

**TOWN AND COUNTRY PLANNING ACT
1990 (AS AMENDED)**

**STATEMENT OF HAVANT BOROUGH
COUNCIL**

**Land adjacent to 27 Emsworth Road,
Havant, PO9 2SN**

**Local Planning Authority Reference:
APP/22/01194**

**Planning Inspectorate Reference:
APP/X1735/W/23/3328946**

HAVANT BOROUGH COUNCIL

TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)

APPEAL BY Mr Brian Long AGAINST REFUSAL to grant permission for:

Erection of 1No two-storey building comprising 2No studio apartments (Use Class C3) with associated hard landscaping.

Planning Inspectorate Reference: APP/X1735/W/23/3328946

Local Planning Authority Reference: APP/22/01194

1 Site Description

- 1.1 The site is located in a residential area of Havant on Emsworth Road, adjacent to a public house to the east and a block of 15No. two storey flats to the west. To the rear of the site is an area of gravel with washing lines used by the residents of the flats to the west, Bernard Powell House.
- 1.2 The site boundary to the west is a very low brick wall approximately 0.3 metres in height. Adjacent to this site boundary is a concrete footpath that provides residents of Bernard Powell House with access to the rear of the flats. The low brick wall continues along the northern site boundary to adjoin the eastern boundary. This eastern site boundary is an approximately 2-metre-high brick wall beyond which the side elevation is The Wheelwrights Arms. The Wheelwrights Arms has a first floor window and a door which overlook the site.
- 1.3 There is an area of land, of approximately 8 metres in depth, directly adjacent to the unmarked front boundary of the site and the public footpath. This land is not within the ownership of applicant and contains a road-side advertisement hoarding of approximately 11m in length and 5m in height.

2 Planning History

APP/10/00598 - Erection of 2No. 1 bed flats. (Resubmission.) REFUSED 18/11/2010

The reasons for refusal were:

1. Overdevelopment of the site which would have an adverse effect on the amenities of the occupiers of the proposed flats. The proposed layout would also result in inadequate cycle provision.
2. The proximity of the windows which serve main habitable rooms within the front elevation of the development to the advertisement hoarding located directly in front of the southern boundary of the site would severely affect the outlook from and light available to the future occupiers of both units. The location of the advertisement hoarding would also restrict the cycle and pedestrian access to the site.
3. Contribution towards the Hampshire County Council Transport Policy not met.
4. The proposed design and external appearance of the building is not of sufficient quality and would be detrimental to the visual amenities of the streetscene.

3 The Appeal

- 3.1 The appeal is for the erection of 1 No two-storey building comprising 2 No studio apartments (Use Class C3) with associated hard landscaping. The studio on the ground floor would be open plan with a living room, kitchen/dining room, bathroom and an external courtyard area. The studio on the first floor would also be open plan with a living room, kitchen/dining/bedroom room, bathroom and an external balcony.
- 3.2 As mentioned in Section 2 planning permission was refused for the erection of 2 No. 1 bed flats under planning reference APP/10/00598. Please see Appendices C, D, E and F for the Decision Notice, Block Plan, Elevations and Floor Plans respectively. This scheme differs from the previous having a different external appearance, internal layout and outdoor amenity space. It is worth noting this appeal raises different policy considerations following the adoption of the Havant Borough Core Strategy (2011), Havant Borough Design Guide SPD (Partially updated September 2019) and Havant Borough Council Parking SPD (2016).

4 Planning Policies

National Planning Policy Framework
Havant Borough Council Borough Design Guide SPD December 2011
Havant Borough Council Parking SPD July 2016

Havant Borough Local Plan (Core Strategy) March 2011

CS11 (Protecting and Enhancing the Special Environment and Heritage of Havant Borough)
CS16 (High Quality Design)
CS21 (Developer Requirements)
CS9 (Housing)
DM13 (Car and Cycle Parking on Residential Development)

Havant Borough Local Plan (Allocations) July 2014

AL1 (Presumption in Favour of Sustainable Development)
DM24 (Recreational Disturbance to Special Protected Areas (SPAs) from Residential Development)
AL2 (Urban Area Boundaries and Undeveloped Gaps between Settlements)

5 Planning Considerations

- 5.1 To avoid repetition, the attached Officer's report (Appendix A) sets out in detail the planning position of the Local Planning Authority (LPA) in respect of the appeal. The Inspector's attention is drawn in particular to paragraphs 7.1 – 8.2 in the report, where the key issues are set out.

6 Overall Conclusions

- 6.1 The scheme conflicts with the development plan as a whole and the National Planning Policy Framework. As such the Inspector is requested to dismiss the appeal.

