

Planning Proof of Evidence

of

Mr. Giles Moir MRTPI

on behalf of

AJC Group

to

Demolish the existing building and erect 25
dwellings with associated access, landscaping
and parking

at

Orchard Gate, Noads Way, Dibden Purlieu,
Hythe SO45 4PD

Our ref: GM-3131

LPA ref: 22/10813

Appeal ref: APP/B1740/W/23/3324227

August 2023

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Version: 1

Prepared by:

Giles Moir Ba (Hons) MTP MRTPI

Chapman Lily Planning Ltd

1. Personal/Professional Statement

- 1.1 My name is Giles Moir. I hold a BA (Hons) degree in Town and Country Planning and Masters in Town Planning from the University of the West of England. I have been a full member of the Royal Town Planning Institute since 2003.
- 1.2 I am currently a Director of Chapman Lily Planning Ltd, a position I have held since 2016. Prior to this current position I was the Planning Manager for Christchurch and East Dorset Councils.
- 1.3 I have a wide and varied range of experience across all sectors of planning and represent clients across a broad spectrum including individuals, landowners, trusts, and developers in relation to a range and scale of projects. These include major residential proposals.
- 1.4 The evidence which I have prepared and provide for this appeal and in this proof of evidence is true and has been prepared and is given in accordance with the guidance of my professional institute and I confirm that the opinions expressed are my true and professional opinions.
- 1.5 Proofs of evidence are provided by my colleagues as follows,
- Mr Newman in relation to viability matters (CD 4-3)
 - Mr Harrington in relation to landscape, character and design matters (CD 4-2)
 - Mr Bird in relation to drainage matters (CD 4-4)
- 1.6 In so far as it is proper to do so, I will defer to my colleagues for their expert opinion on the associated matters. My comments on these matters will be constrained to an analysis of their fit with relevant policy tests and the planning balance.

2. Introduction

- 2.1 This Proof of Evidence has been prepared on behalf of AJC Group. It relates to a planning appeal submitted pursuant to Section 78 of the Town and Country Planning Act 1990 and concerns the Appellant's proposal to demolish the existing buildings at Orchard Gate, Noads Way (the appeal site) and to erect 25 dwellings with associated access, landscaping and parking (the proposal).

- 2.2 The planning application was validated by the LPA on the 8th July 2022 and was refused planning permission by notice dated 19th December 2022 which included seven reasons for refusal. The decision notice is referenced CD 5-3 in the Core Documents library.
- 2.3 The planning appeal was submitted on 15th June 2023. The appellant and the LPA have agreed three Statements of Common Ground relating to the following topic areas,
- Site Description, Character of the area and Planning Policy (CD 8-1)
 - Viability (CD 8-2)
 - Habitats (CD 8-3)
- 2.4 Matters that are not in dispute / agreed as being policy-compliant where relevant, are summarised as including:
- The format of the planning application and the supporting material to permit a lawful decision being made.
 - The LPA is unable to demonstrate a 5 year housing land supply and that the appeal proposal will make a positive contribution to the availability of housing in the plan area.
 - The layout of the proposal would not give rise to levels of overlooking, overshadowing or overbearing that would have a material impact on the amenity of existing neighbours.
 - The principle of residential development of the site is supported by both the development plan and national policy.
 - A suite of draft planning conditions that are compliant with the NPPF 'tests'.
- 2.5 The proposal was the subject of a minor amendment at appeal stage. Details of these changes have been publicised and consulted upon. The amended plans are made up of the following changes,
- the provision of a car port in relation to the parking spaces at T23
 - removal of the proposed benches and revised landscaping plan
 - revised internal road layout to provide crossing points

- revised landscaping proposals to alter the proposed planting stock.
- 2.6 The amended plans were published on the LPA's website as part of the consultation process and remain viewable. The consultation involved writing to all parties that commented during the application stage, local Councillors, the Parish Council and statutory consultees together with the erection of site notices and the hand delivery of letters to adjoining properties. Copies of all relevant paperwork relating to the consultation can be found in Appendix 2.
- 2.7 This planning evidence addresses the town planning issues arising in the appeal. Taking the development plan as the starting point and the weight to be attached to the policies most important to the decision it demonstrates that the proposal is a well planned and high quality development, which provides appropriate, policy compliant mitigation (in relation to habitat impact, air quality and open space provision). This planning evidence is supported by evidence provided by my colleagues (as detailed in paragraph 1.5) which collectively demonstrates that the proposal complies with the development plan as a whole.

3. The Appellant, the Proposal and the Appeal Site

The Appellant

- 3.1 AJC Group are one of the region's leading small/medium sized housebuilders. The business was founded with one clear vision;

'...to become the leading builder of affordable housing across the Wessex Region; delivering homes of exceptional quality on time and to budget on behalf of and in collaboration with our customers and partners.'

- 3.2 They are one of a select number of developers/building contractors that can deliver both small, bespoke residential schemes and large-scale residential schemes. They have a proven track record of delivering schemes. Below are some of the examples of high-quality residential developments under construction or completed in the South coast area.



Okeford Fitzpaine, Dorset.



Dorchester Brewery,
Dorchester.



Hazlebury Bryan, Dorset.



Lindsay Road, Poole.

The Appeal Proposal

- 3.3 The appeal relates to a proposal to demolish the existing, single storey, property and the associated outbuildings – the existing buildings are of no architectural merit. The proposal is to construct a development of 25 dwellings accessed from Noads Way. The 25 dwellings are a mix of the following sizes, 4 x 2 bed, 17 x 3 bed and 4 x 4 bed. The houses are all two storey in scale and will be provided in a variety of forms, being linked detached, semi-detached and terrace properties.
- 3.4 The layout of the proposal has been carefully conceived to ensure that the proposal when viewed from Noads Way represents a single dwelling, set within a spacious plot. The arrangement of built form along the southern boundary (fronting Noads Way) has been designed to integrate with the prevailing character of Noads Way. The frontage unit has an uncomplicated, traditional form.
- 3.5 As the development moves northwards (away from Noads Way) the layout, becoming absent from public view points, transitions into a tighter grain focused around the central area of open space, referred to as ‘the Green’. The verge which runs along the western edge of the access, is read in conjunction with the retained tree belt to the east presenting a semi rural appearance which leads, visually, to the units at the head of the access road – a pair of gabled cottages which reference local traditional forms.
- 3.6 The focal point within the development is the Green which is framed by terraced cottages to the south and west. Within the site, away from public vistas the properties are laid out to ensure that a relationship is maintained with neighbouring properties (having separation distances of 30m or more) to ensure that there is no material loss of privacy or amenity.
- 3.7 The appeal proposal evolved following the appellant engaging with the Council’s pre-application service (a copy of the pre-application advice is attached as appendix 3), this engagement followed the refusal of an application for 37 units. Of particular note is the Officer’s comment, from the 7th April 2022 pre-application advice (CD 5-1), that,

“...the character of the centre of the site could take a different approach, being higher density as shown”

The Appeal Site

- 3.8 The site is located within the established settlement boundary for Hythe Village (a top tier settlement, classed as a 'town' as identified in the New Forest Local Plan Part 1 – 2016-2036, policy STR4 (CD 6-1)). In defining the characteristics of 'towns', policy STR4 identifies that they are the most sustainable locations for large-scale residential developments, with the aim of improving self containment (of the settlement) and to support and consolidate their local service offer.
- 3.9 The site is broadly level and presents itself as an inverted 'L' shape with the long axis running east to west. The site is well located with regard to the provision of local services and facilities being 0.3 miles from Dibden Purlieu Village local centre (which includes a convenience store, post office, a range of comparison stores, pharmacy and cafes), Hythe Village local centre is 1.8 miles to the north-east of the appeal site.
- 3.10 The nearest bus stop to the site is a short, level, walk of 250m and provides services to Southampton, Hythe and Beaulieu.
- 3.11 The site's sustainable credentials should be considered against the environment of the plan area as a whole. Paragraph 2.11 of the New Forest District Local Plan 2016-2036 (CD 6-1) identifies that 'much of the plan area is either an inappropriate location for built development, and/ or should only be considered for development in exceptional circumstances'. As confirmed in the Statement of Common Ground (CD 8-1), the principle of the site being developed is supported. Given the constrained nature of the plan area as a whole, the LPA's Housing Land Supply Statement of January 2022 (CD 7-9) (which identifies a supply of 3.07 years) and the requirement of paragraph 124 of the National Planning Policy Framework to make efficient use of land, the site can only be considered as being highly sustainable and capable and appropriate to deliver the proposed development.
- 3.12 Furthermore, the opportunity to realise efficient use of land at the appeal site, within an existing residential context will preserve the spatial landscape qualities of the New Forest National Park and Cranbourne Chase AONB, in accordance with STR2 of the Local Plan part 1 (CD 6-1).
- 3.13 The site's immediate context is informed by existing residential developments which fall into two broad character types, these being (i) a suburban street frontage comprising the larger

detached properties on Noads Way and Lime Walk which consist of a mixture of bungalows/ chalet style properties and two storey houses and (ii) back land development such as Lime Close made up of higher density developments. To the south and east of the appeal site are further examples of higher density development, including Noads Close, Forest Hill Way and Ranfurly Gardens. The evidence presented on behalf of the appellant demonstrates, in the main, the retention of the trees within the site – with only nine from a total of forty surveyed trees being shown for removal and the provision of twenty seven new trees. None of the trees proposed for removal are in good health or make a high value contribution to the character of the area.

4. The refusal reasons and main issues

4.1 The decision notice sets out seven reasons for refusal.

4.2 The following matters have been resolved between the Council and the appellant,

Reason for Refusal 2:

4.3 Amended plans have been submitted to the Council and consulted upon to demonstrate that within the site pedestrians are able to safely cross the proposed roads (the plans are attached as appendix 4). As detailed in the Statement of Common Ground (CD 8-1), reason for refusal 2 has been resolved and is not in dispute.

4.4 Evidence has been provided to the LPA and Hampshire County Council to demonstrate that appropriate visibility from the proposed access, onto Noads Way, can be achieved.

4.5 The appellant has agreed to enter into a Section 278 agreement to secure off site improvements to the footpath network surrounding the appeal site to support modes of travel other than the private car.

4.6 Given the above, the conflict with policy CCC2 of the New Forest District Local Plan Part 1: Planning Strategy 2016-2036 (CD 6-1) has been resolved and reason for refusal 2 has fallen away.

Reason for Refusal 3:

- 4.7 It is agreed that the proposed drainage strategy detailed in the 11th July 2023 letter from Calcinotto (CD 2-15) will not give rise to increased surface water flooding on site and as such the first section of reason for refusal 3 will be resolved, by this drainage approach.

Reason for Refusal 4:

- 4.8 The appellant has provided a completed unilateral undertaking which secures the following contributions,
- £145,476 – In relation to infrastructure contributions
 - £21,716 - In relation to non-infrastructure contributions
 - £2,472 - In relation to Air Quality Monitoring
 - £19,820 - In relation to Solent Bird Aware Strategy
- 4.9 Policy ENV1 of the New Forest District Local Plan Part 1: Planning strategy 2016-2036 (CD 6-1) identifies that development will only be permitted where the Council is satisfied that any necessary mitigation, management or monitoring measures are secured in perpetuity as part of the proposal and will be implemented in a timely manner, such that, in combination with other plans and development proposals, there will not be adverse effects on the integrity of any of the following International Nature Conservation sites:
- 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
- 4.10 Policy ENV1 states 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 Recreational Mitigation Strategy.

4.11 For completeness, Policy DM3 of the New Forest District Local Plan Part 2: Site and Development Management 2014 (CD 6-2) sets out that development will only be permitted where the Council is satisfied that any necessary mitigation is included such that, in combination with other developments, there will not be adverse effects on the integrity of:

- the New Forest European nature conservation sites (the New Forest SAC; New Forest SPA; the New Forest Ramsar site) or
- the Solent Coast European nature conservation sites (the Solent Maritime SAC; Solent and Isle of Wight Lagoons SAC; Solent and Southampton Water SPA; Solent and Southampton Water Ramsar site).

4.12 However, as agreed in the Habitats Statement of Common Ground (CD 8-3) policy DM 3 was erroneously referred to in the Council's decision notice as it was replaced by policy ENV1 of the New Forest District Local Plan Part 1: Planning strategy 2020.

4.13 The Council's position statement of 4th September 2019 (attached as appendix 1) in relation to nutrient neutrality and the impact on the Solent Maritime SAC and Solent and Southampton Water SPA (Solent SPA and SACs) identifies that such adverse impacts would be avoided if approvals of planning permission were conditional that appropriate mitigation and measures are secured. The appropriate measures are to undertake a calculation and to secure the requisite level of contribution (to be informed by the calculation). A calculation has been undertaken (attached as appendix 5) for the appeal proposal which concludes that the total annual nitrogen load arising from the proposal (and requiring mitigation) is 49.46 TN/year. The appellant has secured confirmation from Roke Manor (attached as appendix 6) – Roke Manor being an appropriate provider for Solent SPA and SACs mitigation that they (Roke Manor) have sufficient mitigation capacity and have reserved the required level of mitigation credits to mitigate the impact of the appeal proposal.

4.14 Having regard to the Planning Practice Guidance (PPG) - paragraph: 010 Reference ID: 21a-010-20190723 I am of the view that it is appropriate to apply a Grampian condition in relation to the matter of nutrient neutrality. It has been demonstrated that there is certainty that the mitigation can be provided and that 'nutrient neutrality' can be achieved.

- 4.15 Securing the infrastructure and non-infrastructure contributions will provide suitable mitigation for the appeal proposal to ensure that there will be no adverse effects on the integrity of the International Nature Conservation sites. Equally, securing the Air Quality Monitoring and Solent Bird Aware Strategy will ensure compliance, respectively, with the Air Quality Monitoring SPD and the Bird Aware Solent Strategy.
- 4.16 It is common ground with the LPA, reflecting the LPA's adopted position statement, that the use of a Grampian condition is appropriate.
- 4.17 Subject to the completion of the Unilateral Undertaking and the application of conditions should the appeal succeed I am of the view that the level of mitigation detailed above, being appropriate to the scale of the appeal proposal, together with the measures that have been entered into to secure such mitigation will ensure that in combination with other developments and projects the appeal proposal will not result in adverse effects on International Nature Conservation sites. As such reason for refusal 4 is resolved.
- 4.18 The main issues arising from the remaining, unresolved, reasons for refusal are,
- The effect of the proposed development on the character and appearance of the site and the surrounding area,
 - Whether the proposed development makes adequate provision for recreation and public open space,
 - Whether the site makes suitable provision for affordable housing.
 - Drainage, in particular whether all options for achieving surface water drainage in accordance with the drainage hierarchy have been exhausted.

5 Legislative and Policy Context

- 5.1 I have set out within this section of my evidence those policies from the Development Plan (having first identified the makeup of the development plan) that are referenced in the LPA's

reasons for refusal together with those which I consider to be of relevance to the determination of the appeal.

- 5.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 is unequivocal in the requirement that planning applications are to be determined in accordance with the development plan unless material considerations indicate otherwise. As such, in addition to the Development Plan, I also make reference to the National Planning Policy Framework (NPPF) and relevant guidance produced by the New Forest District Council.
- 5.3 The appellant's Statement of Case refers to the policies and considerations, save for the National Planning Policy Framework, I do not repeat the full text of the policies here. Within section 7.0 of my proof I consider the policies and material considerations in response to the reasons for refusal/ main issues.

5.4 **The Development Plan**

New Forest Local Plan Part 1 – 2016-2036 (CD 6-1)

- 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

5.5 New Forest Local Plan Part 2 – 2014 (CD 6-2)

- DM2: Nature conservation, biodiversity and geodiversity
- DM3: Mitigation of impacts on European nature conservation sites

5.6 New Forest District Core Strategy – 2009 (CD 6-3)

- CS7: Open spaces, sport and recreation

5.7 Hythe and Dibden Neighbourhood Plan 2018-2026 (CD 6-4)

- 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

5.8 Material Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Air Quality in New Development SPD 2022 (CD 7-3)
- Housing Design, Density and Character SPD 2006 (CD 7-4)
- Mitigation for Recreational Impacts on New Forest European Sites SPD 2021 (CD 7-5)
- Parking Standards SPD 2022 (CD 7-6)
- Interim Strategy for Ecology & Bio-diversity Net Gain 2020 (CD 7-7)
- Bird Aware Solent Strategy (CD 7-8)

The National Planning Policy Framework

- 5.9 The policies of the National Planning Policy Framework (NPPF) in so far as they relate to the consideration of the planning balance are very important to the determination of this appeal. I do not repeat/ summarise the NPPF in its entirety, I do however focus on those paragraphs which are relevant to the matter of planning balance.

- 5.10 Paragraph 8 identifies three overarching objectives which are derived from achieving sustainable development, these objectives are economic, social and environment. Paragraph 38 is clear that LPAs should approach decision making on proposed development in a positive and creative way and that decision-makers at every level should seek to approve applications for sustainable development where possible.
- 5.11 Paragraph 11 (d) is unequivocal that, subject to criteria (i) and (ii) where there are no relevant development plan policies or the policies which are most important for determining the application are out-of-date permission should be granted. Footnote 8 of the NPPF confirms that 'out-of-date' is to include, for applications involving the provision of housing, which this appeal is, where a local planning authority cannot demonstrate a five year supply of deliverable housing sites.
- 5.12 Paragraph 60 identifies that to support the Government's objective of *significantly* (my emphasis) boosting the supply of homes it is important that a sufficient amount and variety of land can come forward where it is needed. The appeal site is in my opinion, such a location and will deliver housing where it is needed – in a sustainable area with an under supply of housing.
- 5.13 Paragraph 124 is clear in its overarching aim that planning policies and decisions should support development that makes efficient use of land. Equally paragraph 125 of the NPPF provides a requirement for LPAs to refuse applications which *fail* to make efficient use of land. The evidence submitted in support of the appeal demonstrates how the proposal makes efficient use of land.

The Housing Design, Density and Character SPD (CD 7-4)

- 5.14 Policy 'DW-E2 Density and Mix of Housing Development' of the Housing Design, Density and Character SPD (which is referenced in the Council's first reason for refusal) states that within the defined built-up areas the average net density of residential development should be a minimum of 30 dwellings per hectare. The proposal has a density of 27.8 dwellings per hectare, which is reflective of the approach set out in the SPD.

6 Housing Land Supply

- 6.1 The LPA has confirmed within both the Statement of Common Ground and within their Statement of Case (at paragraph 4.4) that it cannot demonstrate a 5 year housing land supply. The LPA's published 5 year housing land supply is 3.07 years, representing an acute shortage with little prospect of being rescued through the Local Plan review process given the lack of progress in relation to Local Plan part 2. The Council's published Local Development Scheme proposed an adoption date of December 2023. However, it is understood that the Council's work on part 2 of the Local Plan has been paused and that no revised date is yet planned for the regulation 18 consultation.
- 6.2 The Council's current lack of a 5 year housing land supply reflects a sustained and long standing situation where the Council have been unable to demonstrate a 5 year supply. Appendix 10 is an appeal decision (reference 3209706) from April 2019 – the appeal relates to land next to School Lane, Milford on Sea (being within New Forest District Council). The Inspector found in relation to appeal 3209706 that the presumption in favour of sustainable development was an important material consideration – the Inspector opined that there would be no adverse impacts of granting planning permission that would significantly and demonstrably outweigh the benefits of the appeal scheme (the benefits being the provision of much needed affordable and market housing of a ratio to enable a viable scheme) when assessed against the policies of the Framework taken as a whole. It is my view that the same situation, in relation to the application of the presumption in favour of sustainable development, applies to the appeal at Orchard Gate.
- 6.3 Appendix 9 relates to an appeal, reference 3265937, at Stanford Hill, Lymington (within New Forest District Council). As with this current appeal for Orchard Gate, the Council, in June 2021 were unable to demonstrate a 5 year housing land supply. The Inspector in considering the appeal at Stanford Hill concluded that the tilted balance applied and that this, the tilted balance, together with other material considerations justified a decision other than in accordance with the development plan – the variance being the appeal proposal at Stanford Hill was at variance with policy IMPL2 of the Local Plan.
- 6.4 The chronology of appeals 3209706 and 3265937 demonstrate a sustained absence of a 5 year housing land supply in New Forest District.

- 6.5 Policy STR5 (Meeting our housing need) of the New Forest District Local Plan (2016-2036) (CD 6-1) sets out a target of 10,420 additional homes being provided within the plan period (2016-2036). Section (ii) of policy STR5 identifies that at least (my emphasis) 800 homes on sites of 10 or more are to be identified within or adjoining the defined town and large villages and allocated in the Local Plan Part Two or in Neighbourhood Plans. The LPA has not undertaken any public consultation with regard to advancing part 2 of the Local Plan and the Hythe and Dibden Neighbourhood Plan pre-dates the New Forest District Local Plan (the Neighbourhood Plan being adopted in 2019 and the Local Plan 2020).
- 6.6 The proposal will contribute towards the minimum housing target identified within policy STR5 and complies with the aims of section (ii) being located within a defined town, indeed a top tier settlement as identified in policy STR4. Furthermore, I am of the view that the proposal also complies with the strategy set out in policy STR3 as the site is in an accessible location and will help to sustain the vitality and viability of the local services and facilities at Hythe Village and Dibden Purlieu Village as a result of the residual spend and footfall resulting from future occupants of the appeal scheme. The proposal complies with the aims of policy STR3, STR4 and STR5.
- 6.7 Policy HOU1 of the New Forest District Local Plan (2016-2036) (CD 6-1) sets out a strategy to ensure that all residential development helps to address the diversity of housing needs of local people at all stages of life. It is my opinion that the proposal supports the strategy of policy HOU1, the proposal provides a mix of 2, 3 and 4 bedroom properties which collectively provide a range of housing opportunities for future residents, whether such 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. The LPA have accepted, as evidenced in the Case Officer's report ¹(attached as appendix 7) that it would not be appropriate, in terms of character, for the proposal to include 1 bedroom units. At paragraph 2.3 of the Hythe and Dibden Neighbourhood Plan (CD 6-4) an objective is identified 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.

¹ Section 10 – Principle of Development

The proposal provides a mix of housing sizes that achieves the aims of this objective of the Neighbourhood Plan.

7 Planning Assessment – response to the reasons for refusal and the Inspector’s main issues

- 7.1 The Inspector, in advance of the Case Management Conference, identified six main issues, the first issue being,

the effect of the proposed development on the character and appearance of the site and the surrounding area, with particular reference to trees – this first issue is common, in terms of scope, to the LPA’s first and seventh reason for refusal.

- 7.2 Mr Harrington’s Proof of Evidence (CD 4-2) demonstrates that the design of the proposal has followed an iterative process which is informed by and derived from an analysis of the local development pattern. This analysis has identified that there are two distinct character areas, an assessment that I agree with. Indeed, the LPA in their pre-application response of 7th April 2022 (appendix 3) (CD 5-1) acknowledge that ‘the character of the centre of the site could take a different approach [to the Noads Way boundary] being higher density as shown’.

- 7.3 The Case Officer’s report which led to the refusal of the planning application (attached as appendix 7) (CD 5-2) in assessing the design and appearance of the proposed houses concludes that,

“the design of the proposed houses, like many infill developments of this nature, has a collective character and sit comfortably together. Where appropriate several end of terrace houses include projecting bay windows to overlook and engage with public realm alongside the houses and provide interest to end elevations. Whilst the architectural style may not replicate the variety seen around the site, it would not harm the appearance of the area”.

7.4 In reaching this assessment the Council acknowledge that *“the houses themselves would not be readily seen alongside the variety of housing around the site”*. I believe that this statement by the Council is important as it confirms that there are limited public vistas of the site and that the site is not read within its wider context, thereby being able to have it’s own character and not cause demonstrable harm to the character and appearance of the area.

7.5 Mr Harrington’s Proof of Evidence (CD 4-2) details how existing trees were considered and indeed influenced the layout design. The proposed layout was informed by a tree survey which identified that the mainstay of the mature trees within the site form and delineate the site boundaries. These mature trees, forming the site boundaries, are with the exception of T1, T40 and a selection with G39 retained. The Council’s Senior Tree Officer in their comments of 2nd December 2022 (attached as appendix 8), in relation to the proposed felling of the frontage trees, states,

Due to the poor condition of these trees T40 a Beech tree has extensive decay present and T1 a Sycamore is overall poor form I cannot reasonably object to their loss. However, given the contribution these trees make the verdant character of the area I would expect to see these trees replaced with additional tree planting on the site adjacent to Noads Way.

7.6 Replacement planting is proposed on the frontage of Noads Way (as detailed on the landscape plan) together with the provision of 20.27 sqm of hedgerow. This planting will retain the sylvan character of the Noads Way frontage.

7.7 The comments from the Council’s Senior Tree Officer goes on to state,

The removal of the small trees in the middle of the site will not make a significant impact on the amenity and I cannot object to the loss of these individual, small stature, trees. However, I would like to see additional trees planted within the scheme to mitigate the loss of overall tree cover in the area.

7.8 Again, the landscaping scheme proposes replacement planting throughout the site. Indeed, the proposed landscaping scheme includes 27 new trees and a 27.51% gain in hedgerow units.

- 7.9 The view of the Council's Senior Tree Officer runs contrary to the concerns relayed in the first and seventh reasons for refusal and supports my view and that of Mr Harrington that the proposal safeguards the sylvan character of the area and ensures compliance with policies STR1 & ENV3 of the New Forest Local Plan Part 1 – 2016-2036 (CD 6-1).
- 7.10 I believe that the iterative approach to the design of the proposal demonstrates compliance with policy D1 of the Hythe and Dibden Neighbourhood Plan (CD 6-4) as it is clear that the local character has been fully recognised, the design has responded to this character and that the local values are respected – being the tests of policy D1.
- 7.11 Policy ENV3 of the New Forest Local Plan Part 1 – 2016-2036 (CD 6-1) sets out a series of tests and requirements for development in relation to 'design quality and local distinctiveness'. The proposed layout is logical, with a clear and legible entrance which leads to a network of footpaths and roadways that are well connected and easily navigable. When journeying through the site destinations are easily identified with no hidden paths or roads resulting in a convenient and safe space which is functional. Mr Harrington's proof of evidence demonstrates how the proposal is appropriate to its environment and context and attractive.
- 7.12 The second issue identified by the Inspector is,
- whether the proposed site can provide safe access for all users – this issue is common to the LPA's second reason for refusal**
- 7.13 As evidenced in the Statement of Common Ground matters relating to safe access, both within the site and at the junction with Noads Way have been agreed between the Appellant and the Council. As detailed in the Statement of Common Ground a Section 278 agreement will be secured via condition to undertake off site highway improvement works to improve pedestrian routes in the vicinity of site. I believe that these measures and the updates to the internal layout plan demonstrate that the proposal is compliant with policies CCC1 and CCC2 of the New Forest Local Plan Part 1 – 2016-2036 (CD 6-1).
- 7.14 The third issue identified by the Inspector is,

whether the proposed development makes suitable arrangements for attenuating surface water runoff – this issue is common to the LPA’s third reason for refusal

- 7.15 Policy STR1 of the of the New Forest District Local Plan Part 1: New Forest Local Plan Part 1 – 2016-2036 (CD 6-1) relates to achieving sustainable development. Section (v) of policy STR1 sets out that new development will be expected to make a positive social, economic and environmental contribution to community and business life in the Plan Area by (v) ensuring communities and workers are safe and feel safe, and the risks to people, places and to the environment from potential hazards including pollution, flooding and climate change effects are minimised.
- 7.16 It is agreed that the LPA’s concerns that it had not been demonstrated that the drainage scheme will not give rise to increased surface water flooding has been resolved as detailed in the 11th July 2023 letter from Calcinotto (CD 2-15) and as such the first section of reason for refusal 3 has fallen away.
- 7.17 The Planning Practice Guidance (PPG) ² provides guidance on the sort of sustainable drainage system that can be considered for a development proposal. The PPG is clear that the type of drainage system will “*depend on the proposed development and its location*”. The PPG identifies that “*where possible*”, i.e. not an absolute requirement, preference should be given to multifunctional solutions and solutions that allow surface water to be discharged according to the drainage hierarchy (the hierarchy being (1) into the ground, (2) to a surface water body, (3) to a surface water sewer, highway drain, or another drainage system, (4) to a combined sewer).
- 7.18 The PPG goes on to state that particular types of sustainable drainage features may not be practicable in some locations. The evidence from Mr Bird demonstrates how the drainage strategy for the proposal has considered the drainage hierarchy with each step being considered arriving at the proposed strategy. This approach is consistent with the PPG, evidencing why infiltration is not achievable.

- 7.19 The fourth issue identified by the Inspector is,

² Paragraph: 056 Reference ID: 7-056-20220825

the effect of the proposed development on the New Forest Special Area of Conservation (SAC), the New Forest Special Protection Area (SPA), the New Forest Ramsar site, the Solent and Southampton Water SPA, the Solent and Southampton Water Ramsar site, and the Solent Maritime SAC, which are European Designated sites – this issue is common to the LPA’s fourth reason for refusal

7.20 Section 4 of my proof of evidence sets out the measures which the appellant has undertaken to demonstrate the effects of the proposed development on the sites of International Nature Conservation will be mitigated and ensure that in combination with other developments and projects the appeal proposal will not result in adverse effects on International Nature Conservation sites.

7.21 The fifth issue identified by the Inspector is,

whether the proposed development makes adequate provision for recreation and public open space – this issue is common to the LPA’s fifth reason for refusal

7.22 Policy CS7 of the New Forest District Core Strategy 2009 (CD 6-3) sets out a series of criteria (a) to (i) with regard to the implementation of improving play, sports and other public open space provision. Criteria (b) and (c) of policy CS7 are relevant to the appeal proposal and state that improvements 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;

7.23 The preamble to policy CS7 (paragraph 6.7.6 of the New Forest District Core Strategy 2009) sets out a minimum standard for public open space of 3.5 hectares of per 1000 population and that this (the standard) will assist the Council in the negotiation of new open space provision to support new development in the Plan Area. This standard has been developed from the PPG17 study commissioned by the Council. The standard is comprised of,

- 0.2 hectares per 1000 population of designed play spaces for children and young people,
- 1.25 hectares of formal recreational space per 1000 population and
- 2 hectares of informal open space per 1000 population.

7.24 The proposal has been advanced in the spirit of criteria (b) of policy CS7 in so far as informal open space provision is provided onsite and a contribution has been secured to enhance off site provision and management of formal open space in relation to designed play spaces and formal recreational space. The details of this contribution are set out in the Statement of Common Ground.

7.25 It is common ground that the appeal site is located in close proximity to the Noads Way recreation ground (the entrance to the recreation ground being circa 50m from the site entrance) and as such this is an appropriate location for the open spaces contribution to be utilised.

7.26 It is understood that despite there being common ground in relation to a contribution towards off site provision and management for formal open space and designed play space complying with the aims of policy CS7 the LPA intend to defend the fifth reason for refusal with regard to the provision of the quantum of informal open space within the layout.

7.27 The proposal provides two, linked, areas of open space within the central section of the proposed layout, each having its own distinct character. Collectively the linked areas provide 0.07ha of informal open space. The central green area has a defensible boundary providing a shield to the internal road layout. Paragraph 6.7.10 of the New Forest District Core Strategy 2009 is titled 'ensuring new open spaces are of a high standard'. The open spaces within the proposed layout are easily accessible, being at the centre of the site and served by the network of footpaths within the site. The areas are attractive to future users benefitting from

passive surveillance from surrounding properties and provide opportunities for informal play (within the Green) and interacting with nature in the meandering pathway. It is my opinion that the informal open spaces provided within the development represent good quality play spaces.

