

NEW FOREST DISTRICT COUNCIL

Town & Country Planning Act 1990 (as amended by the Planning and Compulsory Purchase Act 2004)

The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 (SI: 2000/1625) as amended.

Appeal by AJC Group against the decision of New Forest District Council to refuse planning permission to demolish existing buildings and erect at 25 dwellings with associated access, landscape and parking at:

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

Proof of Evidence

PINS Ref: APP/B1740/W/23/3324227

LPA Ref: 22/10813

James Gilfillan. MATCP, MRTPI.

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1. INTRODUCTION AND SCOPE OF EVIDENCE

Introduction

- 1.1 This is an appeal under section 78 of the Town and Country Planning Act 1990 (as amended) against the decision of NFDC to refuse permission to demolish the existing buildings and erect 25 dwellings with access from Noads way, landscaping and parking.

Name and Qualifications

- 1.2 My name is James Gilfillan. I am a chartered town planner and hold the degrees of BA(Hons) and MA in Town and Country Planning from the University of Manchester. I am employed by New Forest District Council as a Senior Development Management Officer. I held a similar post at Bournemouth, Christchurch & Poole Council for 18 years, the majority being at Borough of Poole prior to the Local Government re-organisation in 2019.

Scope of Evidence

- 1.3 The application was refused by notice dated 19th December 2022 for seven reasons, as set out in full on the decision notice **CD 5-3**.
- 1.4 Those reasons are, in summary: (1) failure to respect the character of the area or deliver a high quality design that would contribute positively to local distinctiveness; (2) failure to demonstrate that adequate visibility can be achieved at the site access or forward visibility within the site or to take appropriate opportunities to promote the use of sustainable transport modes; (3) failure to demonstrate that surface water drainage will be dealt with adequately or as sustainably as possible; (4) failure to demonstrate that recreational and air quality impacts on European Sites would be adequately mitigated and avoid significant impact; (5) failure to provide sufficient recreational and open space for residents; (6) failure to provide affordable housing; and (7) impact on trees and landscape setting.
- 1.5 As agreed in the Principal Statement of Common Ground, **CD 8-1**, the Council will defend reasons for refusal 1, 3, 5, 6 in all and 7 in part.

- 1.6 The Council will not present evidence to defend reason 2. The issues leading to that reason for refusal have been satisfied through the provision of additional evidence, updated information and agreement in principle to off-site works.
- 1.7 The suite of additional information and correspondence can be found at **CD 8-1** appended to the SofCG.
- 1.8 That part of Reason for Refusal 7 relating to the impact of the development on trees adjoining the site, resulting in a poor unsustainable relationship with trees, would be resolved by the amended 'Wheatcroft' plans submitted by the Appellant. Correspondance from the Council's Arboricultural Officer confirming this position is also appended to the principal SofCG **CD 8-1**.
- 1.9 The remaining elements of reason for refusal 7 relating to the failure of the layout of the scheme to accommodate the opportunity to plant trees of a size and species to perpetuate the predominance of landscape setting will be defended within the Proof of Evidence defending refusal reason No.1
- 1.10 The conflicts identified by reason for refusal 4 are capable of being resolved through compliance with existing adopted mitigation strategies.
- 1.11 It is anticipated that reason for refusal 4 will have been resolved by way of receipt of a legal undertaking from the appellant by the time the Inquiry opens.

Impact on Character and Design

- 1.12 Reason for refusal 1 focuses on the design and layout of the scheme and its response to the local context. Evidence to demonstrate how the design of the scheme is unacceptable and conflicts with adopted policies and guidance is given by Mr Richard Payne the Council's Principal Environmental Design Officer.

Provision of Sustainable Drainage

- 1.13 Reason for refusal 3 identified the failure of the application, as determined, to deliver sufficient evidence to demonstrate the proposed sustainable drainage strategy was suitable. Subsequently the Appellant has undertaken further surveys and revised the drainage design, the Proof of Evidence prepared by Mr Thomas Callaway a Flood and Water Management Engineer for Hampshire County Council in their role as Lead Local Flood Risk Authority, will demonstrate that the revised scheme has not satisfied the requirements of relevant local and national policies and guidance.

Public Open Space

- 1.14 In respect of the fifth reason for refusal, the Proof of Evidence of Mr Richard Payne will set out how the design and layout of the scheme has failed to meet the recreational and open space needs of the residents.

Affordable Housing

- 1.15 Evidence to support reason for refusal 6, that the scheme is more viable than the Appellant demonstrates, and hence could deliver a higher quantum of Affordable Housing units, will be provided on the Council's behalf by Mr Fraser Castle, a Partner at Bruton Knowles Chartered Surveyors.

Impact on Trees

- 1.16 Reason for refusal 7 identifies two issues, the poor relationship of the development with protected trees adjoining the site and the failure of the design and layout of the scheme to accommodate space for new trees to secure the landscape setting of the area.
- 1.17 Under the principles of the Wheatcroft case, the Appellant has submitted revised plans that the Council is content resolves the first part of the reason for refusal and as presented by the SofCG **CD 8-1**, will not present evidence to defend the concerns arising from the scheme as determined.
- 1.18 The Proof of Evidence of Mr Richard Payne will demonstrate how the layout has failed to accommodate space to ensure the distinctive landscape character of the area can be incorporated by the scheme.

