

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

**STATEMENT OF
HAVANT BOROUGH COUNCIL**

35 Blackthorn Drive, Hayling Island, PO11 9PA

**Local Planning Authority Reference:
APP/19/01235**

**Planning Inspectorate Reference:
APP/X1735/W/20/3254164**

HAVANT BOROUGH COUNCIL

TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)

APPEAL BY MR ELDNEY AGAINST THE DECISION OF HAVANT BOROUGH COUNCIL TO REFUSE TO GRANT PLANNING PERMISSION FOR Variation of Condition 7 of Planning Permission APP/18/01276 (Erection of 1No.1bed detached bungalow with associated parking and access. New parking layout for 35 Blackthorn Drive) to allow the development to be constructed in accordance with the schedule of materials submitted; and removal of Condition 10 of Planning Permission APP/18/01276 which relates to withdrawal of permitted development rights.

Planning Inspectorate Reference: APP/X1735/W/20/3254164
LPA REF: APP/19/01235

1.0 THE APPEAL SITE AND ITS SURROUNDINGS

- 1.1 The application site comprises of a semi- detached two storey property situated on the south eastern corner of Blackthorn Drive just before the hammer head of the cul-de-sac. The property has an enclosed rear and side garden by 2m close boarded fence. There is an area towards the rear of the garden that has hardstanding and access from Blackthorn Drive and thus can be used for the parking of motor vehicles.
- 1.2 To the rear of the site is No. 19 Kingfisher Close which is a detached single storey dwelling which is well screened from the application site by the hawthorn hedges that forms the rear site boundary treatment.
- 1.3 The site is level and the rear garden is mainly laid to lawn with two large sheds towards the rear. The site is currently spilt in two by means of a 2m boundary fence 10 metres from the rear elevation of the existing dwelling. Within the section of the site adjacent to the boundary is a large storage container and the area for parking.

2.0 PLANNING HISTORY

APP/10/00724 - Construction of 1No. 2 bed bungalow., REF,03/12/2010
APP/14/01148 - Erection of 1No. 1 bedroom detached bungalow with associated parking and access, and new parking arrangement for 35 Blackthorn Road., REF,19/12/2014
APP/15/01365 - Erection of a one bedroom detached bungalow with associated parking and access. New parking layout for 35 Blackthorn Drive (resubmission of APP/14/01148)., PERM,28/01/2016

APP/18/01276 - Erection of 1No.1bed detached bungalow with associated parking and access. New parking layout for 35 Blackthorn Drive. (Renewal of planning permission APP/15/01365)., PERM,24/01/2019

3.0 THE APPLICATION

- 3.1 Variation of Condition 7 of Planning Permission APP/18/01276 (Erection of 1No.1bed detached bungalow with associated parking and access. New parking layout for 35 Blackthorn Drive) to allow the development to be constructed in

accordance with the schedule of materials submitted; and removal of Condition 10 of Planning Permission APP/18/01276 which relates to withdrawal of permitted development rights.

Conditions 7 and 10 read

7- No above ground construction 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 CS16 and DM9 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

10-Notwithstanding the provisions of any Town and Country Planning General Permitted Development Order, no extension, building, structure or roof alteration permitted by Part 1, Classes A, B, C or E of the 2015 Order, as amended, shall be erected within the curtilage of the site without the prior written approval of the Local Planning Authority.

Reason: To avoid an overdevelopment of the site in the interests of the character of the area and amenities of the occupiers of nearby properties and having due regard to policy CS16 and DM13 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2018.

3.2 The application was refused for the following reason:

Having regard to the limited size of the plot and its relation to adjoining development, the extension and alteration of the approved one bedroom dwelling under Permitted Development Rights could be detrimental to the amenities of neighbouring properties. The proposal is therefore contrary to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework .

4.0 **PLANNING POLICY**

4.1 National Planning Policy Framework (the relevant paragraphs are referenced in the later Planning Considerations).

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. [Pre-submission Havant Borough Local Plan 2036](#) (HBLP 2036) was approved by the Council on 30 January 2019 and can be afforded limited weight.

Havant Borough Local Plan (Core Strategy) March 2011

CS14 (Efficient Use of Resources)

CS15 (Flood and Coastal Erosion)

CS16 (High Quality Design)

CS21 (Developer Requirements)

CS9 (Housing)

DM13 (Car and Cycle Parking on Residential Development)

DM8 (Conservation, Protection and Enhancement of Existing Natural Features)

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)

5.0 REPRESENTATIONS

- 5.1 Representation and consultee responses are summarised in the officer's delegated report (Appendix B) and have previously been forwarded to PINS.

6.0 PLANNING CONSIDERATIONS

- 6.1 The attached officer's report (Appendix B) sets out the position of the Local Planning Authority and is considered sufficiently detailed to form the basis of the LPA's Statement of Case. This appeal statement will not duplicate, but will simply provide an update on relevant issues, in particular with regard to the Habitats Regulations, Planning Policy considerations and commentary on the appellants grounds of appeal.
- 6.2 The appeal application sought to vary/remove conditions imposed on Planning Permission APP/18/01276 (Appendix C). An Appropriate Assessment was carried out under APP/18/01276 and the assessment included a package of measures based on the suggested scale of mitigation in the Solent Recreation Mitigation Strategy secured by a legal agreement. The Appropriate Assessment concluded that this was 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 confirmed that they agree with the findings of the assessment. As the required Solent Recreation Mitigation Strategy contribution was paid under APP/18/01276, had the appeal application been approved the contribution would have been carried forward to meet the mitigation requirement of the appeal development.
- 6.3 In respect to water quality the appeal application is for development which already has permission and does not increase the no. of bedrooms proposed nor the floor area. The creation of the new dwelling has already been approved and the only difference relates to the planning condition in respect to permitted development rights and of itself would not necessarily increase population.
- 6.4 However, in response to the Habitat Regulations the Council has now update the Emerging Local Plan. For information the following appendices are attached:
D- Emerging Local Plan Policy EX1
E-Potential effects on SPA of residential development
F- Havant Borough Council's Position Statement on Nutrient Neutral Development

7.0 COMMENTS ON THE APPELLANTS GROUDNS OF APPEAL

- 7.1 In respect to para 2.1 the Council confirms it has no objection to the amendment to condition 7.
- 7.2 With regard to paras 2.3 to 2.4 The Council supports the principle that conditions restricting permitted development should only be imposed in exceptional circumstances and only when such a condition is needed to make the development acceptable in planning terms. The Council maintains that condition 10 is precise and fully relevant. The officer report precisely identifies the aspects of permitted development restricted and why the removal of these rights is necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise; and, reasonable in all other respects in accordance with the 6 tests. In summary given the

siting of the development, the small size of the plot and the proximity (approx. 1m to site boundary) to neighbouring properties at 35 and 36 Blackthorn Drive, the Council maintains that there are exception circumstances in this case and that the condition is required to prevent an over-development of the plot and an adverse impact on neighbouring properties for the reasons set out in the officers delegated report at Appendix B.

- 7.3 In respect to para 2.6, and plot coverage it is relevant to note that the proposed bungalow is a one-bedroom property and therefore not suitable for family occupation, hence a small garden was considered acceptable in this case. In the case of a 2 plus bedroom dwelling, which could accommodate a family, and as set out in the Councils' Adopted Borough Design Guide, para 5.05 In order to maintain a reasonable relationship between new dwellings and neighbouring properties, the following minimum distances should apply:
Garden length should normally allow 10 metres between the dwelling and the boundary.
Such space allows for the often noisy outside activities associated with family occupation. A copy of the Guide has previously been sent to the Planning Inspectorate.
- 7.4 Para 2.9 – 2.11– As the appeal application related to both conditions 7 and 10, and the agent was aware that the Council considered condition 10 necessary the Council considered that the appropriate course of action was to refuse the appeal application, but to make it clear within the officer's report that it had no objection to varying Condition 7 in respect to the materials.
- 7.5 The matters raised in Para 3.2 to 3.12 have previously been addressed above or in the officer's statement.

