
Site Address: 95 North Street, Emsworth, PO10 7PQ
Proposal: Removal of conditions 5 and 6 of Planning Permission APP/17/00567 relating to alterations to the external fenestration on the south and north elevations to allow for the changes to the internal layout.
Application Type: Variation/Relief of Condition
Application No: APP/22/00153 Expiry Date: 04/07/2022
Applicant: Mr Howells
 Emsbourne Developments Ltd
Agent: Miss White Case Officer: Joseph Toole
 Helyer Davies Architects Ltd
Ward: Emsworth

Recommendation: **GRANT PERMISSION**

1 Site Description

The application site is located on the corner of North Street and Sultan Road in Emsworth. The entrance to the Emsworth railway station is located opposite to the site. The area is characterised by mainly Victorian style terrace housing along Sultan Road and North Street. A number of the properties on North Street, including the adjacent neighbour at No. 93 have been subdivided into two flats. Parking is predominantly on street.

2 Relevant Planning History

APP/17/00567 - Demolition of existing rear outbuildings, erection of 2No. 2 bed dwellings (Revised submission).(06.11.17). Request to discharge conditions 3,7 & 9. (10.02.21)., PERM,06/11/2017
APP/18/00665 - Demolish existing outbuildings to ground/first floor at rear of site and construct 2No. new two bedroom houses with off road parking., REF,22/08/2018
APP/19/01238 - Non material change relating to reduction in width of plot from 11.65 m to 9.95 m., PERM,17/01/2020
APP/21/00347 - Application for Non-material amendment to Planning Permission APP/17/00567 relating to alterations to the external fenestration on the south and north elevations to allow for the changes to the internal layout., REF,18/05/2021

3 Proposal

- 3.1 The proposal involves the removal of conditions 5 and 6 of Planning Permission APP/17/00567 relating to alterations to the external fenestration on the south and north elevations to allow for the changes to the internal layout.

For reference condition 5 is worded as follows:

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, (or any order revoking and re-enacting that order, with or without modification), no windows at first or second (roof) floor, other than those expressly authorised by this permission shall, at any time, be constructed in the development hereby permitted.

Reason: *In the interests of the amenities of the occupiers of nearby properties and*

having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

For reference condition 6 is worded as follows:

Notwithstanding the provisions of any Town and Country Planning (General Permitted Development) Order 2015, prior to first occupation of the building the windows on the rear elevation at first floor shall be fitted with textured glass which obscuration level is no less than Level 4 of the Pilkington Texture Glass scale (or equivalent), and shall be non-opening and retained as such thereafter.

Reason: *In the interests of the amenities of the occupiers of nearby properties and having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.*

- 3.2 The application as amended proposes that the first floor windows on the rear elevation be obscure glazed in their entirety, and fixed shut where below 1.7m in height above finished floor level. Two rooflight windows are also shown in the roofslope serving the first floor rooms below.
- 3.3 As well as these changes, the application plans take account of the reduced width of the site reflected in the non-material amendment approval under APP/19/01238.

4 Policy Considerations

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

CS16	(High Quality Design)
CS17	(Concentration and Distribution of Development within the Urban Areas)
CS21	(Developer Requirements)
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)

Emsworth Neighbourhood Plan Post Examination Version 2020

ENP_D1	(General Design Policy)
ENP_D2	(Height, Mass & Materials)
ENP_D3	(Layout, Form & Density)

Listed Building Grade: Not applicable.
Conservation Area: Not applicable.

5 Statutory and Non Statutory Consultations

Councillor Julie Thain-Smith

No Comment.

Councillor Lulu Bowerman

No Comment.

Councillor R Kennett

No Comment.

Natural England

Thank you for your consultation on the above dated 27 September 2021 which was received by Natural England on the same date.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

DESIGNATED HABITATS SITES – NO OBJECTION SUBJECT TO SECURING APPROPRIATE MITIGATION

This advice should be taken as Natural England's formal representation on appropriate assessment given under regulation 63(3) of the Conservation of Habitats and Species Regulations 2017 (as amended). You are entitled to have regard to this representation. With regard to European Sites, Natural England does not object to the granting of this permission subject to the advice given below.

Your appropriate assessment, dated 27th September 2022, concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question. Having considered the assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we concur with the assessment conclusions.

Your authority has measures in place to manage potential impacts through contributions to an agreed strategic solution which we consider to be ecologically sound. Natural England is of the view that if these measures, including contributions to them, are implemented, they will be effective and reliable in preventing harmful effects on the Habitats Site(s) for the duration of the proposed development.

This advice is provided on the basis that all mitigation measures will be secured as planning conditions or obligations by your authority to ensure their strict and timely implementation for the full duration of the development. Your authority should be assured that proposed financial contribution rates are proportionate to the identified effects of the proposed development, suitably precautionary, and in line with the Retail Price Index, where relevant. Provided that your authority is assured and satisfied that the budget calculations are suitably precautionary and accurately reflect the proposal, then Natural England raise no concerns with regard to the nutrient budget.