Planning Balance

- 1.19 This proof undertakes, in accordance with S. 38(6) of the Planning and Compulsory Purchase Act 2004, the Planning Balance and sets out the balance of benefits against the harm of the scheme and whether any other material considerations should be considered.

2. DESCRIPTION OF APPEAL PROPOSALS

- 2.1 The development that is the subject of this appeal is illustrated on the submitted plans, as listed on the decision notice **CD 5-3** and Statement of Common Ground **CD 8-1**, but as amended for the appeal listed at para.4.2 of the SofCG and described in the appellant's Planning Statement and Design & Access Statement. In brief, the submitted application seeks to demolish the existing house and outbuildings and erect 25 dwellings comprising 4 x 2 bed units, 17 x 3 bed units and 4 x 4 bed units.
- 2.2 The scheme proposes to provide access by widening the existing vehicle access from Noads Way, including a footway. Vehicular parking would be provided in a mix of shared courtyards, roadside spaces, on plot driveways and garages.
- 2.3 Approximately 750 Sq.m of Public open space would be provided on-site, including tree landscape planting.

3. RELEVANT PLANNING HISTORY

- 3.1 2021. Outline planning application to demolish the existing buildings and erect 37 dwellings was refused.
- 3.2 This application is referenced in the Case Officers report considering the Appeal scheme, so is provided to provide context and explanation as to the evolution of the scheme and considerations. A copy of the decision notice, site plan and Case Officer's report can be found at **CD 5-7 to 5-9**.

4. RELEVANT PLANNING POLICIES

- 4.1 The starting point for decision making is the statutory development plan. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan unless material planning considerations indicate otherwise.

The Statutory Development Plan

- 4.2 The statutory development plan for the area comprises the following documents¹:
- i) The Local Plan Part 1: Planning Strategy adopted 2020
 - ii) The Local Plan Part 2: Sites and Development Management adopted 2014
 - iii) Saved policies (CS7, CS19 and CS21) of the Local Plan Part 1: 'Core Strategy' (2009);
 - iv) Saved policy DW-E12 Protection of Landscape Features of the New Forest District Plan First Alteration 2005.
 - v) Hythe and Dibden Neighbourhood Plan adopted 2019
 - vi) The Hampshire Minerals and Waste Local Plan 2013

The Local Plan Part 1: Planning Strategy 2020

- 4.3 The plan should be read as a whole, however Policies which have a bearing on the appeal proposals in the Local Plan Part 1 are as follows:

STR1 Achieving sustainable development

STR2 Protection of the countryside

STR3 Strategy for locating new development

STR4 Settlement hierarchy

STR5 Meeting our housing need

ENV1 Mitigating impact - International Nature Conservation sites

ENV3 Design quality and local distinctiveness

HOU1 Housing type, size and choice

¹ Policy DW-E12; Protection of Landscape Features (saved from the Local Plan First Review 2005), policies CS19 & CS21 of the 2009 Core Strategy 'Saved Policies' and The Hampshire Minerals and Waste Local Plan (adopted October 2013) are not relevant to this appeal.

HOU2 Affordable housing
CCC1 Safe and Healthy communities
CCC2 Safe and sustainable travel
IMPL1 Developer contributions
IMPL2 Development standards

A copy of the policies are found at **CD 6-1**

The Local Plan Part 2 (Sites and Development Management) adopted 2014

4.4 Policies which have a bearing on the appeal proposals in the Local Plan Part 2 are as follows:

DM2 Nature Conservation, biodiversity and geodiversity

A copy of the policy is at **CD 6-2**

The Core Strategy 2009 (Saved Policies)

4.5 Policies which have a bearing on the appeal proposals in the Core Strategy are:

CS7 Open Spaces, Sport and recreation

A copy of the policy is available at **CD 6-3**

Hythe and Dibden Neighbourhood Plan adopted 2019.

4.6 Neighbourhood Plan Policies which are a material consideration regarding the appeal proposals are:

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

A copy of the policies are found at **CD 6-4**

Other Local Policy Documents and Guidance.

- 4.7 Other relevant policy documents and guidance advice not covered in other proofs.

Mitigation for European Sites SPD 2021

- 4.8 Recognising the proximity to and sensitivity of protected habitats to increased recreational use, the SPD sets the framework for mitigation and identifies a suite of projects and strategies to mitigate the effects of development of different scales and locations across the district proportionate to the proposed use.
- 4.9 The mitigation covers on and off-site projects and divides projects and costs in-to revenue and capital streams. The latter being infrastructure is normally covered by the Community Infrastructure Levy (CIL) but is captured by S.106 agreements in the event that CIL is not liable or relief is secured, ensuring the mitigation is still secured and an Appropriate Assessment of the Habitats regulations can be passed.
- 4.10 The SPD is provided at **CD 7-5**.

Natural England Advice note for achieving Nutrient Neutral Development for new development in the Solent region. 2022.

- 4.11 Working strategically across the South Hampshire region, Natural England prepared this advice note to support LPA's and applicants by setting the context of protected habitats and the likely significant effects of additional nutrients in the Solent arising from development occurring across the region.
- 4.12 Recognising the effect of the Habitats Regulations requirements, the note sets a framework for identifying the scale of the harm arising from development and options for mitigation and delivering nutrient neutral development, in order for an Appropriate Assessment to be passed.