7 Reasons for Refusal

- 1 The proposal is considered to be an overdevelopment of the site due to its cramped and congested layout on a site of insufficient size, which would result in poor living conditions for future occupiers. This would be contrary to Policy CS16 of the Havant Borough Council Core Strategy (2011) and the National Planning Policy Framework.

- 2 The proposed is considered to appear incongruous and the available glimpses of the building behind the hoarding would be an inappropriate form of development. This would be contrary to Policy CS16 of the Havant Borough Council Core Strategy (2011) and the National Planning Policy Framework.
- 3 The close proximity of the hoarding to the south of the proposal would have a significantly and demonstrably unacceptable impact on the living conditions of the future occupiers of the units by reason of overshadowing/loss of natural light and poor outlook. This would be contrary to Policy CS16 of the Havant Borough Council Core Strategy (2011) and the National Planning Policy Framework.
- 4 In the absence of a suitable agreement to secure appropriate mitigation measures, the development would be likely to have a significant effect on the Solent European Sites as specified in the Habitats Regulations Assessment that has been undertaken in relation to this planning application. The development would be likely to result in increased recreational pressures from future residents and impact on the water environment and as such, it is contrary to Policy DM24 of the Havant Borough Local Plan (Allocations Plan) 2014, policies CS11 and CS21 of the Havant Borough Local Plan (Core Strategy) 2011, The Conservation of Habitats and Species Regulations 2017 (as amended) and the National Planning Policy Framework.

8 **Appellant's Statement**

- 8.1 With regards to the Appellant's Appeal Statement, the points raised will be covered below. The LPA reserves the right to comment further if new material planning considerations are raised by the Appellant.
- 8.2 With regards to reason for refusal one: 'overdevelopment' in Appellant's Appeal Statement it argues the proposed development would not result in the overdevelopment of the application site due to the type of dwelling proposed. Whilst it is acknowledged 2 No.1 bedroom studios would require less amenity space than a two storey dwellinghouse, the proposed development would have a large footprint in relation to the size of the application site. As such, it would have a cramped and congested layout. Furthermore, the appeal would offer limited outdoor amenity space in the form of a ground floor courtyard and first floor balcony. Whilst an adopted minimum space standard for external amenity spaces for flats has not been adopted by the Council, when assessing this against Policy CS16 of the Havant Borough Council Core Strategy (2011) which promotes high quality development it would not comply with the criteria. The scheme would offer poor living conditions to the future occupiers of the studio flats, especially at ground floor level which would be partly overshadowed by the first-floor balcony.
- 8.3 It is acknowledged the Council has a flexible approach to densities in different areas as stated within the Havant Borough Design Guide SPD. Within town centres densities maybe at a higher density than say a site on the edge of the countryside. Whilst it is acknowledged within the Officer Report the site is in a sustainable location, the appeal site is located outside Havant Town Centre Public Transport Accessibility Boundary. Therefore, adequate amenity space should be provided for the occupiers.
- 8.4 Within the Appellant Statement it refers to a three-storey mixed use development comprising several commercial units at ground floor and residential apartments above, located at 44 – 54 West Street, Havant, PO9 1PG, granted planning permission (ref no: APP/10/00992) by the Council in February 2011. The scheme does offer a lack of amenity space for several flats however, this scheme differs from the appeal here due

to a number of reasons. Firstly, the site was located within Havant Town Centre thus allowing higher levels of density than the appeal site. Secondly, planning permission was granted in February 2011 which was before the Council adopted the Havant Borough Core Strategy March 2011, Havant Borough Local Plan (Allocations) 2014 and the Havant Borough Design Guide SPD December 2011. Therefore, different policy considerations were made at the time.