Please note in future cases where the necessary avoidance and mitigation measures are limited to collecting a funding contribution that is in line with an agreed strategic approach for the mitigation of impacts on Habitats Sites then, provided no other adverse impacts are identified by your authority's appropriate assessment, your authority may be assured that Natural England agrees that the Appropriate Assessment can conclude that there will be no adverse effect on the integrity of the Habitats Sites. In such cases Natural England will not require a Regulation 63

appropriate assessment consultation. However please note it is strongly advised you as competent authority seek your own legal opinion on whether to consult under these circumstances.

For any queries regarding this letter, for new consultations, or to provide further information on this consultation please send your correspondences to consultations@naturalengland.org.uk.

6 Community Involvement

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 25

Number of site notices: One

Statutory advertisement: Not applicable.

Number of representations received: 4

Comment	Officer Comment
Original Plans	
Significant negative impact on our privacy and ability to enjoy our homes and garden.	Amended plans have been provided with all rear first floor windows being obscurely glazed and non opening below 1.7 metres floor level
Bedrooms would have more of an impact on loss of amenity than bathrooms which were originally proposed	The amended plans show the rear windows as serving bathrooms and landing areas only; the bedroom windows all lie to the front of the property
Close proximity	The variation of condition proposed does not alter the physical proximity of the approved development to adjoining properties
Noise concerns	The variation of condition proposed is not considered to result in any noise impacts to neighbouring properties over and above those associated with the approved development
Smell and vibration concerns	These are not material planning considerations for a residential development proposal

7 Planning Considerations

- 7.1 Having regard to the relevant policies of the development plan it is considered that the main issues arising from this application are:

- (i) Principle of development
- (ii) Impact upon the character and appearance of the area
- (iii) Impact upon residential amenity
- (iv) Impact on amenity of future occupants
- (v) Community Infrastructure Levy
- (vi) Compliance with Habitats Regulations and Nutrients Neutrality

(i) Principle of development

7.1 The application site is situated within an urban area where further development is considered acceptable subject to the usual development control criteria.

7.2 In terms of the planning history of the site, the measurements of the site were originally incorrectly estimated and it is actually 1.5 metres less in width than approved under APP/17/00567. This was regularised under non-material amendment permission APP/19/01238. Furthermore, the scheme was not building control compliant, therefore an application has been submitted to amend the internal layout and fenestration of the dwellings. As the site is the same as previously permitted under APP/17/00567 as amended by APP/19/01238, the principle of development for "No. 2-bed dwellings has already been accepted at this site.

(ii) Impact upon the character and appearance of the area

7.3 The proposed changes to the internal layout and fenestration are not considered to have a negative impact upon the character of the area.

(iii) Impact upon residential amenity

7.4 Originally plans were provided showing bedrooms to the rear with some first floor rear windows opening. Due to concerns with overlooking to No.93 North Street this was not deemed acceptable and recommended a similar layout to the previous approval planning reference APP/17/00567. Revised plans were submitted with the bedrooms being placed to the front of the property and bathrooms and the stairs being located to the rear. This is now building control compliant in terms of a means of escape - Approved Document B. The first floor windows facing out onto the rear garden of No.93 would be obscurely glazed and fixed shut with the exception of the two bathrooms windows being opening above 1.7 metres for ventilation. Therefore, no harmful overlooking is considered to be created. It is worth noting there would be two rooflights serving the bathrooms however they would be within the roofslope at a high level within the rooms and thus would not give rise to overlooking. These windows would be controlled in the form of condition that all first floor rear windows are obscurely glazed and non opening below 1.7 metres above floor level to prevent harmful overlooking into the private amenity space of No.93.

(iv) Impact on amenity of future occupants

7.5 The proposed changes to the plans would result in a reduction of internal floor space within the bedrooms. This is not considered to be materially different from the approval under APP/17/00567 thus does not warrant a reason for refusal.

(v) Community Infrastructure Levy

7.6 The CIL rates to be applied to development are set out in the Havant Borough

Community Infrastructure Levy Charging Schedule, which was adopted by the council on the 20th February 2013. This followed two public consultation exercises and an Examination into the Charging Schedule by an independent Examiner. The Examiners Report concluded that the Havant Borough Council Community Infrastructure Levy (CIL) Charging Schedule provided an appropriate basis for the collection of the levy in the borough. The levy is charged at £100 (plus indexation) per square metre on new floorspace (measured as gross internal area) in Emsworth.

- 7.7 In this case the CIL team have advised "*I confirm that the current variation of condition application is not CIL liable as no additional floorspace is being created. The original planning permission was also not CIL liable as the in-use buildings which were demolished had a larger floor area than the new dwellings.*" The applicant has been advised of this accordingly.