- 4.13 The advice note can be found at **CD 7-21**

Bird Aware Solent Strategy 2017.

- 4.14 This sets the impact of and framework for protecting Solent habitats relied upon by migrating birds, by managing increased visits to the water's edge around the Solent, where additional recreational activities result in conflict and disturbance.
- 4.15 It identifies a suite of projects and roles seeking to influence visitor behaviour and activities to limit the impact on the protected habitats and mitigate the harm identified and sets costs to deliver these largely revenue-based solutions to be secured from new development, in order for an Appropriate Assessment to be passed.
- 4.16 The strategy is available at **CD 7-8**

Air Quality Monitoring. 2021

- 4.17 Identified as part of the Habitats Regs Assessment of the then emerging Local Plan, the impact of additional vehicle trips generated by housing growth on air quality has led to concerns regarding nitrogen deposition and ammonia on parts of the New Forest SAC and SPA.
- 4.18 At this time, as set out in adopted policy ENV1, a contribution is sought towards monitoring air quality in sensitive locations in order to better understand the situation. This may become a strategy for mitigation over the life of the plan if monitoring indicates likely significant effects can not be ruled out.
- 4.19 The Council has prepared an Air Quality SPD. In respect of the impact of Air Quality on protected habitats in the New Forest, it largely repeats the policy position.
- 4.20 The SPD is found at **CD 7-3**

Parking Standards SPD 2022

- 4.21 This document is found at **CD 7-6**, sets parking standards for different uses and sizes

of development across the District, including reference to cycles, lorries and other forms of transport dependent on the use of the site.

National Planning Policy Framework 2023

- 4.22 The following paragraphs are considered to be directly relevant to the appeal and the case between the parties. **CD 7-1.**

Para.7 – The purpose of the planning system is to contribute to the achievement of sustainable development.

Para.8 – Sets out the component objectives that constitute sustainable development, namely: Economic; Environmental and Social objectives.

Para.9 – Confirms that these objectives should be delivered by implementation of the policies in the Framework, they should play a role in guiding development to sustainable solutions, but should take local circumstances into account, to reflect the character needs and opportunities of each area.

Para.11 – Plans and decisions should apply a presumption in favour of sustainable development, for decision making this means approving proposals that accord with an up-to-date development plan without delay.

Para.14 – Advocates the importance of Neighbourhood Plans, indicating “applications involving the provision of housing, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits.

Para.47 – Presents the primacy of the Development Plan for decision making.

Para 58 – Assumption of viability if contributions comply, weight to be applied to viability assessment and approach to viability preparation.

Para.60-62 – Delivering sufficient amount and variety of land to boost the supply of housing delivered. Assessing need and setting targets including identifying the size, type and tenure of housing need.

Para.63 – Where a need for affordable housing is identified, planning policies should specify the type of affordable housing required and expect it to be met on site.

Para.65 – Expects major development to provide at least 10% of the scheme for affordable home ownership.

Para.69 (c) – Highlights the contribution of small and medium sized sites to meeting housing need, encouraging policies to support development of windfall sites.

Para.119 – Decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment.

Para.124 – Encourages decisions should support development that makes efficient use of land, taking in to account the identified need for types of housing, local market conditions and viability, availability and capacity of infrastructure and services, the desirability of maintaining an area's prevailing character and setting, and the importance of securing well-designed, attractive and healthy places.

Para.126 - Highlights the fundamental importance of achieving high quality places, affirming good design as a key aspect of sustainable development creating better places in which to live and work and helps make development acceptable to communities.

Para.127 & 128 – Sets the importance of having plans and design codes that demonstrate design expectations, including the role of Neighbourhood groups in identifying special qualities of an area.

Para.130 – Establish the importance of design ensuring development:

- Functions well and adds to overall quality of the area
- Visually attractive as a result of good architecture, layout and appropriate and effective landscape
- Sympathetic to local character, including the surrounding built environment and landscape setting, but not preventing increased densities
- Establish or maintain a strong sense of place

- Optimise the potential of the site to accommodate an appropriate amount of development, including open space
- Create spaces that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users

Para.131 – Highlights the importance of and contribution of trees to the quality of the urban environment.

Para.134 - Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and SPD's such as design guides and codes

Para.169 - Major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. The importance of the role of the Lead Local Flood Authority is embedded.

Para.182 - 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.

National Planning Policy Guidance

4.23 The following paragraphs in the website based PPG resource are directly relevant to the appeal case. **CD 7-2.**

4.24 Flood Risk and Coastal Change

Para.56 – What sort of sustainable drainage systems can be considered. Presents the drainage hierarchy

Para.58 - What the LPA will need to address when considering a SUD scheme. Expectations for minimum standards of operation and clear maintenance arrangements are secured

Para.59 – Sets expectations of what needs to be submitted with a planning application.

4.25 **Viability**

Para.11 – How should GDV be defined

Para.12 – How should costs be defined

Para.13 – How should land value be defined

Para.14 – What factors should be considered to establish benchmark land value

Para.15 – What is meant by existing use value

Para.16 – How should the premium to the land owner be defined

5. THE COUNCIL'S CASE

5.1 There are five main issues in this appeal which arise from the reasons for refusal now being supported by the Council. These issues are born out of the application of the development plan and Framework policies on design, character and landscape, provision of sustainable drainage, delivery of affordable housing, provision of open space on-site, required to ensure delivery of a sustainable development and the planning balance:

- i) The failure to respect the character of the area or deliver a high quality design that would contribute positively to local distinctiveness of the local area,
- ii) Failure to demonstrate that surface water drainage will be dealt with adequately or as sustainably as possible,
- iii) Lack of sufficient and well design public open space on-site,
- iv) Failure to provide policy compliant level of affordable housing,
- v) Failure of the design and layout of the scheme to accommodate space for characteristic tree planting,
- vi) Delivery of sustainable development.