- 8.5 There is a recent example of a planning refusal and appeal dismissal at 57 London Road, Cowplain, Waterlooville, PO8 8UJ under planning reference APP/21/00433. The proposal was for the erection of a pair of semi-detached 1 bed dwellings, following demolition of existing wall with associated parking and access. The reason for refusal was because the proposal would constitute an undesirable overdevelopment of the site and appear cramped and have a contrived layout not in character with the pattern of development in the locality. It goes on to say the proposal would have an adverse effect on the character of the area and also the lack of any private garden amenity area and poor outlook from habitable rooms would result in unacceptable living conditions for future occupants/owners of the proposed dwellings. The Planning Inspector agreed with this assessment. Please see Appendix G, H and I for the Appeal Decision, Location Plan and Block Plan and Proposed Floors Plans respectively. This example is a similar case to this appeal and shows it is appropriate for refusal on grounds of overdevelopment and providing poor living conditions for future occupiers.
- 8.6 The Officer Report considers the appeal is within a sustainable location, hence not listed as a reason for refusal. However, this does not detract from the appeal site having a cramped and congested layout, whilst offering limited and 'low quality' amenity space. The LPA disagree that one of hallmarks for overdevelopment is overlooking. They are considered to be two separate entities which need to be considered during the planning process.
- 8.7 In summary to reason 1 for the refusal, the points raised above shows the proposed development would result in an overdevelopment of the site, which is limited in size offering unacceptable amenity space for the future occupiers, contrary to Policy CS16 of the Havant Borough Core Strategy (2011) and the National Planning Policy Framework.
- 8.8 Within regards to reason for refusal two: 'impact on character' in Appellant's Appeal Statement it argues that just because the proposed building is partially obscured by the advertisement board it does not mean it will appear incongruous or inappropriate. They refer to an example across the road of the application at Grove House, 4 Emsworth Road which has a two metre tall hedgerow to the front of the house. This example is not considered relevant as there is no control on hedgerows within residential curtilages and it offers a form of green infrastructure which is visually seen as more attractive than the advertising board.
- 8.9 It is acknowledged that views of the proposed building will change depending on the angle viewed upon. This is mentioned with the Officer's report in paragraph 7.11. The appellant argues the proposed building would provide a greater degree of visual interest and improve the aesthetic qualities of the street scene. This would not be the case due to the available glimpses of the building behind the hoarding which would appear as an inappropriate form of development out of keeping with the character of the area. The current site is not considered to contribute to an unattractive form of development being mostly screened by the existing advertisement board.

- 8.10 Whilst it is considered the proposed building in itself would fit within the street scene, due to it being placed behind the hoarding it would appear out of keeping to the character of the area and as such be an inappropriate form of development contrary to Policy CS16 of the Havant Borough Core Strategy (2011) and the National Planning Policy Framework.
- 8.11 With regards to reason for refusal three: 'impact on amenity' in Appellant's Appeal Statement it argues the proposed apartments would have an acceptable outlook and natural light due to their layouts being dual aspect and angled windows directing views away from the advertisement board. This has been partly covered within paragraph 7.19 of the Officer's Report. Due to the proposal's close relationship to the board and its orientation, it would result in limited natural light and outlook for future occupiers. This would be contrary to Policy CS16 of the Havant Borough Core Strategy (2011) and the National Planning Policy Framework.
- 8.12 In terms of the shadow studies provided it can be interpreted that between the times of 12-3 pm in spring and autumn there would be some overshadowing to the front windows of the proposed apartment. This is considered to be prime time for natural light which would not be achieved. Despite being dual aspect due to the windows to the rear being north facing they are not considered to receive adequate natural light to be given sufficient material consideration.
- 8.13 In summary, the proposed development due to its close proximity to the hoarding to the south would have a significantly and demonstrably unacceptable impact on the living conditions of the future occupiers of the units by reason of overshadowing/loss of natural light and poor outlook. This would be contrary to Policy CS16 of the Havant Borough Core Strategy (2011) and the National Planning Policy Framework.
- 8.14 With regards to reason for refusal four: 'Impact on European Sites' The Applicant has now entered into the legal agreement and made payment for the Unilateral Undertakings. Please see Appendix J. As such the LPA withdraws this reason for refusal. An unredacted copy of the signed Unilateral Undertaking and confirmation of payment has been sent to the Inspector separately.
- 8.15 With regards to the planning balance the LPA disagrees with the Appellant's argument that the tilted balance applies here. Whilst it is noted the Council have below the five-year Housing Land Supply figure at 1.81 years (see Appendix B) and this scheme would provide a very modest contribution to the housing supply to which modest weight is given, when balancing the competing aims and having due regard to the advice in the National Planning Policy Framework at paragraph 11d, the adverse impacts of the proposal outlined above significantly and demonstrably outweigh the benefits. Therefore, the Inspector is requested to dismiss this appeal.

9 Suggested Conditions

- 9.1 Notwithstanding the LPA's continuing objection to the proposal, if the Inspector is minded to grant the appeal a list of suggested conditions are below:

Condition 1

The development must be begun not later than three years beginning with the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

Condition 2

The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Location Plan - 22.3361.100 P1

Proposed Site Location Plan - 22.3361.100 P4

Proposed Plans and Elevations - 22.3361.101 P5

Cover Letter

Planning, Design and Access Statement

Proposed Shadow Study Analysis (1)

Proposed Shadow Study Analysis (2)

Proposed Shadow Study Analysis (3)

Proposed Shadow Study Analysis (4)

Condition 3

No above ground works shall commence until samples and details of all external facing and roofing materials shall be submitted to and approved by the Local Planning Authority. Thereafter only such approved materials and finishes shall be used in carrying out the development.

