

PLANNING APPLICATION RESPONSE OF PLANNING POLICY

Application No:	APP/20/00376
Site Address:	Fowley Cottage, 46 Warblington Road, Emsworth, PO10 7HH
Development:	Nine new dwellings on the site surrounding the retained Fowley Cottage, 2 on the Warblington Road frontage and 7 in the rear garden area (Revised).
Case Officer:	Daphney Haywood
Comments by:	Jade Ellis
Date of Comments:	21 April 2021

Policy Status:

The [Local Plan \(Core Strategy\)](#) and the [Local Plan \(Allocations\)](#), together with the [Hampshire Minerals and Waste Plan](#), provide the development plan for the borough. The [Havant Borough Local Plan](#) (HBLP) was submitted for Examination on the 12th February 2021 and can be afforded limited weight.

The following Adopted Local Plan policies are of particular relevance:

- CS8 – Community Safety
- CS9 – Housing
- CS16 – High Quality Design
- CS17 – Concentration and Distribution of Development within the Urban Areas
- CS19 – Effective Provision of Infrastructure
- CS21 – Developer Requirements
- DM8 – Coordination of Development
- DM10 – Pollution
- DM13 – Car and Cycle Parking in Residential Development
- AL2 – Urban Area Boundaries and Undeveloped Gaps between Settlements

In the Pre-submission Plan the following policies are of particular relevance:

- E1 | High quality design
- E2 | Health and wellbeing
- E3 | Landscape and settlement boundaries
- E11 | Sports and recreation
- H1 | High quality new homes
- H3 | Housing density
- E1 | High quality design
- IN1 | Effective provision of infrastructure
- IN3 | Transport and parking in new development
- E22 | Amenity and pollution
- H13 | Fowley Cottage

Importantly, the [Emsworth Neighbourhood Plan \(ENP\)](#) has also reached an advanced stage of preparation, and the examiner's report was received on 6 January 2020. A referendum is scheduled to take place on 8th July 2021. Planning Practice Guidance indicates that a neighbourhood plan may be given significant weight in decision-making in advance of a referendum.

The following policies from the ENP are of relevance:

- D1 – General Design Policy
- D2 – Height, Mass & Materials
- D3 – Layout, Form & Density
- D4 – Design of Public Spaces & External Areas
- D5 – Integration & Strong Connections
- D6 – Resource Efficiency
- D7 – Mitigate Light Pollution
- L1 – General Housing Policy
- L2 – Housing Mix
- WF1 – Public Enjoyment of the Waterfront

This application is a revised submission following the refusal of planning permission reference APP/19/00623 on 29 April 2020 for the retention of the existing 'Fowley Cottage' dwelling and the construction of 6 No. 5 bed detached dwellings. This scheme has also been subsequently revised since my original comments dated 22nd June 2020, and the commentary below has been updated accordingly.

Principle of Development:

The site lies within the urban area as defined by Policies CS17 and AL2 of the adopted local plan and emerging E3 of the Pre-Submission Local Plan. Policy CS17 caveats that development will be acceptable within the five urban areas of the Borough where it *makes the most effective use of land*. The policy also prioritises previously developed land or underused land or buildings within the urban area. Therefore, development is supported in principle where it can be shown it will make the most effective use of land, subject to other relevant considerations. The acceptability of the principle of development therefore hinges on whether it makes an effective use of land.

The site is identified for about 20 dwellings under Policy H13 in the Submission version of the Plan.

For the purposes of Policy H3 (Housing Density) which is considered in further detail below, residential density is taken as dwellings per hectare across the net developable area. Figure 1 of the [Residential Density Evidence Paper](#) indicates the development elements should be included for gross and net area calculations. In the case of the latter "any significant buffer areas required for landscape, ecological or infrastructure such as underground pipes" should be excluded. It is considered that retained trees and the necessary buffers and root protection zones would qualify within that definition.