7.28 In addition to the provision of informal open space I am of the opinion that it is a material consideration that each of the properties has access to its own, private, garden area. These garden areas provide the opportunity for informal play complementing the informal open space provided within the layout. The entrance to Noads Way Recreation Ground is within 50m of the appeal site. The recreation ground provides opportunities for both formal play and informal play, providing future residents of the appeal scheme choice and variety as to which open space they use.

7.29 The Council identify that 0.15ha of informal open space should be provided for within the development. Policy CS7, in so far as it relates to the provision of open space, is worded as an aim, not, an absolute – this wording provides the opportunity for flexibility by the decision maker in the application and assessment of the policy,

The aim is to provide, as a minimum standard, the equivalent of 3.5 hectares of public open space per 1000 population to serve the district's towns and larger villages.

7.30 The preamble to policy CS7 identifies that the ratio of open space per 1000 population is based upon a PPG17 study. PPG17 was replaced in March 2012 by the National Planning Policy Framework.

7.31 Paragraph 98 of the NPPF relates to 'open space and recreation' states that '*Planning policies should be based on robust and up-to-date assessments of the need for open space, sport and recreation facilities (including quantitative or qualitative deficits or surpluses) and opportunities for new provision. Information gained from the assessments should be used to determine what open space, sport and recreational provision is needed, which plans should then seek to accommodate*'. Policy CS7, being a saved policy from the 2009 New Forest District Core Strategy does not reflect the criteria of paragraph 98 of the NPPF as it is clearly not based upon, or derived, from an up-to-assessment.

7.32 Should it be considered that the proposal is in conflict with policy CS7 the application of the planning balance, in my opinion, allows for the development to be approved. In applying the planning balance to the assessment of policy CS7, in so far as it relates to the provision of informal open space, there are material considerations which weigh in favour of the proposal. These material considerations are a qualitative assessment of the informal open space that is being provided, the open space being well designed and laid out so as to facilitate and encourage use. Furthermore, each of the properties are provided with their own private garden space which provide the opportunity for outdoor amenity. Should it be considered that there is conflict with policy CS7, this conflict should be given limited weight in the overall planning balance given that the policy is not based on an up-to-date assessment (as required by the NPPF).

7.33 The sixth issue identified by the Inspector is,

whether the site makes suitable provision for affordable housing – this issue reflects the Council's sixth reason for refusal

7.34 The LPA's Statement of Case makes the assertion that, in relation to policy HOU2 of the New Forest District Local Plan Part 1: Planning Strategy 2016-2036 (CD 6-1), that the LPA will provide evidence to demonstrate that such provision can viably be delivered by the development in accordance with adopted local plan policy HOU2.

7.35 The Case Officer's report identifies that an independent review of the applicant's viability assessment suggests (implying a degree of ambiguity on the Council's part) the scheme could deliver a policy compliant level and mix of affordable housing. For the appeal site policy HOU2 identifies a target provision of 35% provision of affordable housing with a target tenure mix of 70% affordable homes for rent and 30% intermediate or affordable home ownership.

7.36 Policy HOU2 is clear that the viability of development will be taken into account in application of the policy and cross refers to policy IMPL1: Development contributions of the New Forest District Local Plan Part 1: Planning Strategy 2016-2036.

7.37 Policy IMPL1 provides a mechanism whereby 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 Council will work with the applicant to explore options to restore viability in the following order of preference.

7.38 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. The order of preference, in relation to options to restore viability are given as,

- 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.

7.39 The proof of evidence from Mr Newman (CD 4-3) considers the quantum of affordable housing that the proposal can viably provide. Mr Newman's evidence demonstrates how the approach that has been adopted is consistent with policy IMPL1 of the New Forest District Local Plan Part 1: Planning Strategy 2020 together with the NPPF.

7.40 Mr Newman's proof of evidence confirms that the proposal will provide 3 affordable units on the following basis 2 x 2 bedroom properties (1 social rent and 1 affordable rent) and 1 x 3 bedroom shared ownership property.

7.41 Whilst policy HOU2 of the New Forest District Local Plan Part 1: Planning Strategy 2020 provides details of the LPA's expectations for the provision of affordable housing, this expectation is not an absolute test as both the provision of affordable housing and tenure mixes are expressed as targets and the policy wording allows for viability testing. The evidence provided in Mr Newman's proof evidences why these targets cannot be achieved. It is my opinion that the appeal proposal complies with policy HOU2 as viability evidence has been provided which should (as required by the policy) be taken into account in its application.

8 The Planning Balance

- 8.1 The NPPF (September 2023) sets out, at paragraph 11(d) the presumption in favour of Sustainable Development. For decision-taking [making], this means:

“approving development proposals that accord with an up-to-date development plan without delay; or

where there are no relevant development plan policies, or the development plan is absent, silent or the policies which are most important for determining the application are out-of-date, granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole”*

- 8.2 Footnote 8 confirms that where an LPA are unable to demonstrate a five year housing land supply (as is the case with regard to this appeal) policies are considered to be out of date.

- 8.3 Footnote 7 sets out, in relation to para 11(d)(i) the circumstances when exemptions apply to implementing paragraph 11(d), as being those (within the NPPF, rather than Development Plans) that relate to :

- habitats sites (and those sites listed in paragraph 181) and/or designated as Sites of Special Scientific Interest;

In so far are relevant to this appeal.

- 8.4 Paragraph 182 of the NPPF confirms that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site. It is my opinion that paragraph 11(d)(i) of the NPPF is not engaged as the appeal proposal (i.e. the project) secures suitable mitigation (as detailed in section 4 of this proof), 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 sites are not adversely affected, thereby complying with paragraph 182 of the NPPF.

8.5 Paragraph 14 of the NPPF sets out that for applications involving the provision of housing, where the presumption in favour of sustainable development applies (as set out in paragraph 11d) - which I contend does apply in the consideration of this appeal, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided all (emphasis added) of the following apply:

- a) the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made;
- b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement;
- c) the local planning authority has at least a three year supply of deliverable housing sites (against its five year housing supply requirement, including the appropriate buffer as set out in paragraph 74); and
- d) the local planning authority's housing delivery was at least 45% of that required¹⁰ over the previous three years.

8.6 The Hythe and Dibden Neighbourhood Plan (CD 6-4) was adopted on 9th December 2019 – a period in excess of two years (in relation to the requirements of section (a) of paragraph 14). In addition, paragraph 9.3 of the Hythe and Dibden Neighbourhood Plan states,

Earlier drafts of the Neighbourhood Plan that were consulted on in the spring and summer of 2018 included a number of suggested site allocations, for housing, open space, allotments, park & ride infrastructure, burial grounds and cycleways. It was not possible to include them in the Plan being taken forward, because the very substantial requirements for technical investigations and feasibility studies under current planning regulations exceeded the resources available to the Parish Council to be achievable without seriously delaying the delivery of the Plan.

8.7 It is my opinion that the tilted balance is not dis-engaged by paragraph 14 of the NPPF. The absence within the Neighbourhood Plan of policies and allocations to meet its identified

housing requirement, does not meet the requirement of section (b) of paragraph 14 of the NPPF.

- 8.8 I consider that as the LPA cannot demonstrate a 5 year housing land supply this proposal benefits from the tilted balance. With reference to the three objectives of sustainable development, as set out in paragraph 8 of the NPPF, these dimensions being, economic, social and environment I consider below the positive impacts arising from the proposal. The hierarchy of weighting I have adopted, in relation to the degree of benefit, has regard to both the aim of the development plan as a whole and their (the benefits) contribution towards achieving sustainable development. Significant weight should, in the determination of the appeal, be attributed to those benefits identified as being significant with the degree of significance clearly weighing in favour of the proposal.
- 8.9 The appeal proposal will make provision for (net) 24 new homes of a mix of sizes, each with their own outdoor space contributing to the LPA's acknowledged deficit and delivering much needed homes in a sustainable location. The 25 dwellings which form the proposal include 3 affordable properties, being 2 x 2 bedroom properties (1 social rent and 1 affordable rent) and 1 x 3 bedroom shared ownership property – this is a **significant** benefit of the proposal and is linked to the social dimension of sustainable development.
- 8.10 The proposal will deliver housing in a sustainable location, helping to sustain the vitality and viability of the local services, this is a **significant** benefit of the proposal linked to both the social and economic dimensions of sustainable development.
- 8.11 Alongside paragraph 8 of the NPPF and the economic dimension of sustainable development, paragraph 81 sets out that planning decisions should create the conditions in which business can invest, expand and adapt. Paragraph 81 goes on to state that significant weight should be placed on the need to support economic growth. The proposal will provide a **significant** economic benefit of increasing local spending and assist with self containment, there is also a short term benefit relating to employment from the construction phase.
- 8.12 The proposal has a **significant** benefit of protecting the countryside, Cranborne Chase Area of Outstanding Natural Beauty and the adjoining New Forest National Park, benefits which

form part of the environmental dimension of sustainable development. The sustainable location of the site will enable a reduced reliance upon the private car with residents being able to access local services and facilities, this is a significant environmental benefit of the proposal. As confirmed by the correspondence attached as appendix 12, the proposal will provide 10% Biodiversity Net Gain through the Key haven Natural Capital Scheme, which is a significant environmental benefit.

8.13 I find no conflict with development plan policies for the reasons given in this proof of evidence, the statement of case and the planning submissions. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out that determination must be made in accordance with the plan, unless material considerations indicate otherwise – this being the development plan as a whole. I am of the opinion that the proposal does accord with the development plan as a whole. Should conflict be found with policy CS7 of the 2009 Core Strategy, material considerations exist to outweigh any limited harm. It is my opinion that the proposal should be classed as sustainable development and with no harm arising from the proposals, when considering the tilted balance permission should be granted without further delay. Should it be considered there is an adverse impact this (any such adverse impact) does not demonstrably outweigh the benefits of the proposal.

8.14 I consider that in the application of Section 38(6) of the Planning and Compulsory Purchase Act 2004 the proposal accords with the Development Plan, should however an alternative view be taken, there are material considerations, namely the application of paragraph 11 of the NPPF that mean that permission should be granted.

9 Response to Interested Party Comments

9.1 Mr Harrington has considered in his proof of evidence how the proposal has responded to the comments received at the application stage, with the exception of the complaint that community feedback has been ignored. Included with the planning application submission was a statement of Community Engagement (CD 1-24) which details the feedback provided

at the public engagement event. The Design and Access Statement (CD 1-21) and the Planning Statement (CD 1-16) detail the evolution of the scheme.

9.2 I have reviewed the representations submitted by third parties in relation to the appeal. There are seven representations made up of the following,

- Councillor M Wade (there are two duplicate submissions from Councillor Wade)
- Councillor Osborne
- Mr S Spencer, on behalf of Hythe and Dibden Parish Council
- Mr D Cole, on behalf of local residents
- Mr R Sleet
- Mr M Whitehouse

9.3 The representations from Councillor Wade, Councillor Osborne and Mr Cole seek to reiterate the Council's reasons for refusal apart from an additional point in relation to highways safety and access to the adjacent recreation ground. To avoid duplication I will not respond to the individual points raised in the representations that have already been addressed in the proofs of evidence from Mr Newman, Mr Harrington and myself.

9.4 On the matter of the additional point of highway safety and access to the adjacent recreation ground Noads Way benefits from a footpath on both its northern and southern edges. The footpaths provide a safe and convenient walking route to the Noads Way recreation ground. Through the Statement of Common Ground it has been agreed that the access to the appeal proposal provides safe access to the highway and does not prejudice highway safety. For these reasons it is my opinion that the proposal complies with the requirement of policy CCC2 of the New Forest District Local Plan Part 1: Planning Strategy and does not prejudice pedestrian safety.

9.5 The representation from Mr Sleet raises concerns with regard to traffic volumes arising from the proposal, both during and post construction. It is important to consider that the consultation response from Hampshire County Council has not raised concerns with traffic volumes and agreement has been reached regarding the access design, which I consider

demonstrates that safe access and egress can be achieved from the appeal site. I do not consider that there is any evidence to suggest that the proposal will have a significant impact on the operation of, or will be prejudicial to, the safety of the highway network. It is my view that that the proposal complies with the requirement of policy CCC2 of the New Forest District Local Plan Part 1: Planning Strategy 2016-2036

9.6 The representation from Mr Whitehouse raises concerns that the appeal proposal will impact on his privacy, Mr Whitehouse resides at 2 Lime Close. There is a separation distance in excess of 35 metres from the rear elevation of 2 Lime Close to the rear elevation of the properties proposed on the western boundary of the appeal site, numbers 16 and 17 (these properties being the closest to 2 Lime Close). Furthermore, the western boundary of the site, being the shared boundary with 2 Lime Close consists of retained planting that will be enhanced with a new native hedgerow and standard trees. It is my opinion that the extent of the separation distance between 2 Lime Close are the appeal proposal and the nature of the boundary treatments provides a relationship which does not materially impact on the privacy or amenity of neighbouring properties. The proposed layout of the appeal scheme accords with the aims of criteria (ii) of policy ENV3: Design quality and local distinctiveness of the New Forest District Local Plan Part 1: Planning Strategy 2016-2036 as it does not result in an adverse impact on residential amenity.

9.7 The representation from Mr Spencer, made on behalf of Hythe and Dibden Parish Council supports the LPA's reasons for refusal and does not offer any additional points.

10 Conclusion

10.1 This proof of evidence has been prepared on behalf of AJC Group, in my opinion the proposal complies with the development plan and represents sustainable development, providing 25 new homes across a mix of housing sizes (being 2, 3 and 4 bedroom properties), in a form and layout that does not harm or detract from the character and appearance of the area.

10.2 There is no dispute with the LPA with regard to the principle of development of the site and the evidence presented by Mr Harrington, Mr Newman, Mr Bird and myself demonstrates that no material harm will arise from the appeal proposal.

10.3 The LPA are unable to demonstrate a 5 year housing land supply. It is clear that the LPA have an acute housing land supply shortage (the supply being 3.07 years) with little prospect of being rescued through the Local Plan review. This (the lack of a 5 year housing land supply) is not a new situation the LPA find themselves in having had a sustained under provision for several years. The proposal will make a valuable contribution to the LPA's land supply. I have set out in this proof of evidence why it is my opinion that paragraph 11(d) of the NPPF is engaged and that the tilted balance applies and that the proposal is in overall compliance with the development plan. Should the Inspector find any conflict with development plan policies the engagement of paragraph 11(d), taken together with other material considerations clearly indicate that permission should be granted.

Appendix (1)

**POSITION STATEMENT ON NUTRIENT NEUTRAL DEVELOPMENT –
INTERIM NITROGEN MITIGATION SOLUTION**

1. RECOMMENDATIONS

1.1 It is recommended that Cabinet:

- (a) approves the approach to mitigation as set out in the report;
- (b) notes that the Planning Committee will be advised of the mitigation approach agreed by the Cabinet, as a material planning consideration in their determination of planning applications;
- (c) continues to work through the Partnership for South Hampshire (PfSH), the Local Government Association and Members of Parliament to lobby central government to resolve the contradictory positions held by agencies within DEFRA and the Ministry of Housing, Communities and Local Government (MHCLG) and to develop a comprehensive, long term, funded mitigation strategy for the Solent area;
- (d) notes that a further report will come back to Cabinet to seek agreement of a definitive Nitrate Mitigation solution.

2. THE PURPOSE OF THE REPORT

- 2.1** This report considers an Interim Nitrate Mitigation solution for the District. This report details the present situation for the District in relation to advice from Natural England (the statutory advisor on protected sites), that developments in the District must be nitrogen neutral to mitigate any likely significant effect on internationally important protected sites in the Solent.
- 2.2** The Local Plan Review Inspectors have been advised of the updated position together with details of the work being carried out through PfSH.
- 2.3** This report details a package of measures which together form an interim mitigation solution which enable the Council to move forward to a position where planning permissions can continue to be issued. In the absence of an interim strategy the Council would not be able to issue permissions for development of 1 dwelling or more or developments that would result in an increase in overnight accommodation.

- 2.3 Further the report gives an update on progress made by the (PfSH) to develop a sub-regional, long term strategy to address the sources of nitrate pollution in the Solent with central government agencies.

3 BACKGROUND

- 3.1 The Council has a significant housing need to meet within the District. To meet this housing need significant housing development has been promoted through the Local Plan Review. The Council also has committed to build a significant number of new homes as set out in the Council's Housing Strategy.
- 3.2 The Council takes seriously its responsibility to provide for sustainable development in the New Forest. Sustainable development is that which respects equally the three pillars of sustainability: economy, environment and social. This is a key element of the National Planning Policy Framework.
- 3.3 The Council is committed through the New Forest Local Plan Review 2016- 2036 to new development only taking place if it is sustainable development that includes the relevant environmental protections incorporating features to encourage biodiversity and retain and where possible enhance existing features of nature conservation value. Part of the consideration of this is whether there would be a detrimental impact on the water quality of the nearby European designated nature conservation sites in the Solent.

The Habitat Regulations

- 3.4 The Conservation of Habitats and Species Regulations (2017 as amended), hereafter referred to as the Habitats Regulations is the UK's transposition of the European Union Directive 92/43/EEC Conservation of Natural Habitats and of Wild Fauna and Flora. The Regulations place significant responsibilities on the Council as competent authority for the protection of ecology. Regulation 63 requires competent authorities to undertake an 'Appropriate Assessment' of the implications of the permission, if it is likely to have a significant effect on a European site.
- 3.5 The Appropriate Assessment considers potential impacts against the conservation objectives of any European sites designated for their nature conservation importance. If a likely significant effect is predicted, planning permission can only be granted if the competent authority can determine that there will be no adverse effect on the integrity of the site having regard to any proposed mitigation measures. Therefore, if mitigation measures are not available or sufficient to avoid the adverse effect, then the competent authority would not be able to conclude that

the plan or project would not have an adverse effect.

- 3.6 Such European sites include Special Protection Areas (SPA) designated to conserve important or threatened bird species and Special Areas of Conservation (SAC) designated to conserve important and rare habitats. Significant effects on European designated sites can be caused through a number of impact pathways such as direct/indirect habitat loss, increase of recreational disturbance, construction, activities, air and water pollution.
- 3.7 It is also necessary for the competent authority to consider not only the impact of a single plan or project in isolation but the likelihood of a significant effect occurring in combination with other plans and projects.

Recent case law

- 3.8 An established approach is that the Appropriate Assessment must use the 'precautionary principle' when determining likely significant effects. If it is not possible to rule out a likely significant effect, the competent authority must work on the basis that one exists and undertake an Appropriate Assessment. The precautionary principle also dictates that there must be certainty over the effectiveness of the mitigation measures to rule out any adverse effect. This precautionary principle has been reinforced by a recent case determination from the European Court of Justice commonly referred to as the 'Dutch Case'.
- 3.9 The Dutch Case also clarified the requirement that mitigation is to be secured at the time of carrying out an Appropriate Assessment for the competent authority to conclude with certainty that any mitigation proposed would sufficiently mitigate any adverse effects arising from the plan or project in question.

Water Quality in the Solent

- 3.10 PfSH authorities commissioned an Integrated Water Management Study (IWMS) looking into the effects of planned future development on water quality and water resources. The IWMS noted that the majority of the Solent water bodies had in most cases, less than good ecological status for elements such as dissolved inorganic nitrogen (made up of nitrates, nitrites and ammonium). The IWMS also identified that some Wastewater Treatment Works (WwTW) would reach capacity in the early to mid-2020s and that by this point, action would have to be taken to ensure that these issues are satisfactorily mitigated. Therefore, at present, the impact on the Solent SPA and SACs from development is uncertain and the effectiveness of any proposed mitigation is unknown.
- 3.11 The Integrated Water Management Strategy was approved in 2018. Given the

need for a comprehensive and definitive mitigation strategy to be agreed which will enable nutrient neutral development to take place into the future, a Water Quality Working Group was set up through PfSH to look in more detail at the issue of nutrient neutrality. The Working Group includes representatives from Natural England, the Environment Agency and Southern and Portsmouth Water. Ideally the Strategy would be facilitated by Government, however failing that, a PfSH strategy addressing the issue will be prepared in collaboration with Natural England, the Environment Agency and the Water Companies.

- 3.12 One of the causes of a deterioration in water quality is new developments creating additional wastewater which is treated at Wastewater Treatment Works (WWTWs) and discharged into the Solent. The percentage of nitrate coming from this source varies depending on the location in the Solent but is small (3-18%) in comparison to run-off from agriculture (20-77%) and background levels already in the waterbody (12-67%).

Natural England's Advice

- 3.13 Based on the existing condition of the Solent water bodies and considering the implications of the more recent Dutch case ruling, Natural England advised the New Forest District Council verbally on the 9th August 2019 that development which would result in an increase in 'overnight' stays, should achieve nitrate neutrality to not have any likely significant effects. Natural England has also now confirmed its position in a consultation response relating to a specific application. The Council as competent authority under the Habitats Regulations, must have regard to Natural England's advice as a statutory consultee, and national body responsible for the natural environment. The Council should only depart from the advice of Natural England for good and justified reasons.
- 3.14 The affected catchment is all parts of the Plan Area west of, and including New Milton, which are serviced by Southern Water waste water treatment plants (Pennington, Ashlett Creek and Snowhill Copse). Any development in this area served by local treatment plants or septic tank arrangements discharging to water courses that drain to the Solent are also affected including most of the New Forest National Park.
- 3.15 Several other planning authorities across the Solent in considering negative comments from Natural England on specific planning applications and, following Counsel's opinion, have taken the decision to temporarily cease granting planning permissions whilst mitigation strategies are developed. Some Councils have not been able to issue permissions for several months as they have explored options for mitigation.

- 3.16 Advice to local planning authorities in the Solent region, Natural England has acknowledged that there is 'uncertainty as to whether new growth will further damage designated sites'. It is Natural England's advice to local planning authorities and applicants to be 'as precautionary as possible' when addressing uncertainty and calculating nutrient budgets. The contrast between 'scientific proof' and 'as precautionary as possible' may become significant if decisions by local planning authorities are challenged through the Court.

Environment Agency Advice

- 3.17 By contrast, the Environment Agency in a technical note states 'using our evidence we have confirmed that no further investment is needed to treat wastewater to a tighter nitrogen limit for any of the treatment works in the Solent area. The Environment Agency go on to say that 'Where new development can be accommodated within the current waste water discharge activity permit limits individual Wastewater Treatment Works i.e. that there is capacity to take the extra wastewater flows from new development whilst still treating affluent to the same standard, then we consider the development would be acceptable.'
- 3.18 Both Natural England and the Environment Agency are agencies of the Department for Environment, Food & Rural Affairs (DEFRA). DEFRA is also responsible for OFWAT, Water UK and the regulation of the farming industry. Water quality degradation from nitrates and phosphates largely stems from agricultural practices which tend to operate within existing consenting regimes.

Calculating nitrate neutrality

- 3.19 Natural England has produced guidance on how to calculate nitrogen budgets for developments. The calculations compare the existing land use to the proposed land use in terms of nitrate loading and use assumptions on water use and occupancy rates to help planning applicants determine whether more or less nitrate will come from the site (either through run off or via the sewerage system) if permission was granted. Natural England suggest that larger sites, particularly those on agricultural land may achieve neutrality by providing enough open space. Achieving neutrality on smaller sites and brownfield developments is likely to require off-site mitigation.

PfSH Work

- 3.20 Though PfSH there has been various lobbying to highlight the issue to central government and the impact on housing delivery, investment confidence and survival of SME developers across the area. At the PfSH Joint Committee on 31 July 2019, it was agreed, amongst other things, that there was a need to gain a greater understanding of the nature of the issue, that lobbying continues and that there was a need to develop a long-term water quality and mitigation plan, to achieve nutrient neutral development.
- 3.21 PfSH has also made representation to the Ofwat report proposals (published in June 2019) to impose a penalty on Southern Water for a range of failings in its statutory duties as sewerage undertaker, including planning and investment in their infrastructure.
- 3.22 Natural England met with MHCLG on 19 June 2019 to discuss the need to address the source of the problem (environmental permitting regimes and insufficient wastewater treatment practices by statutory undertakers) and the impacts of local planning authorities from housing delivery. MHCLG agreed to organise a cross government/department meeting. MHCLG also attended a meeting with PfSH Planning Officers group on the 20th August which was the start of an on-going conversation with Government on the matter. One proposal is that the Environment Agency should be instructed to commence review of the permits of Waste Water Treatment Works earlier and undertake a robust Appropriate Assessment on the permits.
- 3.23 The PfSH Water Quality Working Group, in partnership with the relevant Government bodies, is considering several interventions, both to reduce the inputs of nitrates into the local catchment and to manage the input of nitrates into the sensitive areas of the Solent. Most of these mitigation measures or medium to long term and will form the basis of a PfSH wide Strategy.

Approach of other PfSH authorities

- 3.24 Several PfSH authorities that have been faced with withholding the issue of planning permissions have now identified a package of potential short to medium term mitigation measures that can assist developments where on-site avoidance and/or mitigation is not possible. These authorities have either formally adopted Interim Strategies or are currently seeking Member approval. These Interim Strategies acknowledge the Council's responsibilities and the need for mitigation, the kind of mitigation packages that will deliver mitigation and the approach towards securing these through a Grampian Condition on planning permissions. The first authority that moved forward with this approach sought Counsel Opinion

on the proposed approach which has confirmed its validity. The approach taken by these Councils has been supported by Natural England.

- 3.25 In all cases further work by individual Councils is necessary to clarify precisely what package of mitigation measures will be enacted in the short term together with calculation to the resultant cost for development schemes of providing the mitigation. Each authority will then use a Grampian style condition to enable permissions to be granted. It should be noted that whilst this is providing a solution, for some applicants the use of a Grampian style condition is not acceptable.

Nitrogen Budget for the District

- 3.26 An exercise has been carried out by officers applying Natural England's nitrogen budget methodology to planned development within the District. This has confirmed that planned development, including the development promoted in the emerging NFDC Local Plan, will generate a large increase in nitrogen discharge to the Solent (a total load of 11,000kg N per annum for 6500 additional homes 2018-2036).
- 3.27 The affected catchment is all parts of the Plan Area west of, and including New Milton, which are serviced by Southern Water waste water treatment plants (Pennington, Ashlett Creek and Snowhill Copse). Any development in this area served by local treatment plants or septic tank arrangements discharging to water courses that drain to the Solent are also affected including most of the New Forest National Park.

Implications

- 3.28 Whilst the longer-term partnership work is intended to create a sustainable mitigation strategy to enable growth in the region, the inability to grant planning permission would have significant implications for housing delivery and meeting housing need within the District and the overall economy of the area. On a more technical note it would also have serious implication for the Housing Delivery test and the Council's 5-year housing land supply. Whilst larger sites should be able to demonstrate nitrate neutrality this will be difficult to achieve at application level on smaller sites.
- 3.29 Given the recent advice from Natural England, any permissions issued without achieving Nitrate neutrality or having a mitigation strategy to address the issue, would be at risk of legal challenge through the Courts.
- 3.30 The emerging Local Plan already requires Nitrate neutrality for larger sites in

accordance with previous Natural England advice. Nitrate neutrality was not debated in the recent Local Plan examination hearings but will be an issue at Main Modification stage in autumn 2019.

- 3.31 Policy 10 (Mitigation) will need to be slightly modified to reflect the current position, and supplementary Habitats Regulations Assessment or commentary may be needed. This will form part of the Main Modifications, however given the significance of the issue the Inspectors have been informed of the position and the proactive approach of the Council in terms of considering this report, the initial progress towards finding solutions to enable development to take place in the period before strategic solutions emerge together with an update on the work through the PfSH WQWG. All of which will demonstrate to the Inspector the deliverability of the Local Plan in the current Nitrate context.
- 3.32 Officers have also now spoken with the promoters of the main strategic sites with further meetings scheduled to identify plausible Nitrate offset mechanisms for planned development in the Local Plan Review, including any early wins that might create head room to enable permissions on smaller schemes to be issued on the short to medium term.

Proposed Approach to mitigation

- 3.33 Given the uncertainties around outcomes and timescales in the PfSH process and the need to progress the Local Plan Review Main Modifications, it is proposed that officers explore options that can be delivered locally alongside participating in PfSH initiatives. Initial discussions with the NFNPA indicate scope for and benefits from taking a District wide approach.
- 3.34 Given the complexity of the issue and the ability for some solutions to come forward more quickly than others, it is likely that a suite of measures will be needed to deliver nitrate neutrality in the District. These measures could include a mix of the following:
- Acquiring and retiring agricultural land: 600 -1,400 hectares would be required to offset the Local Plan in full, depending on the intensity of agricultural production on the land obtained. If obtainable at agricultural values this might cost £15-45 million (£2,300-£7,000 per dwelling) with serious consequences for viability and affordable housing provision. This option does not appear practicable unless offered by a developer who also has suitable offset land available.
 - Woodland planting: this may increase the efficacy of agricultural land set-aside and reduce the amount of offset land needed. This could also form part of on-site mitigation on larger sites, within (parts of) areas provided for recreational habitat mitigation. Up to £6,800/ha. may be available to offset costs via the [Countryside Stewardship Woodland Creation Grant](#).

- A strategic-scale woodland could also help to provide Solent-wide recreational mitigation for recreational impacts on the New Forest SPA/SAC. Some element of commercial return to land owners may also help offset costs, and it may not be necessary to acquire the land.
 - Installation of Waste Water Treatment Works (WWTW) filter wetlands: ideally downstream of WWTW to strip out additional. This approach appears to offer the most tangible opportunity in NFDC/NFNPA to secure a significant long-term benefit in a relatively short timeframe. Site SS3 Marchwood Farm is next to Slowhill Copse WWTW through which 40% of Local Plan Nitrate load will be discharged. The Fawley planning application extends to land adjoining Ashlett Creek WWTW (40% NFDC Nitrate load). All would require Southern Water and land owner cooperation, and where applicable cooperation with NFNPA, but the developers affected also need to achieve Nitrate neutrality. There is also land south of Pennington WWTW owned by HCC which can be explored (20% NFDC Nitrate load).
 - Wetland efficiency and achievability is being investigated further starting with initial land owner soundings (Barker Mill Trust, Fawley Waterside / Cadland Estate). Funding may be available through the LEP Solent Prosperity Fund, provided there is a private sector contribution (bid rounds late September and late November 2019).
 - SUDs and urban drainage: run off from urban areas including open space contributes to Nitrate loads, as well as waste water treatment discharge. Where SUDs are appropriate and can be designed to receive urban and other run off before discharging to drains, there may be some scope to trap Nitrate in on-site mini wetlands or silt traps. Such opportunities will vary by site at planning application stage, but it may be possible to identify and estimate potential Nitrate savings given site specific Nitrate load has been calculated using Local Plan concept masterplans and land budgets.
 - NFNPA Land Advice Service grants: grant funding may be possible to support landowner-led environmental improvement projects e.g. to reduce Nitrate run off from agriculture. Based on experience in the Avon catchment, Natural England are unlikely to agree that such measures would create permanent / in perpetuity changes to Nitrate levels, but they may generate early headroom whilst longer term solutions are identified. As an established service it also offers a direct connection to local land owners.
-

- ENtrade: this is an environmental trading platform run by Wessex Water but open for use in other areas. Land owners or other relevant parties can submit bid proposals to deliver defined objectives such as Nitrate reduction. A District-wide or PfSH-wide bid round could be considered. This approach is also best considered as creating temporary headroom.
 - Water efficiency measures in existing Council housing stock: As the wastewater treatment works operate on a permissible amount of nitrogen per litre of water, reducing the number of litres discharged from the works also reduces the amount of nitrogen going into the Solent. Installing water efficiency measures in existing housing stock, such as Council owned housing stock, could provide enough reductions in water use to offset some new development. Developer contributions could be used to fund the provision and installation of water efficiency kits. This could also benefit our tenants.
 - Review of use and quality of fertilizers on NFDC/Town and Parish Council land; for Parks, open space, playing pitches and green space in our control, specialist advice may provide more informed analysis over the use and quantity of fertilizer applied. Managing fertilizer use to reduce nitrate leeching would however need to be balanced in its consideration to ensure continuation of the quality of open space and the impact on grass playing surfaces.
 - Measures to provide additional water efficiency measures throughout residential accommodation in the District: this would look at retro fitting measures and partnership arrangements with for example Water companies to further promote water efficiency for all residents in the District.
 - Role of current open space and SANG provision; to review all current land held by the Council for open space purposes to assess whether it could play a role in nitrate mitigation.
- 3.35 Further discussions are required with third parties to advance many of these options. Early work suggests that a combination of measures would be enough to provide a solution for housing development going forward. This information would be developed in a Definitive Nitrate Mitigation Solution that would confirm the level of mitigation is enough to offset the scale of development, both for several current planning applications and the Local Plan. As the Definitive Solution is being worked up, the Council would be able to issue permissions with Grampian style conditions, subject to agreement with applicants, which would prevent occupation of the dwellings until such a time as the Council can be satisfied that enough mitigation is secured to be able to conclude that there would be no adverse effect on the European sites. For those developments that will depend upon the Council's mitigation solution, there will be a financial charge to the developer

secured through a legal agreement or similar.