8.0 CONCLUSION

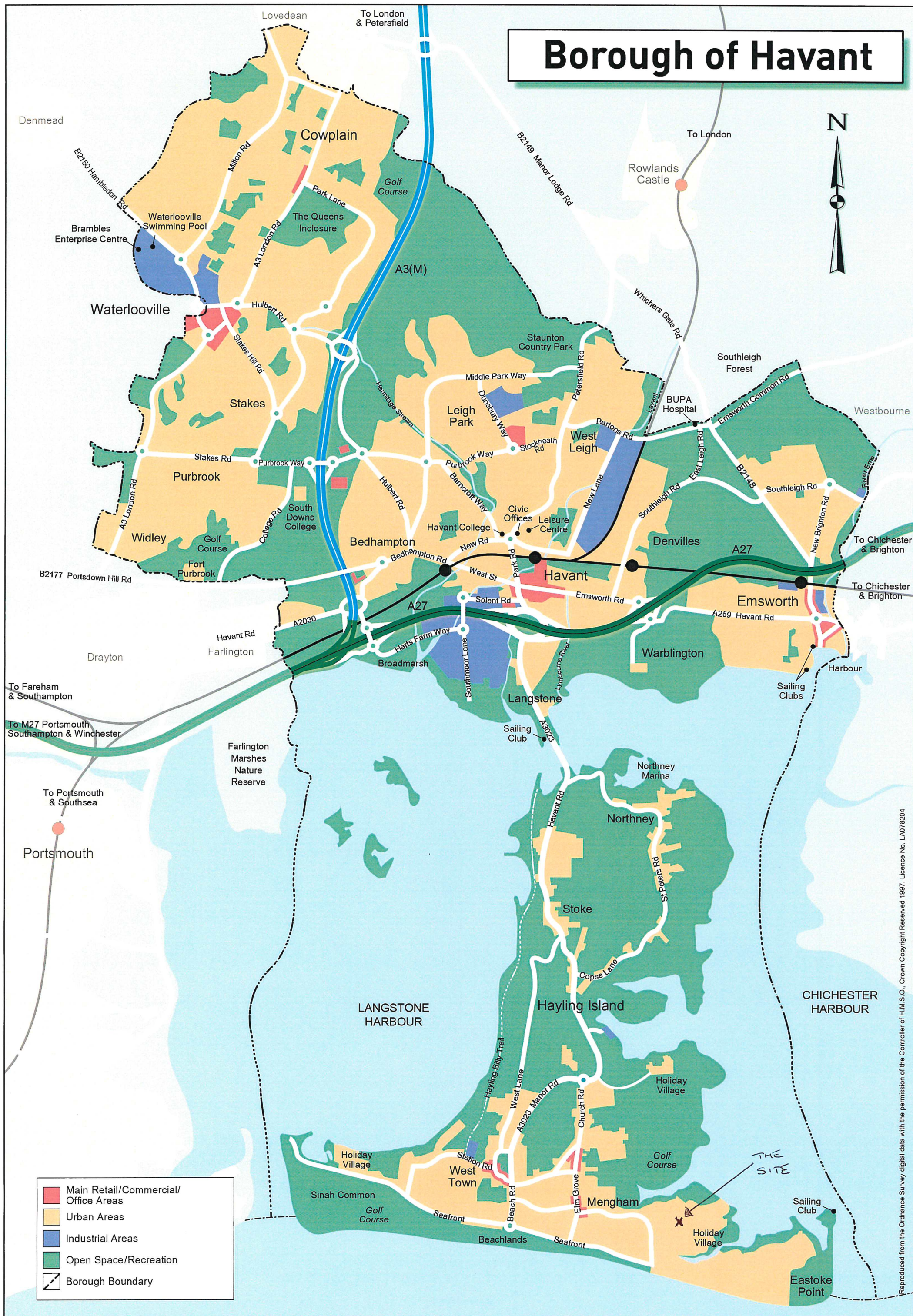
- 8.1 The Council has fully considered the site history, including the 2015 approval which did not remove permitted development rights. The decision to impose such a condition on the 2018 application and the refusal of the appeal application in respect to the removal of condition 10, had full regard to government guidance and the absence of this condition on the 2015 approval, and whether it would be right to impose the restrictive condition on the 2018 application. The need for consistency is fully recognised, however, the need to have regard to the impact of development including the potential under permitted development rights is also a consideration. Despite the justifiable concerns for consistency, these were not considered sufficient to outweigh the need to ensure good development which respected the amenities of the neighbouring properties. Consequently, it was considered necessary to refuse the appeal application.
- 8.2 In accordance with its duty to ensure that its decisions are supported with precise, necessary, reasonable and appropriate conditions the Council refused the appeal application as condition 10 was required to ensure the impact on neighbouring properties would not be unacceptably adverse.
- 8.3 The Inspector is therefore respectfully requested to dismiss this appeal.

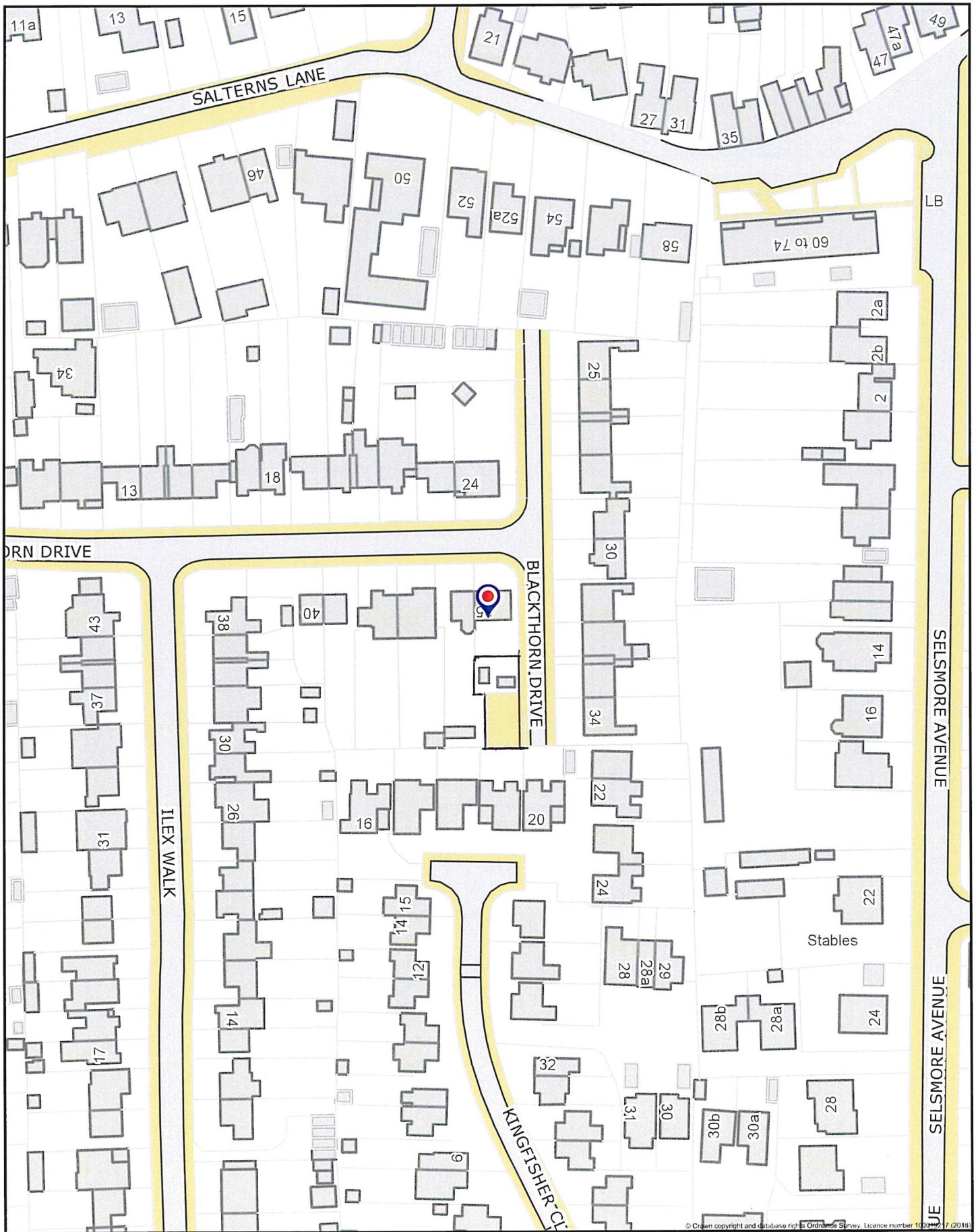
APPENDICES

- (A) Borough Map and 1:1250 Location Plan
- (B) Officer Delegated Report for this application
- (C) Officer Delegated Report for APP/18/ 01276
- (D) Emerging Local Plan Policy EX1
- (E) Potential effects on SPA of residential development
- (F) Havant Borough Council's Position Statement on Nutrient Neutral Development
- (G) Suggested conditions

APPENDIX A

Borough of Havant





35 Blackthorn Drive

N Scale: 1:1250

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Havant
BOROUGH COUNCIL

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APPENDIX B

Site Address: 35 Blackthorn Drive, Hayling Island, PO11 9PA
Proposal: Variation of Condition 7 of Planning Permission APP/18/01276
(Erection of 1No.1bed detached bungalow with associated parking and access. New parking layout for 35 Blackthorn Drive) to allow the development to be constructed in accordance with the schedule of materials submitted; and removal of Condition 10 of Planning Permission APP/18/01276 which relates to withdrawal of permitted development rights.