For allocations in the Submission Plan, yields were calculated using the net developable area considering any high-level mappable constraints including access, ground conditions, flood risk and contamination. In this case, the Flood Zones 2 and 3 affecting the southern part of the site were taken into account, reducing the net developable area to approximately 1ha. More detailed information was submitted by the applicant during the previous application reference (APP/19/00623) which indicated a developable area of no more than 0.5ha, having regard to the tree constraints and sewer easement. As such, the submitted Local Plan indicates a reduced site capacity of 20 dwellings (from the 40 dwellings included in the [CD09 2019 Pre-Submission Local Plan](#)).

The site yield was calculated by applying 40dph across the developable area accordingly (0.5ha x 40 dph = 20 dwellings).

It is acknowledged the site capacities of allocations are set at 'about' rather than minimums or maximums. This is because depending on the form of development proposed through a planning application, it could be that different numbers of homes are achieved subject to other relevant policies or material considerations in the Plan.

It should also be noted that the application site area differs from the allocation site in the Submission Local Plan. The existing house and tennis courts are excluded from the application red line, of which the submitted application form indicates the site has an area of 0.71 ha (when compared to the 1.1 ha site area identified by the allocation).

Housing Land Supply:

The Council's [Five Year Land Supply Update \(February 2021\)](#) indicates the Council has 4.2 years supply with a 20% buffer applied. This is below the five year supply threshold, and as such there is a presumption in favour of sustainable development (para 11d of the NPPF).

Significantly, however, it does not follow there is a tilted balance in favour of permission being granted – permission should only be refused where the adverse impacts of doing so would significantly and demonstrably outweigh the benefits. It is also noted that the scheme would make an undiscernible contribution to housing land supply in the context of the overall planning balance.

In addition, the Submission Local Plan indicates that the Council would be able to meet its objectively assessed housing need of 10,433 homes with a small buffer of 340 homes (including the Fowley Cottage site which is allocated for 'about 20 dwellings'). The application proposals would potentially reduce the buffer available – the housing numbers for the site allocations in the Submission Plan are however, yet to be fully tested through the Examination process. It is noted the appeal Inspector reference 3252953, gave weight to the very small buffer (51 homes in the proposed changes to the Pre-Submission Plan) in combination with the finite amount of developable land and environmental constraints within the Plan, and the need to secure optimal and increased densities accordingly (paragraph 26). The application proposals for 9 dwellings would marginally reduce the buffer available to 329 homes.

Housing Density:

National Policy Context

The 2019 NPPF includes a specific section on 'Achieving appropriate densities' which contains guidance on how planning policies and decisions should support development that makes efficient use of land (paragraph 122).

Paragraph 123 of the 2019 NPPF is clear that planning policies and decisions avoid homes being built at low densities and seeks to ensure that developments make optimal use of the potential of each site, especially where there is an existing or anticipated shortage of land for meeting identified housing needs. In such cases, the use of minimum density standards should be considered and as a result are being taken forward through the Havant Borough Local Plan 2036.

In addition, part c) under paragraph 123 indicates that local planning authorities should refuse applications which they consider fail to make efficient use of land, taking into account the policies in this Framework. It is noted this represents a step change from the 2012 NPPF which did not include a specific section on 'Achieving appropriate densities' (paragraphs 122-123).

The 2012 NPPF previously stated that planning policies and decisions should encourage the *effective* use of land by re-using land that has been previously developed (brownfield land) (added emphasis) (paragraph 111) as opposed to making ‘efficient’ or ‘optimal’ use of the land. Though it is noted that it did provide for local planning authorities to ‘set their own approach to housing density to reflect local circumstances’ (paragraph 47).

In this particular case, the application site relates to residential garden land which is excluded from the definition of ‘previously developed land’ in Annex 2 of the 2019 and 2012 NPPF respectively. It is noted the 2019 NPPF does not distinguish between previously developed land and undeveloped land in the context of achieving appropriate densities.

Local Policy Context

Policy CS9 of the Adopted Local Plan (Core Strategy) states that planning permission will be granted for housing proposals that will:

“achieve a suitable density of development for the location, taking into account accessibility to public transport and proximity to employment, shop and services in addition to respecting the surrounding landscape, character and built form.”

