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31<sup>st</sup> March 2023

Dear Sir/Madam

**TOWN AND COUNTRY PLANNING ACT 1990**

**APPEAL BY D & K CONTRACTING SERVICES LIMITED; REF: APP/X1735/W/22/3305931**

**SITE ADDRESS: LAND BETWEEN 26-32 PADNELL ROAD, COWPLAIN, WATERLOOVILLE,  
HAMPSHIRE , PO8 8DZ**

**Response to LPA Statement and Third-Party Representations**

In response to the matters raised in correspondence and in the LPA Statement, the Appellant wishes to make additional comments on the matters raised below.

**Presumption in Favour of Sustainable Development**

As acknowledged in the LPA Statement, the Local Planning Authority (Havant Borough Council), are unable to demonstrate that there is a five-year supply of land for housing. The LPA state in Paragraphs 4.4 and 4.5 of their Statement that the current housing land supply position is has fallen from 3.9 years (with the 20% buffer applied), to 1.81 years.

On this basis, it is concluded that, as an Inspector found at a recent appeal case<sup>1</sup> where the supply situation was at a similarly low level, that the Local Planning Authority is persistently failing to provide the number of homes needed in the area and there is currently no firm plan to rectify that situation.

As a result, Paragraph 11d), of the NPPF is engaged and that as such planning permission for residential development should be granted unless:

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<sup>1</sup> Appeal Ref: APP/C1950/W/22/3294860 (BioPark, Broadwater Road, Welwyn Garden City, Hertfordshire, AL7 3AX), dated 25 August 2022.

- i. *the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed<sup>7</sup>; or*
- ii. *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

Part i. above is not relevant to the consideration of this appeal since this is not identified or designated as an area which merits specific protection on the basis of its value to conservation or heritage.

Part ii. above therefore represents the key starting point for considering whether the proposed development should be approved. The test is essentially whether the adverse impacts of granting planning permission for the development as proposed would have any adverse impacts which would significantly and demonstrably outweigh the benefits (in the form of housing provision), when assessed against the policies in the Framework as a whole.

In the context of a persistent and acknowledged under supply of housing, the LPA would need to be satisfied that the adverse impacts of development are such that these outweigh the provision of housing. This represents a high bar, which it is argued is not met by the reasons for refusal or the justification provided by the LPA as to why development should not be approved.

While the LPA contend at Paragraph 4.5 of their Statement, that the adverse impacts of the development on local character, neighbouring amenity, quality of living, site parking and refuse arrangements, and likely significant effect on Solent European Sites. However, the Appellant does not consider that any adverse impacts of the proposal would significantly and demonstrably outweigh the benefits arising from the development proceeding. Indeed, the Appellant does not consider that there are any such adverse impacts when assessed against the policies in the NPPF (which is the only test set out in Paragraph 11 d, Part ii), or the policies in the Development Plan.

According to the LPA Statement, the LPA considers that policies CS16 and DM13 of the adopted Core Strategy are broadly consistent with the NPPF insofar as these relate to the consideration of matters relating to character and design. While this may be the case, the wording of Paragraph 11 d), Part ii does not make provision for the assessment against Development Plan policies, only relevant policies of the Framework. The relevant considerations are examined in greater detail below.

### **Housing Delivery Test.**

It is also noted that Havant Borough Council is among the 51 Local Planning Authority areas which have failed to deliver 75% of the homes needed in the area over the three-year period up to 2021. The latest results, published in January 2022, confirm that the delivery of housing was substantially below the housing requirement over the previous three years, and that regardless of their consistency or otherwise with the NPPF, the relevant policies of the Development Plan must be considered out-of-date.

Notwithstanding the above, it is considered that the proposed development would be in accordance with Development Plan policy and that the new housing that it would provide would

be an entirety appropriate addition to the housing supply of the Borough and once which represents sustainable development to which the presumption in favour is clearly applicable.

### **Specific Comments on the LPA Statement**

#### *Comments on The Principle of Backland Development*

Paragraph 5.4 is helpful in that it confirms that the LPA has no objection to the height, siting and design of the proposed front two plots which represent logical infill of linear development in terms of the street scene. It is also noted that the LPA continue to insist that the southern side of Padnell Road is strongly characterised by linear development which it suggests is a defining feature, along with long and open gardens. The Appellant considers that this is not such a defining feature of the character of the area that it needs to be afforded protection, or that there are particular benefits associated with maintaining the existing pattern of development in its own right. This is not a designated conservation area or an area where there is a uniformity evident in the townscape which requires that building lines and the position of dwellings remains consistent for the sake of maintaining positive features.

Several recent developments in the vicinity, including at 50 and 111 London Road, and 16 Latchmore Forest Grove (all within 300 metres of the Appeal Site to the north-west), have seen development that has opened up the linear form of development in places along the street frontage and introduced more depth into the plot. These are all examples of where greater densities of development have been provided for and where an alternative to the linear settlement pattern has become established.