Application No: APP/19/01235

Expiry Date: 18/02/2020

Applicant: Mr Edney

Agent: Mr Andrews
SDA Planning Ltd

Case Officer: Daphney Haywood

Ward: Hayling East

Recommendation: **REFUSE PERMISSION**

1 Site Description

- 1.1 The application site comprises of a semi- detached two storey property situated on the south eastern corner of Blackthorn Drive just before the hammer head of the cul-de-sac. The property has an enclosed rear and side garden by 2m close boarded fence. There is an area towards the rear of the garden that has hardstanding and access from Blackthorn Drive and thus can be used for the parking of motor vehicles.
- 1.2 To the rear of the site is No. 19 Kingfisher Close which is a detached single storey dwelling which is well screened from the application site by the hawthorn hedges that forms the rear site boundary treatment.
- 1.3 The site is level and the rear garden is mainly laid to lawn with two large sheds towards the rear. The site is currently spilt in two by means of a 2m boundary fence 10 metres from the rear elevation of the existing dwelling. Within the section of the site adjacent to the boundary is a large storage container and the area for parking.

2 Planning History

96/51358/002 - First floor side extension, PERM,23/07/1996

APP/10/00724 - Construction of 1No. 2 bed bungalow., REF,03/12/2010

APP/14/01148 - Erection of 1No. 1 bedroom detached bungalow with associated parking and access, and new parking arrangement for 35 Blackthorn Road., REF,19/12/2014

APP/15/01365 - Erection of a one bedroom detached bungalow with associated parking and access. New parking layout for 35 Blackthorn Drive (resubmission of APP/14/01148)., PERM,28/01/2016

APP/18/01276 - Erection of 1No.1bed detached bungalow with associated parking and access. New parking layout for 35 Blackthorn Drive. (Renewal of planning permission APP/15/01365)., PERM,24/01/2019

3 Proposal

Variation of Condition 7 of Planning Permission APP/18/01276 (Erection of 1No.1bed detached bungalow with associated parking and access. New parking layout for 35 Blackthorn Drive) to allow the development to be constructed in accordance with the schedule of materials submitted; and removal of Condition 10 of Planning Permission APP/18/01276 which relates to withdrawal of permitted development rights.

Conditions 7 and 11 read

7- No above ground construction 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 CS16 and DM9 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

11-Notwithstanding the provisions of any Town and Country Planning General Permitted Development Order, no extension, building, structure or roof alteration permitted by Part 1, Classes A, B, C or E of the 2015 Order, as amended, shall be erected within the curtilage of the site without the prior written approval of the Local Planning Authority.

Reason: To avoid an overdevelopment of the site in the interests of the character of the area and amenities of the occupiers of nearby properties and having due regard to policy CS16 and DM13 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2018.

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

CS14	(Efficient Use of Resources)
CS15	(Flood and Coastal Erosion)
CS16	(High Quality Design)
CS21	(Developer Requirements)
CS9	(Housing)
DM13	(Car and Cycle Parking on Residential Development)
DM8	(Conservation, Protection and Enhancement of Existing Natural Features)

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)

Listed Building Grade: Not applicable.

Conservation Area: Not applicable.

5 Statutory and Non Statutory Consultations

Community Infrastructure, Planning Policy & Urban Design

As this application only relates to variation of Condition 7 and removal of Condition 10 there is no need to consider developer contributions. The original application APP/18/01276 remains CIL liable (for which an exemption has been granted) and the Solent Recreation Mitigation Strategy (SRMS) Contribution has already been collected.

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: 11

Number of site notices: one

Statutory advertisement: Not applicable.

Number of representations received: 3

Comment	Officer Comment
Loss of privacy	see section 7
Over development	The principle of a one bed dwelling on the site has been established by the extant permission.
Adverse impact on access and parking in respect to existing properties due to the narrowness of the road.	The principle of a one bed dwellings on the site has been established by the extant permission.
Road is often blocked by existing traffic.	noted
Noise	The principle of a one bed dwellings on the site has been established by the extant permission.
Reduce the area for on street parking and existing parking is Inadequate .	The principle of a one bed dwellings on the site has been established by the extant permission.

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

- (i) Principle of development

The application site is situated within an urban area where further development is considered acceptable subject to the usual development control criteria. The principle of development of the site for a 1 bedroom bungalow on this site is established by the extant permission.

The proposal has 2 elements, the first relating to the external material, and the second is for the removal of the condition restricting permitted development rights.

In respect to the proposed materials the current submission is for sky render with a grey concrete tile roof. Whilst this does not accord with the anticipated finishes on the submitted application form for APP/19/01235 and the use of render with a grey tile would not reflect the materials in the immediate area (brick construction with brown/red roof tiles,) the development is small in scale and single storey and as such it would not be prominent, and the impact on the character and visual amenities of the area is not considered to be adverse.

In respect to the removal of the restriction on permitted development rights . Condition 10 removes the following permitted development rights:-

- A. The enlargement, improvement or other alteration of a dwelling house.
- B. The enlargement of a dwelling house consisting of an addition or alteration to its roof.
- C. Any other alteration to the roof of a dwellinghouse.
- E – buildings etc incidental to the enjoyment of a dwellinghouse

The applicant considers that condition 10 does not meet the 6 tests for conditions, and additionally this condition was not imposed on the earlier permission granted under APP/15/01365.

The National Planning Policy Framework makes it clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

- 1. necessary;
- 1. relevant to planning;
- 1. relevant to the development to be permitted;
- 1. enforceable;
- 1. precise; and
- 1. reasonable in all other respects.

In accordance with Government guidance condition 10 precisely identifies those permitted development rights which are removed.

In respect to A. The enlargement, improvement or other alteration of a dwellinghouse.

Under permitted development the property could be substantially extended to the rear and into the garden (4m under permitted development rights and 8m under the prior approval process) thus substantially reducing what is already a small amenity area of 8m depth. This would not only impact the amenities for the existing dwelling, but

potentially concentrate outdoor activities to a very restricted area, such that activities associated with the amenity area for the new dwelling have the potential to infringe on the enjoyment of the neighbouring property. Hence this aspect of the condition is considered to meet the 6 tests, being necessary, relevant to planning and the proposed development, enforceable, precise and reasonable.

Regarding B. The enlargement of a dwellinghouse consisting of an addition or alteration to its roof, and C. Any other alteration to the roof of a dwellinghouse.

This could potentially introduce additional floorspace and windows, which would impact the amenities of the neighbouring properties by means of over looking, and or increased number of bedrooms. Under the adopted Parking Standards a 2 bed room property required 2 parking spaces. Satisfying this requirement could result in increased on road parking on what is a narrow road resulting in congestion and loss of amenity to neighbours, or a reduction in garden size if the 2nd parking space is provided on site. As set out above a reduced garden size would impact the amenities of the neighbouring property and additionally place greater demands on the amenity area/garden from increased occupation of the new dwelling. Hence this aspect of the condition is considered to meet the 6 tests, being necessary, relevant to planning and the proposed development, enforceable, precise and reasonable.

Class E – buildings etc incidental to the enjoyment of a dwellinghouse

The proposed garden is small in size and erection of an outbuilding would further reduce this amenity area and for the reasons set out above could result in an adverse impact on amenities for exiting and future residents. Hence this aspect of the condition is considered to meet the 6 tests, being necessary, relevant to planning and the proposed development, enforceable, precise and reasonable.

It is noted that these permitted development rights were not removed under APP/15/01365, however, for the reason set out above the condition is considered to meet the 6 tests, being necessary, relevant to planning and the proposed development, enforceable, precise and reasonable.

8 Conclusion

There is no objection to the proposed materials however, for the reasons set out above the condition removing permitted development rights is necessary, relevant to planning and the proposed development, enforceable, precise and reasonable, and therefore refusal of the application is recommended.

9 RECOMMENDATION:

That the Head of Planning be authorised to **REFUSE PERMISSION** for application APP/19/01235 for the following reason

- 1 Having regard to the limited size of the plot and its relation to adjoining development, the extension and alteration of the approved one bedroom dwelling under Permitted Development Rights could be detrimental to the amenities of neighbouring properties. The proposal is therefore contrary to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework .

APPENDIX C

width, 8.5m in depth and 4.4m in height with a pitched roof. It would be constructed in facing brick work with a tiled roof. The front elevation facing onto Blackthorn Drive would comprise of a front door and two ground floor windows serving the bedroom and the lounge. The side elevation facing onto the existing dwelling No.35 would comprise two small windows serving a bathroom and study. The rear elevation comprises patio doors and a window serving the lounge/dining area and a window serving the kitchen face south over the garden area. The previously proposed garage has been omitted and parking would be provided by a single space at the northern end of the site. The proposed single storey dwelling would be 11m from the rear of the existing two storey dwelling house.

- 3.3 Space for three cars to be parked for the existing dwelling is shown to the front of the site and one space is shown for the new dwelling adjacent to the rear boundary of the plot. Provision for refuse and cycle store is located to the rear of the parking space.

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

CS14	(Efficient Use of Resources)
CS15	(Flood and Coastal Erosion)
CS16	(High Quality Design)
CS21	(Developer Requirements)
CS9	(Housing)
DM13	(Car and Cycle Parking on Residential Development)
DM8	(Conservation, Protection and Enhancement of Existing Natural Features)

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)

Listed Building Grade: Not applicable.

Conservation Area: Not applicable.