Paragraph 6.21 of the supporting text indicates that the density of new housing will depend on its design and appropriateness to its location. A range of minimum density thresholds were developed using the Havant Borough Townscape and Seascape Character Assessment and the levels of accessibility to a range of facilities:

High Density	- Minimum of 60 dwellings per hectare
Medium Density	- Minimum of 45 dwellings per hectare
Low Density	- Up to 45 dwellings per hectare

Paragraph 6.22 indicates that where the quality of design justifies it, much higher densities could be achievable. This is likely to be more appropriate in town centres or highly accessible locations. It also notes that seeking higher density in such locations will reduce the requirement for greenfield land release and ensure that more people have excellent access to jobs, public transport, shops and services.

Policy H3 in the emerging Local Plan indicates that residential development must maximise its contribution to addressing housing need in the context of the finite undeveloped land in the Borough. The policy also requires development to provide for a minimum of 40 dph outside of town and district centres and defined opportunity areas. This increases to 55dph within defined ‘opportunity areas’. The [Residential Density Evidence Paper](#) defines opportunities for higher density residential development dependent on accessibility to services that would support future occupants. For Emsworth, this includes shops and services, train station and bus routes. Figure 23 of the plan confirms that the site is partly within the Emsworth opportunity area and partly outside it.

Policy D3 in the emerging Neighbourhood Plan also indicates that development proposals should make the most efficient use of land and be developed at the optimum density. The optimum density should result from a design-led approach to determine the capacity of the site, with particular consideration given to:

- the site context
- its connectivity and accessibility to surrounding areas by walking, cycling and public transport.

It also confirms that residential development that does not demonstrably optimise the density of the site should be refused.

Site Specific Constraints

Paragraph 6.33 of the supporting text for emerging Policy H3 indicates that site-specific constraints and local character may justify a different approach having regard to the site context. In such circumstances, a detailed Design and Access Statement must fully explain the rationale to the proposed approach to the design and layout of the scheme. In this respect, Section 2 of the submitted Design and Access Statement provides an assessment of the site constraints which have influenced the arrangement and design of the proposed houses, including important trees, the extent of flood risk affecting the southern part of the site; sewers, residential amenity of neighbouring occupiers and a restrictive covenant (which would not be a material consideration) on Curlew Close which allows a maximum of 5 dwellings to the south of the existing house.

The submitted Constraints Plan includes a quantitative assessment of the likely developable area which takes into account the site's constraints including easement needed for the sewer, the TPOs and the root protection areas. It is understood the applicant has revised the scheme following the comments of the Arboricultural Officer which suggested a need to reduce the quantum of development on the front (northern part) of the site. The Revised Constraints Plan indicates a maximum deliverable area of 0.478ha. In addition, an additional studio dwelling is proposed within the southern part of the south which would provide a total of 7 dwellings to the south of the existing house. It is understood that this would be achieved by altering the covenant which currently restricts the number of new dwellings which can be accessed off Curlew Close.

Based on the revised Constraints Plan, the northern part of the site has a net developable area of 0.103 ha and the southern part of the site has a developable area of 0.373 ha to provide a total net developable area of 0.476ha. Based on the submitted scheme of 9 dwellings, this would provide a density of about 18.9 dph. However, the northern part of the site falls within the 'area of search for 55 dph' as defined by Figure 23 in the -Submission Local Plan, whilst the southern part of the site would be expected to provide 40 dph under the emerging policy.

It is acknowledged that the northern part of the site is constrained by trees and its capacity is therefore likely to be limited. If 40 dph is applied across the developable area of the southern part of the site, this would equate to around 14.92 dwellings ($0.373\text{ha} \times 40 \text{ dph}$) when compared to the proposed 7 dwellings.

Local character

Whilst it is noted that the street scene character is predominantly large, detached dwellings, with the information available there is a limited justification for the proposed form of development and why it justifies a deviation from the density standard of 40 dph under emerging Policy H3.