These sites are highlighted in red on the diagrams below. Image 1 shows the site at 50 London Road on the right of the picture and 111 London Road on the left. Image 2 highlights the site at 16 Latchmore Forest Grove where backland development has taken place. As highlighted above, all are within 300 metres of the Appeal Site.



**Image 1: 50 and 111 London Road**



**Image 2: 16 Latchmore Forest Grove**

At Paragraph 5.5, the LPA cites Paragraph 124 of the NPPF where Part d), states that: *the desirability of maintaining an area's prevailing character and setting (including residential gardens)...* is an important consideration in determining whether proposals which make efficient land do so appropriately. While it is accepted that maintaining the prevailing character and setting of an area is desirable, there is no significant or demonstrable harm associated with what is proposed, which does not depart so significantly or demonstrably from the prevailing built form to the extent that it is harmful. Indeed, the proliferation of outbuildings is evident throughout the area, and it is often the case, as is evident at 32 Padnell Road, that there is extensive coverage of many gardens by outbuildings. The presence of additional dwellings in locations to the rear of the main frontage of properties at Padnell Road is not considered inappropriate in this context, even if those proposed at the Appeal Site would be two storeys high as opposed to the single storey outbuildings elsewhere in the vicinity.

Paragraph 5.6 highlights Havant Local Plan Policy CS16 which seeks to deliver high quality design. Ultimately the LPA consider that the proposed dwellings towards the rear of the site would not be subservient or subordinate to those at the front of the site, which the LPA consider to be contrary to the linear and frontage pattern and character of development in the area. The Appellant disagrees with the conclusion that the presence of built form of this scale and nature would be so out of character with the prevailing built form in the area that it would be harmful, or that the need to protect any aspect of the character of the area significant and demonstrably outweighs the benefits of the proposal in terms of housing provision.

The LPA also suggest that the proposed dwellings would not be insignificant in height, and that the buildings positioned towards the rear of the site would be similar in scale to the neighbouring property at 32 Padnell Road. The fact that these would not be subservient or subordinate structures to the existing properties fronting onto Padnell Road is evidently the main reason expressed why there would be departure from the prevailing character of the area. However, there is no explicit or implied requirement for any buildings in these locations to display a degree of subservience to those towards the front of the site. Indeed, the policy itself suggests that aspects of the local context should help inform rather than define the features of new development.

It is also the case that the ridge height of the proposed dwellings at Plots 3 and 4 would be 2.7 metres lower than those at the front of the site, and as such there would be a subservient relationship between these and the buildings at Plots 1 and 2.

The Appellant also disagrees with the position set out in Paragraph 5.7 that the hard standing to the front of the site would be out of character or harmful to the character and appearance of the area. The provision of parking as shown on the submitted drawings does not differ significantly from other residential properties in the vicinity, while it is not considered that the frontage area that would be landscaped and defined by boundary treatments that would all enable the creation of attractive features around the margins of the site. These would prevent this part of the site or the plot itself appearing as a 'formal car park' as suggested at Paragraph 5.7.

At Paragraphs 5.8 and 5.9, the LPA state that the proposed development would fundamentally alter the spatial characteristics and setting of the area. The Appellant does not agree with this assessment of the proposal. While there is some consistency in the scale and arrangement of built form in this area of Padnell Road, the appeal proposal would neither depart significantly from the scale and nature of built form in the vicinity, nor would it be harmful to the character and appearance of the area. It is considered that the presence of built form deeper within the site, particularly since there is the capacity to provide this, would be an appropriate form of providing housing which is not fundamentally different to the existing character and setting.

The statement at Paragraph 5.9 that the harm to the character of the area would be so significant that it would outweigh the tilted balance in favour of the development is strongly disputed. As established above, the views towards the site from Padnell Road would give the impression of two dwellings of a similar scale and nature to neighbouring properties. In the event that parts of the houses to the rear of the site are visible, these would only be glimpsed fleetingly from the public realm. In this respect, it is not considered that there is any prospect of significant harm to the character of the area, which is not the subject of any specific designation or protection in townscape terms.

#### *Comments on The Impacts on Neighbouring Amenity*

Paragraphs 5.10 and 5.11 cite the conclusions of Inspectors determining other appeals in the area where it has been found that vehicle movements towards the rear of the site would erode the 'quiet tranquility' of existing rear garden areas.

While it is acknowledged that the presence of an access road adjacent to the boundary of the neighbouring property at 32 Padnell Road would result in changes to the relationship between the

Appeal Site and the neighbouring properties, it is not considered that this would necessarily be harmful in this instance. Indeed, to assert that vehicle movements adjacent to the side elevation of residential properties is as harmful as suggested in the LPA Statement would suggest that any property on a corner plot where the rear garden adjoins the public highway would not be acceptable due to the potential for noise and disturbance to residents using the garden areas. The same would also apply to situations where the side elevations of rear gardens adjoin parking courtyards or driveways. Indeed, were a resident of a dwellinghouse to extend their driveway deeper into garden area, this could conceivably result in a similar level of vehicle movements adjacent to a neighbouring property than the proposed development.

The level of activity that would be associated with two modestly-proportioned dwellings could potentially arise as a result of works that would in some circumstances represent permitted development.