5.2 Considered in full below, this proof of evidence will focus on assessment of planning policy relevant to the appeal scheme and point vi) above. Points i) – v) are covered in the Proofs of Evidence provided by Mr. Payne, Callaway and Castle respectively.

5.3 In summary of i) & v) Mr Payne concludes;

“I find that the proposal does not follow policies STR1 Achieving sustainable development and ENV3: Design quality and local distinctiveness. It also fails for the same reasons to accord with similar aspirations for local distinctiveness and character held by the neighbourhood plan, through its failure to take reasonable cognisance of the Housing Design Density and Character SPD”

5.4 In summary of ii) Mr Callaway concludes;

“Partial infiltration (if not full infiltration) may be possible on this site with suitably designed soakaways, subject to peak groundwater levels not rising to within one metre of the base of any proposed infiltration structures.

“”

5.5 In summary of iii) Mr Payne concludes:

“In terms of play, it would be practical to simply ensure that the space is designed to invite use by the youngest of children to ‘play out’ close to their own doorsteps, in line with recognised guidance. If instead of formal play equipment on site, a commuted sum to improve the play offer in a nearby park was to be proposed, this would not remove the need for space, designed for amenity and to invite play close to home. However, there is neither enough space, nor the quality of design offered to accord with the policy”

5.6 In summary of iv) Mr Castle concludes:

“I am of the opinion that confirmation of the purchase price would confirm that the Policy Compliant Development is a viable form of development and this is supported by sensitivity testing. However, in the absence of confirmation of the purchase price it is difficult to prove that the RLV of the Policy Compliant Development would exceed my current opinion of the BLV of £990,000. It is, however, clear that with only small changes to the inputs to the RLV in line with my sensitivity testing the Policy Compliant Development is a viable form of development even with the inclusion of the new and additional costs introduced by the Appellant for off-site drainage infrastructure.”

5.7 The following matters covered by this Proof of Evidence in chapter 6 are:

- Assessment of the public benefits of the scheme and the weight to be attributed to them; and
- The planning balance, including under section 38(6) of the 2004 Act and para. 11 of the NPPF.

6.0 Scheme Benefits and Planning Balance

Public Benefits

- 6.1 Whilst the Council believes the scheme to be unacceptable, it does recognise that the scheme would bring some public benefits.
- 6.2 The first and most significant is the provision of 25 new homes in the urban area, contributing positively to the objectively assessed needs of the Plan area.
- 6.3 Agreed as Common Ground, the Council cannot demonstrate, that it has a 5 year supply of land for Housing. This is largely predicated on strategic allocated sites not proceeding as rapidly as was presented to the Inspector at the Local Plan examination. The Councils housing land supply statement is found at **CD 7-9**.
- 6.4 That statement calculates approximately 3.1 years worth of Housing land.
- 6.5 The Council has an up-to-date strategy for the delivery of the required homes over the plan period. That plan will deliver a significant boost to housing in the district on suitable sites and in a plan led way, in accordance with the Framework.
- 6.6 By adopting the Local Plan Pt1 Planning Strategy in 2020, the Council has identified the right amount of land in the right places to support growth, this is clearly set out in adopted policy STR5 **CD 6-1** pg 28. This recognises 60% of housing need will come from large scale planned strategic allocations. The policy goes on to identify the approach to deliver the remaining 40% on existing allocations and new allocations on planned sites as part of the impending review of the Local Plan Part 2 site allocations.
- 6.7 The site is included in the Councils SHLAA (**CD 7-23**), considered capable of indicatively providing 14 dwellings and would be likely to be relied upon to contribute to para ii,c) 400 homes in other towns and large villages as part of that review of Local Plan part 2.
- 6.8 The most up to date Housing Delivery Test results, for 2021 (**CD 7-13**), confirm a measurement of 141% against the policy STR5 adopted trajectory.

- 6.9 Whilst that suggests delivery is currently matching need, the scheme subject to this appeal would fall to be delivered after 2023, it would contribute to the increased trajectory of 400 homes pa, over the 2021-2026 period.
- 6.10 Given the reliance on strategic sites to deliver a large amount of the need of the plan period and the longer timescales for delivery of such sites, as evidenced by the housing trajectory included in the 5yr HLS, (**CD 7-9**), there is a need for smaller allocations to make up much of the provision in the forthcoming 5 year period.
- 6.11 The scheme would make provision of 24 additional units, which would contribute 6% of the annual requirement. As such, this would be a benefit in favour of the scheme.
- 6.12 Local policies and National guidance direct development to use land in sustainable locations. The site is in the urban area of Hythe and Dibden Purlieu and is included in the SHLAA assessment of sites that could potentially contribute to meeting the District's objectively assessed housing need.
- 6.13 In this case the site is in a location capable of supporting many of the day to day needs of residents, though the range of services available in walking distances and public transport options would not avoid reliance on the private car for many services.
- 6.14 However given the location of the site within the built-up area, development is not precluded in principle and such benefits would weigh in favour the development.
- 6.15 Enhanced use of land in urban areas is a benefit that contributes to Local Plan Policy STR1 (i) and in principle is given significant weight as a benefit. However, maximizing the use of such urban land cannot be considered in isolation and in particular, it is necessary to have regard to the design consequences of such an approach.
- 6.16 Whilst the scheme provides a mix of house sizes, which is beneficial in meeting need, it does not meet the mix advocated by the Local Plan (Figure 6.1 **CD 6-1 pg.58**) that is based on housing needs assessment and affordability. However given the small scale of the scheme, against the overall plan targets, the failure to adhere to the preferred mix would not significantly skew the overall housing mix. As such the proposed mix is considered to be a neutral factor in the planning balance.