The amended development scheme would provide for a total of nine dwellings, of which a greater proportion (four) would be smaller dwellings including four no. 2 bedroom dwellings and a studio (1 bed) which is welcomed. Larger units would include: one 3-bed, and three 4-bed. However, these would be substantial when compared to the Nationally Described Space Standards:

	Floorspace (Gross Internal Area)	Nationally Described Space Standards GIA¹	Comparison
4 x 2-bedroom detached houses	123-170	79 (4 person)	+155-215%
1 x 3-bedroom detached house	247	95 (6 person)	+260%
3 x 4-bedroom detached houses	279	124 (8 person)	+225%

The above table shows that the small dwellings (2 bedroom units) would be at least one and a half, and that two of the 2-beds would be twice the size of NDSS for two-bedroom dwellings. The 3 and 4 bedroom units would be over twice the size when compared NDSS.

It is acknowledged that the front (northern) part of the site and the developable area means that it is unlikely to be capable of accommodating more than two dwellings. However, it is difficult to conclude that the proposals would make an efficient use of available land on the southern part of the site in accordance with Policy CS17. Paragraph 123 section c) of the 2019 NPPF is clear that local planning authorities should refuse applications which they consider fail to make efficient use of land, taking into account the policies in the Framework.

It should, however, be noted that there are other considerations such as local character which may justify an alternative design approach, and this would need to be weighed in the overall planning balance.

Coordination of Development

Policy DM6 of the Core Strategy indicates that development will only be permitted where they do not undermine the future development of adjacent sites. This principle is reinforced by criterion h. of emerging Policy DR1. Paragraph 10.21 of the supporting text in the Core Strategy indicates that

“Development should not be piecemeal or prejudice the potential for the satisfactory development of a larger area. Piecemeal schemes which avoid the need for developer contributions will be refused.”

In this particular case, it is noted the applicant is the current owner of the existing house and the tennis courts are in the same ownership and are to be retained as part of a shared communal facility. It is noted that this could potentially prevent a larger development coming forward and could be seen to circumvent other developer requirements. These are set out in further detail below.

Housing mix and affordable housing

Policy CS9 (as amended by the NPPF) sets out that 30-40% affordable housing should be provided on housing sites of 10 or more dwellings; and that housing proposals will provide a mix of dwelling types, sizes and tenures which help meet identified local housing need and contribute to the development of mixed and sustainable communities. It is considered that the proposed development could potentially create a form of ‘gated community’ and would not support social cohesion with the surrounding area.

¹ Assumes largest number of persons for each dwelling size

Paragraph 6.24 of the Core Strategy states that a mix of dwelling types should be sought from one and two bedroom flats to terrace and larger detached houses. It is noted that the proposal would provide nine detached dwellings.

It is considered, with the available evidence, that the site has the potential to accommodate more development than is proposed. Emerging policies on affordable housing (H2 of the HBLP and L1 of the ENP) and mix (H4 of the HBLP and L2 of the ENP) have a threshold of ten dwellings and so would not apply to the proposal as currently designed.

The Neighbourhood Plan also recognises that the neighbourhood plan area may wish to encourage the provision of more flats and terraced housing which would complement the large number of existing larger detached houses. In this respect, the provision of a proportion of smaller dwellings (1-2 bedrooms) is encouraged, for which there is evidenced demand. It is noted that five of the nine dwellings would fall into this category.

In terms of mix, the Council's [Specialist Housing Analysis](#) indicates that Emsworth has a surplus of 4+ bedroom market properties (25%) relative to assessed need (11.6%) and a deficit of 2 bedroom properties for which there is a clear need (20% stock v 34.2% need).

In addition to the above, the supporting text to Policy H2 (para 6.28) sets out that:

“Housing proposals will be expected to make efficient use of land in line with Policy E1 (High Quality Design). Any proposal that appears to have an artificially lower density in order to avoid the affordable housing requirement may be refused planning permission”.

The latter principle is also set out in Policy DM8 of the Adopted Local Plan.

Design

More generally, both the adopted and emerging local plan require high quality design in all development under policies

- CS16 High Quality Design (Core Strategy)
- E1 High Quality Design (HBLP 2036)

These considerations are reinforced through the Design Policies (D1 to D7 + design checklist) in the Emsworth Neighbourhood Plan.