- 3.36 However, it is important to note that each case will be dealt with on its merits and different mitigation may be proposed or secured depending on the circumstances. For example, if the development can provide enough mitigation on or off-site to demonstrate nitrate neutrality, the planning application can be determined on that basis and Grampian style conditions need not apply. The Council may be able to conclude no adverse effect on integrity of designated sites in a number of ways.
- 3.37 The analysis that officers have undertaken suggests that there would be ample headroom for all NFDC planned development if current Nitrate permit levels for the Solent area Waste Water Treatment Works in the District were tightened to current best affordable technology. Whilst the prospects of securing such investment appear limited in the short to medium term before the next water industry Price Review (2024) and associated 2025-2030 investment plans, it is possible that the currently elevated profile of this issue with Government might unlock other funding opportunities to achieve investment sooner, and that on a cost neutral basis that the water industry might support them.

Agreeing the solution with Natural England

- 3.38 Natural England has supported similar approaches with other local planning authorities. A meeting has been arranged with Natural England to agree this approach. If Natural England do not agree, a further report will be brought back to Cabinet.
- 3.39 In practice, this means that when consulted on the Appropriate Assessment for a planning application, Natural England would raise the issue of water quality and the need for nitrate neutrality on developments and note that mitigation is not secured at the present time but will be secured via a Grampian condition. They would therefore not object to the granting of planning permission. Before discharging that condition, the Council would re-consult Natural England on a revised Appropriate Assessment demonstrating how the proposed mitigation would be secured to ensure no adverse effect on the European sites.

Practical Arrangements

- 3.40 Several practical arrangements will need to be put in place to manage current applications, pre-application enquiries and appeals and communicate to current and potential applicants.
- 3.41 For information it is proposed that the wording of the Grampian condition should be:-
- 'The development hereby permitted shall not be occupied until: a) A water efficiency calculation in accordance with the Government's National Calculation

Methodology for assessing water efficiency in new dwellings has been undertaken which demonstrates that no more than 110 litres of water per person per day shall be consumed within the development, and this calculation has been submitted to, and approved in writing by, the Local Planning Authority; b) A mitigation package addressing the additional nutrient input arising from the development has been submitted to, and approved in writing by, the Local Planning Authority; and c) All measures forming part of that mitigation package have been provided to the Local Planning Authority.'

Reason: There is existing evidence of high levels of nitrogen and phosphorus in the water environment with evidence of eutrophication at some European designated nature conservation sites in the Solent catchment. The PUSH Integrated Water Management Strategy has identified that there is uncertainty as to whether new housing development can be accommodated without having a detrimental impact on the designated sites within the Solent. Further detail regarding this can be found in the appropriate assessment that was carried out regarding this planning application. To ensure that the proposal may proceed as sustainable development, there is a duty upon the local planning authority to ensure that enough mitigation for is provided against any impacts which might arise upon the designated sites. In coming to this decision, the Council have had regard to Regulation 63 of the Conservation of Habitats and Species Regulations 2017, Policy 10 of the Local Plan Review 2016-2036

4. FINANCIAL IMPLICATIONS

- 4.1 This report sets out a suite of mitigation measures in conjunction with a Grampian condition which officers consider will allow the LPA to conclude in any appropriate assessment that a development will not cause an adverse effect on the integrity of the relevant designated site allowing planning permissions to be granted. Each application must be treated on its merits and determined in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004. Any mitigation measure identified for an application will need to be considered as part of the appropriate assessment for that application.
- 4.2 The cost of the proposal will be at no overall cost to the Council in the medium term, however there may be some upfront costs with the planning and finance team working together to agree funding options. Any additional budgetary pressure will be reported back to the Cabinet.

- 4.3 For those developments that will utilise the Council's nitrogen mitigation solution, financial contributions will be required from the developers which will cover the upfront costs borne by the Council. It may be that the costs and income span more than one financial year, but this will be monitored closely to make sure the money is received correctly.

5 CRIME & DISORDER, ENVIRONMENTAL IMPLICATIONS

- 5.1 The Environmental implications are set out in the report. There are no Crime & Disorder implications.

6. EQUALITY & DIVERSITY IMPLICATIONS

- 6.1 The recommendations of this report have no impact on the protected equalities groups.

7. PORTFOLIO HOLDER COMMENTS

- 7.1 The portfolio holder supports the recommendations as a pragmatic way forward to ensure the delivery of the required housing development while ensuring legal compliance and the protection of the environment.

For further information contact:

Claire Upton-Brown
Chief Planning Officer
023 8028 5588
Claire.upton-brown@nfdc.gov.uk

Background Papers

Environment Agency Technical Guidance Note Solent and South Downs

Natural England Advice on Achieving Nutrient Neutrality for New Development in the Solent Region

Notice of Ofwat's proposal to impose a penalty on Southern Water Services Limited;
www.ofwat.gov.uk/publication/notice-of-ofwats-proposal-to-impose-a-penalty-on-southern-water-services-limited

PfSH(June 2018) Integrated Water Management Study prepared by Amec Foster Wheeler Environment & Infrastructure UK Ltd.
www.push.gov.uk/wp-content/uploads/2018/07/Item-10-Integrated-Water-Management-Study-Cover-Report.pdf

Appendix (2)

NOTICE OF AMENDMENT TO APPLICATION FOR PLANNING PERMISSION
SUBJECT OF A PLANNING APPEAL

Concerning proposed development on land at Orchard Gate, Noads Way, Dibden Purlieu,
Hythe, SO45 4PD

AJC Group (the Appellant) give notice that amendments have been made to the proposed development, subsequent to the refusal of planning permission by New Forest District Council (ref. 22/10813) to '*demolish the existing dwelling and outbuildings and erect 25 dwellings with associated access, landscaping*' which is currently the subject of a planning appeal reference APP/B1740/W/23/3324227.

Anyone having an interest and wishing to inspect the documentation may do so at the following web address (to the public file on the Councils website):_

https://planning.newforest.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=_NEWFO_DCAP_R_217369

Or by requesting paper copies from: Chapman Lily Planning Ltd in writing at the address below or by telephone on 01929 553818.

Anyone having an interest and wishing to make representations¹ about these amendments should use the appeal reference number and address their comments for the 'Attention of the Planning Inspector' but submit them via the above-referenced website or by email to giles.moir@clplanning.co.uk or by post to Chapman Lily Planning Ltd. Unit 5 Designer House, Anglebury Business Park, Sandford Lane, Wareham, Dorset BH20 4DY.

Comments should be received within 21 days of the date of this notice. Comments received will be collated on behalf of the Appellant, and sent unaltered to the Planning Inspector, for consideration during the appeal.

Signed: Chapman Lily Planning Ltd.

On behalf of: AJC Group.

Date: 10th August 2023

¹ In line with the standards required by all relevant published guidance e.g. 'Guide to taking part in planning and listed building consent appeals proceeding by an inquiry (April 2023), its subsidiary guidance and any other relevant guidance.



Owner/ Occupier/ Name
Address

Chapman Lily Planning Ltd
Unit 5 Designer House
Sandford Lane
Wareham
BH20 4DY

Date: 10th August 2023
Our ref: GM- 3131

W: www.CLPlanning.co.uk

Dear Recipient,

NOTICE OF AMENDMENT TO APPLICATION FOR PLANNING PERMISSION SUBJECT OF A PLANNING APPEAL

We are writing to you because you were either consulted on, or made comments on, planning application 22/10813 which proposed to:

'demolish the existing dwelling and outbuildings and erect 25 dwellings with associated access, landscaping'

The planning application was refused permission by New Forest District Council as local planning authority by notice dated 19th December 2022. The applicant (AJC Group) has submitted a planning appeal to the Planning Inspectorate and the Council will notify interested parties in due course. The planning appeal reference is APP/B1740/W/23/3324227. The local planning authority will be hosting the appeal documentation on their website. These plans include:

- Site and Block Plan drwg. no. 211140.41H scale 1:500 @ A1
- Houses 04 -07 Plans and Elevations drwg. No. 21110.43C scale 1:100 @ A1 (appendix 5 ii of Grounds of appeal)
- Houses 14 -17 Plans and Elevations drwg. No. 21110.45C scale 1:100 @ A1 (appendix 5 iii of Grounds of appeal)
- Houses 18-21 Plans and Elevations drwg. No. 21110.46C scale 1:100 @ A1 (appendix 5 iv of Grounds of appeal)
- Houses 22-25 plans and Elevations drwg. No. 21110.47C scale 1:100 @ A1 (appendix 5 v of Grounds of appeal)
- House 21 Carport Elevations dwg. No. 21110.51A scale 1:100 @ A3 (appendix 5 vi of Grounds of appeal)
- Landscape plan 293-1-R7
- Landscape plan 293-3-R6
- Landscape plan 293-4 – planting mood board
- 5577-312 BR Proposed Layout (internal highway)

Chapman Lily Planning Limited
Registered company number: 9402101 Registered in England & Wales
Registered office: Unit 5 Designer House Sandford Lane Wareham BH20 4DY



RTPI

Chartered Town Planners

Subject to acceptance by the appointed Inspector, the Appellant wishes to incorporate minor modifications to the proposed development following the determination of the planning application. The Appellant is proposing minor modifications to the appeal proposals. In summary the changes relate to:

- the provision of a car port in relation to the parking spaces at T23
- removal of the proposed benches and revised landscaping plan
- revised internal road layout to provide crossing points
- revised landscaping proposals to alter the proposed planting stock

For information on the amendments, please see the enclosed copy of the public notice.

Yours sincerely,

Giles Moir BSc (Hons) MSc MRTPI

Director

Encl:

Copy of public notice

Consultee
Address

Chapman Lily Planning Ltd
Unit 5 Designer House
Sandford Lane
Wareham
BH20 4DY

Date: 10th August 2023
Our ref: GM- 3131

W: www.CLPlanning.co.uk

Dear Recipient,

NOTICE OF AMENDMENT TO APPLICATION FOR PLANNING PERMISSION SUBJECT OF A PLANNING APPEAL

We are writing to you because you were either consulted on, or made comments on, planning application 22/10813 which proposed to:

*'demolish the existing dwelling and outbuildings and erect 25 dwellings
with associated access, landscaping'*

The planning application was refused permission by New Forest District Council as local planning authority by notice dated 18th December 2022. The applicant (AJC Group) has submitted a planning appeal to the Planning Inspectorate and the Council will notify interested parties in due course. The planning appeal reference is APP/B1740/W/23/3324227. The local planning authority will be hosting the appeal documentation on their website. These plans include:

- Site and Block Plan drwg. no. 211140.41H scale 1:500 @ A1
- Houses 04 -07 Plans and Elevations drwg. No. 21110.43C scale 1:100 @ A1 (appendix 5 ii of Grounds of appeal)
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- House 21 Carport Elevations dwg. No. 21110.51A scale 1:100 @ A3 (appendix 5 vi of Grounds of appeal)
- Landscape plan 293-1-R7
- Landscape plan 293-3-R6
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Subject to acceptance by the appointed Inspector, the Appellant wishes to incorporate minor modifications to the proposed development following the determination of the planning application. The Appellant is proposing minor modifications to the appeal proposals. In summary the changes relate to:

- the provision of a car port in relation to the parking spaces at T23
- removal of the proposed benches and revised landscaping plan
- revised internal road layout to provide crossing points
- revised landscaping proposals to alter the proposed planting stock

For information on the amendments, please see the enclosed copy of the public notice.

Yours sincerely,

Giles Moir BSc (Hons) MSc MRTPI

Director

Encl:

Copy of public notice

Appendix (3)

Planning

Executive Head of Planning, Regeneration
and Economy: Claire Upton-Brown

Mr G Moir
CL Planning
Unit 5, Designer House
Sandford Lane
Wareham
BH20 4DY

Our Ref: ENQ/22/20022/ERES

Your Ref:

07 April 2022

Dear Mr Moir

Request for pre application advice

Site Address: ORCHARD GATE, NOADS WAY, DIBDEN PURLIEU, HYTHE, SO45
4PD

Proposal: 25 dwellings

Thank you for your recent request for pre-application advice, We met on 11th February to discuss the revised scheme, submitted to address the concerns of the refused application. At that meeting areas of concern were highlighted and solutions discussed. Our response is based on the following revised plans and information:

Technical Site Plan Ref:21110.04 rev G received 07/03/22

Proposed Site Plan Ref:21110.05 rev D received 07/03/22

Planning History that refers to your property or is relevant to the proposal

2021. Planning application to demolish the existing and erect 37 dwellings was refused.
(21/11201)

Planning Considerations

At our meeting we discussed areas of concern with the proposals as submitted in January, this response will focus on the amended plans presented subsequently, on 7th March.

As advised at the meeting the reduced scheme makes significant improvements over the scheme refused planning permission.

I felt the discussion around the density and layout of the portion of the site occupied by units 1-5 relating to the character of Noads Way was sensible and an appropriate approach to the site's development, unfortunately I don't feel the revision presents an appropriate solution. Houses fronting the access road was a positive feature of the original pre-app submission, but it was the extent of cars along the edge of the road that was the problem and needed attention.

I do not accept that the courtyard of parking and the rear of the terrace of four houses is an appropriate design response for the entrance in to the site or the character of Noads Way. The scheme would benefit from returning to the original layout, for this pre-app, of houses fronting the access drive and may have to accept a reduction in numbers of units in order to accommodate the required level of parking, within the plots, as discussed at our meeting.

Whilst the layout of the north corner works better for parking accessibility, the continuous built form of parking and building frontage along that whole length from unit 6 to 14 is particularly harsh. It needs breaking with a landscape separation, or at least a more generous gap between buildings.

I acknowledge that the character of the centre of the site could take a different approach, being higher density as shown. I am still not comfortable with the approach of 3 sets of tandem parking spaces (parking 18-20) being an appropriate design solution.

In all cases of parking being placed between flank walls, access for bikes, buggies and potentially wheeled bins is particularly constrained and likely to lead to conflicts.

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. However the presence of trees at the front of the site and highway visibility has not been reviewed at this time.

However I am very skeptical about the chances for tree planting to be successful between the parking spaces 22-25. They look very vulnerable and would compromise manoeuvrability, to the extent of being readily at risk of driven over, which based on a standard landscape maintenance/replacement condition would require regular replacement. The principle of courtyard/street trees has merit, but they need to have chance for success.

Subject to drainage design and calculations, demonstrating how surface water would enter the attenuation 'pond', its depth, bank gradient and ultimate size, the larger greenspace in the centre of the site, along with the ribbon along the south boundary, would provide space for informal recreation and play. At this stage it is not clear what role the space at the front of the site would play, however Bio-Diversity Net Gain, needs to be considered and expecting spaces on site to play multiple roles has the potential to undermine its success.

The scheme would need to make provision for mitigating its effect on habitats in the New Forest and Solent, from increased recreational pressure and water quality. The former would take the form of financial contributions towards mitigation projects, the latter a condition, satisfied by your purchase of credits from one of the nutrient neutrality offsetting schemes. Contributions towards monitoring Air Quality throughout the New Forest are also required.

The scheme would be expected to contribute towards the provision of Affordable Housing in the District. In the event a policy compliant 50% provision isn't achievable then a financial appraisal should be provided to demonstrate what contribution would be viable.

By the time an application based on this pre-app is received the Council is likely to have implemented a schedule of fees associated with monitoring delivery of on and off site

mitigation. These costs will relate to the specifics of the obligations sought and the triggers, such as checking commencement has occurred and payments received or regular monitoring of BNG over its 30 year lifespan, for example. A full report on the proposals can be found at item 5 here: [S.106 monitoring](#)

Conclusions

The principle of the reduced scheme has addressed some aspects of the reasons the 2021 scheme was refused, however I believe the plans require further review to address concerns expressed at our meeting in order to deliver an acceptable development.

The above comments represent the informal views of the planning officer and are not binding on the elected Council Members of the Authority or the Chief Planning Officer. The views are based on the information provided and the research undertaken. Should a planning application be submitted the Council must take into account any views expressed by statutory and non-statutory consultees and other interested 3rd parties. The eventual recommendation and decision may therefore change when more detailed consideration is given at application stage. You will be advised if that is the case prior to the decision being sent out. The decision notice and case officer's report will set out in detail the reasons for the decision.

Further information on how to submit an application, the information required, how we publicise the application, and the fee to be paid along with the eventual decision and case officer's report can be accessed on our planning web site pages by following this link <https://newforest.gov.uk/article/1051/View-or-Comment-on-a-Planning-Application>

If you do have any queries or are unsure about anything in this letter, please do not hesitate to contact me. However, please note that if you require any further written advice this is likely to incur an additional pre-application fee.

Yours sincerely

JRG

James Gilfillan
Senior Development Management Officer

Direct Line: 02380 28 5797
General: 023 8028 5345 Option 1
Email: planning@nfdc.gov.uk

Appendix (4)



Notes

--- Pedestrian visibility - 18m

Bellamy Roberts
Clover House
Western Lane
Odiham
Hampshire, RG29 1TU
Tel: 01256 703355
Email: info@bellamyroberts.co.uk

CLIENT
AJC Group

PROJECT
Noads Way

TITLE
Amended Road Layout
with Pedestrian Visibility

DRAWN BY DE DESIGN BY - CHK BY IR

DATE 24/07/23 DRAWING No. 5577 / 312 REV No.

SCALE 1:250 @ A3

Appendix (5)

Development site details

Date (dd/mm/yyyy):

27/07/2022

Site Name:

Orchard Gate, Noads Way, Dibden Purlieu

Planning Application number:

22/10813

Site Address:

Orchard Gate, Noads Way, Dibden Purlieu

Stage 1

User Inputs

Date of first occupancy:	01/01/2025
Average occupancy rate:	2.98
Water usage (litres/person/day):	110
Development Proposal (dwellings/units):	25
Include deductible acceptable loading?	
Wastewater treatment works:	Slowhill Copse WwTW
Wastewater treatment works N permit (mg TN/litre):	14

Stage 1 Calculated Loading

Stage 1 Nutrient Loading		
Additional population	74.5	people
Wastewater by development	8195	litres/day
Annual wastewater TN load	37.71	kg TN/yr

Stage 2

User Inputs

Catchment:	New Forest - Lymington and Beaulieu
Soil drainage type:	Freely draining
Annual average rainfall (mm):	850.1 - 900
Within Nitrate Vulnerable Zone (NVZ):	No

Existing land use type(s)	Area (ha)	Annual nitrogen nutrient export (kg TN)
Lowland	0.65	7.10
Residential urban land	0.25	4.08
Total:	0.9	11.18

Stage 3

User Inputs

New land use type(s)	Area (ha)	Annual nitrogen nutrient export (kg TN)
Residential urban land	0.90	14.68
Total:		0.9
		14.68

Stage 4

Calculated Outputs

Annual Nutrient Budget

The total annual nitrogen load
to mitigate is:

49.46 kg TN/year

Appendix (6)

DATED

2023

(1) ROKE MANOR LIMITED

(2) AJC DEVELOPMENTS (SOUTH) LIMITED

DEED OF ALLOCATION OF NITRATE OFFSETTING SCHEME

At

Roke Manor Farm, Salisbury Lane, Roke SO51 0GD

SH[∞]SMITHS

Shoosmiths LLP

Forum 5

The Forum

Parkway

Whiteley

Fareham

PO15 7PA

Tel: 03700 866800

Fax: 03700 866801

Ref. M-01072859

THIS DEED is made the day of Two thousand and Twenty-Three

BETWEEN

- (1) **ROKE MANOR LIMITED** (Company Number 09996790) whose registered office is at The Old Dairy, Ovington, Alresford, Hampshire SO24 0RB (the “Owner”); and
- (2) **AJC DEVELOPMENTS (SOUTH) LIMITED** (Company Number 1193149) whose registered office is at 4 Joshuas Vista, Sandbanks Road, Poole BH14 8HA (the “Developer”);

together **the Parties**

WHEREAS:

- (A) The Owner owns the freehold interest in the Site and is registered as proprietor with Title Absolute at the Land Registry free from encumbrances other than those matters contained or referred to in the Property and Charges Register of Title Number HP425557 at the date of this Deed.
- (B) High levels of nitrogen from housing and agricultural sources in the Solent have caused excessive growth of green algae (a process called eutrophication) having a detrimental impact upon protected habitats in the Solent.
- (C) The Parties agree on the advice of Natural England that any net increase in residential dwellings within the catchment of the Solent is likely to have a significant adverse effect on protected habitats in the Solent unless nitrate neutrality is achieved for those new residential dwellings.
- (D) The Owner has dedicated the Site as Nitrate Mitigation Scheme.
- (E) The Owner agrees to Allocate a portion of the Capacity to the Developer in order to mitigate the impact of the Development on nitrate levels in return for the Allocation Fee.

NOW THIS DEED WITNESSETH:

1. DEFINITIONS

- 1.1 The following words and phrases shall have unless the context otherwise requires bear the following meanings:

“**Allocation**” means the dedication of the Required Capacity by the Owner to provide Nitrate Mitigation for the Development, and “Allocate” and “Allocated” shall be construed accordingly

“**Allocation Fee**” means the sum less Reserve Fee 1 and (where it shall have been paid by the Developer) Reserve Fee 2 (exclusive of VAT)

to be paid by the Developer to the Owner for the Allocation to be provided for the Development to be calculated at a rate of £3,500 per kg/TN/yr

“Appeal”

means all or any of the following:

- (a) an application under section 73 of the Town and Country Planning Act 1990 to vary or discharge a condition in a Planning Permission;
- (b) an application for judicial review, including any appeal to a higher court against a judgment given by a lower court;
- (c) an application under section 78 of the Town and Country Planning Act 1990;
- (d) an application under section 288 of the Town and Country Planning Act 1990 including any appeal to a higher court against a judgment given by a lower court; and
- (e) a Call-In;

“Call-in”

means a direction by the Secretary of State that the Secretary of State will determine:

- (a) a planning application under section 77 of the Town and Country Planning Act 1990; or
- (b) an Appeal under section 78 of the Town and Country Planning Act 1990;

“Capacity”

means up to 2917.34 Kg/TN/yr to be removed from the Solent by the Scheme or such revised figure as the Council shall from time to time approve pursuant to paragraph 8 of Schedule 1 to the Section 106 Agreement;

“Capacity Monitoring Report”

has the same meaning as in the Section 106 Agreement

“Challenge Free”

means either:

- (a) the Challenge Period has expired without any Challenge Proceedings having been commenced; or
- (b) all Challenge Proceedings have been finally determined leaving the Planning Permission in place

“Challenge Period”

means the period of six weeks and ten Working Days commencing on the date on which Planning Permission is granted

“Challenge

means either of the following:

Proceedings	<p>(a) an application for judicial review made by a third party following the grant of Planning Permission by the relevant planning authority, including any appeal to a higher court against a judgment given by a lower court and any referral back to and/or redetermination by the relevant planning authority; or</p> <p>(b) an application by a third party under section 288 of the Planning Act following the grant of Planning Permission by the Secretary of State, including any appeal to a higher court against a judgment given by a lower court and any referral back to and/or redetermination by the Secretary of State;</p>
“Council”	means Test Valley Borough Council or its successor (from time to time) as local planning authority
“Development”	means the demolition of the existing buildings; erection of 25 dwellings with associated access, landscaping and parking on the Development Site pursuant to the Planning Permission;
“Development Site”	means the land at Orchard Gate, Noads Way, Dibden Purlieu, Hythe SO45 4PD as particularised in the Planning Application;
“Expiry Date”	means the date that is 6 months from the date of this Deed (or such alternative date as may be agreed by the parties in writing);
“Implementation”	<p>means the date on which a Development commences by the carrying out of a material operation as specified in section 56(4) of the 1990 Act other than (for the purposes of this Deed and no other);</p> <p>(a) site investigations or surveys;</p> <p>(b) archaeological works;</p> <p>(c) site decontamination;</p> <p>(d) the demolition of any existing buildings or structures;</p> <p>(e) excavation works;</p> <p>(f) clearance or regrading;</p> <p>(g) the erection of hoardings and fences;</p> <p>(h) works connected with infilling;</p> <p>(i) works for the provision or diversion of drainage or mains services to prepare the Site for development; or</p> <p>(j) the construction of access and service roads;</p>
“Nitrate Mitigation”	has the same meaning as in the Section 106 Agreement
“Management Plan”	has the same meaning as in the Section 106 Agreement

“Occupation”	means occupation of the Development for the purposes permitted by the Planning Permission but not occupation for the purposes of construction, fitting out or decoration for marketing or display purposes or in connection with security operations and “Occupy” and “Occupied” shall be construed accordingly;
“Perpetuity”	means the period of 80 (eighty) years from the date on which a dwelling or other building comprised in the Development is first occupied and “Perpetuity Period” shall be construed accordingly;
“Phasing Plan”	has the same meaning as in the Section 106 Agreement;
“Plan”	means the plan attached to this Deed;
“Planning Agreement”	<p>means an agreement or undertaking with the relevant planning authority or any other competent authority made under:</p> <ul style="list-style-type: none"> (a) section 106 of the Town and Country Planning Act 1990; (b) section 111 of the Local Government Act 1972; (c) sections 38,184 or 278 of the Highways Act 1980; (d) section 33 of the Local Government (Miscellaneous Provisions) Act 1982; (e) section 98, 104 or 106 of the Water Industry Act 1991; or (f) section 2 of the Local Government Act 2000;
“Planning Application”	means the application for planning permission submitted to New Forest District Council for the Development and allocated reference number 22/10813 received on 8 July 2022 and validated on 15 July 2022 which was refused on 19 December 2022 and is the subject of appeal reference APP/B1740/W/23/3324227;
“Planning Permission”	means the planning permission for the Development to be issued pursuant to the Planning Application (and for the avoidance of doubt includes a planning permission granted following an Appeal);
“Qualifying Scheme”	has the same meaning as in the Section 106 Agreement;
“Relevant Event”	<p>means any of the following events:</p> <ul style="list-style-type: none"> (a) a change in the law; or (b) a decision of a Court, tribunal, Secretary of State, or other decision maker with competence; or (c) a change in Natural England’s custom or practice; or (d) a change in scientific opinion based on evidence; or (e) a change in industry practices or in the generally

accepted calculation methods for the type or extent of land required to achieve Nitrate Mitigation;

that is accepted by or is otherwise binding upon Natural England and/or the relevant local planning authority and results in any of the following:

- (a) nitrate neutrality not being required in relation to the Development; or
- (b) Nitrate Mitigation not being required; or
- (c) the Scheme not being considered to be an effective form of Nitrate Mitigation; or
- (d) the Scheme not being required for Nitrate Mitigation;

“Reserve Fee 1” means the non-refundable sum of £5,000 (exclusive of VAT) to be paid by the Developer to the Owner;

“Reserve Fee 2” means the non-refundable sum of £20,000 (exclusive of VAT) to be paid by the Developer to the Owner;

“Reserve Capacity” means 49.56 kg/TN/yr out of the total Capacity

“Required Capacity” means so much of the Reserve Capacity (as notified in writing by the Developer to the Owner in accordance with clause 4.2) as being the amount necessary to provide Nitrate Mitigation to mitigate the impacts of the Development

“Required Land” means the land within the Phase or Phases of the Site that will provide the Required Capacity

“Scheme” means the scheme for the cessation of the use of the Site as a pig farm and the restoration of soils to the extent required for tree planting on the Site [in accordance with the Phasing Plan and the Management Plan]

“Section 106 Agreement” means the agreement dated 14 June 2021 entered into pursuant to Section 106 of the Town and Country Planning Act 1990 between (1) Test Valley Borough Council and (2) the Owner in connection with the Scheme;

“Secretary of State” means the Secretary of State for Levelling Up Housing and Communities or any other minister or authority for the time being entitled to exercise the powers given by sections 77, 78 and 79 of the Town and Country Planning Act 1990;

“Site” means the area shown edged red on the Plan being land at Roke Manor Farm, Salisbury Lane, Roke SO51 0GD and registered at the HM Land Registry at Title Number HP425557;

“Solent” means the strait that separates the Isle of Wight from the mainland of England;

“Working Days” means any Monday, Tuesday, Wednesday, Thursday and Friday except bank or public holidays and except any day between 25 December and 02 January (inclusive) in each year;

2. INTERPRETATION

- 2.1 The clause headings in this Deed are for reference only and do not affect its construction or interpretation.
- 2.2 References to clauses and Schedules are to the clauses and Schedules of this Deed, unless stated otherwise.
- 2.3 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.
- 2.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 2.5 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 2.6 Unless this Deed states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.
- 2.7 References to the Site include any part of it.
- 2.8 References to “including” means “including, without limitation”.
- 2.9 Any covenant not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.10 Where two or more people form a party to this Deed, the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 2.11 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Deed shall be unaffected.

3. COMMENCEMENT

- 3.1 This Deed will take effect on the date of this Agreement.

4. OBLIGATIONS OF THE DEVELOPER

- 4.1 The Developer shall

4.1.1 pay Reserve Fee 1 to the Owner on the date of this Deed

4.1.2 notify the Owner within 10 Working Days of each of the following events:

- 4.1.2.1 the grant of Planning Permission
 - 4.1.2.2 the commencement of any Challenge Proceedings
 - 4.1.2.3 the final determination of any Challenge Proceedings
 - 4.1.2.4 Implementation of the Development
 - 4.1.2.5 first Occupation of the Development
 - 4.1.2.6 expiry of the Planning Permission without the development having begun
- 4.1.3 notify the Owner of the Required Capacity and (unless the Allocation Fee shall have already been paid pursuant clause 4.1.4) pay Reserve Fee 2 within 5 Working Days of the date on which the Planning Permission is Challenge Free
- 4.1.4 Pay the Allocation Fee to the Owner on or before the earlier of:
 - 4.1.4.1 The Expiry Date; and
 - 4.1.4.2 The date on which the Developer completes the purchase (by freehold or leasehold transfer) of the Development Site
- 4.1.5 not to Implement the Development unless and until it has paid the Allocation Fee to the Owner

5. OBLIGATIONS OF THE OWNER

5.1 The Owner shall:

- 5.1.1 Following receipt of Reserve Fee 1 reserve the Reserve Capacity for the Developer until the earlier of:
 - 5.1.1.1 the Expiry Date; and
 - 5.1.1.2 the date on which the entirety of the Required Capacity has been Allocated to the Developer.
- 5.1.2 Within 5 Working Days of receipt of the Allocation Fee, Allocate the Required Capacity to the Developer.
- 5.1.3 From the date on which the Required Capacity is Allocated to the Developer pursuant to Clause 5.1.2, maintain the Required Land as a Nitrate Mitigation Scheme in accordance with the Management Plan in Perpetuity.