- 6.17 Whilst the decision subject to this appeal was based on a nil affordable housing offer, the Appellant has now presented a financial appraisal offering three houses as affordable units. The Council maintains its position, through the proof of Mr Castle, that the scheme could make a greater affordable housing contribution, and as such the provision of three units, whilst a benefit in itself, is considered to be contrary to policy and unacceptable.
- 6.18 Provision of offsite improvements to pedestrian routes, as shown on plan at appendix 7 to the SofCG (**CD 8-1**) is a benefit of moderate weight. There are already safe routes to the school in that location, but there is a worn desire line demonstrating a preference for an alternative route that this project would formalize.
- 6.19 Whilst it is not in line with the Council's policy, and does not fully resolve the Council's objection regarding the lack of on-site provision of open space, the financial contribution, proposed by the Appellant, towards the provision of off-site recreational facilities is a benefit of the scheme. However, as there are already provisions in the area for existing communities and the need arises because of the development and the contribution is in lieu of delivering a well-planned scheme, it is only a moderate benefit.
- 6.20 During construction the scheme would have minor economic benefits associated with employment of construction teams and their spend locally, residents would also contribute to spend in the local shops and services.
- 6.21 There would be environmental benefits associated with the provision of houses built to modern standards of insulation and energy efficiency, however as these are requirements of the building regulations, they would not be any more than moderate benefits.
- 6.22 Reduced reliance on the motor car to access services and facilities is a benefit of any scheme in such an urban area, although as demonstrated by para.2.3 of the SofCG (**CD 8-1**), the range of services available in walking distance is limited, however that shortcoming is countered by the proximity to schools avoiding the need to travel to school by car, a major contributor to congestion around schools. This would benefit air quality and reduced energy consumption, encourage active travel combining to be a significant benefit of the scheme.

- 6.23 Whilst requiring the removal of some poor specimen and lower category trees, the scheme would retain the most important trees on and around the site, this is an environmental benefit.
- 6.24 Achieving 10% bio-diversity net gain accords with Council guidance and the minimum requirements likely to be set pursuant to the Environment Act 2021. However, as the Appellant intends this to be achieved off-site it would not have the same benefit for the local area if it were on-site.
- 6.25 Locating the proposed housing in an existing residential area close to schools would contribute to the social wellbeing of residents and mutual support that comes from such areas. The mix of house sizes and provision of affordable units would contribute towards a mixed and balanced community. Whilst the Council believes the balance could be better, the appeal scheme still has benefits.

The Planning balance, S.38(6), and any other material considerations

- 6.26 The starting point for decision making is the statutory development plan. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan unless material planning considerations indicate otherwise.
- 6.27 The documents comprising the development plan and the relevant policies are listed above at para's 4.2-4.6
- 6.28 The scheme, as defended at this appeal, is determined to conflict with the following policies:

STR1 Achieving sustainable development:

ENV3 Design quality and local distinctiveness:

ENV4 Landscape Character and Quality:

HOU2 Affordable Housing:

Of the Local Plan Pt1: Planning Strategy 2020:

CS7 Open spaces, sport and recreation

Of the Local Plan Pt1 Core Strategy 2009 (saved policies), and:

D1 Exemplary standards of design and architecture

Of the Hythe and Dibden Neighbourhood Development Plan 2019.

- 6.29 Benefits of the scheme have been identified above and the scheme can, subject to conditions, demonstrate compliance, to a greater or lesser degree, with the following policies.
- 6.30 New Forest Local Plan Pt1: Planning Strategy 2020. (CD 6-1)
- 6.31 STR2 – Protection of the Countryside. (pg.25) The scheme would be within the built-up area away from the boundary with either Cranborne Chase AONB, or New Forest National Park boundaries. Delivering development in urban areas such as Dibden Purlieu, reduces the pressure to expand settlements in to close proximity with those areas with more sensitive characters.
- 6.32 STR3 – Strategy for locating new development. (pg.26) The development has been directed towards an accessible location and will contribute towards vitality and viability. The policy does require a high standard of design that maintains and enhances local character and amenity, which the scheme doesn't deliver.
- 6.33 STR4 – Settlement Hierarchy. (pg.27) The site is within Dibden Purlieu/Hythe, included in the largest settlements in the hierarchy listed, where there is access to a wider range of employment, facilities and services. Appropriate for large scale developments, that for residential development are 50 dwellings. The policy does not preserve the settlements listed as 'Towns' for large scale developments only, and the scheme being a medium scale development, at 25 dwellings, would be appropriate to its location.
- 6.34 STR5 – Meeting our Housing Needs. (pg.28) Sets the strategic approach to the delivery of housing and trajectory for their delivery. Predominately relying on strategic allocations but recognising existing smaller allocations in the Local Plan Pt2 and to be identified in a review of that development plan document, likely to include this site, under ii – c).