Health and wellbeing

The Submission Local Plan (E2 and E11)) and the NPPF (paras 96-101) promote achieving health gains through planning decisions. Both (E11 and para 97) set out a presumption against the loss of sports provision. Whilst a private and not public facility, ensuring that it would not be lost through development is considered appropriate in that it would serve to boost healthy living for the proposed occupants. There would be an opportunity to allow public use of the facility though it would appear only to be available to the residents of the development, and potentially those of Curlew Close.

The site also includes common parts, including vehicular and pedestrian access to the southern properties from Curlew Close. At the south of the site there is an access to Chichester Harbour and Footpath 56 (Wayfarers Way), which runs along the coast from Emsworth to Langstone. However, this is private access for use by residents only. Policy E2 of the Submission Local Plan highlights the need to enhance existing and facilitate new opportunities for active travel (walking and cycling) ...by...creating and improving pedestrian and cycle routes linkages within the Borough and to surrounding areas, particularly...along

the coast. The need for a safe and convenient access to Footpath 56 is also highlighted in the allocation for the site (H13). In this respect, it is also noted that criterion f of Policy E1 indicates that the layout should provide safe and convenient access for all users. It is recognised that consideration should be given to the need for natural surveillance and lighting, ensuring that the latter does not adversely affect designated habitats or the landscape.

The Neighbourhood Plan refers to access to the waterfront and recognises the health and leisure benefits that residents can gain from the coastal path. Policy WF1 is clear that any new development on any waterfront site shall provide public right of access to the waterfront. It also indicates that applications should include an appraisal of options for the provision of public spaces and leisure facilities, and must clearly explain how the proposals have taken account of this appraisal. This must be afforded substantial weight.

Development Requirements:

The full set of developer considerations can be found in the emerging allocation policy; please see Policy H13 in the Submission Draft Local Plan. The applicant should ensure these are satisfactorily addressed through assessments of these site issues as part of any planning application.

In addition to the above, emerging policies which are of particular relevance to the proposed development are summarised below:

- **Low Carbon Design** – Residential development is expected to achieve a 19% reduction in Dwelling Emission Rate in accordance with emerging Policy E12.
- **EV Charging Infrastructure** – Electric Vehicle charging infrastructure should be provided for each new residential unit with private off-street parking in line with emerging IN3.
- **Management Plans** – A management plan is likely to be required through a legal agreement to establish the whole life management and maintenance of the common parts within the development.

Parking:

The proposals would need to ensure that appropriate parking provision is provided in accordance with Policy DM13, emerging policy IN3 and the Council's Parking SPD.

Summary:

Emerging policy H3 must be afforded some weight particularly given the clear direction in national policy to optimise the use of land. The NPPF in and of itself is also a material consideration in the determination of planning applications. Whilst the Council is not currently able to demonstrate an up-to-date five year housing land supply position, there is not automatically a tilted balance in favour of permission being granted. Permission should only be refused where the adverse impacts of doing so would significantly and demonstrably outweigh the benefits. In this case, it is noted the scheme would make an undiscernible contribution to remedying the Council's housing land supply shortfall and this should be afforded weight in the overall planning balance accordingly.

The development proposals would provide for a significantly lower density than set out by emerging policies H3 and H13. Paragraph 123 section c) of the 2019 NPPF is clear that local planning authorities should refuse applications which they consider fail to make efficient use of land, taking into account the policies in the Framework. Whilst it is acknowledged that

the northern extent of the site is constrained, it is difficult to conclude that the proposals would make an efficient use of available land on the southern part of the site, by virtue of the scale and massing of the dwellings. The larger (3&4 bed) dwellings which are over 2-2.5 times the size required by space standards, and although effectively “pass” this requirement clearly overachieve at the expense of the density that could be provided on this site. For example, these dwellings could relatively easily be subdivided to provide 2no. dwellings in place of one.

It is also noted that there may be other considerations such as local character which may justify an alternative design approach, and this must be weighed carefully in the overall planning balance. Furthermore, the proposed form of development by virtue of the scale of the dwellings seeks to artificially lower the density of the site, and thereby circumvent the requirements for housing mix and affordable housing. This would result in harm in and of itself reducing the site’s potential to contribute to overall housing land supply and meet the need for housing, including the Borough’s ability to meet affordable housing needs.