The proposed development would provide four parking spaces for the benefit of residents of the new dwellings at Plots 3 and 4. The traffic movements typically associated with two new dwellings would not be excessive. Any vehicle manoeuvres in this part of the site would involve passing the flank elevation of 32 Padnell Road, which has only one low-level window in this side elevation, which itself is set behind the 1.8m high close boundary fence, and a bathroom window set within the roof slope of the first-floor rear projection. Therefore, in reality, there would be little prospect of significant, direct disturbance to the amenity of residents of this property when this is in use. Furthermore, any vehicles using this short stretch of private access road would do so moving at a low speed. The width of the drive, at 4.0m, would not be so constrained that a car would struggle to negotiate its length.

In relation to the perceived dominance and overbearing relationship of the proposed dwellings which is referred to at Paragraph 5.13, it is not considered that the mere presence of two storey dwellings on the adjacent plot would in itself result in an overbearing relationship with the neighbouring property. Such a relationship as that proposed between the Appeal Site and the neighbouring property to the east is indeed typical of many suburban areas, while the gap between the closest dwellings and the neighbouring properties would help ensure that any harm to amenity is limited or at worst mitigated.

The LPA Statement acknowledges the change in levels and a fall between the neighbouring property at 32 Padnell Road, and Plot 4 of the proposed development, but contrary to the view expressed in the LPA Statement at Paragraph 5.13, this would inevitably provide a degree of mitigation against the presence of built form up to 6.3 metres high. The lower ground level of the area towards the rear (south), of the Appeal Site will inevitably reduce the prospect of the proposed development having an overbearing relationship with the neighbouring property.

It is ultimately not considered that there would be any harm to the amenity of neighbouring properties as a result of the proposed development, but any additional noise or disturbance that may arise or that may affect residential properties in the vicinity would either not be significant or is at very least afforded unnecessarily great weight by the LPA in their assessment of this aspect of the proposals. In either instance, it is not considered that this would represent significant and

demonstrable harm to amenity to the extent that this would conflict with the requirements of Paragraph 124 or Paragraph 130 of the NPPF.

#### *Comments on Living Conditions for Future Occupiers*

Paragraphs 5.15, 5.16 and 5.17 all relate to factors that influence the standards of amenity provided for prospective occupiers. It is not considered that any of these are factors that would be sufficiently detrimental to the standard of amenity that would be provided for prospective residents.

#### *Comments on Highways and Parking Layout*

It is noted that at Paragraphs 5.18 – 5.20, the LPA comment on these matters, and the acknowledgement at Paragraph 5.20 that issues relating to highways, parking, cycle storage and refuse collection could be covered and could be the subject of appropriately worded conditions.

The comment at Paragraph 5.19 that the annotation to the original drawing showing a second car is insufficient to address the full range of outstanding highways matters is not disputed. However, this serves a specific purpose and addresses an apparent shortcoming of a previously submitted plan and serves a specific purpose.

The provision of housing does not necessarily mean that the less fundamental matters such as parking, cycle storage and waste collection point locations could be the subject of subsequent submissions to discharge conditions, as the LPA have suggested in Paragraph 5.20. It is notable that the LPA has suggested a condition (Proposed Condition 5), which would require these details to be submitted and approved in writing before any development takes place. The Appellant agrees that this would be an appropriate means of securing approval for the details of the dropped kerb on to Padnell Road, the width of the carriageway within the site, cycle storage and bin storage facilities.

#### *Comments on Habitats Regulations Assessment and Solent Recreation Mitigation Strategy*

As confirmed by the letter issued by the LPA, dated 29<sup>th</sup> March 2023, the Appellant has provided a signed copy of a Unilateral Undertaking which sets out their obligations to make the necessary payments towards mitigation measures that would address the potential harm arising from the development. The letter from the LPA also confirms that the payment of the required sum of £16,049.50 for providing this mitigation has been received by the LPA.

#### **Third Party Representations**

It is noted that there have been third party representations received in respect of this appeal, and that the complainant has previously submitted representations in relation to the linked appeal at this site. There is little of substance to pass comment on at this stage, other than to respectfully acknowledge their submission.

#### **Conclusion**

On the basis that all of the relevant matters raised in the LPA Statement and Third-Party Representations have been addressed by the above and in the original appeal submission (in the form of the Appellant's Statement of Case and associated appendices), it is not considered that the

there is significant or demonstrable harm arising that would outweigh the benefits of the provision of housing. Harm of this nature to either local character, residential amenity, highways matters or protected sites would not arise. In light of the benefits of the development itself, which would provide well-designed new housing in a sustainable location within the existing urban area, there is no reason why the presumption in favour of sustainable development set out in the NPPF, should not apply. In the context of both a persistent under supply of land for housing and the latest Housing Delivery Test findings, it is respectfully requested that the appeal is allowed and that planning permission for a scheme providing new housing in a highly sustainable location should be approved without delay.

Yours sincerely,

*Mike Spurgeon*

**Mike Spurgeon MRTPI**