- 6.35 ENV1 – Mitigating impacts on International Nature Conservation Sites. (pg.42) Identifies the framework of protected habitats where likely significant effects would occur in and close to the plan area. Identifies a mitigation strategy. In this respect the mitigation is off site and would consist of financial contributions and nitrate neutrality projects to be secured by appropriate S.106 and condition in order to pass an appropriate assessment of the Habitats regulations. Should the required mitigation not be satisfactorily secured the scheme would not be in accordance with the entirety of this policy.
- 6.36 HOU1 - Housing type, size, tenure and choice. (pg.57) Indicates that there needs to be a diverse choice of housing available across all sites at all stages of life by providing a mix of choice of homes. The scheme proposes a mix of 2, 3 and 4-bed units.
- 6.37 CCC1 – Safe and Healthy communities. (pg.86) Manages development proposals in areas where residents would be placed at risk and prevents development causing harm. Harm to water environments can be mitigated, Construction management plans would preserve existing amenity during construction.
- 6.38 CCC2 – Safe and Sustainable Travel. (pg.89) Promotes active travel and highway safety. As resolved prior to the Inquiry and captured by the Statement of Common Ground **CD 8-1** the scheme provides safe access for all, incorporates sufficient bike storage and car parking and makes provision for off-site enhancements to support safe active travel.
- 6.39 IMPL1 – Developer Contributions. (pg.94) Sets the principle of contributions required to make the development acceptable and offers flexibility to preserve scheme viability.
- 6.40 IMPL2 – Development Standards. (pg.96) Requires developments to incorporate measures to ensure water efficiency, provide high speed broadband connection and Electric vehicle charging. Conditions could be used to ensure such standards are met.
- 6.41 New Forest Local Plan Part 2: Sites and DM policies 2014 (CD 6-2)
- 6.42 DM2 – Nature conservation, biodiversity and geodiversity. (pg.24) Directed towards protecting or mitigating harm of ‘UK’ protected habitats and protecting protected species and their local habitats, promoting on-site bio-diversity gain. The location of the site does directly impact on important features of nature conservation, is supported by an ecological appraisal that advocates appropriate and deliverable mitigation and

enhancement that can be secured by condition and has demonstrated it can deliver 10% bio-diversity net gain off-site.

6.43 Hythe and Dibden Neighbourhood plan 2019 (CD 6-4)

6.44 WEL1 (pg.41) – Expects development to support public health, active lifestyles and community wellbeing. The scheme complies with this policy in part, through its location in the urban area giving residents a chance to walk and cycle to facilities and the off-site improvements to walking routes. There is nothing about the scheme that would intrinsically be likely to contribute to anti-social behaviour or undermine social interaction and its location in a residential area would support residents social wellbeing.

6.45 WEL2 (pg.42) – Expects new development to preserve air pollution, congestion, road safety and parking and include EV charging. The scheme would preserve all these potential impacts and a condition can secure EV charging.

6.46 T5 (pg.47) – Expects active travel improvements to have regard to the needs of all users. The site and immediate surroundings are relatively flat and the off-site improvements would be designed for school children to use.

6.47 C1 (pg.52) - Design of the development should demonstrate steps to reduce the negative impact of crime, nuisance and anti-social behaviour. There is nothing about the scheme that suggests these problems would arise.

6.48 F1 (pg.57) – Directs development to areas of lowest probability of flooding, which the scheme complies with.

6.49 F3 (pg.57) - Requires new development to deliver sufficient drainage to avoid impact on the existing network and if required demonstrate reinforcements can be delivered, co-ordinated with the service provider. Whilst the Appellants drainage proposals are not considered to be sustainable, it appears that sufficient capacity could be provided in theory subject to the delivery of improvements and the service provider's agreement to the same.

- 6.50 Turning to those policies identified in the reasons for refusal, the conflict with design, character, built form, landscape and recreation aspects of ENV3, ENV4 and CS7 have been covered in detail by the proof of Mr Payne, and viability by Mr Castle. Consideration of these issues and their contribution to the delivery of sustainable development and the planning balance are covered below.
- 6.51 ENV3 – Design Quality and Local Distinctiveness. (pg.52) Requires development to achieve high quality design that contributes positively to local distinctiveness. Detailed analysis of the way the scheme conflicts with this policy has been presented to the Inquiry. The scheme leads to conflict with the policy and adopted guidance in the Housing Design, Density and Character SPD.
- 6.52 The pre-ambles to the policy at para. 5.45 (**CD 6-1** pg.52) references the approach of para.134 of the framework, where decision makers are directed to refuse development of poor design.
- 6.53 Para v) of the policy expects developments to ensure resource efficiency, climate change resilience and reduce environmental impacts, including the use of sustainable drainage systems. As set out in the proof of Mr Callaway, it has not been satisfactorily demonstrated that a SUDS scheme can-not provide for at least part, if not all, of the schemes surface water drainage needs.
- 6.54 The policy also requires development to provide appropriately designed green spaces including provision for play and natural greenspaces for recreational mitigation, contributing to quality of life, be enjoyable to be in, which the proof of Mr Payne has demonstrated the scheme fails to achieve.
- 6.55 Due to the importance placed on the protection and enhancement of the special and unique character and environment of the New Forest area, identified as a key priority of the Local Plan, para. 3.3 and Strategic Objective SO3, para. 3.21 (**CD 6-1** pg.13 & 17), significant weight is placed on the need to meet those objectives through compliance with the relevant policies. As such the conflict with the policies delivering those objectives should attract significant weight against the scheme.
- 6.56 The Proof of Mr Payne also sets out how the scheme has failed to meet the recreational and open space needs of its residents as required by policy CS7 (**CD 6-3** pg.41),