5 Statutory and Non Statutory Consultations

Building Control

Building Regulation application required

Community Infrastructure, Planning Policy & Urban Design

CIL Liable, but self build exemption form submitted.

Additionally, instructions should be passed by the Case Officer to the CI Team to issue the Solent Recreation Mitigation Strategy Unilateral Undertaking, now based on the number of dwellings and their respective number of bedrooms. See <http://www.havant.gov.uk/unilateral-undertaking-solent-recreation-mitigation-strategy>.

The customer has already partially paid for this item under APP/15/01365 and the sum of £182.70 can be taken into consideration as having already been paid.

The Unilateral Undertaking and cheque for £191.15 (the balance due) has now been received.

Crime Prevention -Minor Apps

No comments received.

Development Engineer - Highways

The Highway comments have no adverse comment to this application providing the dropped kerb access is provided. An informative should be added to any approval stating that the details of the vehicular access will need to be agreed with the Highway Authority.

Public Spaces

No comments received.

Waste Services Manager

No concerns raised.

Natural England

Your appropriate assessment 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, providing that all mitigation measures are appropriately secured in any permission given.

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: 11

Number of site notices: Not applicable.

Statutory advertisement: Not applicable.

Number of representations received: 2

Comment	Officer Comment

Summary:

Comment:

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) Appropriateness of design and effect on the streetscene;
- (iii) Effect on neighbouring properties and amenities of future occupants
- (iv) Highway Implications
- (v) Impact on trees
- (vi) CIL and SRMP considerations
- (vii) Appropriate Assessment

- (i) Principle of development

7.2 The site is within an urban area as identified by the Havant Borough District Wide Local Plan 1996-2011, therefore the proposal is acceptable in principle provided it is of a high quality design, the relevant contributions are provided and the proposal does not have a significant adverse effect on the neighbouring properties or the character of the area.

- (ii) Appropriateness of design and effect on streetscene

7.3 The proposed dwelling is single storey in height and is orientated such that the front entrance door faces out onto Blackthorn Drive. To this regard the design of the dwelling accords with the height and simple style of the terrace of small post war bungalows located opposite the site in the eastern most section of the Blackthorn Drive cul-de-sac.

7.4 It is considered that this revised layout with orientation of primary rooms south and east, with regard to the relationship between the existing and proposed dwelling accords with the character of the area. As such it is considered that the development would not be detrimental to the amenities of the area nor contrary to the Borough Design Guide and Policy CS16 of the Havant Borough Core Strategy.

- (iii) Effect on neighbouring properties and the amenities of future occupants

7.5 The proposal would leave No.35 with a rear garden of 10m which accords with the minimum garden depth required by the Borough Design Guide. The rear garden available to the proposed property is 8m, however as it has an orientation to the south of the bungalow, away from the existing dwelling thus creating a private amenity space with the lounge facing out over this private space this is considered acceptable.

7.6 To the south of the site is No.19 Kingfisher Close which is a detached single storey dwelling. The rear elevation of the proposed new dwelling will be 20m approx from the rear elevation of No.19 and this is considered to be acceptable. It should be conditioned that the boundary hedge is retained in order to protect the amenities of both properties.

7.7 The adjoining neighbouring dwelling to No.35 is set sufficient distance away from the proposal and in the case of No. 34 the existing road provides separation, such that the impact is considered acceptable. Furthermore, this form of corner development is usual in sites where sufficient amenity space is available. In respect to No.35. and No. 36 back to back separation is in the order of 12m which is acceptable given the single storey nature of the proposal, however, the introduction of first floor accommodation and alterations to the roof could result in loss of amenity and whilst this was not imposed on the previous permission a condition withdrawing permitted development rights for this and also for extensions and buildings under class E is recommended.

(iv) Highway Implications

- 7.8 The Council's Development Engineer has raised no objection to the proposal on the grounds of the information provided that parking is conditioned and the provision dropped kerbs covered by an informative.

(v) Impact on trees

- 7.9 The previously refused schemes proposed a new driveway to the new bungalow that would impact the retention of a highway tree. The 2015 approval overcame this reason for refusal by retaining the existing parking area to the rear of the site, and this is carried through to the current application.

(vi) CIL and SRMP considerations

- 7.10 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 per square metre on new floorspace (measured as gross internal area) plus indexing. It is considered that there is a CIL liability of £8,383.93 for this site. However, a self build certificate has been completed.

- 7.11 This development would increase the number of dwellings within the 5.6km zone identified as significant in potentially increasing recreational pressure on the Solent SPA. Natural England's advice in regard all new housing development within this zone is that it is likely to have a significant effect on the SPA. The measures of mitigation adopted by the LPA at the end of June this year requires a payment of £373.85 for a one bed dwelling to the Solent Disturbance Mitigation Project. The has already partially under APP/15/01365 the sum of £182.70 and a new Unilateral Undertaking and cheque for £191.15 (the balance due) has now been received.

(vii) Appropriate Assessment

- 7.12 The Council has conducted a Habitats Regulations Assessment (HRA) of the proposed development under Regulation 63 of the Conservation of Habitats and Species Regulations 2017, this includes an Appropriate Assessment under Regulation 63. This is included in the case file. The screening under Regulation 63(1)(a) found that there was likely to be a significant effect on Chichester and Langstone Harbours Special Protection Area due to the increase in recreation as a result of the development. The planning application was then subject to an Appropriate Assessment under Regulation 63. This assessment included a package of measures based on the suggested scale of mitigation in the Solent Recreation Mitigation Strategy and the applicant has indicated a willingness to enter into a legal agreement to secure the mitigation package. The Appropriate Assessment concluded that 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. The applicant has subsequently entered into a legal agreement to secure the mitigation package.

8 **Conclusion**

- 8.1 It is considered that this revised application accords with the relevant Local Plan and Allocation policies and the guidance set out in the Borough Design Guide SPD and the NPPF. The application is therefore recommended for permission.
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9 **RECOMMENDATION:**

That the Head of Planning be authorised to **GRANT PERMISSION** for application APP/18/01276 subject to the following conditions

- 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.
- 2 The development hereby permitted shall be carried out in accordance with the following approved plans:
Site Location and Block Plan drwg.no 234/10/01 received 12 December 2018
Proposed Ground Floor drwg.no 234/10/02 received 12 December 2018
Proposed Roof Plan drwg.no 234/10/03 received 12 December 2018
Proposed Elevations drwg.no 234/10/04 received 12 December 2018
Proposed Site Layout Plan drwg.no 234/10/05 received 12 December 2018
Proposed Cycle and Refuse Plans drwg.no 234/10/06 received 12 December 2018
Reason: - To ensure provision of a satisfactory development.
- 3 The finished ground floor level shall not exceed 150mm above existing ground level of the site.
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 The car parking, servicing and other vehicular access arrangements shown on the approved plans to serve the development hereby permitted shall be made fully available for use prior to the development being first brought into use and shall be retained thereafter for their intended purpose.
Reason: In the interests of highway safety and having due regard to policy DM13 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.
- 5 The premises shall not be occupied before the proposed access and the crossing of the highway verge and/or footway is constructed and laid out in accordance with the approved details.
Reason: In the interests of highway safety and having due regard to policies CS16 and CS20 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 6 The hawthorn hedge to the southern boundary of the site shall be retained. Measures shall be undertaken to prevent damage to existing hawthorn hedge throughout implementation of the development hereby approved. Any such tree which is nevertheless seriously damaged during that implementation shall be replaced within 6 months of the occurrence of such damage by another of the same species in the same position.
Reason: To safeguard the continued health and presence of such existing vegetation and protect the amenities of the locality and having due regard to policies CS16 and DM8 of the Havant Borough Core Strategy 2011 which form part of the Local Development Framework and National Planning Policy Framework, March .
- 7 No above ground construction 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 CS16 and DM9 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.
- 8 The development shall be constructed in accordance with the hard and soft landscaping specifications as detailed within the submitted plans. The development hereby permitted shall not be brought into use until the implementation of all such hardsurfacing and soft landscaping has been completed in full accordance with that specification.
Reason: To ensure the appearance of the development is satisfactory and having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.
- 9 The development hereby permitted shall not be brought into use until the means of enclosure of the site has been installed and completed in full accordance with the specifications as detailed within the submitted plans.
Reason: To ensure the appearance of the development is satisfactory and having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.
- 10 Notwithstanding the provisions of any Town and Country Planning General Permitted Development Order, no extension, building, structure or roof alteration permitted by Part 1, Classes A, B, C or E of the 2015 Order, as amended, shall be erected within the curtilage of the site without the prior written approval of the Local Planning Authority.
Reason: To avoid an overdevelopment of the site in the interests of the character of the area and amenities of the occupiers of nearby properties and having due regard to policy CS16 and DM13 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2018.