Reason: To ensure the appearance of the development is satisfactory and having due regard to policies CS11.4, CS16 and DM9 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

Condition 4

Prior to commencement of the development, a noise assessment shall be submitted to the Council for approval of external noise levels including reflected and re-radiated noise and details of the sound insulation of the building envelope, orientation of habitable rooms away from major noise sources and of acoustically attenuated mechanical ventilation as necessary to achieve 'Good' internal room- and (if provided) external amenity noise standards in accordance with the criteria of BS8233:2014. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.

Reason: To ensure that the amenity of occupiers of the development site is not adversely affected by noise from transport & commercial noise sources having due regard to policies CS16 and DM10 of the Havant Borough Core Strategy (2011).

Condition 5

Prior to commencement of the development, details shall be submitted to and approved in writing by the Council, of an enhanced sound insulation value $D_{nT,w}$ and $L'_{nT,w}$ of at least 5dB above the Building Regulations value, for the floor/ceiling /wall structures separating different types of rooms/ uses in adjoining dwellings, namely

living room and kitchen above bedroom of separate dwelling. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.

Reason: To ensure that the amenity of occupiers of the development site is not adversely affected by noise having due regard to policies CS16 and DM10 of the Havant Borough Core Strategy (2011).

Condition 6

No development shall commence, including any demolition and site clearance works, until a Construction Management Plan (CMP), to include details of: (a) provision of boundary hoarding; (b) hours of operation; (c) means to control dust and emissions to air; (d) means to control noise and vibration has been submitted to, and approved in writing by, the Local Planning Authority. The CMP should be in accordance with the GLA's Supplementary Planning Guidance 'Control of Dust and Emissions during Demolition and Construction'. The development shall be constructed in accordance with the approved statement.

Reason: To ensure that the proposed development does not have a significant adverse impact on the amenities of nearby residential properties and to minimise the impacts on local air quality having due regard to policies CS16 and DM10 of the Havant Borough Core Strategy (2011).

Condition 7

Details of any external lighting of the site shall be submitted to, and approved in writing by, the Local Planning Authority prior to the commencement of the development. This information shall include a layout plan with beam orientation and a schedule of equipment in the design (luminaire type, mounting height, aiming angles and luminaire profiles). The lighting shall be installed, maintained, and operated in accordance with the approved details unless the Local Planning Authority gives its written consent to the variation.

Reason: To protect the appearance of the area, the environment, and local residents from light nuisance having due regard to policies CS16 and DM10 of the Havant Borough Core Strategy (2011).

Condition 8

Prior to the occupation of any relevant part of the permitted development, EITHER of the following shall be submitted to the Local Planning Authority;

- A) A written statement confirming that no suspected contamination was identified during development, OR;
- B) Documentation in accordance with 1) & 2) above; together with a Verification Report (where appropriate) which demonstrates that the agreed remediation objectives (3)) have been met.

Reason: Site investigation has identified that discrete deposits of contaminating material / contaminated soils may be present at the site which could pose a risk to future occupiers of the site or to the local water environment. This is in line with DM10 of the Havant Borough Local Plan (Core Strategy) 2011, DM17 of the Havant Borough

Local Plan (Allocations) [2014], and paragraphs 183-185 of the National Planning Policy Framework 2021."

Condition 9

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; and
- (b) All measures necessary to meet the approved water efficiency calculation have been installed.

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. In compliance with Regulation 63 of the Conservation of Habitats and Species Regulations 2017, the local planning authority has a duty to ensure that sufficient mitigation is provided against any impacts which might arise upon the designated sites. In coming to this decision, the Council has also had regard to Policy CS11 of the Havant Borough Local Plan (Core Strategy) 2011.

Condition 10

At all times following occupation of the development hereby approved, all measures for water usage within the submitted nutrient budget shall be maintained in the development in perpetuity.

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. In compliance with Regulation 63 of the Conservation of Habitats and Species Regulations 2017, the local planning authority has a duty to ensure that sufficient mitigation is provided against any impacts which might arise upon the designated sites. In coming to this decision, the Council has also had regard to Policy CS11 of the Havant Borough Local Plan (Core Strategy) 2011.

Appendices

- (A) Officer's Delegated Report
- (B) Five Year Housing Land Supply Update March 2023
- (C) APP/10/00598 Decision Notice
- (D) APP/10/00598 Block Plan
- (E) APP/10/00598 Elevations
- (F) APP/10/00598 Ground and First Floor Plans
- (G) APP/21/00433 Appeal Decision
- (H) APP/21/00433 Location Plan and Block Plan
- (I) APP/21/00433 Proposed Floor Plans
- (J) Unilateral Undertaking and mitigation payment