5.2 If a Planning Agreement is required by the relevant local planning authority for the district in which the Development is situated or any other competent authority as a pre-condition to the grant of the Planning Permission the Owner shall, if required, enter into the Planning Agreement provided that:

- 5.2.1 the terms of the Planning Agreement which relate to or seek to bind land which is within the Owner ownership and or occupation are acceptable to the Owner (acting reasonably and having regard to the Allocation pursuant to this Deed);
- 5.2.2 the terms of the Planning Agreement do not conflict with the Owner's obligations pursuant to the Section 106 Agreement;
- 5.2.3 the Developer pays the Owner's (reasonable and properly incurred) legal fees in connection with the Planning Agreement;
- 5.2.4 any liabilities on the Owner under the Planning Agreement are conditional upon the implementation of the Planning Permission; and
- 5.2.5 the Owner will not be liable for a breach of a covenant contained in the Planning Agreement after the Owner has parted with all its interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.

6. NOTICES

- 6.1 Any notice, consent, demand or any other communication served under this Deed will be effective only if in writing and delivered by hand or sent by first class post, pre-paid or recorded delivery.
- 6.2 Any notice, consent, demand or any other communication served shall be sent to the address of the relevant party set out at the beginning of this Deed or to such other address as one party may notify in writing to the others at any time as its address for service.

7. DETERMINATION OF DISPUTES

- 7.1 Subject to clause 7.7, if any dispute arises relating to or arising out of the terms of this Deed, either party may give to the other written notice requiring the dispute to be determined under this clause 7. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.
- 7.2 For the purposes of this clause 8 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.
- 7.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society who will have the power, with the right to take such further advice as he may require,

to determine the appropriate type of Specialist and to arrange his nomination under clause 7.4.

7.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the Developer cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.

7.5 The Specialist is to act as an independent expert and:

7.5.1 each party may make written representations within ten (10) Working Days of his appointment and will copy the written representations to the other party;

7.5.2 each party is to have a further ten (10) Working Days to make written comments on the other's representations and will copy the written comments to the other party;

7.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

7.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;

7.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and

7.5.6 the Specialist is to use all reasonable endeavours to publish his decision within thirty (30) Working Days of his appointment.

7.6 Responsibility for the costs of referring a dispute to a Specialist under this clause 7, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

7.7 This clause 7 does not apply to disputes in relation to matters of law or the construction or interpretation of this Deed which will be subject to the jurisdiction of the courts.

8. ASSIGNMENT

8.1 At any time prior to the earlier of

8.1.1 the Expiry Date; and

8.1.2 the date on which the Required Capacity has been Allocated

the Developer may with the Owner's approval assign the benefit of this Deed to a third party (such approval not to be unreasonably withheld or delayed).

8.2 At any time prior to the date on which the Required Capacity has been fully Allocated the Developer may with the Owner's approval (such approval not to be unreasonably withheld or delayed) assign the Reserve Capacity which has not been Allocated to a Qualifying Scheme PROVIDED THAT the Allocation Fee is paid in full by the Developer (less any Reserve Fee already paid) to the Owner on or before the earlier of:

8.2.1 the date of assignment; or

8.2.2 the Expiry Date

8.3 Following the date on which the Required Capacity has been Allocated the Developer may with the Owner's prior written approval assign the benefit of the Allocation and/or this Deed to a third party (such approval not to be unreasonably withheld or delayed) PROVIDED ALWAYS that the Developer shall pay the Owner's reasonably legal costs incurred in connection with the amendment of any updated or revised Capacity Monitoring Report required by the Council.

9. TERMINATION OF THIS DEED

9.1 This Deed will come to an end and the obligations in this deed will immediately terminate on the earlier of:

9.1.1 the expiry of the Perpetuity Period;

9.1.2 the occurrence of the Expiry Date prior to the date on which the Required Capacity has been Allocated.

9.2 Without affecting any other right or remedy available to it, any party may terminate this Deed with immediate effect by giving notice to the other parties if a Relevant Event occurs prior to the date on which the Required Capacity has been Allocated.

9.3 Without affecting any other right or remedy available to it, the Owner may terminate this Deed with immediate effect by giving notice to the Developer if any of the following events occur:

9.3.1 the Developer is in fundamental breach of any of its obligations in this Deed; or

9.3.2 the Developer is in substantial breach of any of its obligations in this Deed and has failed to rectify the breach within a reasonable time after receiving notice to rectify from the Owner.

9.4 If this Deed is terminated in accordance with the provisions of Clause 9.2 or Clause 9.3 then:

9.4.1 the Owner may use the Site as they see fit in their absolute discretion;

9.4.2 Neither party shall have any further rights or obligations under this Deed save for:

9.4.2.1 the rights of either party in respect of any earlier breach of this Deed; and

9.4.2.2 the obligations in the clauses referred to in 9.4.3;

9.4.3 Clause 9 shall continue in force notwithstanding the termination of this contract under clause 9.2 or clause 9.3; and

9.4.4 any sums paid to the Owner by the Developer under the terms of this Deed shall not be refunded.

10. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it provided that the exclusion of the said Act shall not prevent all or any future successors in title to any of the parties to this Deed from being able to benefit from or to enforce any of the provisions of this Deed.

11. VAT

11.1 Each amount stated to be payable by the Developer to the Owner under or pursuant to this deed is exclusive of VAT (if any).

11.2 If any VAT is at any time chargeable on any supply made by the Owner under or pursuant to this deed, the Developer making the payment shall pay the Owner an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice.

12. JURISDICTION

12.1 Subject to the provisions of clause 7 this Deed shall be governed by the laws of England and Wales and the Courts of England shall have sole jurisdiction in respect of the construction of this Deed and as to the respective rights and liabilities of the parties.

13. FEES

- 13.1 The Developer covenants with the Owner to pay to the Owner prior to the date hereof the Owner's reasonable legal fees for the preparation, negotiation and completion of this Agreement.

IN WITNESS WHEREOF the Parties hereto have executed this deed the day and year first before written

EXECUTED as a DEED by

ROKE MANOR LIMITED

acting by a director in the presence of:

.....

(Full name of witness)

Signature

.....

(Signature of witness)

.....

.....

.....

Address

.....

Occupation

EXECUTED as a DEED by

AJC DEVELOPMENTS (SOUTH) LIMITED

acting by a director in the presence of:

.....

(Full name of witness)

Signature

.....

(Signature of witness)

.....

.....

.....

Address

.....

Occupation

DATED

2023

(1) ROKE MANOR LIMITED

(2) AJC DEVELOPMENTS (SOUTH) LIMITED

DEED OF ALLOCATION OF NITRATE OFFSETTING SCHEME

At

Roke Manor Farm, Salisbury Lane, Roke SO51 0GD

SH[∞]SMITHS

Shoosmiths LLP

Forum 5

The Forum

Parkway

Whiteley

Fareham

PO15 7PA

Tel: 03700 866800

Fax: 03700 866801

Ref. M-01072859

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- (B) High levels of nitrogen from housing and agricultural sources in the Solent have caused excessive growth of green algae (a process called eutrophication) having a detrimental impact upon protected habitats in the Solent.
- (C) The Parties agree on the advice of Natural England that any net increase in residential dwellings within the catchment of the Solent is likely to have a significant adverse effect on protected habitats in the Solent unless nitrate neutrality is achieved for those new residential dwellings.
- (D) The Owner has dedicated the Site as Nitrate Mitigation Scheme.
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to be paid by the Developer to the Owner for the Allocation to be provided for the Development to be calculated at a rate of £3,500 per kg/TN/yr

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means all or any of the following:

- (a) an application under section 73 of the Town and Country Planning Act 1990 to vary or discharge a condition in a Planning Permission;
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has the same meaning as in the Section 106 Agreement

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“Council”	means Test Valley Borough Council or its successor (from time to time) as local planning authority
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“Development Site”	means the land at Orchard Gate, Noads Way, Dibden Purlieu, Hythe SO45 4PD as particularised in the Planning Application;
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“Implementation”	<p>means the date on which a Development commences by the carrying out of a material operation as specified in section 56(4) of the 1990 Act other than (for the purposes of this Deed and no other);</p> <p>(a) site investigations or surveys;</p> <p>(b) archaeological works;</p> <p>(c) site decontamination;</p> <p>(d) the demolition of any existing buildings or structures;</p> <p>(e) excavation works;</p> <p>(f) clearance or regrading;</p> <p>(g) the erection of hoardings and fences;</p> <p>(h) works connected with infilling;</p> <p>(i) works for the provision or diversion of drainage or mains services to prepare the Site for development; or</p> <p>(j) the construction of access and service roads;</p>
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“Management Plan”	has the same meaning as in the Section 106 Agreement

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accepted calculation methods for the type or extent of land required to achieve Nitrate Mitigation;

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“Scheme” means the scheme for the cessation of the use of the Site as a pig farm and the restoration of soils to the extent required for tree planting on the Site [in accordance with the Phasing Plan and the Management Plan]

“Section 106 Agreement” means the agreement dated 14 June 2021 entered into pursuant to Section 106 of the Town and Country Planning Act 1990 between (1) Test Valley Borough Council and (2) the Owner in connection with the Scheme;

“Secretary of State” means the Secretary of State for Levelling Up Housing and Communities or any other minister or authority for the time being entitled to exercise the powers given by sections 77, 78 and 79 of the Town and Country Planning Act 1990;

“Site” means the area shown edged red on the Plan being land at Roke Manor Farm, Salisbury Lane, Roke SO51 0GD and registered at the HM Land Registry at Title Number HP425557;

“Solent” means the strait that separates the Isle of Wight from the mainland of England;

"Working Days" means any Monday, Tuesday, Wednesday, Thursday and Friday except bank or public holidays and except any day between 25 December and 02 January (inclusive) in each year;

2. INTERPRETATION

- 2.1 The clause headings in this Deed are for reference only and do not affect its construction or interpretation.
- 2.2 References to clauses and Schedules are to the clauses and Schedules of this Deed, unless stated otherwise.
- 2.3 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.
- 2.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 2.5 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 2.6 Unless this Deed states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.
- 2.7 References to the Site include any part of it.
- 2.8 References to “including” means “including, without limitation”.
- 2.9 Any covenant not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.10 Where two or more people form a party to this Deed, the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 2.11 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Deed shall be unaffected.

3. COMMENCEMENT

- 3.1 This Deed will take effect on the date of this Agreement.

4. OBLIGATIONS OF THE DEVELOPER

- 4.1 The Developer shall

4.1.1 pay Reserve Fee 1 to the Owner on the date of this Deed

4.1.2 notify the Owner within 10 Working Days of each of the following events:

- 4.1.2.1 the grant of Planning Permission
- 4.1.2.2 the commencement of any Challenge Proceedings
- 4.1.2.3 the final determination of any Challenge Proceedings
- 4.1.2.4 Implementation of the Development
- 4.1.2.5 first Occupation of the Development
- 4.1.2.6 expiry of the Planning Permission without the development having begun
- 4.1.3 notify the Owner of the Required Capacity and (unless the Allocation Fee shall have already been paid pursuant clause 4.1.4) pay Reserve Fee 2 within 5 Working Days of the date on which the Planning Permission is Challenge Free
- 4.1.4 Pay the Allocation Fee to the Owner on or before the earlier of:
 - 4.1.4.1 The Expiry Date; and
 - 4.1.4.2 The date on which the Developer completes the purchase (by freehold or leasehold transfer) of the Development Site
- 4.1.5 not to Implement the Development unless and until it has paid the Allocation Fee to the Owner

5. OBLIGATIONS OF THE OWNER

5.1 The Owner shall:

- 5.1.1 Following receipt of Reserve Fee 1 reserve the Reserve Capacity for the Developer until the earlier of:
 - 5.1.1.1 the Expiry Date; and
 - 5.1.1.2 the date on which the entirety of the Required Capacity has been Allocated to the Developer.
- 5.1.2 Within 5 Working Days of receipt of the Allocation Fee, Allocate the Required Capacity to the Developer.
- 5.1.3 From the date on which the Required Capacity is Allocated to the Developer pursuant to Clause 5.1.2, maintain the Required Land as a Nitrate Mitigation Scheme in accordance with the Management Plan in Perpetuity.

5.2 If a Planning Agreement is required by the relevant local planning authority for the district in which the Development is situated or any other competent authority as a pre-condition to the grant of the Planning Permission the Owner shall, if required, enter into the Planning Agreement provided that:

- 5.2.1 the terms of the Planning Agreement which relate to or seek to bind land which is within the Owner ownership and or occupation are acceptable to the Owner (acting reasonably and having regard to the Allocation pursuant to this Deed);
- 5.2.2 the terms of the Planning Agreement do not conflict with the Owner's obligations pursuant to the Section 106 Agreement;
- 5.2.3 the Developer pays the Owner's (reasonable and properly incurred) legal fees in connection with the Planning Agreement;
- 5.2.4 any liabilities on the Owner under the Planning Agreement are conditional upon the implementation of the Planning Permission; and
- 5.2.5 the Owner will not be liable for a breach of a covenant contained in the Planning Agreement after the Owner has parted with all its interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.

6. NOTICES

- 6.1 Any notice, consent, demand or any other communication served under this Deed will be effective only if in writing and delivered by hand or sent by first class post, pre-paid or recorded delivery.
- 6.2 Any notice, consent, demand or any other communication served shall be sent to the address of the relevant party set out at the beginning of this Deed or to such other address as one party may notify in writing to the others at any time as its address for service.

7. DETERMINATION OF DISPUTES

- 7.1 Subject to clause 7.7, if any dispute arises relating to or arising out of the terms of this Deed, either party may give to the other written notice requiring the dispute to be determined under this clause 7. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.
- 7.2 For the purposes of this clause 8 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.
- 7.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society who will have the power, with the right to take such further advice as he may require,

to determine the appropriate type of Specialist and to arrange his nomination under clause 7.4.

7.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the Developer cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.

7.5 The Specialist is to act as an independent expert and:

7.5.1 each party may make written representations within ten (10) Working Days of his appointment and will copy the written representations to the other party;

7.5.2 each party is to have a further ten (10) Working Days to make written comments on the other's representations and will copy the written comments to the other party;

7.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

7.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;

7.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and

7.5.6 the Specialist is to use all reasonable endeavours to publish his decision within thirty (30) Working Days of his appointment.

7.6 Responsibility for the costs of referring a dispute to a Specialist under this clause 7, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

7.7 This clause 7 does not apply to disputes in relation to matters of law or the construction or interpretation of this Deed which will be subject to the jurisdiction of the courts.

8. ASSIGNMENT

8.1 At any time prior to the earlier of

8.1.1 the Expiry Date; and

8.1.2 the date on which the Required Capacity has been Allocated

the Developer may with the Owner's approval assign the benefit of this Deed to a third party (such approval not to be unreasonably withheld or delayed).

8.2 At any time prior to the date on which the Required Capacity has been fully Allocated the Developer may with the Owner's approval (such approval not to be unreasonably withheld or delayed) assign the Reserve Capacity which has not been Allocated to a Qualifying Scheme PROVIDED THAT the Allocation Fee is paid in full by the Developer (less any Reserve Fee already paid) to the Owner on or before the earlier of:

8.2.1 the date of assignment; or

8.2.2 the Expiry Date

8.3 Following the date on which the Required Capacity has been Allocated the Developer may with the Owner's prior written approval assign the benefit of the Allocation and/or this Deed to a third party (such approval not to be unreasonably withheld or delayed) PROVIDED ALWAYS that the Developer shall pay the Owner's reasonably legal costs incurred in connection with the amendment of any updated or revised Capacity Monitoring Report required by the Council.

9. TERMINATION OF THIS DEED

9.1 This Deed will come to an end and the obligations in this deed will immediately terminate on the earlier of:

9.1.1 the expiry of the Perpetuity Period;

9.1.2 the occurrence of the Expiry Date prior to the date on which the Required Capacity has been Allocated.

9.2 Without affecting any other right or remedy available to it, any party may terminate this Deed with immediate effect by giving notice to the other parties if a Relevant Event occurs prior to the date on which the Required Capacity has been Allocated.

9.3 Without affecting any other right or remedy available to it, the Owner may terminate this Deed with immediate effect by giving notice to the Developer if any of the following events occur:

9.3.1 the Developer is in fundamental breach of any of its obligations in this Deed; or

- 9.3.2 the Developer is in substantial breach of any of its obligations in this Deed and has failed to rectify the breach within a reasonable time after receiving notice to rectify from the Owner.
- 9.4 If this Deed is terminated in accordance with the provisions of Clause 9.2 or Clause 9.3 then:
- 9.4.1 the Owner may use the Site as they see fit in their absolute discretion;
- 9.4.2 Neither party shall have any further rights or obligations under this Deed save for:
- 9.4.2.1 the rights of either party in respect of any earlier breach of this Deed; and
- 9.4.2.2 the obligations in the clauses referred to in 9.4.3;
- 9.4.3 Clause 9 shall continue in force notwithstanding the termination of this contract under clause 9.2 or clause 9.3; and
- 9.4.4 any sums paid to the Owner by the Developer under the terms of this Deed shall not be refunded.

10. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it provided that the exclusion of the said Act shall not prevent all or any future successors in title to any of the parties to this Deed from being able to benefit from or to enforce any of the provisions of this Deed.

11. VAT

- 11.1 Each amount stated to be payable by the Developer to the Owner under or pursuant to this deed is exclusive of VAT (if any).
- 11.2 If any VAT is at any time chargeable on any supply made by the Owner under or pursuant to this deed, the Developer making the payment shall pay the Owner an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice.

12. JURISDICTION

- 12.1 Subject to the provisions of clause 7 this Deed shall be governed by the laws of England and Wales and the Courts of England shall have sole jurisdiction in respect of the construction of this Deed and as to the respective rights and liabilities of the parties.

13. FEES

- 13.1 The Developer covenants with the Owner to pay to the Owner prior to the date hereof the Owner's reasonable legal fees for the preparation, negotiation and completion of this Agreement.

IN WITNESS WHEREOF the Parties hereto have executed this deed the day and year first before written

EXECUTED as a DEED by

ROKE MANOR LIMITED

acting by a director in the presence of:

.....

(Full name of witness)

Signature

.....

(Signature of witness)

.....

.....

.....

Address

.....

Occupation

EXECUTED as a DEED by

AJC DEVELOPMENTS (SOUTH) LIMITED

acting by a director in the presence of:

.....

(Full name of witness)

Signature

.....

(Signature of witness)

.....

.....

.....

Address

.....

Occupation

Appendix (7)

Application Number: 22/10813 Full Planning Permission

Site: ORCHARD GATE, NOADS WAY, DIBDEN PURLIEU, HYTHE
SO45 4PD

Development: Demolition of the existing buildings; erection of 25 dwellings with associated access, landscaping and parking

Applicant: AJC Group

Agent: Chapman Lily Planning Ltd

Target Date: 14/10/2022

Case Officer: James Gilfillan

Extension Date: 13/01/2023

1 SUMMARY OF THE MAIN ISSUES

The key issues are:

- 1) Planning History
- 2) Impact on the character and appearance of the area
- 3) Relationship with trees and landscape
- 4) Highway Safety

This application is to be delegated.

2 SITE DESCRIPTION

The site is within the built-up area of Dibden Purlieu. It is accessed from and has frontage to Noads Way and is enclosed by residential properties on Noads Way, Lime Walk and Lime Close. The site is flat and is occupied by a detached house with outbuildings and stables. It covers 0.9Ha largely consisting of paddocks.

The character of the surrounding area is residential with detached houses and bungalows adjoining the site. There are trees along all boundaries, some in the site, some outside. Those along the road frontage to Noads Way and along the north-east boundary are covered by Preservation Orders.

Schools on water Lane are close to the north of the site and Dibden Purlieu Local Shopping frontage to the south. Access to Noads Way Recreation Ground is opposite the site.

A small area in the centre of the site is identified as being at risk of surface water flooding.

3 PROPOSED DEVELOPMENT

Demolition of the existing buildings; erection of 25 dwellings with associated access, landscaping and parking

4 PLANNING HISTORY

Proposal	Decision Date	Decision Description	Status
21/11201 37 dwellings comprising: 2 blocks of apartments; 5 no. 2-bedroom houses and 20 no. 3-bedroom houses with associated access, parking and landscaping (Outline application details of Access & layout only)	18/11/2021	Refused	Decided

5 PLANNING POLICY AND GUIDANCE

Local Plan 2016-2036 Part 1: Planning Strategy

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 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

Local Plan Part 2: Sites and Development Management 2014

DM2: Nature conservation, biodiversity and geodiversity

New Forest District Core Strategy 2009

CS7: Open spaces, sport and recreation

Hythe and Dibden Neighbourhood Plan

Policy D1 - High Standards of Design and Architecture

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

Policy WEL2 - New developments should be designed so as not to exacerbate, and where possible improve, air pollution, traffic congestion, road safety and parking. New residential developments should provide infrastructure for charging electric vehicles.

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

Policy F1 - Sequential Test

Policy F3 - Drainage capacity

Supplementary Planning Guidance And Documents

SPD - Air Quality in New Development. Adopted June 2022

SPD - Housing Design, Density and Character

SPD - Parking Standards
SPD - Mitigation Strategy for European Sites

Relevant Advice

NPPF 2021

Constraints

SSSI IRZ Compost
SSSI IRZ Combustion
SSSI IRZ Infrastructure
SSSI IRZ Discharges
SSSI IRZ All Consultations
Plan Area
SSSI IRZ Air Pollution
Aerodrome Safeguarding Zone
SSSI IRZ Wind and Solar Energy
SSSI IRZ Water Supply
NFSFRA Surface Water
SSSI IRZ Waste
SSSI IRZ Residential
SSSI IRZ Minerals Oil and Gas
SSSI IRZ Rural Residential
SSSI IRZ Rural Non Residential

Tree Preservation Order: 3/98/1/T2

Plan Policy Designations

Built-up Area

6 PARISH / TOWN COUNCIL COMMENTS

Hythe & Dibden Parish Council

Comment: PAR 4: Recommend REFUSAL for the following reasons:

1) The development would be out of keeping with the street scene and character of the area. The properties in the surrounding area are typically 4/5 bedroomed detached homes on large plots. Also, the property at the front of the site would be highly visible on the street scene and therefore does not reflect the character of neighbouring properties which are surrounded by trees.

Therefore, this application is contrary to Aim 1 of the Objectives and Policies of the Hythe and Dibden Neighbourhood Development Plan 2018- 2026.

Hythe and Dibden Neighbourhood Development Plan 2018- 2026 Section 8
Objectives and Policies

1.1.1 New development shall be designed and built to high standards of quality based on a clear understanding and appreciation of the unique character of the area and what is valued locally.

1.1.2 New development shall respect and enhance the character and distinctiveness of the built and natural environment.

D1 All new development in Hythe and Dibden will be required to seek exemplary standards of design and architecture, to demonstrate

- that local character and context has been fully recognised,
- that the proposed design response to it, and
- that what is valued locally is respected.

2) It is overdevelopment of the site. The proposal is for 25 dwellings whereas this site has been identified as having the capacity for 13 homes in NFDC's 2018 Strategic Housing Land Availability Assessment. There is no precedent for this number of houses within such a small area in the wider locality.

3) There are concerns about highway safety as the volume of traffic will increase and it will lead to further congestion in the area. The road is already significantly busy during drop off and collection times for the local schools and there is an existing issue of dangerous parking in the area at these times. There are also highway safety concerns regarding cyclists and pedestrians, and particularly young children as the site is in close proximity to the access to Noads Way play area.

4) The land proposed for development is prone to water logging and flooding. The addition of 25 new homes could significantly impact neighbouring properties, as well as those proposed, with water ingress into their properties and land. The provision taken to counter this does not reassure the Parish Council that there is a reduced flood risk, rather the Committee feels that the flood risk would be increased due to this proposal.

5) There are concerns about overlooking and perceived overlooking into the adjacent properties at Noads Way, Lime Walk and Lime Close and the associated loss of privacy for these residents. The new development will also impact residents in the adjacent neighbouring properties in respect of enjoyment of their gardens.

7 COUNCILLOR COMMENTS

Councillor Stephanie Osbourne objects to the:

- Overdevelopment of the site;
- Development is out of keeping with the streetscene;
- Insufficient parking;
- Double the number of houses than the local plan;

8 CONSULTEE COMMENTS

Comments have been received from the following consultees:

NFDC Arboriculture: No objection to the loss of trees to facilitate the development, subject to securing replacement planting. Concerns regarding conflict between parked cars, pedestrian paths and seating under trees likely to drop sap and detritus that would be a nuisance. Insufficient quality shown in the replacement tree planting proposed. Concerns regarding the restriction of trees along the north boundary on the amenity of the new houses adjacent.

NFDC Ecology: The site would have an impact on protected habitats in the New Forest and Solent, mitigation should be secured. A ecological appraisal appropriately provides mitigation and enhancement. Bio-diversity Net Gain should be secured.

NFDC Environment Team: Object to the failure to preserve the landscape as a dominant characteristic of the site, insufficient space for succession planting and a layout at odds with the context and fails to support local distinctiveness.

NFDC Environmental Health: No objection to the potential for the scheme to impact on air quality, subject to a condition securing a condition securing a Construction Management Plan

NFDC Strategic Housing: Expect to see a higher proportion of smaller units in affordable housing provision.

HCC Highways: Object to the lack of information that allows consideration of the impact of the development on highway safety and supporting sustainable modes of transport. Sufficient information has been provided to conclude that there would be no impact on the capacity of surrounding road network to accommodate the additional vehicle movements.

HCC Surface Water: Object to the lack of sufficient infiltration and ground water testing to be able to conclude that sustainable drainage by way of soakaways would be feasible and would not exacerbate existing known surface water flooding on the site.

Natural England: Identify that the scheme would give rise to harm to protected sensitive habitats in the New Forest and Solent, from recreational activities and water quality. Impacts that can and should be mitigated.

9 REPRESENTATIONS RECEIVED

The following is a summary of the representations received.

- Overdevelopment setting a precedent for further high density schemes in the area
- Out of keeping design
- Terraced and semi-detached housing and small plots being out of character
- Increased traffic and parking demands impact on congestion and safety of pedestrians, cyclists and horse riders, especially due to proximity to the local play ground
- Houses won't be affordable as local values are too high
- Medium sized houses with space would support growing families, freeing small affordable units down the housing ladder
- Need for executive 4-bed properties
- Lack of affordable housing
- Lack of on site sustainable energy generation
- Ignored the SHLAA 14 house limit
- Loss of privacy and amenity from overlooking and overshadowing
- Noise and disturbance during construction and subsequent occupation
- Community feed back ignored
- Loss of habitat and wildlife
- Loss of trees and pressure on remaining trees, due to their impact on amenity
- Loss of open space
- Flood risk
- Insufficient drainage capacity
- Pressure on water supply
- Potential anti-social behaviour occurring in greenspaces on site
- Insufficient space for storage of bikes and bins on plots

- Impact on over subscribed schools and availability of GP's
- Failure to overcome previous objections and reasons for refusal
- Misleading public consultation.
- Insufficient social amenities, sports facilities and playgrounds

For: 0

Against: 193

10 PLANNING ASSESSMENT

Principle of Development

The site is in the built-up area of Dibden Purlieu and surrounded by residential development. The character of the area is residential, as such the principle of residential development is acceptable.

Adopted policies STR3 and STR4 of the Local Plan Part 1, seek to direct development to locations appropriate to the scale of the development. Dibden Purlieu would fall within 'Hythe Village', on the list of locations capable of accommodating large scale development and are the most sustainable locations due to the range of services and facilities available within the community. The application would comply with these strategic aspects of the development plan.

Furthermore, by reason of its location within the existing built-up area surrounding by residential development, the scheme would preserve the spatial landscape qualities of the New Forest National Park and Cranbourne Chase ANOB, in accordance with STR2 of the Local Plan part 1.

The Council can not 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 site has been identified within the Council's Strategic Housing Land Availability Assessment however this carries no weight within the decision making process

Local Plan policy HOU1 includes an indicative housing mix. The scheme proposes a mix, but not directly comparable. 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.

Hythe and Dibden Neighbourhood Plan refers to a desire to see more smaller sized houses, including 1 and 2 bedroomed properties, more affordable housing and housing suitable for first time buyers and young families, being provided in their plan area. The Plan goes on to indicate a principal aims of its policies are to provide new housing of up to 3 bedrooms to meet local needs, provide a substantial number of starter homes and provide a mix for downsizing to retire to and for young families, couples and single people to start their first home.

Whilst the Neighbourhood Plan does not appear to include a policy that reflects these principals explicitly, it is considered that the scheme does present a mix of housing

and plot sizes that would fit these aspirations and the prevailing pattern of much larger houses is not consistent with identified needs.

The scheme would have economic benefits of generating employment during construction, enhanced by residents who would be likely to spend in local shops and services, supporting the local economy.

It would have environmental benefits of using land in the urban area, close to services, facilities, schools and employment opportunities, reducing reliance on the private car. It would deliver energy efficient, highly insulated housing, built to modern building regulations requirements.

The scheme would social benefits of providing additional housing in a residential area, providing a mix of housing types and sizes to meet a range of housing needs.

The principle of residential development is acceptable and provides weight in favour of the scheme.

Design, site layout and impact on local character and appearance of area

The existing property is of negligible architectural merit, and due to its location makes little contribution to the character and appearance of the area. There is no opposition to the proposed demolition of the existing house and other buildings, which would have no impact on the character and appearance of the area.

The surrounding area is residential in character, dominated by detached houses and bungalows. Noads Way around the entrance in to the site is dominated by mature trees and an extensive landscape setting. Large houses occupy large plots, in a spacious setting resulting in a low density. This continues along Noads Way along the north east edge of the site. Rear gardens are between 25-50m deep. The character is slightly less sylvan along Lime Walk to the North and West, with the trees as a backdrop, rather than dominating plot frontages.

Whilst recognising that the scheme has sought to overcome the previous reasons for refusal by reducing the number of units and amending the layout, especially removing the flats and seeking to provide greater separation between buildings, the scheme still fails to readily respect the distinctive character of the immediate surroundings and proposes plot sizes and layouts that are not readily reflective of this context.

It is clear from the representations received from residents, Hythe and Dibden Parish Council and the NFDC Environment team, that this scheme fails to meet the requirements of Local Plan policy ENV3 and the Neighbourhood plan in terms of its response to the context.

The intensity of built form, hard surfaces and layout still hasn't created a layout that is dominated by landscape, where individual plots are formed, enclosing houses, gardens, access and parking as plots in a landscape setting, but proposes layouts with swathes of hard surfaced drives between flank elevations, semi-detached and terrace forms

The revised layout does have improvements, such as the arrangement of the 2 terraces of 4 houses around the open space in the centre of the site, creating a positive outlook for those houses and engagement with that space, but it does expose backs of the east terrace to the access road and requires parking courtyards at a scale that isn't characteristic of the area.