(vi) Compliance with Habitats Regulations and Nutrients Neutrality

- 7.8 The site lies within 5.6km of the Chichester and Langstone Harbours SPA and will lead to a net increase in residential accommodation which results in increased recreational pressure on the Solent SPA sites. Havant Borough Council has adopted a planning policy to mitigate against adverse effects from recreational disturbance on the Solent SPA sites, as agreed by the Solent Recreation Mitigation Partnership (SRMP). A European site avoidance and mitigation checklist was submitted with this application.

- 7.9 A Council Occupancy rate calculator and Solent Nutrient Budget calculator were submitted with this application following the latest Natural England guidance. The Council Nutrient Team commented on the application stating there is sufficient capacity within the Council's mitigation scheme for planning application APP/22/00153.

- 7.10 The Council has conducted a Habitats Regulations Assessment (HRA), including Appropriate Assessment (AA), of the proposed development under Regulation 63 of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019. The Council's assessment as competent Authority under those regulations is included in the case file. The screening under Regulation 63(1)(a) found that there was likely to be a significant effect on several Solent European Sites due to both the increase in recreation and the decrease in water quality that would result from the proposed development.

- 7.11 The planning application was then subject to Appropriate Assessment under Regulation 63. This included two packages of avoidance and mitigation packages. The first is a package of measures based on the suggested scale of mitigation in the Solent Recreation Mitigation Strategy. The second is a package of measures based on the Position Statement on Nutrient Neutral Development.

- 7.12 With respect to the Solent Recreation Mitigation Strategy the mitigation package amounts to £1,205,30 and based on the submitted nitrogen budget the water quality mitigation amounts to £2,599,76. The applicant has been sent the appropriate joint agreement and Deed requesting these payments. Full payment has been made.

- 7.13 The Appropriate Assessment concluded that, subject to the securing of these packages through a legal agreement/condition, this is sufficient to remove the significant effect on the SPAs which would otherwise have been likely to occur. The HRA was subject to consultation with Natural England as the appropriate nature conservation body under Regulation 63(3) who have confirmed that they agree with the findings of the assessment and raise no objection on this basis.

8 **Conclusion**

- 8.1 In conclusion due to the minor internal and fenestration changes to APP/17/00567 the application is considered to be acceptable. As this is a S73 application, appropriate conditions need to be brought forward to this application from APP/17/00567; however, no time limit for commencement is required as work is under way on site at the time of drafting this report.
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9 **RECOMMENDATION:**

That the Head of Planning be authorised to **GRANT PERMISSION** for application APP/22/00153 subject to the following conditions:

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

Location and Block Plan - 20165-02B
Floor Plans and Elevations - 20165 105 E

Reason: - To ensure provision of a satisfactory development.

- 2 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no development permitted by Classes A, B, C, D and E, of Schedule 2, Part 1 of the Order shall be carried out without the prior written consent of the Local Planning Authority.

Reason: In the interests of the amenities of the occupiers of nearby properties and having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 3 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, (or any order revoking and re-enacting that order, with or without modification), no windows at first or second (roof) floor, other than those expressly authorised by this permission shall, at any time, be constructed in the development hereby permitted.

Reason: In the interests of the amenities of the occupiers of nearby properties and having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 4 Notwithstanding the provisions of any Town and Country Planning (General Permitted Development) Order 2015, prior to first occupation of the building the windows on the rear elevation at first floor shall be fitted with textured glass which obscuration level is no less than Level 4 of the Pilkington Texture Glass scale (or equivalent), and shall be non-opening below a height of 1.7 metres above finished floor level of the rooms they serve, and shall be

retained as such thereafter.

Reason: In the interests of the amenities of the occupiers of nearby properties and having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 5 Unless otherwise agreed in writing with the Local Planning Authority, the development hereby permitted shall not be occupied until the rear boundary wall between the application site and neighbouring property of 93 North Street has been completed. The wall shall remain in place at all times thereafter.

Reason: This screening is required in order to prevent overlooking into the private amenity areas of 93 North Street, given the positioning of the development, having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011.

- 6 Unless otherwise agreed in writing with the Local Planning Authority, the levels of the development shall accord with those details approved pursuant to Planning Permission APP/17/00567 under Discharge of Condition Notice dated 08 April 2021

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

- 7 Unless otherwise agreed in writing with the Local Planning Authority, the materials to be used in the development shall accord with those details approved pursuant to Planning Permission APP/17/00567 under Discharge of Condition Notice dated 08 April 2021

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

- 8 Unless otherwise agreed in writing with the Local Planning Authority, the arrangements for contractors parking and material storage throughout the implementation of the development shall accord with those details approved pursuant to Planning Permission APP/17/00567 under Discharge of Condition Notice dated 08 April 2021

Reason: To safeguard the amenities of the locality and/or in the interests of traffic safety and having due regard to policies CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

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

dwelling 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.

- 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.