APPENDIX D

EX1 | Water Quality impact on the Solent European Sites

Why this policy is needed

- [5.220](#) [New development necessitates the provision of connections to the foul water drainage network. This could increase nutrient load at the Solent European Sites. Nutrient enrichment can arise from wastewater treatment required in support of new development, even if it is a proportionately small contribution.](#)
- [5.221](#) [New housing schemes and other proposals which includes a net gain in overnight accommodation need to prevent any increase in nutrients into the harbour in order for them to be 'nutrient neutral' if they would otherwise lead to a likely significant impact on the European site.](#)
- [5.222](#) [Waste water from Havant discharges through two wastewater treatment works. Most of the built-up areas of the Borough drain to Budds Farm Waste Water Treatment Works however, Emsworth drains to Thornham Waste Water Treatment Works.](#)
- [5.223](#) [If there is a significant effect from new development and other proposals which includes a net gain in overnight accommodation on the Solent European Sites, then mitigation would need to be provided.](#)
- [5.224](#) [The Council has a strategic mitigation package for developments unable to achieve nutrient neutrality on site. Land at Warblington Farm is allocated in Policy EX for mitigation related to this issue.](#)

EX1 | Water Quality

[New dwellings and/or net gain in overnight accommodation which would cause a likely significant effect on the designated sites will need to provide a nutrient budget.](#)

[Planning permission will only then be granted if a mitigation package is provided which will remove the likely significant effect. This mitigation can be provided through either:](#)

- [a. A financial contribution towards the Council's strategic mitigation package; or](#)
- [b. A developer provided package of measures associated with the proposed development supported by evidence that it will avoid or mitigate any likely significant effect on the Solent European Sites; or](#)
- [c. A combination of measures in \(a\) and \(b\) above.](#)

[Where these measures cannot be provided development proposals will be refused, unless the applicant can show, subject to meeting the tests of the Habitats Regulations, that there would not be a likely significant effect on the Solent European Sites either alone or in combination with other plans or projects.](#)

How this policy works

- [5.225](#) [Development which proposes overnight accommodation or has a high volume of water use would need to provide mitigation if it is likely to have a significant impact on the Solent European Sites. Most commercial development will not need to address nutrient neutrality as it is considered that the](#)

[population that work in businesses live locally. However, where they result in an increase in additional nutrients, they will need to be assessed on a case by case basis.](#)

[5.226 New developments would need to provide mitigation and use the Council's methodology for calculating a nutrient budget. A nutrient budget will need to be submitted with an application to determine whether the development is nutrient neutral and if it not to calculate the amount of nutrient mitigation needed to ensure the correct amount is secured through on-site or off-site measures.](#)

[5.227 Any development that cannot achieve nutrient neutrality on-site will be expected to contribute to the delivery of the Council's strategic mitigation scheme and/or provide their own off-site mitigation scheme. Details of the Council's mitigation plan and how a proportionate scale of mitigation to be provided, in the form of a financial contribution, from proposed development will be set out in guidance.](#)

APPENDIX E

The potential effects of new residential development on the Chichester and Langstone Harbour SPA can be summarised as follows:

Potential Effect	Site Conservation Objective(s)	Qualifying features	Potential for Impact?	Relevant Mitigation Measures
Decrease in survival rates and populations of over-wintering birds due to increase in disturbance, caused by increasing human population (in combination with other plans and projects)	Maintain or restore the population of each of the qualifying features. Maintain or restore the distribution of the qualifying feature within the site.	All for Chichester and Langstone Harbours SPA.	Yes. Indirect impact. Without mitigation, bird populations would be reduced and/or re-distributed by increased numbers of visitors leading to increased disturbance	Bird Aware Solent Strategy The Strategy proposes:- • a team of 5-7 coastal rangers to advise people on how to avoid bird disturbance, liaise with landowners, host school visits, etc.; • communications, marketing and education initiatives; • initiatives to encourage responsible dog walking; • preparation of codes of conduct for a variety of coastal activities; • site-specific projects to better manage visitors and provide secure habitats for the birds; • providing new/enhanced greenspaces as an alternative to visiting the coast;

Further details in relation to the Bird Aware Solent Strategy can be viewed via the following web address:

<http://www.birdaware.org/CHttpHandler.ashx?id=29372&p=0>

APPENDIX F

Position statement on nutrient neutral development

Introduction

1. Havant Borough benefits from its position on the Solent coast which is internationally designated for its wildfowl and wading species. This creates a high quality natural environment highly worthy of protection for both its intrinsic value as well as its value in making Havant Borough an attractive place to live, work and study. The Council also takes seriously the requirement under the National Planning Policy Framework *“to support the Government’s objective of significantly boosting the supply of homes”*. The Council is in the process of updating its Local Plan with a view to not only meeting but exceeding the Government’s identified housing need for the authority, in large part through an ambitious regeneration agenda.
2. In looking to marry together these two agendas, an issue has arisen out of recent case law. This relates specifically to the impact from development on the natural environment due to a decrease in water quality.
3. The Council is already committed to development only taking place if it is sustainable development that includes relevant environmental protections. Part of the consideration of this is whether there would be a detrimental impact on the water quality on any European Designated Nature Conservation Sites. However, it should be noted the contribution from urban areas to this is relatively small and from new development extremely small. The majority of nitrogen deposition into the harbour is from agricultural practices or background deposition, the source of which is not known.

Context

The Habitats Regulations

4. The Conservation of Habitats and Species Regulations (2017 as amended), hereafter referred to as the Habitats Regulations are the UK’s transposition of European Union Directive 92/43/EEC on the ‘Conservation of natural habitats and of wild fauna and flora’ (the Habitats Directive). There are significant responsibilities conferred on the Council as a ‘competent authority’ under The Habitats Regulations. Chiefly, it requires the Council to only approve plans or projects (such as planning applications or a local plan) if there is no likelihood of a significant effect on any European designated nature conservation site.

5. A significant effect could be caused by a number of potential impacts including direct or indirect habitat loss, air pollution, water pollution, increase in recreation, light pollution, tall buildings or construction activity.
6. In order to assess whether there is a 'likely significant effect' a Habitats Regulations Assessment (HRA) is carried out. This generally includes an Appropriate Assessment (AA), which is the second more detailed stage¹ of an HRA. Natural England must be consulted on the findings of an HRA and there is a duty to consider their response.
7. An HRA is necessary for any local plan produced for the Borough as well as a proportion of planning applications. An HRA aims to assess the potential effects of a land use plan or policy against the conservation objectives of any European sites designated for their nature conservation importance under the Habitats Directive and Birds Directive (Directive 2009/147/EC on the 'conservation of wild birds'). Such sites are known collectively as the Natura 2000 network of European sites.
8. An established principle under law is that appropriate assessments must use the 'precautionary principle'. An appropriate assessment must enable the local planning authority to apply the regulation 63(5) "integrity test" on a "precautionary basis". Authorisation may only be given if the competent authority have made certain there will be no adverse effect on the integrity of the site and where no reasonable scientific doubt remains. Conversely, that means where doubt remains as to the absence of an adverse effect on the integrity of the site linked to the plan or project being considered, the competent authority would have to refuse authorisation. It is also necessary to consider not only the impact of a single plan or project in isolation but where there is any likelihood of a significant effect in combination with other plans and projects as well.
9. The need for Habitats Regulations Assessments has existed since 2004 when the original regulations came into force. It has been known for many years that new development does lead to an increase in recreation at the coast and that this has an impact on the birds which use the coastal mud flats to feed and roost (this is a 'likely significant effect'). As a result, mitigation is required from all new development which is then used to fund the Bird Aware Partnership, of which the Council is a member. The partnership implements the mitigation scheme, largely consisting of a ranger patrols along the coast. This is an established part of the development process at the Solent.

Pressures

10. New development necessitates the provision of connections to the foul water drainage network. This could increase nutrient load at the Solent European Sites. Nutrient enrichment, can arise from wastewater treatment required in support of new development, even if it is a proportionately small contribution.
11. An increase in nutrients in the marine environment can cause a process called eutrophication. Increases in nutrients cause this process which are found in effluent, fertilisers used in arable agriculture and faeces from animals.

¹ This is set out in Regulation 63 of The Regulations.

Eutrophication

12. Eutrophication occurs when an excessive amount of nutrients within a water body are present. It causes increased plant growth which reduces the oxygen content in water. This process makes it difficult for aquatic insects or fish to survive, in turn removing a food source from the food cycle.
13. Addressing the sources of eutrophication reduces the input of nutrients into the internationally designated marine environment. However if the issue of eutrophication is not addressed, it could have a negative impact on the marine environment and the conservation objectives of the European designated nature conservation sites (see below).
14. Water quality can be measured by chemically testing water samples. Chemical testing can test for parameters such as nitrogen and phosphates which are indicators of poor water quality.

Recent case law

15. The European Court of Justice recently determined a case related to considering water quality in Appropriate Assessments. This generally referred to as The Dutch Case².
16. The judgement in this case refines the definition of plans and projects and effectively includes significantly more operations within the definition which have an impact on water quality, most notably runoff from agriculture.
17. As a result, using this changed approach, it can only be concluded that new development could increase nitrogen and phosphate deposition into the protected harbours above consented levels. This results in increased nutrients in the harbour which cause a dense growth in certain plants. This harbours which in turn leads to harm to the species which use them. This is the likely significant effect.
18. As a result, the only way that a new housing scheme could prevent this likely significant effect is for there to be no increase in nutrients into the harbour, i.e. for it to be 'nutrient neutral'.