The house facing on to Noads Way, sits in a garden that would be responsive to the character of the area, but it then doesn't sit within its own plot and is linked to its neighbour with car port and driveway. Its position set back from the road is sufficient to respect the pattern of development along Noads Way and would not be a prominent feature of the streetscene to the detriment of the character of the road. That in itself does not overcome the failure to preserve the spacious landscape dominance of the plot within the site.

All of the properties surrounding the application site on large plots, set a considerable distance from the shared boundary, except Field House, positioned close to the north-east boundary. Due to the proposed size of plots, most particularly the depth of rear gardens to units 8-21, the proposed change in character and intensity of built form and contrast with existing character and spaciousness would be very evident. The amenity of those neighbours is assessed below, however in terms of responding to the context, the contrast between the existing sylvan setting and the proposed length of built form along the north and west edges would be particularly stark when experienced from those neighbours.

The consultation response from the Environment Team captures these concerns, "Individual settings within the scheme, lack of meaningful front gardens, lack of greenery between dwellings, intensively hard surfaced courtyards and parking areas, lack of significant tree species or space for such trees to grow altogether would create an external environment that is completely at odds with the context and fails to support local distinctiveness".

The design and appearance of the houses would have a consistency, with materials being used to create variety. Concerns have been raised regarding the design of the houses having regard to the appearance of housing in the area. It is acknowledged that there is wider variety in architectural design and appearance in the surrounding area than proposed by the scheme, that variety stems from the more spacious pattern of development that allowed for incremental and individual development to occur.

The houses themselves would not be readily seen alongside the variety of housing around the site. The design of the proposed houses, like many infill developments of this nature, has a collective character and sit comfortably together.

Where appropriate several end of terrace houses include projecting bay windows to overlook and engage with public realm alongside the houses and provide interest to end elevations.

Whilst the architectural style may not replicate the variety seen around the site, it would not harm the appearance of the area. However that would not remedy the harm arising from the scale of the development, extent of plot coverage and lack of landscaping setting and uncharacteristic layout.

The scheme would fail to comply with policy ENV3 (in part), would not provide environmental benefits and would weigh against the scheme in the planning balance. The NPPF at para.134 directs decision makers to refuse schemes that are not well designed.

Landscape impact and trees

As described the dominance of mature landscape is a distinctive feature of the character of the area. Whilst it is not readily publicly accessible it has high value locally due to its extent in dominating the built form, its presence in streetscenes, back

drop to properties and screening between properties. Furthermore due to the number of properties surrounding the application site, it is enjoyed in multiple streetscenes and rear gardens.

The scheme does not require removal of many trees or lengths of hedgerow to facilitate the development. Proposing removal of 9 out of 98 trees and groups on the site. None of the trees proposed for removal are in good health or make a high value contribution to the character of the area that their loss would be resisted. However the proposed landscape scheme does not make provision for appropriate replacement planting to preserve the landscape dominance, nor does the layout make provision for space for trees to grow to embed that distinctive characteristic in the new development.

Whilst a condition could secure a revised schedule of species, it could not create better opportunity to ensure the dominance of landscape to built form evident in the surrounding area is achieved.

Concerns are also raised about the potential detrimental impact of the trees on the development due to the proximity to trees. T23, a Red Oak, is proposed to have cars parked beneath it. Whilst a no-dig specification surface could avoid harm to the tree, the potential for leaf litter, debris and sap to be dropped on cars would likely lead to pressure for extensive pruning of this off site tree, leading to conflict with the owner.

Part of the onsite amenity space described as 'The Park' follows the south east boundary. It would be limited to an area for informal play, including a footpath and bench under a Lime tree (T25). Lime trees drop a lot of sap which would compromise the attractiveness of the bench and path, however the path appears superfluous and the bench could easily be relocated, secured by condition.

Previous concerns regarding the justification for the loss of T40 to facilitate access visibility have been resolved. There is no objection to the loss of this tree, though appropriate replacement would be sought, not currently included in proposals. Similarly the loss of T1 would not be resisted, however scope for replacement planting is insufficient.

Whilst retention of the majority of trees is proposed, there is little resistance to the loss of the trees proposed to be felled, however the scheme, especially its layout, fails to adequately allow for replacement and additional tree planting to establish a sylvan character and harmonise the development in to the surrounding pattern of development. Trees around the site would be likely to give rise to an un-sustainable relationship with the development.

Highway safety, access and parking

The scheme proposes to use the existing access from Noads Way, widened to provide two way access and egress with sufficient visibility. The road would enter the site, curving around a central open space terminating with cul-de-sacs to the north and south at the end.

TRICS calculations of traffic generation would not lead to rates or volumes of vehicle movements that would have a significant impact on surrounding roads and junctions to prejudice highway or pedestrian safety. The scheme would not result in the loss of any space along the existing highways relied upon by parents driving pupils to local schools. The site is close to several schools reducing reliance on cars to get to school, as such it is highly unlikely that this development would exacerbate existing congestion or demand for parking at the start and end of the school day.

Concerns have been raised by Hamps CC officers regarding visibility between manoeuvring vehicles and forward visibility within the site and along Noads Way to meet the surveyed vehicle speeds. They have requested a Road Safety Audit and accident data. In the absence of these it has not been possible to conclude highway and pedestrian safety is achieved on the site and at the access.

The scheme proposes a mix of shared and on plot parking. The amount of parking provided exceeds the amount required for shared provision, but does not meet the amount if it was entirely allocated/on plot. The layout shows options for additional on site on street parking for visitors or residents should the proposed parking not prove sufficient. It is considered that the proposed level of parking would not compromise highway safety in the area, nor lead to overwhelming demand for kerbside parking along Noads Way or other surrounding roads.

Bike stores are shown in each plot and driveways provide space to pass between parked cars. Bin stores do not appear to have been included, however each plot has access to a rear garden or similar space in which to place wheeled bins off pavements or shared surfaces.

Hamps CC officers have also raised concerns at the lack of a review of facilities in the area for pedestrians, cyclists and horse riders, being mindful of ensure safe crossing points and routes are available. Whilst it would not be for this scheme to rectify existing problems, the scheme would inevitably increase pedestrians and cyclists seeking to travel to schools and village centre services, the scale of scheme would justify additional interventions where a deficiency is identified.

The scheme has not demonstrated that it would preserve highway and pedestrian safety both on and off site, nor positively make provision to promote walking and cycling, minimising reliance on private the motor vehicle.

Residential amenity

Due to the position of the site, size of trees and separation distance to neighbouring properties, the scheme would not give rise to levels of overlooking, overshadowing, or overbearing that would have a material impact on the amenity of existing neighbours.

Concerns regarding an increase in noise and disturbance, especially given the number of properties proposed are given little weight. Any activities on the site, would be residential in nature and character, conducive with the prevailing character of the area. Additional vehicle manoeuvring would not be at a volume, intensity of duration that would get close to that generated in the area or already, nor would it be located in such close proximity to a neighbouring property to be detrimental.

Disturbance during construction is likely, however it would be short in duration and based on the scheme proposing houses, is unlikely to involve intensive or intrusive foundation design as might be required for taller buildings. However a construction management plan could be secured by condition to best manage deliveries, car parking, dust and noise.

The layout of the scheme would avoid any intrusive overlooking and overbearing between residents of the scheme. The orientation would give rise to shading between neighbouring properties detrimental to amenity. However properties 8-13 have north west facing rear gardens, as such the dwellings themselves would cast shadows over the gardens for extensive periods of the year. Furthermore these gardens would be particularly short, between 8-9m with trees up to 10m tall on the rear boundary.

Based on the tree protection plan, the area of garden furthest from the houses would be under the tree crowns, as such the gardens would not readily meet the amenity needs of the occupiers.

Plots 17-20 would have rear gardens of less than 10m. Whilst they would not suffer from shading and the overbearing presence of large trees, they are still short by reference to the context and character of the area a consequence of the concern raised above regarding the extent to which development is being squeezed on to the site.

NPPF requires Councils at para.125, to seek to ensure efficient use of land is achieved and take a flexible approach in applying policies relating to daylight and sunlight, in order to make efficient use of land for the delivery of housing. Taking a flexible approach to amenity in respect of the size of plots 8-13 would not justify the harm to the character of the area arising from the layout and size of plots proposed.

Representations received objecting to the loss of open space are given little weight. The site is in private ownership and does not provide for the recreational needs of the local community.

The scheme has improved the provision of public open space on the site, compared to the refused scheme. The revised housing mix requires the following quantum of open space:

Informal POS: 0.15ha

Play Space: 0.02ha

Formal POS: 0.09ha

Circa 0.07ha of informal POS is provided for within the scheme, but no play equipment or formal open space are provided for. The site is within easy walking distance of Noads Way recreation ground, where both formal open space and play equipment is located. However no justification for the failure to deliver the required space or facilities on site has been presented. In doing so the scheme conflicts with

Concerns that open space in the site is not enclosed by secure gates, as the nearby recreation ground is, would lead to anti-social behaviour is given little weight. The space within the scheme is framed by housing and well overlooked, the recreation ground does not benefit from such a level of surveillance.

Ecology

The site is largely used as paddocks grazed by horses. A Preliminary Ecological Appraisal has been undertaken and has not identified any constraints to the principle of development.

The report includes some mitigation and enhancement measures to be employed during construction and incorporated in the development, these could be secured by condition.

Bio-diversity Net Gain would need to be secured off site as the scheme could not deliver the 10% uplift required on site alone.

Habitat Mitigation

In accordance with the Conservation of Habitats and Species Regulations 2017 ('the Habitat Regulations') an Appropriate Assessment has been carried out as to whether

granting permission would adversely affect the integrity of the New Forest and Solent Coast European sites, in view of that site's conservation objectives. The Assessment concludes that the proposed development would, in combination with other developments, have an adverse effect due to the recreational impacts on the European sites. Although the adverse impacts could be avoided if the applicant were to enter into a Section 106 legal agreement to secure a habitat mitigation contribution in accordance with the Council's Mitigation Strategy, no such legal agreement has been completed in this instance. As such, it is not possible, in respect of recreational impacts, to reach a conclusion that adverse effects on European sites would be avoided.

Air Quality impact on habitats

To ensure that impacts on international nature conservation sites are adequately mitigated, a financial contribution is required towards monitoring and, if necessary (based on future monitoring outcomes) managing or mitigating air quality effects within the New Forest SPA, SAC and Ramsar site. There is potential for traffic-related nitrogen air pollution (including NO_x, nitrogen deposition and ammonia) to affect the internationally important Annex 1 habitats for which the New Forest SAC was designated, and by extension those of the other International designations. Given the uncertainties in present data, a contribution is required to undertake ongoing monitoring of the effects of traffic emissions on sensitive locations. A monitoring strategy will be implemented to provide the earliest possible indication that the forms of nitrogen pollution discussed (including ammonia concentrations) are beginning to affect vegetation, so that, if necessary, measures can be taken to mitigate the impact and prevent an adverse effect on the integrity of the SAC habitats from occurring.

Nitrate neutrality and impact on Solent SAC and SPAs

In accordance with the Conservation of Habitats and Species Regulations 2017 ('the Habitat Regulations') an Appropriate Assessment has been carried out as to whether granting permission which includes an element of new residential overnight accommodation would adversely affect the integrity of the New Forest and Solent Coast European sites, in view of that site's conservation objectives having regard to nitrogen levels in the River Solent catchment. The Assessment concludes that the proposed development would, in combination with other developments, have an adverse effect due to the impacts of additional nitrate loading on the River Solent catchment unless nitrate neutrality can be achieved, or adequate and effective mitigation is in place prior to any new dwelling being occupied. In accordance with the Council Position Statement agreed on 4th September 2019, these adverse impacts would be avoided if the planning permission were to be conditional upon the approval of proposals for the mitigation of that impact, such measures to be implemented prior to occupation of the new residential accommodation. These measures to include undertaking a water efficiency calculation together with a mitigation package to addressing the additional nutrient load imposed on protected European Sites by the development. A Grampian style condition has been agreed with the applicant and is attached to this consent

Flood Risk and Drainage.

A small area of the site is known to suffer surface water flooding. Whilst this would be unlikely to place any residents at risk, an increase in hardsurfaces and discharge rates from roofs could materially increase its duration and rate of occurrence.

It also suggests ground conditions are not free draining or maybe saturated during winter months. Insufficient details have been provided to demonstrate that the scheme would not suffer from increased surface water flooding, or that the suggested soakaways are capable of discharging the predicted volumes of storm water in a

sustainable manner without causing problems.

There is nothing to indicate it would not be possible to serve the development with an adequate water supply.

Affordable Housing.

Independent review of the applicants viability assessment suggests the scheme could deliver a policy compliant level and mix of affordable housing. The principal areas for disagreement are assessment of the Gross Development Value and reference to the residual land value. In the absence of any evidence to the contrary from the applicant to clarify or a S.106 agreement securing such a provision, the scheme would be contrary to HOU2.

It is noted that not only does the proposed housing mix not meet that of the Local Plan, with only four 2-bed units in the scheme, it can not meet the policy requirements for the affordable housing mix.

Heritage Assets

The site is not close enough to any heritage assets to have an impact on their significance.

Other Matters

The applicant is supported by an Air Quality Statement, setting out how the scheme would comply with the Councils Air Quality SPD. A dust management plan could minimise impacts during construction and could be secured as part of a Construction Management Plan. Air source heat pumps would be used to provide heating. Electric vehicle charging infrastructure would be required.

Concerns regarding the impact of the development on local services and infrastructure are noted, however the scheme would makes its contribution to infrastructure through the provision of CIL payments and the nature of funding being provided by central government on the basis of registered patients.

Failure of the applicant to adhere or agree with public consultation feedback does not render the scheme unacceptable.

Developer Contributions

As part of the development, the following are required but have not been secured via a Section 106 agreement:

- New Forest Habitats recreational mitigation Infrastructure £129,760
- New Forest Habitats recreational mitigation non-infrastructure £19,360
- Solent Bird Aware £17,468
- New Forest Habitats Air Quality monitoring £19,360
- 35% Affordable Housing
- Public Open Space and Play equipment

As part of the development, subject to any relief being granted the following amount Community Infrastructure Levy will be payable:

Type	Proposed Floorspace (sq/m)	Existing Floorspace (sq/m)	Net Floorspace (sq/m)	Chargeable Floorspace (sq/m)	Rate	Total
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Dwelling houses	2339.2		2339.2	2339.2	£80/sqm	£238,958.28*
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Subtotal:	£238,958.28
Relief:	£0.00
Total Payable:	£238,958.28

11 CONCLUSION

The scheme would deliver 25 homes in the built up area, with economic, environmental and social benefits as identified above. These benefits and the contribution of the scheme to housing delivery would be outweighed by the clear harm to the character of the area arising from the scale and layout of the development, lack of landscape setting and opportunity for replacement and new tree planting of sufficient scale.

The failure to demonstrate highway and pedestrian safety on and off the site, support modes of travel other than the private car, demonstrate that drainage could be achieved without exacerbating on site flooding, and provide affordable housing or public open space, fail to comply with the development plan and contribute to impacts weighing against the scheme.

The application is recommended for refusal.

12 OTHER CONSIDERATIONS

None

13. RECOMMENDATION

Refused

Reason(s) for Refusal:

1. The scheme would, due to the scale and layout of development proposed, the extent of plot coverage of built form and hard surfaces, the dominance of car parking, proximity to trees on and adjoining the site, the small plots proposed and lack of space for recreation open space and sufficient landscape setting fail to respect the spacious sylvan character of the prevailing pattern of development in the area, or deliver a well planned high quality design that would contribute positively to the local distinctiveness, the quality of life and enhances the character and identity of the locality. It is therefore contrary to Policies STR1 & ENV3 of the New Forest District Local Plan Part 1: Planning Strategy 2020, Policy D1 of the Hythe and Dibden Neighbourhood Plan 2019 and the Housing Design, Density and Character SPD 2006.
2. Due to the proximity of the proposed access to the existing access to the

east and 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. 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. It is therefore considered that the scheme would be prejudicial to highway and pedestrian safety and contrary to policy CCC2 of the New Forest District Local Plan Part 1: Planning Strategy 2020.

3. The scheme has failed to demonstrate that surface water drainage can be dealt with in a manner that would not give rise to increased surface water flooding on site and meet the requirements of delivering sustainable drainage contrary to policy STR1 of the New Forest District Local Plan Part 1: Planning Strategy 2020.
4. The recreational and air quality impacts of the proposed development on the New Forest Special Area of Conservation, the New Forest Special Protection Area, the New Forest Ramsar site, the Solent and Southampton Water Special Protection Area, the Solent and Southampton Water Ramsar site, and the Solent Maritime Special Area of Conservation would not be adequately mitigated and the proposed development would therefore be likely to unacceptably increase recreational pressures on these sensitive European nature conservation sites, contrary to Policies ENV1 of the New Forest District Local Plan Part 1: Planning strategy 2020 and DM3 of the New Forest District Local Plan Part 2: Sites and Development Management 2014 and the Mitigation for Recreational Impacts on New Forest European Sites SPD 2021, Air Quality Monitoring SPD 2022 and the Bird Aware Solent Strategy.
5. The scheme has not demonstrated how it would meet the recreational and open space needs of the occupiers of the development, contrary to CS07 of the New Forest District Council Core Strategy 2009
6. The proposal has not demonstrated that it can not provide the required amount of affordable housing and is therefore contrary to Policy HOU2 of the New Forest District Local Plan Part 1: Planning Strategy 2020.
7. The scheme has failed to demonstrate that it can be delivered in a manner that respects the trees on and adjoining the site that make a positive contribution to the character and appearance of the area. The scheme would therefore have a detrimental impact on the landscape setting of the area and fails to deliver space and landscape proposal to mitigate the loss of trees. The scheme is contrary to Policies ENV3 and ENV4 of the New Forest District Local Plan Part 1: Planning Strategy 2020.

Notes for inclusion on certificate:

1. In accordance with paragraph 38 of the National Planning Policy Framework

and Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, New Forest District Council takes a positive and proactive approach, seeking solutions to any problems arising in the handling of development proposals so as to achieve, whenever possible, a positive outcome by giving clear advice to applicants.

In this case the applicant did not have regard to pre-app advice given, were given the opportunity to amend the scheme and were advised that the scheme was unacceptable.

Decision

Further Information:

James Gilfillan

Telephone: 02380 28 5797

Appendix (8)

ONLINE CONSULTEE RESPONSE ON PLANNING APPLICATION 22/10813

Location	ORCHARD GATE, NOADS WAY, DIBDEN PURLIEU, HYTHE SO45 4PD
Received Date	02 December 2022
Objection received from	NFDC Tree Team

Demolition of existing buildings; erection of 25 dwellings with associated access, landscaping and parking.

There are a number of trees situated on and adjacent to this site that contribute to the amenity of the area and are protected by a Tree Preservation Order 23/98. These trees are considered a constraint to development.

To support this application the Treework Environmental Practice Arboricultural Impact Assessment ref 220613-1.1-OGNWDP-AIA-AL dated 13 June 2022 has been submitted. Within this report the trees on this site have been surveyed and categorised by the BS5837:2012 process. I am broadly in agreement with the assessment made on these trees.

9 trees have been identified for removal, 1x U class tree, 6 x C class individual and groups and 2x B class trees. With tree works identified for a number of trees in order to facilitate construction and to give adequate clearance over proposed roads and access within the development.

The largest impact this proposal will have on tree cover is the loss of a number of trees at the front of the site, adjacent to the current access from Noads Way. These trees have been identified in the above report as T1, T40 and G39 (the 3x eastern most trees). Due to the poor condition of these trees T40 a Beech tree has extensive decay present and T1 a Sycamore is overall poor form I cannot reasonably object to their loss. However, given the contribution these trees make the verdant character of the area I would expect to see these trees replaced with additional tree planting on the site adjacent to Noads Way.

The removal of the small trees in the middle of the site will not make a significant impact on the amenity and I cannot object to the loss of these individual, small stature, trees. However, I would like to see additional trees planted within the scheme to mitigate the loss of overall tree cover in the area.

I do not support the parking areas that are shown within the root protection area of T23, a Red Oak, which is off site, in the adjacent property. This tree will drop debris such as leaves, minor deadwood and sap onto cars parked underneath – it is foreseeable that this will create a future conflict between residents and the tree resulting in pressure to prune or even remove it. T23 is not under the ownership of the applicant and this could also create conflict between neighbours. The applicant will need to remove any parking from under this tree to avoid this foreseeable future problem.

The submitted landscape plan by The Landscape Service, drawing no 293-1-R4 dated 13.07.2022 shows a gravel path with seating within the root protection area of T25 – a B grade Lime Tree. This aspect of the layout has not been shown within the Tree Protection Plan – and therefore no details have been provided by the applicant that shows how this can be constructed without harming this significant off-site tree. However, even if non-dig construction methods were used to construct this path, I still

have concerns about future conflict with trees. Lime trees drop a lot of sap (from aphids feeding on the leaves) this sticky residue will cover the seating making it unappealing to sit upon. Again, it is foreseeable that this will create conflict with the tree and result in pressure to prune the tree to the extent that would be detrimental to its overall health and amenity. This Lime tree is off site and not under the management of the landowner and therefore could create conflict between neighbours.

I also object to the landscaping scheme on the site – the loss of trees (which are protected by a Tree Preservation Order) has not been suitably mitigated and replacement planting should be in the vicinity of where the trees were removed from to ensure the verdant character of the area is maintained in the future.

The soft planting plan shows only fastigate and small species trees being planted within this site – this is partly due to the density of the proposed development. However, I would expect to see larger growing species on the green central to the site. I consider the proposed trees inadequate and will only make a limited contribution to future canopy cover in the area.

Units 08-17 all have very short rear gardens that back onto a linear tree group. Overall these trees do not have significant amenity value and are not a constraint to development but the off site trees which are owned by private householders could create conflict with future occupiers who would seek to prune or remove the trees in order to reduce the dominance they have over their small gardens. It would not be unreasonable for the tree owner to want to retain the trees in order to maintain screening and privacy thus creating neighbour disputes. It would be beneficial to the scheme if there could be greater separation between these trees and the dwellings.

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.

H Chalmers

Senior Tree Officer

1

The **trees/hedges** on the site which are shown to be retained on the approved plans shall be protected during all site clearance, demolition and building works **in accordance with the measures set out in the submitted arboricultural statement – Treework Environmental Practice Arboricultural Impact Assessment Ref: 220613-1.1-OGNWDP-AIA-AL dated 13 June 2022..**

Reason: To safeguard trees and natural features which are important to the visual amenities of the area.

2

No development, demolition or site clearance shall take place until the following information has been provided:

A plan showing the location of service routes, including the position of soakaways;
A plan showing the location of site compound and mixing areas;
Tree Planting Schedule and Tree Plan specific for tree planting including (tree species, size, spacing, form, planting method and location) in accordance with BS 8545: 2014

are submitted to and approved in writing by the Local Planning Authority. Development shall only take place in accordance with these approved details.

Reason: To safeguard trees and natural features which are important to the visual amenities of the area.

3

No development, demolition or site clearance shall take place until a method statement and engineering drawings for the foundation design and any paths within the root protection areas of retained trees of the approved development has been submitted to and approved in writing by the Local Planning Authority.

Development shall only take place in accordance with these approved details.

Reason: To safeguard trees and natural features which are important to the visual amenities of the area.

4

Prior to the commencement of works (including site clearance, demolition and construction works) 3 working days notice shall be given to the Local Planning Authority Tree Officer to attend a pre-commencement site meeting to inspect all tree protection measures and confirm that they have been installed as illustrated and specified within the submitted **Treework Environmental Practice Tree Protection Plan 220601-1.0-OG-TPP-JI**.

Reason: To safeguard trees and natural features which are important to the visual amenities of the area.

Appendix (9)



Appeal Decision

Inquiry Held on 11,12, 18, 19, 20 and 24 May 2021

Site visit made on 21 May 2021

by G J Fort BA PGDip LLM MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th June 2021

Appeal Ref: APP/B1740/W/20/3265937

**Site of The Rise and Three Neighbouring Properties, Stanford Hill,
Lymington, SO41 8DE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Renaissance Retirement Limited against the decision of New Forest District Council.
 - The application Ref 20/10481, dated 1 May 2020, was refused by notice dated 14 October 2020.
 - The development proposed is the demolition of existing buildings and the erection of 44 sheltered apartments for the elderly with associated access, mobility scooter store, refuse bin store, landscaping and 34 parking spaces.
-

Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing buildings and the erection of 44 sheltered apartments for the elderly with associated access, mobility scooter store, refuse bin store, landscaping and 34 parking spaces at the site of The Rise and Three Neighbouring Properties, Stanford Hill, Lymington, SO41 8DE in accordance with the terms of the application, Ref 20/10481, dated 1 May 2020, subject to the conditions set out in the schedule below.

Procedural Matters

2. The application that led to this appeal was refused by the Council on a number of grounds including its effects to biodiversity (both offsite and on-site) and its effects to the living conditions of the occupants of 14 and 15 Bucklers Mews. However, during the course of the appeal, the Council withdrew its objections in relation to these aforementioned matters on the basis that the proposed development could be made acceptable in these terms through the use of planning obligations or conditions.
3. Whilst these matters do not therefore form main issues in this appeal, I am the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). Consequently, the Habitats Regulations require me to carry out an appropriate assessment of the appeal scheme in circumstances where it would be likely to have significant effects on European sites, alone or in combination with other plans or projects – I return to this issue below. Moreover, I will deal with the

other matters covered by the Council's original reasons for refusal, where appropriate, elsewhere in this decision.

4. During the Inquiry, it emerged that the Council had recently adopted¹ a Mitigation for Recreational Impacts on New Forest European Sites Supplementary Planning Document (the Mitigation SPD), which supplants the guidance² that was relevant at the time of the decision on the application that led to this appeal. The Mitigation SPD was provided as an Inquiry document and adequate time was available for its implications to be captured in the appellant's finalised planning obligation related to this matter. Consequently, I consider that no prejudice would occur to the interests of any parties as a result of me taking the Mitigation SPD into account in my assessment of the appeal's planning merits.
5. Following the closure of the Inquiry, I received finalised planning obligations relating to a number of matters, which are covered in my reasoning below.

Main Issues

6. I consider the main issues in this case to be firstly, the effects of the proposed development on the significance of Lymington Conservation Area, and the Grade II Listed Buildings at Highfield (No 1(Hill House) No2; Nos 3 and 4 (Down House); and Nos 5 and 6 (Highfield Ridge)); and secondly, the effect of the appeal scheme on the character and appearance of the area.

Reasons

Site, surroundings and proposed development

7. The appeal site comprises four relatively deep residential plots currently occupied by detached houses of varying scale and character. These existing dwellings are set back from Stanford Hill behind a considerable amount of hard standing bounded by hedges, and short walls in a mix of materials. Close to the town centre, the appeal site is just outside the boundary of the Lymington Conservation Area. Bucklers Court, a building mainly of three-storeys, and of a relatively deep plan, with a long, but articulated front elevation addressing the curve of Stanford Hill, lies to one side of the appeal site set at a higher level due to the underlying topography of the area. To the other is Concord, a detached dwelling in a deep plot. To the rear of the appeal site are detached houses in relatively deep plots, which address Belmore Road. The comparatively denser development of Bucklers Mews also lies to the rear of part of the appeal site. Situated across Stanford Hill from the appeal site are the mature trees and broad landscaped area to the rear of Rowans Park. Further up the hill, situated behind a landscape element referred to by parties as a "green" the substantial properties of Highfield, which are of considerable aesthetic quality, provide an obvious focal point.
8. The appeal scheme would entail the demolition of the existing buildings on the site and the development of a larger single building of mainly three storeys, which would provide 44 sheltered apartments for older people. A portion of the proposed development would also include a lower ground floor. Of a broadly "T" shaped footprint, the appeal building would comprise a number of distinct

¹ On 5 May 2021

² *Mitigation Strategy for European Sites: Recreational Pressure from Residential Development Supplementary Planning Document* (Adopted June 2014) (CD4.6)

elevational elements of varied overall heights and set-backs from the highway. The proposed building's rear wing would project more deeply into the plot than the existing buildings. Vehicular access and egress from the site would be provided via two highway crossovers, and the remaining existing crossovers would be removed which would create a more consolidated boundary across the front of the appeal site than exists at present. The boundary would incorporate hedges and railings. A landscaped strip, including tree planting, would be placed between the front boundary and the appeal scheme's parking and access arrangements. Further parking would be provided on the portion of the site adjacent to Bucklers Court and Bucklers Mews. To the rear and side boundaries additional tree planting would accompany the retained trees in the site, which include one identified as an "important tree" in the Lymington Local Distinctiveness Supplementary Planning Document (adopted February 2011) (the Distinctiveness SPD).

Listed Buildings and Conservation Area

9. It is common ground between the main parties that the appeal site is within the setting of both the Conservation Area and No 1 (Hill House); No 2; Nos 3 and 4 (Down House); and Nos 5 and 6 (Highfield Ridge), Highfield, which are all Grade II Listed Buildings (the Highfield Listed Buildings).
10. The Highfield Listed Buildings are pairs of properties, which vary in terms of their elevational treatment and the materials employed but are consistent in terms of their scale. The overall symmetry of each pair, and the classical proportions of their facades are also clear similarities shared by the Highfield Listed Buildings. Occupying an eminent position at the brow of Stanford Hill, the Highfield Listed Buildings are high-status structures which mark an entry point into the historic town, with windows and other features at their fronts orientated towards Stanford Hill.
11. Consequently, insofar as is relevant to the appeal, the significance of these buildings derives, to a considerable degree, both from this marked architectural quality; and from their historic interest in terms of the evidence they yield about the development of Lymington, particularly in terms of their status as a visual entry point to the town centre and their position at the western extent of its historic core. In this latter respect, I also note the Council's view of their relationship to the emergence of Lymington as a resort in the 19th Century. As high-status buildings situated at the brow of the Hill and orientated towards it, views to and from them are elements of the setting that contribute to their significance in these respects.
12. The Listing Descriptions for the Highfield Buildings contain the annotation "GV", which indicates that their Group Value is of note, both in terms of their relationships with each other and with other nearby Grade II Listed Buildings at Stanford Road and Priestlands Place. It is clear that the Highfield Listed Buildings' relationships with these other structures is also a matter relevant to the consideration of the contribution made to the significance by their setting.
13. Historic mapping³ supplied by both parties shows that most of the area broadly to the south of Highfield, aside from the "green" has changed considerably since the Listed Buildings were originally constructed – with extensive residential development taking place over the course of the 20th Century.

³ In the Council's *Conservation Proof of Evidence Appendix 2* (CD8.10) and the appellant's *Heritage Proof* (CD8.18)

Whilst the density of much of this development allows for landscaping and mature trees, the predominantly domestic character of much of the land, and the buildings on it, is readily perceived in views from Highfield – meaning that any ‘designed views’ that may have existed when the Listed Buildings were constructed have already been fundamentally altered.