through the poor design and insufficient provision of open space on-site. Provision of well design open space goes hand in hand with creating an attractive place for people to live, making significant contributions towards social and environmental objectives of delivering sustainable development.

- 6.57 Conflict with CS7 also leads to the 'in part' conflict with Neighbourhood Plan policy WEL1, (**CD 6-4**) whereby the scheme would not ensure the availability of good quality open and green spaces, supporting outdoor physical recreational opportunities including gentle activities suitable for older people.
- 6.58 ENV4 – Landscape Character and Quality. (pg 54) Requires development to retain and/or enhance identified landscape features and characteristics. The scheme has been identified to conflict significantly with section i). The impact of the extent of plot coverage and layout of the development compromises the opportunity to enhance existing landscape and successfully integrate the new development in-to the local landscape context.
- 6.59 HOU2 – Affordable Housing. (pg.61) The scheme meets the 11 unit or more threshold, requiring provision of 35% of the scheme as affordable housing, the policy also sets the Councils required tenure mix. The scheme has not met the requirement of 35%, 9 units, to be provided as affordable housing.
- 6.60 The policy accepts that scheme viability will be taken into account. The reason for refusal was based on an offer of 0% affordable housing against the Councils assessment that the 35% requirement could be met. The Appellant has reviewed their viability appraisal to offer 3 units as affordable housing, circa 12%. Mr Castle's evidence shows that there is sufficient viability for the scheme to make a better contribution. As such the proposal does not accord with the policy and also conflicts with the social objective of sustainable development and the policies on affordable housing in Section 5 of the NPPF.
- 6.61 STR1 – Achieving Sustainable Development. (pg.24) Expects all development to make a positive social, economic and environmental contribution to community and business life in the plan area.

- 6.62 The scheme is considered to comply with the first (unnumbered) section as it delivers development within a settlement boundary, in a manner that is appropriate for and proportionate to the nature and size of the settlement, where there is sufficient supporting infrastructure, this weighs in favour of the scheme and contributes positively to achieving sustainable development.
- 6.63 Subsection i), due to its proximity to the local centre in Dibden Purlieu and town centre in Hythe as well as education and health services supporting residents, the site is sustainable and accessible. The development proposes a mix of 2, 3 and 4-bed units, there is likely to be a mix of values associated with outlook, garden size and parking arrangements. There would be a mix of affordable housing tenure provided on-site, however it is the Council's case that the Appellant's offer does not accord with the site's ability to contribute towards the full spectrum of local housing needs at all stages of life.
- 6.64 The recently adopted development plan has a strategy to significantly increase the delivery of homes in a manner that accords with this strand of the policy. The scheme does not readily support the strategy as identified, but nevertheless does provide housing within a top tier settlement.
- 6.65 This makes a minor positive contribution to the delivery of a sustainable development.
- 6.66 Subsection ii), due to the size, scale and layout of the proposed scheme and its design, the scheme fails to take a context-led approach to its siting and layout, that fails to maintain local distinctiveness, fails to create a high quality landscape and townscape and amenity value of the locality. However it's location safeguards Green Belt, AONB, local heritage assets and the purposes of the National Park and the amenity value of the wider plan area.
- 6.67 This has been clearly articulated above in consideration of the failure to comply with Policies ENV3, ENV4 and D1 and in the proof of Mr Payne.
- 6.68 This has a significant negative contribution to the delivery of a sustainable development.

- 6.69 Subsection iii), the scheme would deliver bio-diversity net gain off-site. Recreation and air quality impact on protected habitats in the New Forest and Solent, arising from the development leading to likely significant effects, are capable of being mitigated and it is expected that a legal undertaking will be presented to the inquiry.
- 6.70 The negative contribution of the development to water quality in the Solent, by way of additional nutrient rich waste water would also give rise to likely significant effects. Mitigation projects are available to offset the impact and the LPA would be content with the proposed Grampian condition, however should that approach be deemed unacceptable then likely significant effects could not be ruled out.
- 6.71 Should the appropriate mitigation be secured the scheme would comply with this strand of the delivery of a sustainable development.
- 6.72 Subsection iv), the scheme does not deliver development that generates economic growth or investment but does delivers residents in close proximity to services and facilities, that would contribute to the vitality and viability of the town and those services and reduce reliance on the private car.
- 6.73 Short term temporary employment benefits would arise during construction and unquantifiable employment in gardening or general household maintenance and clean could occur, however these are not growth generating forms of employment that the Local Plan promotes.
- 6.74 Overlapping with i) the benefit of the location within the identified settlement a minor positive contribution would be made, by the scheme, towards this strand of delivering a sustainable development.
- 6.75 Subsection v), residents would be safe from flooding, pollution and climate change. It is not clear how the drainage needs of the development would be achieved, however it would be unlikely to place residents at material risk of harm from flooding.
- 6.76 It is acknowledged that as a residential scheme in a largely residential area the scheme would not involve activities at odds with those prevailing, requiring consideration.