European designated nature conservation sites which are affected

19. The Natura 2000 network of European designated nature conservation sites provides ecological infrastructure for the protection of rare, endangered or vulnerable natural habitats and species of exceptional importance within the European Union. These sites consist of Special Areas of Conservation (SACs, designated under the Habitats Directive) and Special Protection Areas (SPAs, classified under the Birds Directive). Additionally, UK Government policy (section 118 of The National Planning Policy Framework and Circular 06/05) recommends that Ramsar sites listed under the Convention on Wetlands of International Importance (UNESCO, 1971), are treated as if they are fully-designated European sites for the purposes of considering development proposals that may affect them.
20. The European Designated nature conservation sites that are relevant to this Position Statement are those where wastewater from Havant Borough would drain (via a wastewater treatment works):

² Full reference is Cooperatie Mobilisation for the Environment UA and College van gedeputeerde staten van Noord-Brabant (Case C-293/17 and C294/17) available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62017CA0293>.

- Chichester and Langstone Harbour Special Protection Area (SPA)
- Chichester and Langstone Harbour Ramsar Site
- Solent Maritime Special Area of Conservation (SAC)
- Solent and Dorset Coast Potential Special Protection Area (pSPA)

21. These are hereafter referred to the Solent's European Sites.

The impact of development on the Solent's water quality

Natural England's position regarding the impact of development on water quality at the Solent

22. Natural England advises that there is a likely significant effect on the Solent's European Sites due to the increase in waste water from the new housing as a result of the Havant Borough Local Plan 2036. Natural England also advises that any development proposed through any planning application providing overnight accommodation which would discharge into the Solent would be likely to cause a significant effect as there is uncertainty as to whether the increase in waste water from new housing in the Solent catchment will have an adverse effect on the Solent's European Sites.
23. Natural England advise that there is existing evidence of high levels of nitrogen and phosphorus in the Solent water environment with evidence of eutrophication at some designated sites. The Partnership for Urban South Hampshire (PUSH)³, Natural England (NE), and Environment Agency (EA) have been jointly working to develop an Integrated Water Management Strategy (IWMS). This examines the potential for the PUSH region to accommodate future housing growth without having a detrimental effect upon the water environment. A Water Quality Working Group has been set up to identify and analyse the existing evidence gaps and evaluate the need for strategic mitigation measures. However, there is currently uncertainty as to whether there is sufficient capacity to accommodate the new housing growth.
24. Natural England recommend that any new proposals which include overnight accommodation have inevitable waste water implications. These implications, and all other matters capable of having a significant effect on designated sites in the Solent, must be addressed in the ways required by Regulation 63 of the Habitats Regulations.
25. Natural England recommends that the waste water issue is examined within the appropriate assessment and that the existing nutrient and conservation status of the receiving waters be taken into account. The achievement of nutrient neutrality, if scientifically and practically effective, is a means of ensuring that development does not add to existing nutrient burdens. Natural England has prepared a methodology setting out how this can be achieved, which is available on request from Natural England. It is appreciated that nutrient neutrality may be difficult to achieve for smaller developments or on brownfield land.
26. Natural England advises Havant Borough Council to set up an interim approach that developments can contribute to, thereby ensuring that this uncertainty is fully addressed by all applications and will continue to work closely with Havant Borough Council in addressing this issue.

³ Which includes Havant Borough Council.

27. Natural England can also provide further advice to applicants through their Discretionary Advice Service⁴.

Havant Borough Council's position regarding the impact of development on water quality at the Solent

28. The Council is already committed to development only taking place if it is sustainable development that includes relevant environmental protections. Part of the consideration of this is whether there would be a detrimental impact on the Solent's water quality, given the presence of the Solent's European Sites, the conservation objectives of which are sensitive to eutrophication.

29. There has been no change to the level of nitrogen that is proposed to be emitted from new development. Nitrogen emitted from urban areas is relatively small and from new development extremely small.

30. However there has been a change in terms of how this is assessed under the Habitats Regulations and whether this level of nitrogen is considered a significant effect. The Council considers that under this new approach, the development of new overnight accommodation would be likely to cause a significant effect on several European Sites.

31. The Council considers that, due to the cause of the issue being recent case law, that the issue itself should be addressed through any one or a combination of the following:

- A national review of the nitrogen discharge consents of wastewater treatment works to include increases in nitrogen as a result of new development.
- Government provided 'mitigation banking', potentially through a delivery arm such as Homes England.

32. Failing a central solution, there should be a PUSH-wide solution to enable development to come forward comprehensively across the Solent area. However, neither of these potential solutions can be enacted in the short term to enable planning permissions to be granted for much needed new housing.

33. As such, the Council accepts that it will be necessary to provide short term mitigation to enable development to continue to come forward in the Borough. The Council also accepts that it will be necessary to ensure that a nitrogen neutral Local Plan is prepared for submission and longer term mitigation options are explored.

Havant Borough Local Plan 2036 – Initial Nutrient Budget

34. A nitrogen budget, prepared in line with the methodology and supplementary advice from Natural England and Southern Water, using the best scientific evidence available, has been produced by Havant Borough Council (The Nitrogen Budget). The Nitrogen Budget considers all development currently proposed as part of the Havant Borough Local Plan 2036. The number of dwellings used includes all residential applications proposed in the Pre-submission

⁴ Further detail is available at <https://www.gov.uk/guidance/developers-get-environmental-advice-on-your-planning-proposals>.

Draft Havant Borough Council Local Plan⁵, including the published allowance for windfall development⁶. Nitrogen is a chemical parameter for water quality. In this situation, it is used as the measure for the impact that proposed development could have on the Solent's European Sites through eutrophication.

35. This Nitrogen Budget result is derived from calculating the total increase in nitrogen that would arise from foul drainage and be processed through the Budds Farm Wastewater Treatment Works (6751 Kilograms (Kg) / Total Nitrogen (TN) / year (yr)⁷). The Nitrogen Budget also includes development within the Borough that will be processed through Thornham Waste Water Treatments Works (575 Kg/TN/yr). This leads to a total deposition of 7,326 Kg/TN/yr. By separating out planned development in this way, it ensures that a precautionary approach to the budgeting has been used.
36. Additionally, a calculation is made to assess the nitrogen load of existing agricultural land that is planned to be developed (7284 Kg/TN/yr), and the nitrogen load associated with the new uses on the developed site (2900 Kg/TN/yr).
37. By comparing the nitrogen load of the current agricultural uses against the future planned use a figure of 4,384 Kg/TN/yr establishes the nutrient reduction that will occur through planned changes in land use for development. This is due to the fact that using land for agriculture is often more nitrogen intensive than using it for residential development, depending on the density of the proposed residential development scheme.
38. The Nitrogen Budget result subtracts the reduction in nitrogen load arising from changes in land use from the nitrogen load arising from increased foul drainage. **This confirms that the impact arising from all development planned within the Borough to 2036 can be quantified as 2,942 kg/TN/yr. This is the figure that will need to be mitigated to allow occupation of all proposed development within the Borough until 2036.**
39. Moving forwards, it will be necessary for further research to be undertaken regarding the role of nitrogen and phosphorous in the water environment, the sources of nitrogen and phosphorous in the Solent's European Sites and the effectiveness of potential measures to mitigate this. Decisions regarding the effect of recreation on European Sites and measures to avoid and mitigate that impact were based on extensive research and it is logical that the same is true of water quality. Long term decisions on the effect of development on water quality should be taken with the most robust and up-to-date scientific information possible.

The Council's position regarding avoidance and mitigation measures to ensure nitrogen neutrality

40. Based on the results of the Havant Borough Local Plan 2036 Nitrogen Budget the Council confirms that appropriate strategic mitigation options are available within the Borough that would mitigate all development planned within the Borough until 2036. The availability of mitigations options within the Borough include, but are not limited to, the following:

⁵ <https://www.havant.gov.uk/sites/default/files/documents/Pre-Submission%20HBLP2036%20for%20Full%20Council%20-%20FINAL%20POST%20COUNCIL%20%28clean%20for%20use%29%20-%20Copy.pdf>

⁶ <https://www.havant.gov.uk/sites/default/files/documents/RE-ISSUE%20-%20Windfall%20Unidentified%20Housing%20Development%20%28Final%20-%20Word%20Document%29.pdf>

⁷ Figures used are rounded to the nearest kilogram. Rounding has always been up in line with the precautionary principle.