14. The proposed building would be of a greater scale than the dwellings currently on the appeal site, and its footprint would extend across the existing plots. However, the proposed building would be set well back from Stanford Hill, behind tall trees. Taken together, these aspects of the appeal scheme’s design would help it to assimilate with the generally leafier and more spacious pattern further down the hill. The appeal scheme would not therefore, appear as an alien feature within this setting, which already includes buildings and landscaping. Moreover, the appeal site is set at a considerably lower level than Highfield. As a result, taken together with its set back and landscaping proposals, the appeal scheme would not constitute a dominant feature in views available from Highfield. In my judgement therefore, the proposed development would not materially erode any ‘designed views’ from the Highfield Listed Buildings and would thus avoid harm to their significance in this respect.
15. The location of the Highfield Listed Buildings on the brow of the hill and their scale, taken together with the set-back of the proposed development, the level of its site and the landscaping proposals to its front, would also ensure that the Listed Buildings remain the pre-eminent structures marking the entry point to the historic town, in views toward them from lower down Stanford Hill. Accordingly, the aforementioned aspects of the architectural and historic significance of the Highfield Listed Buildings would not be eroded as a result of the appeal scheme.
16. No 7 Highfield House and No 8 Highfield are not included on the statutory list, and neither are they identified in *Lymington: A Conservation Area Appraisal* Supplementary Planning Guidance (adopted July 2002) (the CAA) as “Key / Important Unlisted Buildings”. The Council confirmed at the Inquiry that they do not appear on a local list. Nevertheless, the Council consider them to be non-designated heritage assets. Be that as it may, for the reasons set out above in terms of the appeal site’s relationships to Highfield, I consider that the proposed development would not cause a harmful effect to any significance that those non-designated properties may possess.
17. The appeal site is situated to the side of Bucklers Court, a substantial structure, which would effectively screen it from the Grade II Listed Buildings on Priestlands Place and Stanford Road. As a result, the proposed development would not interrupt the relationship that these structures have with the Highfield Listed Buildings and would not diminish their group value.
18. The Conservation Area has a legible medieval street pattern in its core, with 18th Century and later expansion at its periphery. These aspects contribute to the significance of the Conservation Area in its architectural and historic senses – as does the resultant harmonious, but nonetheless varied, nature of its built form.
19. Bucklers Court marks the boundary of the Conservation Area in relation to the appeal site, and effectively severs inter-visibility between the site and the historic core of the town – albeit the appeal site is inter-visible with the

Highfield properties. I accept that there is a marked change in character and scale between Bucklers Court and the appeal site's properties. It is clear that the change in scale from Bucklers Court to the predominantly 20th Century dwellings further down the hill would become more gradual and transitional as a result of the proposed development.

20. However, the proposed development would clearly read as a modern building and not a traditional one, and due to its site level, set-back and landscaping at its front, it would not appear overly assertive. Moreover, these aspects of the proposed development, taken together with the more assertive positioning of Bucklers Court, and the high quality architecture of the Highfield Listed Buildings set at the brow of the Hill, would ensure that the existing entry to the Conservation Area and the town's historic core would remain readily understandable. Consequently, the proposed development would not undermine the legibility of the town and would not erode the historic and architectural significance of the Conservation Area.
21. Accordingly, for the reasons set out above, I conclude on this main issue that the proposed development would avoid harm to the significance of the Conservation Area, and to the Grade II Listed Buildings No 1(Hill House) No2; Nos 3 and 4 (Down House); and Nos 5 and 6 (Highfield Ridge) Highfield. In these respects, the proposed development would accord with Policy DM1 of the New Forest Local Plan Part 2 (adopted April 2014) (the Part 2 Plan) and the National Planning Policy Framework (the Framework). Taken together and amongst other things, these policies seek to ensure that heritage assets are conserved in a manner appropriate to their significance; and that development should pay particular regard to setting, historic significance and context of heritage assets. In arriving at this view, I have taken fully into account the relevant Historic England good practice and related advice⁴.
22. In light of the above, and mindful of my duty under s66(1) of the Planning (Listed Buildings and Conservation Areas Act) 1990, I conclude that the proposed development would preserve the setting of the Grade II Listed Buildings No 1(Hill House) No2; Nos 3 and 4 (Down House); and Nos 5 and 6 (Highfield Ridge) Highfield.
23. Whilst I have been supplied with the CAA, that document makes clear⁵ that it provides guidance on "the subject of the design of development *in* Lymington's central conservation area" (with my emphasis). The appeal site would thus be outside the scope of this document in terms of its design principles.

Character and appearance

24. For the purposes of the Distinctiveness SPD, the appeal site is located within Character Area 6 - South Lymington. According to the Distinctiveness SPD⁶ this area has several key defining elements including the similar scale and mass of neighbouring dwellings, the presence of large trees, large garden settings (including rear garden islands), common set-backs, build-up of plot widths and low front boundaries. As currently developed, the site broadly conforms to these key defining features.

⁴ GPA2 *Managing Significance in Decision-Taking in the Historic Environment* (CD7.13); GPA3 *Setting and Views* (CD7.14); Historic England Advice Note 1 – *Conservation Areas* (CD7.16); Historic England Advice Note 12 – *Statements of Heritage Significance* (CD7.17)

⁵ At paragraph 1.2

⁶ At page 95

25. Nevertheless, the Distinctiveness SPD, makes it clear⁷ that the guidance contained within the document “should inform the necessary thorough research into the context of individual sites. It is for the ... developer or the designer to investigate the finer nuances of the place and how they can inform the design of new development.” In these regards it is relevant that the appeal site is situated at the boundary of Character Area 6, close to Character Area 1 – the Town Centre, and Character Area 7 – Yaldhurst Purlieu. In this context, it is also relevant that the Framework⁸ sets out that SPDs relating to design matters should allow a suitable degree of variety where this would be justified.
26. I readily accept that there is a clear distinction between Bucklers Court and the dwellings present at the appeal site in terms of their massing, scale, set-back density and the build-up of their building lines. I am also mindful of the design intentions set out in previous planning policy/guidance relating to the Bucklers Court site, which identified an “opportunity to ‘round off’ the town centre with a high quality residential scheme”⁹. Nevertheless, I saw that, due to its immediate proximity to the appeal site, Bucklers Court provides a clear context, and unlike the majority of dwellings in Area 6, which are in the main situated on quieter residential streets and cul-de-sacs, those on the appeal site directly address the A337 (Stanford Hill). To my mind, these aspects of the appeal site, and its relationships with its immediate surroundings could reasonably be considered finer nuances of this part of Area 6 which clearly distinguishes it from the wider area, which lacks such immediate contextual relationships. For this reason, I do not share the Council’s view that the design evolution of the appeal scheme, as expressed in the Design and Access Statement and other submissions, is based on erroneous conclusions about the appeal site’s context.
27. The design of the proposed development has responded to this site-specific context and would see a building which would, instead of the marked change in character that now exists, provide a more transitional approach. This would be achieved through a building which would step down in scale from its northern edge to its southern, and would incorporate distinct elevational elements, which would be set further back from the highway than Bucklers Court. The proposed building would be set in from its boundaries and landscaping would be provided adjacent to these. These elements of the appeal scheme’s design would ensure that the proposed building, despite its scale and massing, would not appear as an overly assertive feature. For these reasons too, it would not compete with the ‘rounding off’ role of Bucklers Court, or interfere with a contextual understanding of where the town centre and Conservation Area begins. Neither would the proposed development dominate Concord, the dwelling to its other side.
28. The front of the proposed building would incorporate four distinct elevational elements, which would provide articulation and modelling to this street-facing elevation. I saw within the appeal site’s wider surroundings (including at Highfield) examples of dormer windows, canopies, parapets, and flat-roofed elements. The proposed building would also clearly reference the range of facing materials present in nearby structures.

⁷ At paragraph 1.3

⁸ At paragraph 126

⁹ Included in Appendix 4 of the Council’s *Conservation Proof of Evidence* (CD8.12)

29. Some aspects of the elevational treatment would differ from those of some of the traditional buildings in the area. For example, I note views that the elevations may not achieve the precise classical proportions, particularly under the pediment, in contrast to the Highfield Listed Buildings and Bucklers Court; and its dormers would be in a broadly "landscape" rather than a "portrait" orientation unlike a great deal (although not all) of dormers present on buildings within the Conservation Area. Moreover, the front elevation, whilst incorporating symmetrical elements (such as the rendered element with dormer windows), taken as a whole would be asymmetric – and also incorporate asymmetric individual elements. I am mindful also that, unlike Bucklers Court, the proposed development would incorporate more extensive areas of flat roofing. Nevertheless, the appeal site is outside of the Conservation Area, and the proposed development would be a modern building, which would clearly read as such, albeit with references to traditional elements. Furthermore, due to the roof-level design, which includes parapets and pitched features, the flat roof elements would be largely invisible in the majority of available views of the appeal scheme. Accordingly, the proposed development's design would not appear incongruous in these terms.
30. The appeal scheme would introduce a more consolidated front boundary than exists at present with associated landscaping and tree planting and in this respect would be a considerable improvement on the current arrangement of highway crossovers. In these terms, the proposed development would clearly meet with the Distinctiveness SPD's design advice relating to the garden setting for built development¹⁰. Moreover, this aspect would greatly assist the proposal to assimilate with its surroundings.
31. In other respects, the proposed development would not meet the Distinctiveness SPD's guidance of most relevance to the character area within which it sits – in terms of its build-up of building line and its plot width. Whilst I accept that this would close the gaps currently present between the houses on the site, these gaps are only perceptible in a limited range of views, and in any event ancillary structures are present in a number of them. Consequently, the current contribution of the gaps between the appeal site's existing dwellings to the streetscene is, in my view, limited and their loss would be mitigated by the implementation of the proposed landscaping scheme. Moreover, the articulation of the proposed front elevation would also serve to break up the building line into visually discrete elements.
32. I note also that the rear wing of the proposed building would extend over the rear gardens currently at the appeal site, and that this element of the scheme would be visible in gaps from Belmore Road. Nevertheless, a considerable proportion of the rear garden would remain and existing trees would be accompanied with new planting. Taking these aspects of the proposed development together with the depth of neighbouring gardens and the maturity of their existing vegetation, I consider that the rear 'garden island' would not be harmfully eroded, and that intervening landscape elements would screen and soften views through to the rear of the proposed development.
33. The Framework sets out that planning decisions should promote an effective use of land in meeting the need for homes¹¹; and that where there is an existing shortage of land for meeting identified housing needs (a matter of

¹⁰ Set out on page 95

¹¹ At paragraph 117

common ground between the parties in the current case), it is especially important that planning decisions ensure that developments make optimal use of the potential of each site¹². To my mind, the site-specific design response of the appeal scheme would ensure that this is the case, and, taken together with the lack of material harm that would be caused in townscape terms, justifies a departure from the advice of the Distinctiveness SPD in this case insofar as its guidance regarding the build-up of building line and plot width is concerned.

34. For the reasons set out above, the appeal scheme would clearly not constitute an example of poor design, and thus would not conflict with the Framework¹³ in this regard. Accordingly, these considerations taken together with my conclusions regarding the effects of the proposed development on the significance of heritage assets, lead me to the conclusion on this main issue that the appeal scheme would avoid harm to the character and appearance of the area. In these respects, the proposed development would accord with Policy ENV3 of the New Forest Local Plan (adopted July 2020) (the Local Plan), insofar as (amongst other things) it expects new development to create buildings, streets and spaces which are sympathetic to the environment and their context in terms of layout, landscape, scale, height appearance and density and in relationship to adjoining buildings, spaces and landscaping features. For these reasons too, I find no conflict with the Government's priorities for well-designed places as expressed in the National Design Guide.

Other Matters

Housing Supply Position

35. It is common ground that the Council cannot demonstrate a five-year supply of deliverable housing land. Although I accept that the Council's recently adopted Local Plan includes a strategy to meet its requirement over the plan period – delivery of its strategic site allocations is not progressing at the rate previously anticipated. The Council is currently engaging with developers to support an updated housing supply position to be published later this year. However, the fruits of that labour are not yet available – and I am mindful of the Council's statement that, as this work is still in progress, "it is not possible to take a definitive position on whether or not the Council has a five-year housing land supply at this present point in time and to attempt to do so through this Appeal Inquiry would not be practical or worthwhile"¹⁴. Consequently, at the Inquiry no substantive evidence was forthcoming sufficient to undermine the appellant's conclusion¹⁵, based on robust and credible analysis, that there is only around a 2.5 year supply of specific deliverable housing sites – a position that they characterise as an "optimistic view"¹⁶ of the situation.
36. Moreover, I have found that no harm would occur to the significance of heritage assets as a result of the proposed development, and that in this respect, policies in the Framework that protect areas or assets of particular importance do not provide a clear reason for refusal. In such circumstances the Framework indicates¹⁷ that the tilted balance is engaged. In arriving at this

¹² At paragraph 123

¹³ At paragraph 130

¹⁴ Paragraph 4.10 of Appendix 4 of the Council's *Proof of Evidence* (CD8.6)

¹⁵ Per paragraph 10.2 *Draft Proof of Evidence: Housing Land Supply*, included as Appendix 1 to the Appellant's *Planning Proof of Evidence* (CD8.29)

¹⁶ Ibid at paragraph 10.2

¹⁷ At paragraph 11(d)

view, I acknowledge that the Council has met the most recent Housing Delivery Test – however, the Framework is clear¹⁸ that this consideration would not disengage the tilted balance, where a five year supply of deliverable housing sites cannot be demonstrated.

37. Whilst the Council and appellant's assessments differ on this point, both indicate a significant need¹⁹ for specialist housing for older people in the District over the plan period. During the course of the appeal, I have been supplied with no substantive evidence which suggests that there are any deliverable sites, other than the one subject to this appeal, which would make a meaningful contribution to the supply of sheltered housing in the short-to-medium term. Furthermore, the Government's Planning Practice Guidance (PPG) advises²⁰ that the need to provide housing for older people is critical.
38. I am mindful of views of interested parties²¹ referring to the availability of older people's properties in Lymington and the perceived slow sales of some of the available stock -including one development, which appears to have completed in late 2019. Some consider that the level of parking provided and other matters such as the tenure arrangements involved in such housing may have contributed to slower than usual sales rates for the recently completed scheme. Nevertheless, social distancing measures pursuant to the COVID-19 pandemic have been in place for a considerable period of time following the completion of that scheme – and these may well have affected sales rates. I am conscious also that the market for age-restricted housing is necessarily smaller than that for general needs housing subject to no age restrictions – this is clearly another factor which could influence sales rates for such dwellings.
39. Some consider that housing, such as that proposed in this case could attract occupants from outside of the District. However, the demographic projections on which the Council's needs assessments are based includes an allowance for in-migration – and I am mindful of the material presented by the appellant in relation to one of its recently completed schemes²² located in Brockenhurst, which demonstrates that a considerable proportion of its occupants moved from properties within the immediate locality. Although this material relates to an individual scheme, and is thus a limited sample, I have been supplied with no substantiated evidence that would refute this or that demonstrates that higher proportions of in-migration have occurred in respect of other schemes.
40. Accordingly, these matters do not materially undermine either the appellant's or Council's assessments in terms of the underlying need for this type of accommodation over the plan period.
41. Furthermore, in enabling older people to 'down-size' to smaller accommodation, which nonetheless would meet their needs, the proposed development would free up larger housing elsewhere, including a proportion in the District, which would also have beneficial housing supply effects.
42. Against this background, and taking into account the Court judgements and appeal decisions provided by the parties²³, the appeal scheme's delivery of

¹⁸ At Footnote 7

¹⁹ Per paragraph 6.24 of the Local Plan

²⁰ *Housing for Older and Disabled People* at Paragraph: 001 Reference ID: 63-001-20190626 Revision date: 26 June 2019

²¹ Including Lymington and Pennington Town Council (ID3) and the Lymington Society (ID11)

²² At Appendix 3 of the appellant's *Planning rebuttal to proof of evidence by Mr James Gilfillan* (CD8.35)

²³ *Hallam Land Management Ltd v Secretary of State for Communities*

specialist housing for older people would deliver benefits that weigh very significantly in its favour.

Other Benefits of the proposed development

43. Due to its adjacency to the town centre, its positioning within a settlement boundary, and its ready access to services, the appeal site is manifestly a sustainable location – a matter of common ground between the parties. In these ways, the proposed development would accord with the Local Plan's intention for older persons' housing to be located close to local facilities and services²⁴.
44. Moreover, a considerable proportion of the appeal site also constitutes previously developed land – and I am mindful that some 61% of the District's area is what the Local Plan describes as "Greenfield with NPPF 2012 footnote 9 constraints"²⁵. In the light of these considerations, the Framework's support for the effective²⁶ and efficient²⁷ use of land is particularly relevant. For these reasons, taken together with my findings on housing supply matters, I consider that the proposed development would also contribute to the Government's objective of delivering the right homes in the right places²⁸.
45. The PPG sets out²⁹ that offering older people a better choice of accommodation to suit their changing needs can help them live independently for longer, feel more connected to their communities and help reduce costs to the social care and health systems. Research has been drawn to my attention by the appellant³⁰, which finds that provision of housing of the type proposed could yield substantial savings to health and social care budgets.
46. The proposals would deliver a biodiversity net gain (BNG) on the site, which would be secured by a planning condition, of over 10%. Although Policy STR1 of the Local Plan requires BNG, it sets no specific percentage gain, and legislation enshrining a requirement is not yet in place. In any event, the BNG provided would be a clear benefit of the appeal scheme.
47. During its construction phase the proposed development would create direct employment, of some 20 roles per annum over an 18 month build programme³¹ – and over that time the appeal scheme would also have a positive effect on economic activity in the wider construction supply chain. When completed, the adjacency of the appeal site to the town centre would likely lead to a considerable increase in spending at local businesses. These

and Local Government and Eastleigh Borough Council [2017] EWHC 2865 (Admin); *Cheshire East Council v Secretary of State for Communities and Local Government and Rowland Homes Ltd* [2014] EWHC 3536 (Admin); *Phides Estates (Overseas) Limited v Secretary of State for Communities and Local Government, Shepway District Council and David Plumstead* [2015] EWHC 827 (Admin); APP/B1740/W/17/3174028; APP/B1740/W/17/3180586; APP/H2265/W/18/3202040; APP/R3650/W/18/3211033; APP/B1740/W/18/3198347; APP/F2605/W/18/3194045; APP/A0665/W/18/3203413; APP/B1740/W/18/3212419; APP/C3810/W/19/3242332; APP/C3810/Y/19/3242340; APP/W1145/W/19/3238460; APP/Q3115/W/19/3230827; APP/C1570/W/19/3242550; APP/A1530/W/19/3223010; APP/N1730/W/20/3261194; APP/G5180/W/20/3257010.

²⁴ Expressed at paragraph 6.27 of the Local Plan

²⁵ At Figure 2.5

²⁶ At paragraph 117

²⁷ At paragraph 122

²⁸ Set out in *Fixing our broken housing market* Cm9352 CD7.8

²⁹ *Housing for Older and Disabled People* at Paragraph: 001 Reference ID: 63-001-20190626 Revision date: 26 June 2019

³⁰ *Healthier and Happier: an Analysis of the fiscal and wellbeing benefits of building more homes for later living*, Produced by WPI Strategy, September 2019 included as Appendix 15 to the appellant's Statement of Case

³¹ Per the appellant's *Planning Proof of Evidence* at paragraph 9.1 CD8.29

would be clear benefits in the economic sense – and in these terms the Framework makes clear that significant weight should be placed on the need to support economic growth³².

48. Accordingly, for these reasons, the proposed development's clear social, environmental and economic benefits taken together would attract very significant weight in the overall planning balance.
49. Although some would prefer to see development of family housing, given the proportion of older residents already in the District, an alternative scheme to provide such dwellings is not before me in this appeal, and in any event, for the reasons set out above, the proposed development would meet clear needs and secure a number of benefits.

European Sites

50. The Statement of Common Ground³³ and the appellant's Proof of Evidence in respect of Ecology and Nature Conservation³⁴ highlight the following European sites in close proximity to the appeal site:
- the New Forest Special Area of Conservation (SAC);
 - the New Forest Special Protection Area (SPA)
 - the Solent and Isle of Wight Lagoons SAC;
 - the Solent Maritime SAC;
 - The Solent and Southampton Water SPA and RAMSAR.
51. Where plans or projects, either alone or in combination with others, would be likely to cause significant effects to European sites, the Habitats Regulations requires the competent authority to carry out an appropriate assessment before granting such consent. For the purposes of the Habitats Regulations, I am the competent authority in respect of this appeal and will proceed on this basis.
52. In short, the internationally important interest features of the New Forest European sites derive from the heathland, water and meadow features, and the habitats they provide for, amongst others, the European honey buzzard, the hen harrier, the Eurasian hobby, the European nightjar, the woodlark, the Dartford warbler and the wood warbler. The internationally important special interest features of the Solent European sites, are, in summary, and amongst other things, the coastal lagoon, sandbank, mudflat, annual and perennial vegetation of drift lines and stony banks, shifting dunes and salt meadow features. These European sites provide a habitat for Desmoulin's whorl snail, the sandwich tern, the common tern, the little tern, the roseate tern, the dark-bellied brent goose, the Eurasian teal, the ringed plover, the black-tailed godwit, and the Mediterranean gull.

Likely Significant Effects

53. The increase in residential development that would occur as a result of the appeal scheme would be likely, in combination with other plans and projects, to

³² At paragraph 80

³³ CD7.12 at paragraph 3.8

³⁴ CD 8.27

have a significant effect on the New Forest and Solent European sites as a result of recreational disturbance. Furthermore, an increase in occupation and related transport movements is also likely, in combination with other plans and projects to lead to air quality implications that could lead to significant effects on the New Forest SAC. Moreover, in terms of the Solent European sites, the proposed development is likely to have significant effects in terms of the increase in nitrates arising as a result of the additional wastewater that would be discharged from the site.

Recreational Pressure and Air Quality

54. Recreational pressures arising from the proposed development would be likely to include disturbance of wintering birds feeding and roosting along the Solent coastline. Similarly, the disturbance of ground nesting birds in the New Forest European sites as a result of increased recreational activity arising from the site would also be likely to lead to adverse effects. Other effects could include trampling, nutrient enrichment and increased risk of wildfires as a result of increased recreational activity. In these ways, the proposal, in combination with other plans and projects, would adversely affect the integrity of the European sites.
55. There is a degree of uncertainty at this stage as to whether or not the air quality impacts of proposed developments in the New Forest District would lead to significant effects to the integrity of European sites. Nonetheless, it is necessary to apply the precautionary principle in relation to this matter, and it is not possible to establish conclusively at this stage that no adverse effects would arise to the integrity of the European sites as a result of its air quality implications.
56. It follows that, in terms of recreational pressure and air quality, the proposed development could clearly cause an adverse effect to the integrity of the relevant European sites and their conservation objectives. However, I have been supplied with a lawfully executed planning obligation pursuant to s106 of the Town and Country Planning Act 1990 (as amended), which would secure mitigation measures in accordance with the Council's Mitigation SPD and its *Developers' Contributions to Air Quality Monitoring on New Forest Habitats* note of 2 March 2021³⁵. I am also mindful of Natural England's position³⁶ on these matters, which is that appropriate financial contributions, in line with the Mitigation SPD, would provide acceptable mitigation in these terms. I consider that the unambiguous content of Natural England's consultation response in these regards means that the requirement³⁷ for consultation on this matter in terms of my appropriate assessment has been met.
57. The obligations in these regards are clearly necessary to make the proposed development acceptable in planning terms, are directly related to the proposed development, and are based on an established methodology which ensures that they are fairly and reasonably related in scale and kind to the development. Accordingly, the obligations meet the relevant legal³⁸ and national policy tests³⁹. In these terms, I am satisfied that I can take these planning obligations into account and that they would provide an effective mechanism

³⁵ CD7.18

³⁶ Set out in its consultation response on the planning application dated 24 June 2020

³⁷ Established by Reg 63(3) of the Habitats Regulations

³⁸ Per Regulation 122(2) of the Community Infrastructure Regulations 2010 (as amended)

³⁹ Per paragraph 56 of the Framework

for ensuring that adverse impacts to the integrity of the relevant European sites in terms of air quality and recreational pressure would be effectively mitigated.

Nitrates

58. Evidence produced by the Partnership for South Hampshire, which supported the production of the Local Plan, found that the majority of Solent water bodies had in most cases, less than good ecological status for elements such as dissolved inorganic nitrogen, and that wastewater treatment works in the area would reach capacity early in the plan period⁴⁰. Consequently, developments in the New Forest Plan Area which would lead to increased discharges of wastewater would be likely to cause an adverse impact to the integrity of the Solent European sites in terms of nutrient enrichment. I am also cognisant that Natural England has advised the council that development which would result in increased overnight stays in certain parts of the District (including Lymington), should achieve nitrate neutrality to avoid any likely significant effects⁴¹ to water quality in the Solent. Taking these things together, leads me to the view that without mitigation to achieve nitrate neutrality the proposed development, due to the increased wastewater discharge that it would create, would lead to an adverse effect to the integrity of the Solent European sites.
59. The appellant proposes an offsite mitigation package (the Heaton Scheme) based at a site in the Isle of Wight. In short, the Heaton Scheme would involve land being removed from active agricultural use to be planted with woodland. In doing so, the outflow of nitrates from the Heaton Scheme would reduce. The appellant would buy credits for the appropriate amount of land to be taken out of agricultural use to offset the proposed development's nitrates output. Contributions would also be included to secure monitoring of the Heaton Scheme by Isle of Wight Council.
60. Natural England confirmed⁴² that the proposed mitigation land subject to the Heaton Scheme would be appropriate to offset nitrogen from developments which would discharge to the Pennington Wastewater Treatment Works, such as the one proposed in this case. Moreover, Natural England provided a site-specific response⁴³ on this point, which confirmed that the Heaton Scheme would be an appropriate location to provide mitigation in respect of the proposed development. Given the clear position of its representations generally in terms of the Heaton Scheme taken as a whole, and specifically in relation to the proposed development, I consider that this fulfils the requirement⁴⁴ for consultation with Natural England in respect of my appropriate assessment.
61. Natural England's site-specific response emphasises the necessity for any planning obligation relating to nitrates mitigation to secure the appropriate amount of land in the Heaton Scheme. Material submitted with the appeal, including the draft overarching agreement relating to the Heaton Scheme, and a nitrogen balance calculation for the proposed development based on the

⁴⁰ Per paragraph 3.10 of the Council's *Interim Position Statement on Nutrient Neutral Development* of 4 September 2019, included as Appendix 2 of the appellant's *Planning Proof of Evidence* (CD8.29)

⁴¹ Ibid paragraph 3.13

⁴² In a letter of 21 April 2020 included at Appendix 24 of the appellant's *Planning Statement of Case* (CD7.24)

⁴³ Dated 26 November 2020 and included as Appendix 25 of the appellant's *Planning Statement of Case* (CD7.24)

⁴⁴ Established by Reg 63(3) of the Habitats Regulations

methodology established by Natural England, clearly demonstrate that the appropriate amount of land would be secured.

62. The appellant has submitted a unilateral planning obligation to secure the measures related to the Heaton Scheme, which would relate only to the area of land necessary to mitigate the proposed development's effects. However, I am mindful that neither of the parties promote this measure as their preferred option. Instead, securing the mitigation as part of the emerging overarching agreement relating to the wider Heaton Scheme as a whole would be preferred, not least as Isle of Wight Council would be a signatory to the overarching agreement and would thus be bound by its terms insofar as the responsibility for monitoring is concerned. I concur that there would be advantages in these terms of securing the mitigation via the overarching agreement rather than by the submitted unilateral undertaking.
63. The overarching agreement is not yet finalised – however, the Council indicated that it is due imminently. Consequently, the parties propose a Grampian condition, which would prevent the proposed development from being occupied prior to the mitigation measures pursuant to the Heaton Scheme being in place. This approach would be in-step with the Council's *Position Statement on Nutrient Neutral Development – Interim Nitrogen Mitigation Solution* (4 September 2019)⁴⁵, which advocates the use of such conditions.
64. As set out above, the Council cannot currently demonstrate a supply of specific deliverable sites to provide a minimum of five years' worth of housing against their adopted requirement. In this context, the requirement to enter into proposal-specific arrangements in relation to nitrates agreements in the absence of a strategic package such as that which is to be subject to the overarching agreement, could act as a further impediment to securing permissions and completions – placing the delivery of the District's housing requirement at risk. For these reasons, I am of the view that exceptional circumstances exist which would justify the imposition of a condition which requires the appellant to enter into a planning obligation, and that this approach would therefore accord with the PPG⁴⁶ in these regards.
65. In arriving at this view, I am mindful that the proposed development could commence, but that only its residential occupation would be dependent on the measures being in place, as it is from this aspect of the proposal that the nitrates impacts would arise. I am content that the principal terms of the obligation are clear from the material before me, and that its imposition would clearly meet the three legal and policy tests⁴⁷. Moreover, given that the completion of the overarching agreement is imminent, I consider that proceeding on the basis of the suggested Grampian condition would not unreasonably delay either the delivery of the development or its residential occupation. Taking these things together leads me to the view that the use of a Grampian condition in these circumstances would clearly accord with the advice set out in the PPG. For these reasons, I consider that the planning obligations contained in the unilateral undertaking related to this matter to be

⁴⁵ Included as appendix 2 of the appellant's *Planning Proof of Evidence* (CD 8.29)

⁴⁶ *Use of Planning Conditions Paragraph: 010 Reference ID: 21a-010-20190723 Revision date: 23 07 2019*

⁴⁷ Per Regulation 122(2) of the Community Infrastructure regulations 2010 (as amended); and paragraph 56 of the Framework

unnecessary in this case, and they therefore carry no weight in my assessment of the appeal's merits⁴⁸.

Appropriate Assessment

66. For the reasons set out above, the proposed development would be likely to give rise to adverse effects to the integrity of European sites in terms of its recreational, air quality and nitrates impacts. However, the combination of the planning obligation which secures policy compliant mitigation in terms of recreational and air quality impacts; and the imposition of a condition requiring nitrate mitigation prior to the first occupation of the proposed development would ensure that the appeal scheme would not adversely affect the integrity of the relevant European sites. Consequently, I conclude that the proposed development would be acceptable in these terms, and would accord with Policy ENV1 of the Local Plan, insofar as it requires developments to avoid adverse effects to the integrity of European sites.

Optional Technical Standards

67. The Council suggested a condition which would require the proposed dwellings to meet the optional technical standard for wheelchair adaptable housing and cited Policy IMPL2 of the Local Plan as a justification for this. Although the Council withdrew this suggested condition during the course of the Inquiry, I am nevertheless mindful that s38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) requires me to determine applications in accordance with the development plan unless other material considerations indicate otherwise. Policy IMPL2 requires sheltered housing to be built to the wheelchair adaptable dwelling standard of Part M4(3)2a of the Building Regulations. The proposed development would not meet this standard, a matter not disputed by the appellant. Consequently, in this respect the appeal scheme would conflict with the Local Plan insofar as this policy is concerned.
68. It is important to note that the appeal is pursuant to an application for full planning permission, rather than an outline scheme, and thus the internal arrangement of the proposed development would be fixed per the approved plans should permission be forthcoming – meaning that a condition requiring these standards would be likely to render the scheme unimplementable. I am mindful also that the design of the appeal scheme seeks to achieve the M4(2) Optional Building Regulations standard for accessible and adaptable dwellings⁴⁹ – albeit that without a condition specifying this, I accept that the Council could not enforce this standard. In any event, the proposed development would cater for a range of occupants, and not only those with impaired mobility. Consequently, I am not persuaded that a requirement for the higher optional standards to be deployed in all of the proposed dwellings would be either reasonable or necessary in this case.
69. Accordingly, taking these matters together with the benefits of the proposed development that are set out above, it is my view that any harm that would occur as a result of the appeal scheme's variance with Policy IMPL2 of the Local Plan does not significantly and demonstrably outweigh the proposed development's benefits – matters to which I accord very significant weight. In

⁴⁸Clause 6.6 of the unilateral undertaking indicates that in such a circumstance, the relevant obligations cease to have effect from the date of this decision

⁴⁹ *Rebuttal to the Proof of Evidence of Mr Gilfillan*, Contact Consulting, 30 April 2021 at paragraph 6 (CD 8.38)

arriving at this view, I am cognisant that the Council does not cite Policy IMPL2 in any of its reasons for refusal, and I have not been made aware of any material which indicates that compliance with the higher optional standard was sought prior to the appeal stage.