- 6.77 In this respect the development would be neutral towards achieving a sustainable development.
- 6.78 Subsection vi), it is not explicit in the documents supporting the scheme what, if any, future proofing has been embedded in the scheme.
- 6.79 Whilst not readily an innovation in transport technology, the significant shift in technology supporting 'home shopping' in recent years has dramatically increased the number of delivery vehicles visiting residential areas. The layout of the scheme would accommodate those delivery vehicles.
- 6.80 In this respect there is a neutral contribution towards delivering a sustainable development.
- 6.81 The combined effect of these considerations presents a scheme with minor economic and social benefits, but even after taking account of the location and need for housing, a scheme with significantly negative environmental consequences. The scheme therefore does not comply with Policy STR1.
- 6.82 Delivery of sustainable development underpins the planning system, in this case the very strong conflict with policies ENV3, HOU2, CS7 and Neighbourhood Plan policy D1, along with the minor conflict with ENV4, Neighbourhood Plan policies WEL1 and F3 contribute to the failure of the scheme to comply with STR1 and would not deliver a sustainable development, such conflict outweighs the benefits arising from compliance with those policies considered above at **6.1 – 6.25**.
- 6.83 Whilst that indicates the appeal should be refused for failing to accord with the development plan, the decision maker should consider any material considerations that may also add weight to the case.

Other Material Considerations.

- 6.84 Due to the location of the site, any scheme proposing new housing would accord with the strategic principles of the NPPF, in the same way as the scheme accords with Local Plan policies STR2-5. Broad compliance with NPPF para's 60-62 and 69 weigh in favour of the scheme.

- 6.85 However the importance of delivering a well designed place, that responds to local context, has the support of a community with a neighbourhood plan, in accordance with para's 14, 119, 127 & 128 of the NPPF that the scheme fails to achieve would outweigh those benefits, and demonstrate the importance design in the delivery of a sustainable development.
- 6.86 The Proof of Mr Callaway highlights the failure of the scheme to fully assess options for use of sustainable drainage. In doing so the scheme fails to implement the drainage hierarchy advocated by the PPG and the requirement of para.169 of the NPPF.
- 6.87 As presented by Mr Payne the design of the scheme not only conflicts with Local Plan policy ENV3 but does not follow the guidance published by the Council in its Housing design, density and character SPD.
- 6.88 The scheme is accepted as being in accordance with aspects of the SPD, however taking the SPD as a whole, the scheme would not comply with it sufficiently to be in accordance with it, especially as the resultant scheme is unacceptable, for the scheme to be in accordance with the SPD.
- 6.89 Furthermore conflict with the SPD also brings the scheme in to conflict with paras. 124 d) and 130 of the NPPF, a conflict that at para.134 directs the decision maker to refuse permission.
- 6.90 The affordable housing offer made in support of the Appeal scheme complies with the requirement of para.65 of the NPPF, which weighs in favour of the scheme, however against the evidence of Mr Castle, the proposed offer fails to comply with the Local Plan policy, as such the benefit should only be afforded moderate weight.
- 6.91 In light of the position agreed at para **8.3** to the SofCG (**CD 8-1**) that a 5year housing land supply cannot be demonstrated at this time application of the presumption in favour of sustainable development is accepted.
- 6.92 The Council considers that the proposed habitats mitigation would satisfy the requirements of the legislation and NPPF para.182. However, if the Inspector should

disagree, then it is considered that footnote 7 to para 11 would be engaged and the appeal would have to be dismissed as directed by para.180 a).

- 6.93 The benefits of the scheme are identified above at 6.1 – 6.25 above. Whilst they contribute to delivering economic, environmental and social benefits, the harm arising from the scheme, identified in the Councils case would significantly and demonstrably outweigh the benefits.

7.0 Conclusions

- 7.1 This proof has set out that the appeal scheme would not deliver sustainable development, a requirement at the heart of the planning system.
- 7.2 The supporting specialist proofs of evidence demonstrate the poor design, including lack of amenity space and space to achieve a landscape setting to integrate the scheme with its setting, would conflict with adopted policies, guidance and constitute poor design. As directed by the NPPF this should in itself be reason to dismiss the appeal.
- 7.3 Mr Callaway has demonstrated that the scheme has failed to meet the requirements of the drainage hierarchy, conflicting with the ability of the scheme to be sustainable.
- 7.4 Whilst the Appellant has made an Affordable Housing offer, that offer falls short of the policy expectations and the Councils assessment of the scheme viability.
- 7.5 In making that offer, the Council is being invited to accept a poorly designed scheme without receiving all of the benefits that such a scale of development should deliver.
- 7.5 There are no other material considerations that would direct the Inspector away from determining the appeal in accordance with the development plan.
- 7.6 The Inspector is respectfully requested to support the Local Planning Authority, by resisting this unsustainable development, protect the distinctiveness of this area and not support development that fails to comply with the adopted development plan, by dismissing this appeal.