- Apply the optional water efficiency standard of 110 litres per person per day (l/pp/d) to all new development – this mitigation option has already been included within The Nitrogen Budget. As such all residential development will be expected to meet this standard
- Taking land out of agricultural use and converting it to a use that does not artificially increase the nitrogen load of the land
- Create wetland environments that act as a nitrogen sink and remove nitrogen from rivers and streams (catchment management solutions)
- Increase the requirement for open space/SANGS for development on agricultural land
- Agreement with Southern Water that they will increase the nitrogen removal rate at the receiving Waste Water Treatment Works beyond consented levels
- Contribute to taking land out of agricultural use and catchment management solutions within the river catchment area for the impacted protected site
- Development of the Havant Thicket Reservoir
- Implementation of Brent Goose and Wader refuges

41. Havant Borough Council has ownership of land that would be suitable for various mitigation options and therefor has some certainty that strategic mitigation options can be delivered. The Council also intends to provide a mitigation package from the available options that provides a net nitrogen deficit against planned development. This will allow the Council to accommodate unforeseen windfall development and the implications of commercial development within defined limits.

42. The precise nature of the mitigation scheme will be set out through an 'Implementation Plan' associated with this Position Statement. This will set out which mitigation measures will be specifically implemented to mitigate the planned development in Havant Borough. It will then calculate the proportionate scale of mitigation to be provided, in the form of a financial contribution, from proposed development.

43. It is considered that any significant effect as a result of development generally takes place at the point that it is occupied rather than when it commences.

Development schemes that are could be affected

44. A large number of schemes are likely to result in a significant effect on the European Sites as a result of an increase in nitrogen load. Whilst there will inevitably be significant overlap with the Bird Aware Solent mitigation package, different schemes in different places in different ways will need to contribute to addressing water quality.

45. The key test is whether there would be an increase in nitrogen emissions into one or more European Sites once the development is occupied compared to if it was not built. The advice below is general in nature and does not remove the necessity to discuss this matter through a pre-application enquiry at an early point in the development process. It should also not be considered advice as to whether there would be a likely significant effect from other causes. It has already been noted that a large amount of development in the Borough, if not mitigated, would be likely to cause a significant effect due to recreational disturbance. However, as set out above, there are many less common reasons why a significant effect may be caused and it is incumbent upon applicants to familiarise themselves with the issues involved.

Area which is affected

46. All of Havant Borough is within the catchment of a Wastewater Treatment Works that drains into a Solent European site. As such, all of the Borough is affected.

Types of applications that will be affected

47. Full and outline planning applications for applicable uses are affected and so an avoidance and mitigation package will be needed. This applies to any applications determined after the adoption of this Position Statement.
48. It is the Council's advice to the Planning Inspectorate⁸ that any planning appeals for applicable uses should include an avoidance and mitigation package to remove any likelihood of a significant effect.
49. Any increase in residential dwellings that takes place as permitted development must undertake a separate HRA through Regulations 75 and 77 of the Habitats Regulations. Such assessments will need to consider water quality. Mitigation packages for such development will be needed on the same basis as those for dwellings that require planning permission.
50. Other types of application, including reserved matters, those made under Section 73 of the Town and Country Planning Act and re-submitted applications will be considered by the Council as competent authority on a case by case basis.

Residential (C3) dwellings

51. Any residential development would lead to an increase in nitrogen and thus would be likely to cause a significant effect.
52. In this context, 'dwelling' includes net new dwellings created through the sub-division of existing dwellings, second homes, dwellings to be used as holiday accommodation, self-contained student accommodation, and new dwellings created as a result of approval granted under the General Permitted Development Order e.g. change of use from office to residential (including houses and flats). It includes permanent accommodation for gypsies and travellers; temporary/transit pitches will be assessed on a case-by-case basis by the local planning authority in consultation with Natural England.

Other forms of development providing overnight accommodation

53. There is a range of development other than C3 dwellings which provides overnight accommodation. Most commonly, this includes care homes and other forms of housing for older people and hotels.
54. Such development would be considered to increase nitrogen and thus would be likely to cause a significant effect. This is due to such development housing people who otherwise would not have been in the catchment of a wastewater treatment works which drains to a Solent European Site.

⁸ In a scenario where an applicant has appealed to the Secretary of State (in practice the Planning Inspectorate) against a refusal of planning permission, the Planning Inspectorate become the Competent Authority under Regulation 63 of the Habitats Regulations. As part of this, they will need to undertake an assessment under that regulation.

Commercial and other non-residential development

55. Non-residential development is considered to potentially increase the nitrogen load through the foul drainage network and result in a potential significant effect on a protected site. Due to the large number of different uses within non-residential development these cases will have to be considered on a case specific basis. This should be explored with the Council through a pre-application enquiry.
56. Generally, applications to convert or change the use of one commercial use to another commercial use would not be considered likely to cause a significant effect.

How this position Statement will be implemented through development management decisions

57. It is necessary for the Council, as the competent authority under The Regulations, to undertake a Habitats Regulations Assessment, including Appropriate Assessment, on any development that it is considered could lead to a likely significant effect on a European Site. It is incumbent on the applicant to provide all of the information necessary to undertake that assessment.
58. The Council already undertakes Appropriate Assessment on a large number of planning applications as there is an acknowledged likely significant effect from residential development in almost all of the Borough in terms of recreational disturbance. Avoidance and mitigation packages are collected from such developments in the form of a contribution towards the Bird Aware Solent Partnership and its Solent Recreation Mitigation Strategy.
59. When submitting planning applications, applicants will need to include a 'European Sites Mitigation Checklist' (please see appendix A of this Position Statement) to set out how any likely significant effects on European Sites will be mitigated through the application.
60. For any schemes which would lead to a decrease in water quality, that AA will inevitably conclude that there would be a likely significant effect. If applicants consider there to be site specific circumstances which mean that there is no likelihood of a significant effect, it is recommended that they engage in a pre-application enquiry with the Council. As part of that enquiry, a supporting statement should be provided setting out precisely why the applicant concludes that there would not be a decrease in water quality at a European Site as a result of the proposal. It should be noted that an argument of a de minimus impact would not be considered valid.
61. As such, an avoidance and mitigation package will be necessary for almost all proposals.
62. Proposals which include development on agricultural land will need to prepare a site-specific nitrogen budget, using Natural England's methodology. This will inform a site-specific Appropriate Assessment. It is envisaged that on-site measures will be used in order to achieve nitrogen neutrality. This would generally include:
- Application of the optional water efficiency standard of at least 110 l/pp/d
 - Management of on-site open space in a low nitrogen manner
 - Create wetland environments in SUDS systems that act as a nitrogen sink and remove nitrogen from surface water

63. However, it is envisaged that development on non-agricultural land will not be able to provide mitigation on-site. As such, in order to maintain confidence in the development market and enable the continued growth of Havant Borough, whilst meeting its environmental obligations, the Council will use Grampian Conditions. This will ensure the provision of an avoidance and mitigation scheme prior to the occupation of the residential unit.
64. A Grampian Condition prohibits development authorised by the planning permission or other aspects linked to the planning permission (in this case occupation of the development) until a specified action has been taken (in this case the provision of an avoidance and mitigation package). Such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission⁹, which is not envisaged in this case. However, it will require applicants to take on an unknown cost and risk when implementing planning permissions relying on an avoidance and mitigation package provided under this Position Statement.
65. The specific condition wording that will be used by the Council will be:

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;*
- b) A mitigation package addressing the additional nutrient input arising from the development has been submitted to, and approved in writing by, the Local Planning Authority. Such mitigation package shall address all of the additional nutrient load imposed on protected European Sites by the development when fully occupied and shall allow the Local Planning Authority to ascertain on the basis of the best available scientific evidence that such additional nutrient loading will not have an adverse effect on the integrity of the protected European Sites, having regard to the conservation objectives for those sites; and*
- c) All measures forming part of that mitigation package have been provided to the Local Planning Authority.*

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. To ensure that the proposal may proceed as sustainable development, there is a duty upon the local planning authority to ensure that sufficient mitigation for is provided against any impacts which might arise upon the designated sites. In coming to this decision, the Council have had regard to Regulation 63 of the Conservation of Habitats and Species Regulations 2017, Policy CS11 of the*

⁹ <https://www.gov.uk/guidance/use-of-planning-conditions> Paragraph: 009 Reference ID: 21a-009-20140306

66. For sites on agricultural land that are nitrogen neutral on-site or in other unusual circumstances, variations or different conditions may be necessary in order to conclude that there would not be any likelihood of a significant effect.
67. It is anticipated that there will be a requirement for developers to make a financial contribution to facilitate the delivery of a strategic mitigation package. It is possible that at the point of decision the extent of financial contribution will not be known. However, the Council is fully aware of the need for development to be viable and, if necessary, will part fund delivery of the Havant Borough Local Plan 2036 Nitrogen Mitigation Strategy to facilitate occupation of approved dwellings. If this is necessary, the Council will engage with external funding providers, including Homes England, in order to spread the cost of such provision.