Highway Safety and Parking

70. The submitted plans depict works in the highway which would entail a dedicated right-turn lane from Stanford Hill to the access to the proposed development – and this measure could be secured by a condition – as could appropriate visibility splays from the proposed access. Consequently, whilst traffic movements associated with the site would undoubtedly increase as a result of the proposed development, these measures would ensure that its highway safety implications would be acceptable.
71. The appeal site is also in an accessible location in close proximity to the town centre and related bus routes and makes provision for mobile scooter parking and charging. Taken together, these aspects of the appeal site and the proposed development would allow its future occupants to use alternative transport modes and reduce the reliance on the private car. So, whilst I note views that the proposed development would not supply an adequate amount of car parking, I consider the provision it makes would not lead to any harmful overspill parking on adjacent streets. I am mindful also that the local highway authority has no objections to the proposed development in highway safety or parking terms.

Living Conditions

72. An electricity substation would be located in the corner of the site adjacent to 14 and 15 Bucklers Mews. The principal windows of these properties are in their front elevations, which are orientated away from the appeal site and the proposed substation, with only smaller windows at ground floor on other elevations – which the approved plans⁵⁰ for the Bucklers Mews properties indicate relate to kitchens and shower rooms. Moreover, I am mindful that the noise report submitted by the appellant⁵¹, finds that the noise effects of the substation would be negligible. Additionally, a condition, which would restrict the noise generated by the sub-station could be attached, and this would secure acceptable limits in these terms – a matter with which the Council agrees. Although I am mindful of comments relating to health and safety aspects of the proposed substation, I am satisfied that it will meet the relevant regulatory standards for such installations which are matters outside of the scope of planning control.
73. I acknowledge that due to their height and orientation of some of the proposed windows and balconies that these could lead to some overlooking of neighbouring properties. However, the installation of obscure glazing could be secured by condition and this, taken together with existing and proposed landscaping, would ensure that the proposed development would not materially reduce the level of privacy available to the occupants of neighbouring properties.

⁵⁰ Included as Appendix 27 of the appellant's *Planning Statement of Case* (CD7.24)

⁵¹ According to the *Statement of Case on Noise* included as Appendix 27 of the appellant's *Planning Statement of Case* (CD7.24)

74. As set out above, the proposed building would be taller than the dwellings currently at the appeal site, and the footprint of the rear wing would extend over an area of what is currently garden space. Nevertheless, the proposed development would be adequately separated from the appeal site's rear boundaries, and further still from the dwellings which address Belmore Road. Moreover, existing and proposed landscaping both within the appeal site and in the properties to its rear would screen views through from the Belmore Road properties to the appeal site. I saw also that the closest properties at Bucklers Mews are orientated in a way which present no direct views of the appeal site from its windows.
75. For these reasons I consider that, whilst undoubtedly more visible than the dwellings currently on the appeal site from some adjacent dwellings, the proposed development would not harmfully reduce the outlook available from the properties to its rear. Moreover, the distance achieved by the proposed building from the boundaries of its site would ensure that the amount of daylight and sunlight available to the occupants of adjacent dwellings would not be materially reduced as a result of the appeal scheme. Similarly, the proposed development's distance from, orientation to, and the lower level of the appeal site in comparison with the properties on Highfield would mean that the outlook available from the latter buildings' front windows would not be reduced to any meaningful extent. These relationships between the Highfield properties and the proposed development would also mean that adequate privacy would remain (and be provided for) their occupants.
76. These considerations therefore lead me to the conclusion that the proposed development, subject to the conditions that I have mentioned, would cause no adverse effects to the living conditions of the occupants of adjacent dwellings
77. Some consider that the density of the proposed development may not secure adequate living conditions for its future occupants, citing social distancing measures pursuant to the COVID-19 pandemic in support of this view. However, the proposed development would provide adequate amounts of internal and external space, and as a result I consider that it would secure a high standard of amenity for its future occupants.

Affordable Housing

78. The application that led to the appeal was supported by a viability statement, which was independently reviewed⁵² on behalf of the Council. The independent review found, for site and proposal-specific reasons, that an affordable housing contribution would not be viable. I concur with the independent review that the appellant's viability evidence is reasonable. Moreover, for the reasons set out above, the proposed development would deliver specialist housing for older people for which there is a clear need. Consequently, the lack of provision of affordable housing, either on-site or in the form of a commuted sum is justified in this case, and would accord with Policies IMPL1 and HOU2 of the Local Plan insofar as taken together, and amongst other matters, they require the viability of development to be taken into account in decisions relating to the provision of affordable housing. In arriving at this view, I am cognisant that the Council raised no objections to the proposed development in these terms.

⁵² CD2.18

Health Considerations

79. At the application stage, the Royal Bournemouth and Christchurch Hospitals NHS Foundation Trust sought a contribution from the proposed development to support the provision of its services during the first year of the proposed development's occupation to fill the gap that would occur until general funding available to the Trust increases in line with any overall increases in population. However, there is no specific Local Plan policy requiring such a contribution, and the viability material provided indicates that the proposed development would not be able to provide this in any event.
80. Moreover, I am mindful of the aforementioned research provided by the appellant⁵³, which indicates that each person living in a home for later living such as those proposed in this case would benefit from reduced risks of health challenges, which could lead to circa £3,500 savings per occupant per annum to the NHS and social services. To my mind, this gives further evidential weight to the PPG⁵⁴, insofar as it states that offering older people a better choice of accommodation to suit their changing needs can help reduce costs to the social care and health care systems. Also as set out above, based on sales of another comparative property in Brockenhurst, a considerable proportion of the proposed development's occupants would be likely to come from the existing catchment area for the NHS Foundation Trust – albeit I readily accept that some population increase could potentially occur both as a result of some in-migration to the proposed dwellings, and as a result of larger homes made available through the appeal scheme's future occupants down-sizing.
81. Nevertheless, these site and proposal specific reasons lead me to the view on this matter that the obligation sought by the Foundation Trust would not be necessary to make the development acceptable in planning terms and thus would not meet the requirements of the Community Infrastructure Levy Regulations 2010 (as amended)⁵⁵ or the Framework⁵⁶ in this respect. Consequently, the unilateral undertaking submitted by the appellant to address this matter carries no weight in my assessment of the appeal's merits⁵⁷.
82. Furthermore, given the potential for specialist older people's housing to reduce health risks, and thus pressure on related services, taken together with the likelihood that a considerable proportion of the occupants of the appeal scheme would come from the District, I consider that the proposed development would not give rise to any unacceptable additional pressure on local health services.

Flood Risk

83. The appeal site is located in Flood Zone 1 which means that there is a low probability that river or sea flooding would affect it⁵⁸. Conditions requiring the implementation and maintenance of an appropriate drainage system have been

⁵³ *Healthier and Happier: an Analysis of the fiscal and wellbeing benefits of building more homes for later living*, Produced by WPI Strategy, September 2019 included as Appendix 15 to the appellant's Statement of Case (CD7.24)

⁵⁴ *Housing for Older and Disabled People* at Paragraph: 001 Reference ID: 63-001-20190626 Revision date: 26 June 2019

⁵⁵ Regulation 122(2)

⁵⁶ At paragraph 57

⁵⁷ In such a circumstance, Clause 6.4 of the submitted unilateral undertaking sets out that the relevant obligations cease to have effect from the date of this decision

⁵⁸ Per the PPG *Flood Risk and coastal change* Paragraph: 065 Reference ID: 7-065-20140306 Revision date: 06 03 2014

sought and can be imposed. I am also mindful that the Lead Local Flood Authority has raised no objections to the scheme subject to such conditions. Accordingly, I am of the view that the proposed development would be acceptable in these terms and would not lead to increased flood risk on the appeal site or elsewhere.

Planning Balance

84. Although the proposed development would not secure housing which would meet the M4(3)2a optional technical standard and would thus be at variance with Policy IMPL2 of the Local Plan in this respect, the very significant benefits it would yield combined with the other material considerations referred to above (including the operation of the tilted balance, as set out in the Framework) would justify a decision other than in accordance with the development plan in this instance.
85. Furthermore, taken together, the above-matters also lead me to the view that the proposed development would accord with Policy STR1 of the Local Plan insofar as it expects, amongst other things, all new development to make a positive social, economic and environmental contribution to community and business life in the Plan Area. In my judgement, the appeal scheme would in all other respects accord with the development plan.
86. Whilst some consider that the appeal scheme could create a precedent for further development in the area, I have considered this site-specific proposal on its own merits. My decision in this case would not therefore create a precedent for proposals elsewhere in the area, or for instances where the harmful effects of proposals are not outweighed by their benefits.

Conditions

87. The Framework sets out⁵⁹ that conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. I have considered the suggested conditions on this basis. In the conditions I have attached, I have made minor amendments to their wording in the interests of clarity⁶⁰. Where conditions require compliance with them prior to the commencement of the proposed development, the appellant has supplied their written agreement⁶¹ to their terms⁶².
88. In the interests of certainty, it is necessary to attach a condition that specifies the approved plans.
89. A condition is imposed which requires the submission of a construction management plan to the Council for its approval prior to the commencement of development on the site. As the construction management plan will set out the measures to be adhered to during the appeal site's development phase, elements of the condition of necessity require compliance prior to the commencement of development. For these reasons, I consider the imposition of this condition to be clearly justified.

⁵⁹ At paragraph 55

⁶⁰ Condition numbers 3, 4, 5, 8, 10, 12, 13, 14, 16, 17, 18, 19

⁶¹ ID9 *Agreement to pre-commencement conditions*

⁶² Per s100ZA of the Town and Country Planning Act 1990 (as amended)

90. In the interests of biodiversity, as well as the character of the site and its surroundings, and to ensure that existing trees that are due to be retained are adequately protected, a condition is attached which requires compliance with the appellant's submitted *Arboricultural Assessment and Method Statement*⁶³ and related details. Given the criticality of protecting the trees during the construction phase of the development there is clear justification for requirement for these measures to be in place prior to the demolition of the houses currently on the appeal site.
91. A condition is attached, which requires details of the materials to be used in the external construction of the appeal scheme to be submitted to the Council prior to their use. This condition is necessary in the interests of the character and appearance of the site and its surroundings.
92. As set out above, the proposed landscaping elements of the appeal scheme are integral to its overall townscape quality. It is for this reason that a condition is attached which requires timely implementation of the landscaping proposals in accordance with the approved plans – and requires replacement of trees should this be necessary within 5 years of the proposed development's completion. For substantially similar reasons, a condition is attached which requires the implementation of the front boundary treatment and planting as depicted in the plans prior to the first occupation of the proposed development.
93. In the interests of highway safety, a condition is attached which requires visibility splays in line with those shown on the submitted plans to be provided, and to remain free from obstruction. I am of the view that any restriction of permitted development rights that this condition could entail would be clearly justified in the interests of highway safety. The same condition would also ensure that the proposed development would provide adequate amounts of car and scooter parking, including charging points.
94. Also in the interests of both highway safety and of the character of the streetscene a condition is attached which requires details of the highways works that would be required to facilitate the dedicated right turn and highway crossovers and the removal of redundant crossovers to be submitted and approved prior to the commencement of the development. The condition requires these measures to be implemented prior to the first occupation of the proposed development.
95. Given the criticality of these measures to ensure the highway safety of the development in its day-to-day use a pre-commencement condition is clearly justified in this case. I have made a minor modification to the suggested condition to ensure that it is relevant to planning insofar as the details of the local highway authority's approval are to be supplied to the Council prior to the commencement of the development. The local highway authority raises no objection to the scheme subject to the implementation of the highway works set out in the condition. A Grampian condition in this instance is therefore clearly justified as there is a reasonable prospect that those highway works would be carried out in a timely fashion.
96. In the interests of the residential amenity of the occupants of adjacent dwellings conditions requiring the installation and retention of obscure glazing

⁶³ Produced by Barrell Tree Consultancy, Dated 17 April 2020

- in identified windows and balustrades are clearly justified and are accordingly imposed.
97. To ensure that the appeal scheme would provide housing to meet the needs of older residents in accordance with the description of development given in the banner heading, a condition is attached which restricts the occupancy of the proposed dwellings to those aged 60 or above and their spouses or partners.
98. To ensure that the proposed development would provide adequate drainage and that development of the appeal site would not increase flood risk elsewhere, a condition is attached which requires the implementation of a drainage system in accordance with previously submitted details. Moreover, to ensure that the drainage infrastructure remains effective over the lifetime of the development, a condition is imposed which requires details and schedules of protection measures and maintenance arrangements for the surface water drainage system to be submitted to the Council for its approval and implemented in accordance with the approved details. I have made minor modifications to the suggested wording of this condition in the interests of precision and enforceability.
99. As set out above, in order to ensure that the noise created by the proposed electricity substation would cause no material harm to the living conditions of the occupants of 14 and 15 Bucklers Mews a condition is attached to ensure that acceptable limits are placed on this in line with the relevant British Standards, and as set out in the appellant's noise report⁶⁴.
100. A condition is included to secure a biodiversity net gain on the site to ensure that the development would accord with Policy DM2 of the Local Plan in this regard, and to secure the benefit anticipated in documents submitted with the appeal. For substantially similar reasons, a condition is attached requiring the implementation and maintenance of the green roof. Also in the interests of biodiversity, and to ensure that any bats present on the site are adequately protected during construction and related activity, a condition is attached which requires details of appropriate licences for relevant works to be supplied to the Council prior to the commencement of any activities which may have an effect on their roosts.
101. I set out above the specific justification for including a Grampian condition which requires the submission of a mitigation package in respect of the proposed development's nitrates output. Accordingly, a condition to this effect is attached as it is necessary in the interests of the integrity of European sites. The condition imposed includes some minor amendments to the wording supplied by the Council, in the interests of enforceability and precision; and to ensure that the drafting conforms with the PPG advice relating to such conditions – particularly that they should be negatively worded⁶⁵.

Conclusion

102. For the reasons set out above, and taking fully into account all other matters raised, I conclude that the appeal should succeed.

G J Fort

INSPECTOR

⁶⁴The *Statement of Case on Noise* included as Appendix 27 of the appellant's *Statement of Case* (CD7.24)

⁶⁵ *Use of Conditions* Paragraph: 009 Reference ID: 21a-009-20140306 Revision date: 06 03 2014 and Paragraph: 010 Reference ID: 21a-010-20190723 Revision date: 23 07 2019

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Topographical Survey 2810-SV-1
 - Existing Floor Areas 2810-SV-2
 - Location Plan 1913 30
 - Site Plan 1913 31
 - Site Plan First Floor 1913 32
 - Lower Ground Floor 1913 33
 - Ground Floor Plan 1913 34
 - First Floor Plan 1913 35
 - Second Floor Plan 1913 36
 - Roof Plan 1913 37C Rev C
 - Proposed Elevations 1913 38
 - Proposed Elevations 1913 39
 - Indicative Street Scene and Site Section 1913 40
 - Section A-A 1913 41
 - Section B-B 1913 42
 - Section C-C 1913 43
 - Section D-D 1913 44
 - General Landscape Arrangement 1632-GA-100 REV K
 - Graphic Landscape Plan 1632-GP-101 REV K
 - Section A and B 1632-GP-102 REV A
 - Section C 1632-GP-103 REV A
 - Planting Plan 1632-PP-300 Rev L
 - Planting Schedule 1632-PP-301 Rev L
 - Tree Protection Plan 19028-BT2
- 3) No development shall take place, (including any works of demolition), until a Construction Method Statement (CMS) has been submitted to, and approved in writing by, the local planning authority. The approved CMS shall include scaled drawings illustrating the provision for:
 - 1) The parking of site operatives' and visitors' vehicles;
 - 2) Loading and unloading of plant and materials;
 - 3) Management of construction traffic and access routes;
 - 4) Details of construction access and construction vehicle tracking;
 - 5) Storage of plant and materials used in constructing the development;
 - 6) Details of the method of cleaning wheels and chassis of all HGVs, plant and delivery vehicles leaving the site and the means of keeping the

site access road and adjacent public highway clear of mud and debris during site demolition, excavation, preparation and construction.

The agreed CMS shall then be adhered to for the duration of construction of the development hereby permitted.

- 4) Prior to demolition of the existing houses at the site, the tree protective measures recommended by the Barrell Tree Consultancy *Arboricultural Assessment and Method Statement* (reference:19028-AA-PB dated 17 April 2020) and the Tree Protection Plan (reference: 19028-BT2) shall be installed and thereafter retained for the duration of the construction period for the development hereby approved. No fires, building operations, storage of goods including building materials, machinery and soil, or discharge of any chemical substances, including petrol and diesel, shall be undertaken within the tree protection zones or within the canopy spreads, whichever is the greater, nor shall any change in soil levels or routing of services within those defined areas be carried out.
- 5) Prior to their use, details of all materials to be used in external facing walls, roofs, doors, windows, balustrades and hard surfaces shall be submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved details.
- 6) All external hard and soft landscape works shall be carried out in accordance with the approved plans and details within one year of the first residential occupation of development. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 7) Prior to occupation of the development hereby approved the parking spaces, accesses, manoeuvring space, visibility splays and motorised scooter store (with electric charging points) shown on the approved plans shall be provided. The parking spaces shall be retained and kept available for the parking of residents and their visitors only. The visibility splays shall be kept clear of any obstructions over 0.6m in height.
- 8) Prior to occupation of the relevant flats, the windows on the south elevation shown to be obscure glazed on the plan ref: Proposed Elevations 1913-38, shall be obscurely glazed, top hung and shall not open outward more than 200mm and shall be retained as such.
- 9) Prior to occupation of the relevant flats, the 1.8m high obscure glazed balcony screens, shown on the approved plans, shall be installed and thereafter retained as such.
- 10) Prior to first residential occupation of the development hereby approved the boundary treatment as shown on the approved plans shall be planted, implemented and installed, as appropriate, and thereafter maintained and retained.
- 11) The sheltered apartments comprising the development hereby permitted shall only be occupied by persons of sixty years or over, and the spouse or partner of such a person and in the event of the death of such person,

the spouse or partner of such person shall be permitted to remain within the retirement apartments irrespective of whether they are aged sixty years or over.

- 12) Development shall not take place until details of the works in the highway to provide:
- The access and egress pavement crossovers and the right turn lane on the A337, as shown in principle on drawings PBA 107.0008.006 Rev C (included in the *Stanford Hill Lymington Transport Statement produced by Paul Basham Associates*) and Site Plan 1913.31; and
 - Removal of the existing pavement crossovers serving High Bank, Silver Birches and Hill View from the A337 and reinstatement of the kerb, pavement and verge;

Shall have been submitted to the local highway authority for approval for the purposes of s278 of the Highway Act 1980; and evidence of the local highway authority's s278 approval shall have been provided to the local planning authority.

The development hereby permitted shall not be occupied until the works in the highway have been constructed in accordance with the approved details.

- 13) Prior to the occupation of the development hereby approved, the drainage system shall be constructed to achieve the proposed discharge rate of 5.0 l/s, in accordance with the designs and details set out in *Hydraulic Modelling Calculations for 44 Unit Scheme Stanford Hill, Lymington produced by Arch Associates DRAINAGE STRATEGY LAYOUT*; Project No: AAL160; Drawing No: 502; Revision: P2; dated: APRIL 2020, received 17/09/20 unless otherwise agreed in writing with the local planning authority.
- 14) Details for the long-term maintenance arrangements for the surface water drainage system shall be submitted to and approved in writing by the local planning authority prior to the first occupation of the development hereby approved. The submitted details shall include:
- a. Maintenance schedules for each drainage feature type and ownership;
 - b. Details of and timescales for implementation of protection measures;
- The agreed maintenance and protection measures shall be implemented thereafter in accordance with the approved details, schedules and timescales.
- 15) The rating noise level from the proposed substation, determined in accordance with the requirements of BS 4142: 2014 + A1:2019 *Methods for rating and assessing industrial and commercial sound* shall not exceed the prevailing representative background noise level by more than minus 10 dB in any external amenity space or at the nearest habitable room window (under free-field conditions) at numbers 14 and 15 Bucklers Mews at any time.
- 16) Any works that impact on the bat roosts (day roost for common pipistrelle at Silver Birches (garage) and day roost for brown long-eared at High Bank as identified in the Phase 2 Bat Survey Report undertaken by Abbas Ecology (Dated August 2019)) shall not in any circumstances

commence unless the local planning authority has been provided with either:

a) a licence issued by Natural England authorising the specified activity/development to go ahead; or

b) a statement in writing from the relevant licensing body to the effect that it does not consider that the specified activity/development will require a licence.

17) No construction works above damp proof course level shall take place until a Biodiversity Net Gain (BNG) Management Plan has been submitted to and approved in writing by the local planning authority (covering a minimum period of 30 years). The management plan should include:

- Methods and timetable for delivering BNG;
- Responsibilities for delivering BNG – during and after construction;
- Description of the habitats to be managed;
- Clear timed and measurable objectives in the short, medium, and long-term for BNG - Detail objectives for all habitats (target condition);
- A commitment to adaptive management in response to monitoring to secure the intended biodiversity outcomes;
- Details for a formal review process when objectives are not fully reached / roles and responsibilities;

The agreed BNG and management plan shall be implemented and maintained in accordance with the agreed timescales and schedules unless otherwise agreed in writing with the local planning authority.

18) The roof of the development hereby permitted shall not be constructed until full details and specification of the biodiverse extensive (green/brown) roof(s) as shown on the approved plan have been submitted to and approved in writing by the local planning authority. The biodiverse roof(s) shall be implemented in accordance with the details approved and shall be maintained as such thereafter.

19) The development hereby permitted shall not be occupied until:

- A water efficiency calculation in accordance with the Government's National Calculation Methodology for assessing water efficiency in new dwellings has been undertaken which demonstrates that no more than 110 litres of water per person per day shall be consumed within the development, and this calculation has been submitted to, and approved in writing by, the local planning authority; all measures necessary to meet the agreed waste water efficiency calculation must be installed before first occupation and retained thereafter;
- A mitigation package addressing the additional nutrient input arising from the development has been submitted to, and approved in writing by, the local planning authority. Such mitigation package shall address all of the additional nutrient load imposed on protected European Sites by the development when fully occupied and shall allow the local planning authority to

ascertain on the basis of the best available scientific evidence that such additional nutrient loading will not have an adverse effect on the integrity of the protected European Sites, having regard to the conservation objectives for those sites; and

- The mitigation package shall include a timetable for implementation and measures for retention and maintenance of that mitigation package.

The mitigation package shall thereafter be implemented, maintained and retained in accordance with the approved timetable.

*****End of Conditions Schedule*****

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Guy Williams of Counsel

Instructed by Amanda Wilson,
Solicitor, New Forest District
Council

He called:

James Gilfillan BA(Hons) MATCP
MRTPI

Senior Development Management
Officer, New Forest District Council

Warren Lever BSc (Hons) Cons
PGDip UD MRICS IHBC

Senior Conservation and Building
Design Officer, New Forest District
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FOR THE APPELLANT:

Charles Banner QC

Instructed by Robert Garden
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He called:

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Laurie Marlow BA(Hons), BArch,
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Andrew Williams BA(Hons) DipLA,
DipUD, CMLI

Director, Define

INTERESTED PARTIES:

Councillor Andrew Peter Ash-Vie

Chair of the Lymington and
Pennington Town Council Planning
Committee

Don Mackenzie

Deputy Chair, The Lymington
Society

DOCUMENTS SUBMITTED AT THE INQUIRY:

- ID1 – Appellant’s Opening
- ID2 – Council’s Opening
- ID3 – Lymington and Pennington Town Council Statement
- ID4 – Note to the Inspector on the overarching agreement and the unilateral undertaking
- ID5 – Secretary of State Decision Letter on APP/P1133/W/18/3205558 Land at Wolborough Barton, Coach Road, Newton Abbot TQ12 1EJ
- ID6 – Mitigation for Recreational Impact on New Forest European Sites Supplementary Planning Document
- ID7 – List of Suggested Conditions
- ID8 – Note on the current availability of Market Retirement Accommodation in New Forest District Council
- ID9 – Appellant’s agreement to pre-commencement conditions
- ID10 – Appeal Decision APP/N1730/W/20/3261194
- ID11 – Statement of the Lymington Society
- ID12 – Chris Cox Rebuttal Clarification
- ID13 – Closing Submissions on behalf of the Council
- ID14 – *Hallam Land Management Ltd v Secretary of State for Communities and Local Government and Eastleigh Borough Council* [2017] EWHC 2865 (Admin)
- ID15 – Closing Submissions on behalf of the appellant

DOCUMENTS SUBMITTED BY AGREEMENT AFTER THE INQUIRY:

- 1 - Unilateral Undertaking relating to Nitrates Mitigation: Dated 20 May 2021
- 2 - Unilateral Undertaking relating to Health Contributions: Dated 20 May 2021
- 3 - Section 106 planning obligations relating to mitigation of recreation impacts and air quality: Dated 26 May 2021

Appendix (10)



Appeal Decision

Inquiry held on 12-15 February 2019

Accompanied site visit made on 14 February 2019

by Alex Hutson MATP CMLI MARborA

an Inspector appointed by the Secretary of State

Decision date: 8th April 2019

Appeal Ref: APP/B1740/W/18/3209706

Land next to School Lane, Milford on Sea, Lymington SO41 0TU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
 - The appeal is made by Pennyfarthing Homes against the decision of New Forest District Council.
 - The application Ref 17/10606, dated 18 April 2017, was refused by notice dated 19 July 2018.
 - The development proposed is 42 dwellings comprised: 17 detached houses; 8 semi-detached houses; 11 terraced houses; 6 flats; garages; parking; landscaping; estate roads; junction access; footpaths; open space; play area; 5 allotments; and cycleway.
-

Decision

1. The appeal is allowed and planning permission is granted for development of 42 dwellings comprised: 17 detached houses; 8 semi-detached houses; 11 terraced houses; 6 flats; garages; parking; landscaping; estate roads; junction access; footpaths; open space; play area; 5 allotments; and cycleway at land next to School Lane, Milford on Sea, Lymington SO41 0TU in accordance with the terms of the application, Ref 17/10606, dated 18 April 2017, subject to the attached schedule of conditions.

Application for costs

2. At the Inquiry an application for costs was made by Pennyfarthing Homes against New Forest District Council. This application is the subject of a separate Decision.

Preliminary matters

3. The application originally sought planning permission for development to include 46 dwellings. However, during the course of the application, this was amended to 42 dwellings. This is reflected in the description of the proposed development in the banner heading above and I have considered the appeal on this basis.
4. The application and appeal form suggest that the appellant, Pennyfarthing Homes, is the main landowner. However, during the course of the appeal, it became apparent that this information was given in error and furthermore, that the appellant had not served the relevant notice on the main landowner as is required. Nevertheless, prior to the opening of the Inquiry, I was provided with a statutory declaration to confirm that the main landowner was aware of

the planning application and appeal and has no comments to make other than to support the proposal. On this basis, I am satisfied that the interests of the landowner have not been prejudiced and that the appeal can proceed.

5. The Government's updated revised National Planning Policy Framework (the Framework) and the Housing Delivery Test 2018 were published on 19 February 2019, subsequent to the close of the Inquiry. The main parties have been given the opportunity to comment on these matters and I have had regard to those comments in my determination of the appeal.
6. A completed Unilateral Undertaking (UU) pursuant to section 106 of the Act was submitted subsequent to the close of the inquiry. The UU deals with matters relating to land transfer, starter homes, affordable housing, open space, a children's play area, allotments, a car park, highway works, a cycleway, habitat mitigation and financial contributions in respect of some of these matters. I have taken note of the statement of compliance with the Community Infrastructure Levy Regulations 2010, as amended (CIL Regulations), which was submitted with evidence. On the basis of the contents of the UU and the compliance statement, I am content that all matters conform to the CIL Regulations and that the UU can be taken into account in my determination of the appeal.
7. Subsequent to the close of the Inquiry, an interested party indicated that they wished to speak on its final day as they were unable to attend the previous three days but, due to some miscommunication, I was not fully aware of this at the time. The interested party has provided some representations in writing and has requested that I consider them in light of this. Given the circumstances, I consider it reasonable for me to accept the representations and have regard to them. The appellant takes the same view and has been given the opportunity to comment on the representations.

Main issue

8. The main issue is whether the proposal would provide an acceptable level and mix of affordable housing.

Reasons

9. Policy CS12 of the New Forest District outside the National Park Core Strategy 2009 (Core Strategy) sets out that sites will be identified to allow for housing to address identified local need for affordable and low cost market housing which will not otherwise be met, including up to about 30 dwellings at Milford on Sea. This policy also sets out that development will be permitted subject to the affordable housing contribution requirements contained in Policy CS15(b) of the Core Strategy. Policy CS15(b) of the Core Strategy requires that on greenfield sites released to meet an identified local need for affordable housing which would not otherwise be met, the target will be a minimum of 70% affordable housing (40% social rented housing and 30% intermediate affordable) with the remainder of the site developed for low cost market housing, which could include starter homes. However, Policy CS15 of the Core Strategy also makes provisions for a lower level of affordable housing to be provided where it can be demonstrated that the target level is not economically viable.

10. The appeal site is located on the edge of the settlement of Milford on Sea and comprises part of a large agricultural field. Its southern part lies within the defined settlement boundary and its northern part within Green Belt. It is allocated under Policy MoS1 of the New Forest District outside the National Park Local Plan Part 2: Sites and Development Management 2014 (Local Plan) to provide residential development for local housing needs in accordance with Policies CS12 and CS15(b) of the Core Strategy, and for public open space. Policy MoS1 of the Local Plan requires, amongst other things, the provision of a maximum of 30 dwellings on the southern part of the site, which was removed from the Green Belt on the adoption of the Local Plan, and for 70% of dwellings provided to be affordable housing.
11. The proposal would provide 42 dwellings on the southern part of the appeal site and playing fields, a children's play area, allotments and a car park on the northern part. The proposal would also make provisions for footpaths and cycleways. Of the 42 dwellings, 6 would be for affordable rent, 6 would be for shared ownership and 7 would be starter homes. The remaining 23 dwellings would be for sale on the open market.
12. Whilst the Framework recognises starter homes as a form of affordable housing, there is dispute between the main parties relating to whether they can be defined as such in the context of the abovementioned local planning policies. Nevertheless, even if starter homes were to be included within the affordable housing offer, the overall provision would fall below the 70% affordable housing target level set out in Policy CS15(b) of the Core Strategy and Policy MoS1 of the Local Plan. Consequently, it should be demonstrated that to develop the appeal site to meet this affordable housing target level would not be economically viable.
13. The Council raises no concern in respect of the development of the appeal site with a greater level of housing than that set out within Policy CS12 of the Core Strategy and Policy MoS1 of the Local Plan. It also accepts that, by way of its own viability assessment (VA) as part of the appeal, to develop the appeal site to provide 70% affordable housing with the remainder low cost market housing would not be viable. It is, however, the Council's view that, on the basis of its own VA, a further 6 units of affordable housing (3 x affordable rent and 3 x shared ownership) could be provided. The appellant, on the other hand, contends that the VA it has undertaken as part of the appeal demonstrates that, similarly to the one undertaken as part of the original planning application process in liaison with the District Valuer Service (DVS) who act as independent property specialists, to provide more affordable housing than that proposed would not be viable.
14. There is no dispute between the main parties that there is an acute need for affordable housing in Milford on Sea and the District in general. Nevertheless, the main parties agree that viability lies at the heart of the appeal. Moreover, they take the view that if I favour the Council's VA, then the appeal should be dismissed for this reason and conversely, if I favour the appellant's VA, the proposal, in terms of the level, mix and tenure of housing proposed would be acceptable. The differences between the Council's and the appellant's VAs and the reasons for such differences is thus the key factor to my consideration of the main issue.