Ongoing monitoring and next steps

68. It is considered that this position statement sets out a mechanism through which some certainty can be provided to developers, whilst fully protecting the Solent's European Sites from the significant effect that would otherwise arise through development. This position statement has been prepared using the best and most up-to-date scientific knowledge available and has applied the precautionary principle where appropriate.
69. The Council will monitor permissions that are granted under this position statement and the nitrogen load that they would create. This will make sure that as mitigation comes forward this 'banked' nitrogen can be addressed as the first priority. The Council will ensure that an appropriate scale of mitigation is in place prior to occupation of any permitted schemes. The use of Grampian Conditions gives the Council a tool which can be used definitively in this effect, albeit the Council will use all tools available to ensure that effectively completed homes are not stood empty whilst mitigation is finalised.
70. Monitoring will also take place of schemes which are able to achieve nitrogen neutrality or a deficit on-site. This will feed into continued nitrogen budgeting to inform the definitive mitigation strategy and the Havant Borough Local Plan 2036.
71. Moving forwards, the Council will continue to work towards a more definitive mitigation strategy. This should ideally be on a PUSH wider (or larger) basis. The Council will continue to positively and proactively work with its partner authorities, through PUSH, together with Natural England, the Environment Agency, Southern Water, Homes England and any other stakeholder in order to address this issue appropriately.

Appendix 1: European Site avoidance and mitigation checklist

This checklist must be completed and provided in order for the Local Planning Authority to validate any planning application for one or more dwellings. It sets out how an avoidance and mitigation package will be provided to remove any likely significant effect on a European Site.

All relevant boxes should be completed and the form must be signed. If signed by an agent, it is their responsibility to ensure that the applicant is aware of the commitment to providing a mitigation package, in the form of a financial contribution, the scale of which is currently not known.

Application details	
Site name:	
Site address:	

Recreational disturbance																	
The proposed development would be within 5.6 km of Chichester and Langstone Harbour, which is a Special Protection Area and Ramsar site. As such, mitigation will need to be provided. The Council considers that mitigation provided in line with the Solent Recreation Mitigation Strategy (available at www.birdaware.org/strategy) is appropriate to the applicable planning applications. This would result in a mitigation package based on the table below. It will be necessary for a suitable avoidance and mitigation package to be provided in order for the Council to lawfully grant permission for applicable schemes. <table border="1"> <thead> <tr> <th>Size of units</th> <th>Scale of mitigation per unit</th> </tr> </thead> <tbody> <tr> <td>1 bedroom</td> <td>£346.00</td> </tr> <tr> <td>2 bedroom</td> <td>£500.00</td> </tr> <tr> <td>3 bedroom</td> <td>£653.00</td> </tr> <tr> <td>4 bedroom</td> <td>£768.00</td> </tr> <tr> <td>5 bedroom</td> <td>£902.00</td> </tr> <tr> <td colspan="2">Please note that a monitoring fee is attached, at 5% of mitigation cost.</td> </tr> <tr> <td colspan="2">Please note that an administration fee of £20 per application is applied.</td> </tr> </tbody> </table>		Size of units	Scale of mitigation per unit	1 bedroom	£346.00	2 bedroom	£500.00	3 bedroom	£653.00	4 bedroom	£768.00	5 bedroom	£902.00	Please note that a monitoring fee is attached, at 5% of mitigation cost.		Please note that an administration fee of £20 per application is applied.	
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2 bedroom	£500.00																
3 bedroom	£653.00																
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5 bedroom	£902.00																
Please note that a monitoring fee is attached, at 5% of mitigation cost.																	
Please note that an administration fee of £20 per application is applied.																	
Please select one of the following options:																	
I hereby confirm that the proposed development will include an avoidance and mitigation package in line with the Solent Recreation Mitigation Strategy.																	
An alternative approach to avoiding and mitigating the recreational impact arising out of the development is proposed (please set out in more detail in a supporting document appended to this checklist).																	
The site is located more than 5.6km from the Solent Special Protection Areas (this applies to only a small section of the Borough in Cowplain).																	

Water quality

There is existing evidence of high levels of nitrogen and phosphorus in the water environment with evidence of eutrophication at some designated sites. As such, there is considered to be a likely significant effect from residential (and similar) developments located anywhere in Havant Borough. As a result, an avoidance and mitigation package will be needed in order for the Council to lawfully grant any planning permission. The Council has published a Nutrient Neutrality Position Statement which sets out that it is possible to mitigate development in the short term.

The position statement highlights those developments which are expected to provide avoidance and mitigation on-site, thus resulting in a nutrient neutral development. It also sets out that, for any other applicable developments, the exact scale of avoidance and mitigation package (which would take the form of a financial contribution) is not yet known.

As a result, in order for the development to comply with the requirements of the Conservation of Habitats and Species Regulations and for the Council to lawfully be able to grant planning permission, it will be necessary to impose a grampian condition requiring the provision of an avoidance and mitigation package prior to the occupation of the development.

It would be the applicants risk as to whether to proceed with any development that is granted planning permission without the knowledge of the precise scale of the avoidance and mitigation package.

Please select **one** of the following options:

I hereby confirm that the proposed development will include an avoidance and mitigation package, in line with the Nutrient Neutrality Position Statement and confirm that I am content that a grampian condition is used to secure this prior to occupation.	
The proposed development would be 'nitrogen neutral'. A nitrogen budget is attached to this checklist (this option is particularly applicable to developments proposed on agricultural land)	
The proposed development is not nitrogen neutral and no avoidance or mitigation package is proposed (please note that planning permission could not lawfully be granted in these circumstances).	

Please select one of the following options to the right, then complete all boxes below	Signed by applicant		Signed by agent	
By submitting this form to Havant Borough Council, the applicant is committing to providing mitigation packages, usually in the form of a financial contribution. If the top option for 'water quality' has been selected, the applicant specifically understands that the scale of the contribution is unknown at this time.				
If an agent is signing on behalf of an applicant, it is the agent's responsibility to seek the agreement of the applicant to the commitments selected above as it will be the applicants who assumes the risk and responsibility upon the granting of any planning permission.				
Signed:				
Print name:				
Date:				

APPENDIX G

APPEAL BY MR ELDNEY AGAINST THE DECISION OF HAVANT BOROUGH COUNCIL TO REFUSE TO GRANT PLANNING PERMISSION FOR Variation of Condition 7 of Planning Permission APP/18/01276 (Erection of 1No.1bed detached bungalow with associated parking and access. New parking layout for 35 Blackthorn Drive) to allow the development to be constructed in accordance with the schedule of materials submitted; and removal of Condition 10 of Planning Permission APP/18/01276 which relates to withdrawal of permitted development rights.

SUGGESTED CONDITIONS

- 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.
- 2 The development hereby permitted shall be carried out in accordance with the following approved plans:
Site Location and Block Plan drwg.no 234/10/01 received 12 December 2018
Proposed Ground Floor drwg.no 234/10/02 received 12 December 2018
Proposed Roof Plan drwg.no 234/10/03 received 12 December 2018
Proposed Elevations drwg.no 234/10/04 received 12 December 2018
Proposed Site Layout Plan drwg.no 234/10/05 received 12 December 2018
Proposed Cycle and Refuse Plans drwg.no 234/10/06 received 12 December 2018
Schedule of Materials 19 December 2019
Reason: - To ensure provision of a satisfactory development.
- 3 The finished ground floor level shall not exceed 150mm above existing ground level of the site.
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 The car parking, servicing and other vehicular access arrangements shown on the approved plans to serve the development hereby permitted shall be made fully available for use prior to the development being first brought into use and shall be retained thereafter for their intended purpose.
Reason: In the interests of highway safety and having due regard to policy DM13 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.
- 5 The premises shall not be occupied before the proposed access and the crossing of the highway verge and/or footway is constructed and laid out in accordance with the approved details.
Reason: In the interests of highway safety and having due regard to policies CS16 and CS20 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 6 The hawthorn hedge to the southern boundary of the site shall be retained. Measures shall be undertaken to prevent damage to existing hawthorn hedge throughout implementation of the development hereby approved. Any such tree which is nevertheless seriously damaged during that implementation shall be replaced within 6 months of the occurrence of such damage by another of the same species in the same position.
Reason: To safeguard the continued health and presence of such existing vegetation and protect the amenities of the locality and having due regard to policies CS16 and DM8 of the Havant Borough Core Strategy 2011 which form part of the Local Development Framework and National Planning Policy Framework, March .
- 7 The development shall be constructed in accordance with the hard and soft landscaping specifications as detailed within the submitted plans. The development hereby permitted shall not be brought into use until the implementation of all such hardsurfacing and soft landscaping has been completed in full accordance with that specification.
Reason: To ensure the appearance of the development is satisfactory and having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.
- 8 The development hereby permitted shall not be brought into use until the means of enclosure of the site has been installed and completed in full accordance with the specifications as detailed within the submitted plans.
Reason: To ensure the appearance of the development is satisfactory and having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.
- 9 Notwithstanding the provisions of any Town and Country Planning General Permitted Development Order, no extension, building, structure or roof alteration permitted by Part 1, Classes A, B, C or E of the 2015 Order, as amended, shall be erected within the curtilage of the site without the prior written approval of the Local Planning Authority.
Reason: To avoid an overdevelopment of the site in the interests of the character of the area and amenities of the occupiers of nearby properties and having due regard to policy CS16 and DM13 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2018.