15. On this matter, the areas of difference are narrow. Furthermore, most areas of difference do not materially change either the appellant's or the Council's case and are thus not decisive. I therefore need not consider them in any further detail. The one area of difference on VA matters which is decisive relates to build costs. In respect of this, the appellant and the Council have used data for the New Forest District taken from the Building Cost Information Service (BCIS) of the Royal Institute of Chartered Surveyors. BCIS provides cost and price information for the construction industry and I understand that to use it in VAs is standard practice. The difference is that the Council has used the BCIS default median build cost data (default data), which includes data from the last 15 years, whilst the appellant has used BCIS median build cost data from the last 5 years (5 year data). The notable variance between using the default data and 5 year data can be seen in the construction costs of the proposed detached dwellings. The default data indicates a noticeably lower cost of constructing such dwellings than is indicated by the 5 year data. It is for this reason that the Council's VA suggests that a greater number of affordable dwellings could be provided, whilst still achieving a residual land value similar to the agreed benchmark land value, defined as a price for land which would incentive the landowner to sell for development, whereas the appellant's VA does not.
16. The Council's written evidence does not address why it prefers the default data. However, through cross examination, the Council viability witness indicated that although the 5 year data was more recent, it was not as representative as the default data given the small sample size and that the data is taken from building projects around the country, albeit adapted for local circumstances.
17. However, the sample size of the default data is also not extensive and it is my understanding that it too comprises data taken from house building projects around the country, albeit adapted for local circumstances. The appellant's written evidence sets out that the 5 year data has been used as it is more reflective of the current market and draws upon more relevant and recent house build projects which reflect current specifications and new build standards which were not applied historically. I was also informed that to prevent any build cost anomalies from abnormally distorting the 5 year data, the upper and lower 25% build cost figures are excluded and that, normally, if BCIS was not content with the sample size for a specific type of dwelling, it would not populate the relevant part of the table with any build cost data. I have no substantive reasons to consider otherwise. In addition to this, the DVS has confirmed, in an email from its Head of Viability to the appellant, that it uses the 5 year data for all residential projects. Moreover, that this data was used in the VA which accompanied the original planning application for the proposal and for VAs associated with other applications for residential development on sites allocated under policies of the Local Plan in the District which have been granted planning permission¹. It is also my understanding that the 5 year data has been used in the consideration of viability for proposed site allocations in the Council's emerging Local plan by the consultants tasked to undertake this.

¹ Including sites at: land north of Alexandra Road, Lymington (Policy LYM2 of the Local Plan); land south of Gore Road, New Milton (Policy NMT1 of the Local Plan); and land in Whitsbury Road, Fordingbridge (Policy FORD1 of the Local Plan).

18. Having regard to the above factors and having carefully considered all the written and oral evidence on matters relating to viability, it seems to me that for the appellant to adopt the 5 year data in its VA as part of the appeal is a reasonable approach to take. I therefore favour the appellant's VA over the Council's.
19. It is also worth noting here that numerous other sites allocated under Local Plan policies² which set out a 70% affordable housing target have not achieved this where planning applications have been approved by the Council, based on viability evidence, and where in some cases starter homes have been included in the mix of housing. The affordable housing levels approved on these sites, if starter homes are to be included within the figures, range between 35% and 50%, according to the evidence. If starter homes were to be included in the affordable housing offer in the proposal, the figure would be around 45%, so within a similar range. It is my understanding that the single exception to this relates to a site³ which was developed by a housing association. I have no compelling evidence before me to indicate that any such organisation would be interested in the purchase and development of the appeal site in a similar manner or could do so in a viable way. I am also aware that there are a number of other sites allocated under Local Plan policies⁴ which set out a 70% affordable housing target which have not progressed beyond this. Whilst it is not conclusive that viability is a factor in this, given the unknown reasons for this, it cannot be ruled out.
20. I therefore conclude that the appellant has demonstrated to an adequate degree through its viability evidence that the proposal would provide an acceptable level and mix of affordable housing in this instance, albeit that it would not fully address local need for such housing.
21. On the basis that the target level of affordable housing as set out in Policy CS15(b) of the Core Strategy and Policy MoS1 of the Local Plan would not be met, the proposal would conflict with the relevant parts of these policies. It would also conflict with Policy CS12 of the Core Strategy where it requires development to be subject to the affordable housing requirements set out in Policy CS15(b) of the Core Strategy, albeit that this policy is not specifically referenced on the Council's decision notice. Nonetheless, given the Council's own viability evidence indicates that the affordable housing target levels of these policies cannot be met, I afford such conflict limited weight. I also afford limited weight to conflict between the total number of dwellings proposed on the appeal site and any references to 30 dwellings contained within these policies, given that the Council has no objection to this and to set a maximum figure would be inconsistent with the aims and objectives of the Framework which seeks to significantly boost the supply of homes. Moreover, in light of my findings in respect of the appellant's viability evidence and the proposed level and mix of affordable housing, the proposal would comply with Policy CS15 overall, given that this policy makes allowances for the level of affordable housing provision based on economic viability. This is the overriding policy consideration given the interrelationship between the abovementioned development plan policies.

² Including those set out in Table 5 of the appellant's planning proof of evidence

³ Referred to orally by the Council's planning witness as being allocated under Policy HYD1 of the Local Plan and planning permission approved in November 2015

⁴ Including those set out in Paragraph 4.39 of the appellant's planning proof of evidence

Other matters

22. The appeal site lies within the zone of influence of the New Forest and Solent Coast European Nature Conservation Sites (European sites). In relation to these European sites, increased recreational visits associated with new housing development may lead to disturbance to the habitat of ground nesting birds, overwintering waders and wildfowl which contribute to their designation. Consequently, in the absence of mitigation, the proposal would, either alone or in combination with other plans or projects, be likely to have a significant effect on the European sites. In accordance with the Conservation of Species and Habitats Regulations 2017 (Habitats Regulations), as the competent authority, I have therefore undertaken an Appropriate Assessment (AA) of the implications of the proposal on these European sites.
23. The Habitats Regulations require that consultation is made with the appropriate nature conservation body, in this case Natural England (NE). NE has commented on the scheme and in relation to the Council's AA, and clearly states that there would be no need for further consultation provided appropriate mitigation proposals are incorporated. I am content that this satisfies the purposes of Regulation 63(3).
24. The Council's adopted Mitigation Strategy for European Sites Supplementary Planning Document 2014 (SPD) sets out the process for securing measures to mitigate the effect of housing development on the European sites. This includes a requirement for a financial contribution towards non-infrastructure access and visitor management and monitoring which would be secured through the submitted UU. It also includes measures to deflect potential visits away from the European sites through, for example, new areas of green space and the enhancement of existing green space and footpaths/rights of way.
25. The Council has a CIL Charging Schedule in place and the funding for mitigation aspects of the SPD which involve infrastructure, would, in most cases, be included within the CIL payment. However, this would not occur where development is CIL exempt, such as in the case of affordable housing. As affordable housing is not exempt from the provision of habitat mitigation, both the appellant and the Council agree that to adequately mitigate the effect of CIL exempt dwellings on the European sites, a negatively worded planning condition should be used to secure the appropriate mitigation. The Council has provided a detailed explanation as to why it considers this to be a suitable approach to take, having regard to Regulation 123 of the CIL Regulations and advice contained within the Planning Practice Guidance (PPG).
26. This explanation suggests that mitigation may be secured through mechanisms including a legal obligation, the provision of suitable land or for the developer to carry out works directly. In my view, all such approaches are likely to result in the submission of a legal undertaking or other agreement. Indeed, the Council's explanation itself accepts that in the majority of cases a planning obligation which seeks contributions is the most practical way of meeting the terms of the condition.
27. However, the PPG sets out that the use of such a condition to secure a planning obligation or other agreement is unlikely to be appropriate in the majority of cases. It goes on to require that a condition be used only in exceptional circumstances and in the case of more complex and strategically important

development where there is clear evidence that the delivery of the development would otherwise be at serious risk.

28. In this case, I am satisfied that, given the restrictions of the current framework for securing planning gain where there is the need for housing developments to provide mitigation for potential harm to European sites and due to the scale of development proposed, the circumstances can be considered as exceptional. Furthermore, on the evidence presented to me, I find that the scheme, when considered as a site allocated for housing against which the pressing need for affordable housing across the district is to be delivered, represents a sufficient level of complexity and strategic importance. To conclude otherwise would lead to an inference that the mitigation could not be secured by a negatively worded condition and my AA would find that the harm to the European sites would not be mitigated. This would put the delivery of the proposed development at serious risk.
29. Therefore, having considered all the evidence for this case carefully, I consider that the circumstances set out in the PPG are satisfied and that the suggested approach to take is a reasonable one to ensure the appropriate mitigation is secured. I therefore consider that taken together, the mechanisms to secure necessary mitigation are sufficient to ensure that harmful effects on the European sites can be avoided.
30. An ecological appraisal of the appeal site has identified the presence of some protected species. However, I am satisfied that its conclusions and recommendations demonstrate that any effects on these can be mitigated and that this can be secured through the use of an appropriately worded planning condition. The proposal would involve the removal and alteration of some hedgerows, including for the purposes of siting a new cycleway, which have been shown to support dormice, a European Protected Species (EPS). In accordance with the Habitat Regulations, I must consider the proposal against the three relevant tests to ascertain the likelihood of NE granting an EPS licence to carry out such works.
31. In this respect, I consider there to be a reasonable prospect of this as: (a) the proposal is in the public interest as the appeal site is allocated in the Local Plan and a number of new dwellings would be provided in an area where there is an agreed shortfall, as well as other benefits, including facilities for outdoor sport and recreation; (b) given the allocation of the appeal site in the Local Plan and the constraints to accommodate a cycleway, there is no satisfactory alternative; and (c) that the works authorised would not be detrimental to the maintenance of the population of dormice concerned given the mitigation measures proposed, which include the timing of the works, other precautionary measures and the provision of replacement hedgerows. Though some hedgerow works already appear to have been undertaken, this does not alter my view on this matter and the implications of this, insofar as any breach of the law is concerned, lie outside of my remit.
32. I have had regard to the concerns raised by interested parties, including in respect of Green Belt, more suitable brownfield land to develop, pressure on local services including the adjacent school, pressure on sewage systems, trees, access to services and facilities, light pollution, flood risk, noise, odour, pollution, character and appearance, tourism impact, safeguarding of school pupils, bathrooms with no windows, siting of the proposed car park, highway

safety, crime, second homes and the prioritisation of affordable housing for local residents.

33. Paragraph 143 of the Framework sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 145 of the Framework sets out that the construction of new buildings within the Green Belt should be regarded as inappropriate, with an exception to this being the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments, as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. Paragraph 146 of the Framework sets out other forms of development which are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it, including material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds).
34. With regard to the proposed dwellings, these would not be sited within the Green Belt. The change of use of the northern part of the appeal site for playing fields, a children's play area, allotments and footpaths and thus for outdoor sport and recreation, would, in my view, preserve the openness of the Green Belt and would not conflict with the purposes of including land within it, in accordance with Paragraph 146 of the Framework. The proposed car parking area in the northern part of the appeal site would primarily provide a facility in connection with the change of use of the land that I have just referred to, would be modest in size and any cars parked on it would be transient in nature. Thus, such a facility would, in my view, preserve the openness of the Green Belt and would not conflict with the purposes of including land within it, in accordance with Paragraph 145 of the Framework. Though I recognise that the proposed car park would at times also be used for school pick ups and drop offs, this does not alter my conclusions on this matter.
35. Though there may be some brownfield land or other land suitable for development in the area, this is somewhat immaterial given the allocated status of the appeal site for, amongst other things, housing. There is no substantive evidence to demonstrate that any services would be put under any undue pressure and I note that Hampshire County Council consider that the adjacent school would not be oversubscribed as a result of the proposal. Nor is there any compelling evidence to indicate that sewage systems would be overloaded. On this matter, Southern Water raise no objections and consider that foul water management could be dealt with by way of a suitably worded planning condition. I have no substantive reasons to take a different view.
36. I am satisfied, as is the Council's Tree Officer, that the submitted arboricultural report and associated tree protection plan show how trees to be retained will be protected throughout the development and a suitably worded planning condition could be imposed to ensure this. The southern part of the appeal site is located within the settlement boundary and thus any future occupiers of the proposed dwellings would be likely to have a reasonable level of access to local services and facilities within Milford on Sea, in a manner similar to the occupiers of other nearby housing development. In any event, the principle of housing development on the appeal site has been established through its allocation in the Local Plan.

37. Some lighting is likely to be required as part of the proposal. However, this is not unusual for development within an established settlement. In addition, the details of such could be secured through a planning condition to ensure sensitivity to its surroundings. The appeal site lies within a low flood risk zone and any surface water would be managed through a sustainable drainage system, the details of which I am satisfied, as are the Council, could be secured by way of a planning condition. The proposal, given its uses, is unlikely to generate any harmful levels of noise or odours.
38. No substantive evidence of pollution levels in the vicinity of the appeal site has been provided and, in any case, the additional car usage associated with a proposal of this scale would be unlikely to affect current or future pollution levels to a significant degree. Though the proposal would inevitably alter the character of the appeal site this would be seen in the context of the existing settlement of Milford on Sea and has been accepted through the allocation of the appeal site. Moreover, the Council considers that the proposal would create a distinctive place to live and would respond positively to local character and context. Having regard to the submitted plans, supporting images and my own observations of the appeal site and its surroundings, I would concur with this view and consider that the proposal, overall, would represent good design. Having regard to this, any tourists would be unlikely to see Milford on Sea as a less attractive place to visit.
39. The proposed dwellings which would be closest to the adjacent school have been arranged in a way that would avoid any significant overlooking of the playground areas. Also, pupils are likely to be supervised when using these areas and the school is also likely to have secure boundary fences. The proposal is therefore unlikely to raise any safeguarding issues for pupils of the school. Moreover, it is not unusual for residential development and schools to share boundaries. I note that some of the proposed dwellings are shown with bathrooms with no windows. Nonetheless, bathrooms are not main habitable rooms and natural lighting to them is therefore not so critical. Also, there are other ways to ventilate a bathroom and this matter is likely to be subject to building regulations.
40. The proposed car park would be only a short walk, along a pavement, from the school entrance and thus would be in a reasonable location to serve any pupil drop offs or pick ups should parents or carers wish to use it. It is also my understanding that the majority of parents or carers come from the north when dropping off or picking up pupils and thus any use of the proposed car park for such a purpose would be likely to reduce any congestion at the front of the school during these times. In addition, the proximity of the proposed dwellings to the school would encourage any travel to it by any of its future occupiers by means other than a car. On the basis of the evidence before me, I am also satisfied, as is the Council and the Highways Authority, that the access to the proposed car park would be provided with adequate sight lines to ensure the safe entrance and egress of vehicles from and to Lymington Road and that the local highway network would be able to accommodate safely any additional traffic movements that would arise from the proposal.
41. There is no substantive evidence to demonstrate that the proposal would increase crime in the area. It also appears to me that the proposed public spaces within the housing area would have a good level of natural surveillance by virtue of the dwellings which would front them. Furthermore, the

orientation of an open street towards the children's play area, and the siting of this facility close to the housing area, would provide a sense of safety to and natural surveillance of it. I acknowledge the concern that the proposed open market dwellings could be bought as second homes. Nevertheless, there is no compelling evidence that would lead me to believe that this would inevitably be the case. With regard to the allocation of affordable dwellings, it is my understanding that this would be undertaken via the normal Council procedures which include geographical location of residents with affordable housing needs as a factor.

42. I therefore consider that the concerns raised by interested parties do not weigh against the proposal.

Conditions

43. I have had regard to the conditions suggested by the Council. I have amended some of these for clarity and conciseness. In addition to the statutory time limit condition, a condition specifying the relevant drawings is necessary as this provides certainty. Those conditions relating to materials, landscaping, hedgerows, tree protection, lighting and slab levels are necessary in the interests of character and appearance. A condition relating to the recommendations of the ecological appraisal is necessary in the interests of biodiversity. A condition relating to a scheme to minimise any impact of construction activity on certain bird species is necessary for the same reason. A condition to secure appropriate mitigation is necessary to avoid adverse effects on European sites. A condition relating to mineral extraction is necessary in the interests of the beneficial use of natural resources. A condition relating to phasing is necessary in the interests of the appropriate delivery of development. Those conditions relating to archaeology are necessary in the interests of heritage. Conditions relating to parking, turning areas and construction management are necessary in the interests of highway safety. Conditions relating to foul and surface water drainage are necessary in the interests of the appropriate management of foul and surface water.
44. The Council considers, and the appellant agrees, that the size of certain plot sizes justifies the removal of some permitted development rights in the interests of character and appearance. I am satisfied that, on this basis and having regard to the submitted plans, exceptional circumstances have been demonstrated for such a condition.
45. I am also satisfied that those conditions which are pre-commencement are necessary to ensure the satisfactory layout of development, its appropriate phasing, biodiversity protection, the beneficial use of natural resources, archaeology protection, highway safety and appropriate water management. The appellant has confirmed acceptance of the pre-commencement conditions in writing.

Planning balance and conclusion

46. As I have identified, there would be some conflict with some of the policies of the Core Strategy and Local Plan. However, having regard to my findings on viability and thus the overall compliance with Policy CS15 of the Core Strategy, and that I find no other harm, the proposal would broadly comply with the development plan when read as a whole. Moreover, the Council accepts that it cannot demonstrate a 5 year housing land supply and that the shortfall is

considerable. The presumption in favour of sustainable development as set out in Paragraph 11 of the Framework is thus relevant and an important material consideration. On this matter, there would be no adverse impacts of granting planning permission that would significantly and demonstrably outweigh the benefits, which includes much needed affordable and market housing of an ratio to enable a viable scheme, when assessed against the policies of the Framework taken as a whole.

47. Accordingly, for the reasons set out above and having regard to all other matters, I conclude that the appeal should be allowed.

Alex Hutson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Gary Grant, of Counsel

Instructed by Pennyfarthing Homes

He called:

James Stacey BA (Hons) DipTP
MRTPI

Director, Tetlow King Planning

Timothy Cann DIP MBA (Est.Man)
FRICS

Senior Director, BNP Paribas Real Estate

Jacqueline Mulliner BA (Hons)
BTP (Dist) MRTPI

Director, Terence O'Rourke Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Paul Brown, of Queens Counsel

Instructed by New Forest District Council

He called:

Tim Davis MSc Cert CIH

Housing Development and Strategy
Manager, New Forest District Council

Gary Jeffries BSc MBA FRICS

Regional Managing Partner, Vail Williams
LLP

Ian Rayner MRTPI

Principal Planning Officer, New Forest
District Council

INTERESTED PARTIES:

Susan Whitlock

On behalf of Milford on Sea Parish Council

James Cain MRTPI

Planning Base Ltd on behalf of SLAM (School
Lane and Manor Road)

Patricia Banks

On behalf of Milford on Sea Parish Council
and as a Local Resident

Andrew Hallows

On behalf of SLAM and as a Local Resident

David Hodgson

Local Resident

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Tree Protection Plan Ref 16283-BT6
2. List of agreed conditions and agreement in writing from the appellant in respect of pre-commencement conditions
3. Extracts from Planning Practice Guidance relating to viability
4. Opening and closing statements on behalf of the Council, the appellant, Milford on Sea Parish Council and SLAM (School Lane and Manor Road)
5. LPA1: Table of building costs differences between the main parties
6. A1: Email from Orion Heritage to Pennyfarthing Homes dated 1 February 2019
7. A2 and A3: Emails between Pennyfarthing Homes and the District Valuer Services dated between 1 February 2019 and 5 February 2019
8. A4: Comparison table of housing registers
9. A5: Email from i-Transport to Pennyfarthing Homes dated 14 February 2019
10. Appellant's costs application and the Council's response

DOCUMENTS SUBMITTED AFTER THE INQUIRY

1. Comments from the Council and the appellant in respect of the updated revised National Planning Policy Framework February 2019, updates to Planning Practice Guidance and the Housing Delivery Test 2018
2. Representations from an interested party and comments from the appellant in respect of those representations
3. Completed Unilateral Undertaking

SCHEDULE OF CONDITIONS:

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: LP.01 REV B; SL01 REV G; DBML01 REV G; CSE.01 REV B2; HT.403-A.e REV C; HT.403-A.p REV C; HT.403-B.e REV C; HT.403-B.p REV C; HT.1650.e.1 REV C; HT.1650.e.2 REV C; HT.1650.p REV C; HT.AND-A.e REV C; HT.AND-A.p REV C; HT.AND-H-A.e REV B; HT.AND-H-A.p REV B; HT.FLET.H.e REV C; HT.FLET.H.p REV C; HT.NORTH.e REV C; HT.NORTH.p REV C; HT.NORTH-H.e REV A; HT.NORTH-H.p REV A; S-GAR.01.pe REV C; D-GAR.02.pe REV C; T-GAR.03.pe REV B; SHED.pe REV C; CAR PORT.pe REV A; P.5.e REV B; P.5.p REV A; P.6-7.e REV A; P.6-7.p REV A; P.8.e REV A; P.8.p REV A; P.9-10.p REV C; P.9-10.e REV C; P.11-14.e REV A; P.11-14.p REV A; P.15-17.e REV B; P.15-17.p REV B (black and white version); P.18-23.cpe REV G; P.24-27.e1 REV D; P.24-27.e2 REV D; P.24-27.p REV D; P.28-29.p REV B; P.28-29.e REV B; P.30.e REV B; P.30.p REV B; P.38-39.p REV B; and P.38-39.e REV B.
- 3) Notwithstanding the submitted plans, no development shall take place until a detailed scheme of landscaping and a tree planting schedule for the site have been submitted to the local planning authority for its written approval. This scheme shall include:
 - (a) the existing trees and shrubs which have been agreed to be retained;
 - (b) a specification for new planting (species, size, spacing and location);
 - (c) details of the planting system to be used for trees within the hardstanding areas;
 - (d) details of the areas for hard surfacing and the materials to be used;
 - (e) details of the boundaries of the site and all other means of enclosure;
 - (f) a detailed design for the children's play area, with details of the play equipment to be installed;
 - (g) a precise specification of the proposed levels across the areas of proposed public open space;
 - (h) a precise specification of the playing field surface and the associated below surface drainage measures based on a full drainage survey; and
 - (i) a method and programme for its implementation, and the means to provide for its future management, including a watering scheme and maintenance.

No development shall take place above damp course level unless these details have been approved and then only in accordance with those details.

- 4) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the development hereby permitted or its completion, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development hereby

permitted die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size or species.

- 5) No development shall take place until details of the methodology for the realignment and reinforcement of the boundary hedge to the Lymington Road frontage, where it is required to facilitate the provision of the approved cycleway, have been submitted to and approved in writing by the local planning authority. The methodology shall include the following specific details:
- (a) the extent of hedgerow that will be affected;
 - (b) a methodology for undertaking the works;
 - (c) mitigation measures that will be put in place to safeguard ecological interests (including birds and dormice); and
 - (d) if a suitable hedge realignment methodology (that would ensure the health and long-term survival of this hedge) under (b) is not achievable, details of proposals for a replacement hedge.

Works shall be undertaken in strict accordance with the agreed methodology, under professional ecological supervision.

- 6) No development shall take place until a hedgerow management plan has been submitted to and approved in writing by the local planning authority. This management plan shall include details of the methodology for any hedge removal approved as part of this development and the future maintenance/management of all retained hedges. The methodology and management as agreed shall be undertaken in accordance with the approved details under professional ecological supervision.
- 7) No development shall take place until a plan for the incidental extraction of mineral deposits from the site has been submitted to and approved in writing by the local planning authority. The plan shall consist of a written statement outlining:
- (a) a method for ensuring that minerals that can be viably recovered during the development operations are recovered and put to beneficial use; and
 - (b) a method to record the quantity of recovered mineral (re-use on site or off site) and to report this data to the local and minerals planning authorities.

Development shall only proceed in accordance with the approved plan.

- 8) No development shall take place until a phasing plan, setting out the detailed phasing of the construction of all aspects of the development hereby permitted, has been submitted to and approved in writing by the local planning authority. Development shall thereafter be implemented in full accordance with the approved phasing plan.
- 9) No development shall take place until a programme of archaeological work including a Written Scheme of Investigation has been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions; and:
- (a) the programme and methodology of site investigation and recording;

- (b) the programme for post investigation assessment;
- (c) details of provision to be made for analysis of the site investigation and recording;
- (d) details of provision to be made for publication and dissemination of the analysis and records of the site investigation;
- (e) provision to be made for archive deposition of the analysis and records of the site investigation; and
- (f) nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

Development shall not take place other than in accordance with the approved Written Scheme of Investigation.

- 10) No dwelling shall be occupied until the analysis, publication and dissemination of the results of the approved Written Scheme of Investigation and archive deposition has been secured and the details made available to the local planning authority.
- 11) No development shall take place until a Construction Management Plan (CMP) has been submitted to and approved in writing by the local planning authority. The CMP shall include the following details:
 - (a) a programme and phasing of construction work;
 - (b) the provision of long-term facilities for contractor parking;
 - (c) the arrangements for deliveries associated with all construction works;
 - (d) methods and phasing of construction works;
 - (e) access and egress for plant and machinery;
 - (f) protection of pedestrian routes during construction; and
 - (g) the location of temporary site buildings, compounds, construction materials and plant storage areas.

Development shall be implemented in accordance with the approved CMP.

- 12) No development shall take place until details of the means of disposal of foul water from the site have been submitted to the local planning authority for its written approval. No above ground construction shall take place until these details have been approved, and then only in accordance with the approved details.
- 13) Notwithstanding the submitted details, no development shall take place until surface water drainage works have been submitted to the local planning authority for its written approval, and the development hereby permitted shall not thereafter be occupied until the approved surface water drainage works have been fully implemented. Before any details are submitted to the local planning authority an assessment shall have been carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall then be provided to the local planning authority with the proposed scheme of surface drainage works. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - (a) provide information about the design storm period and intensity, the method employed to delay and control the surface water

- discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - (b) include a timetable for its implementation; and,
 - (c) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 14) No development shall take place until proposals for the mitigation of the impact of the development hereby permitted on the New Forest and Solent Coast European Nature Conservation Sites have been submitted to and approved in writing by the local planning authority, and the local planning authority has confirmed in writing that the provision of the proposed mitigation has been secured. Such proposals must:
- (a) provide for mitigation in accordance with the New Forest District Council Mitigation Strategy for European Sites Supplementary Planning Document 2014 (or any amendment to or replacement for this document in force at the time), or for mitigation to at least an equivalent effect; and
 - (b) provide details of the manner in which the proposed mitigation is to be secured. Details to be submitted shall include arrangements for the ongoing maintenance and monitoring of any Suitable Alternative Natural Green Spaces which form part of the proposed mitigation measures together with arrangements for permanent public access thereto.

The development shall be carried out in accordance with and subject to the approved proposals.

- 15) No development shall take place above damp course level until samples of the facing and roofing materials to be used have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.
- 16) Before development commences in respect of any dwelling hereby permitted, the proposed slab levels in relation to the existing ground levels, set to an agreed datum, shall be submitted to and approved in writing by the local planning authority. Development shall be implemented in accordance with the approved slab levels.
- 17) No dwelling shall be occupied until the areas for the parking of cars and cycles associated with that dwelling have first been provided and made available in accordance with the approved plans. These areas shall be retained and made available for their intended purposes thereafter.
- 18) The development hereby permitted shall not be occupied until the areas for the turning of vehicles have been provided and made available in accordance with the approved plans. These areas shall be retained and made available for their intended purpose thereafter.
- 19) The 36 unallocated parking spaces in the northern part of the site that are designed to provide parking for the open space, allotments and school drop offs/pick ups shall be provided and made available before the occupation of any dwelling hereby permitted. These spaces shall be retained and made available for their intended purpose thereafter and at

- no time shall any of these spaces be allocated to any of the dwellings hereby permitted.
- 20) No development shall take place between 1st October and 31st March inclusive unless a mitigation scheme to minimise the impact of construction activities on wintering Brent geese and waders has been submitted to and approved in writing by the local planning authority. Development shall be implemented in accordance with the approved mitigation scheme.
- 21) No external lighting shall be installed until a detailed scheme of lighting has been submitted to and approved in writing by the local planning authority. The scheme shall include a detailed specification of lighting columns/fixtures, designs and locations. Development shall only proceed in accordance with the approved details.
- 22) The trees/hedges on the site which are shown to be retained on the approved plans shall be protected during all site clearance and building works in accordance with the measures set out in the Barrell Tree Consultancy Arboricultural Assessment and Method Statement (Ref 16283-AA5-DC) dated 10th June 2018 and the Barrell Tree Protection Plan (Ref 16283-BT6) and in accordance with the recommendations set out in BS 5837: 2012. The tree protection measures that are installed shall be maintained and retained for the full duration of the works or until such time as agreed in writing with the local planning authority.
- 23) The works hereby approved shall be undertaken in strict accordance with the Ecological Appraisal and Phase 2 Surveys undertaken by Lindsay Carrington Ecological Services dated June 2018 and the supplementary letter dated 8 June 2018.
- 24) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any re-enactment of that Order), no extension otherwise approved by Classes A, B and C of Part 1 of Schedule 2 to the Order, or garage or other outbuilding otherwise approved by Class E of Part 1 of Schedule 2 to the Order, shall be erected or carried out in respect of plot numbers 11, 12, 13, 14, 15, 16, 17, 24, 25, 26 and 27 without express planning permission first having been granted.

Appendix (11)



Simon McFarlane
Planning Director
AJC Group
Poole, Dorset
BH14 8HA

Beechcroft House
Vicarage Lane
Curdrige
Hampshire
SO32 2DP

feedback@hiwwt.org.uk
01489 774400

18th August 2023

Dear Simon

Further to our correspondence regarding off site BNG provision for the development at:

Orchard Gate, Noads Way, Didben Purlieu, Hythe, SO45 4PD

Planning Ref: 22/10813

We can confirm that we can offer 0.59 BNG credits of 'good' other neutral grassland units at the Keyhaven Natural Capital Scheme, located with the New Forest District LPA (subject to contract). This would provide a 12.14% uplift.

The Keyhaven Natural Capital Scheme is a partnership project involving Belpart, the site owner, and Hampshire & Isle of Wight Wildlife Trust the managing agent for the site. The site has been managed under intensive arable for the past 10 years. The BNG proposal is for arable reversion with grassland habitat and hedgerow creation. The site was surveyed in 2022 and BNG assessment carried out using Defra metric 4.0 carried out. A management and monitoring plan for BNG delivery can be made available on request.

Best wishes

****Signature redacted****

Deborah Whitfield
Senior NBS Manager
Main Switchboard: 01489 774400