

TOWN AND COUNTRY PLANNING ACT 1990 (As Amended)

**Appeal by Bargate Homes
Against the decision of Havant Borough Council
to
Refuse Full Planning Permission for**

Erection of 50 dwellings together with Access, Landscaping and Open Space

on

**Land at Lower Road,
Bedhampton,
Havant
PO3 3NB**

LPA REF: APP/19/00427

STATEMENT OF CASE ON BEHALF OF THE APPELLANT

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1.0 INTRODUCTION

1.1 This appeal relates to the decision of Havant Borough Council (“The Council”) to refuse full planning permission for the erection of 50 dwellings with new access, landscaping and Public Open Space on land south of Lower Road, Bedhampton, Havant. A copy of the Planning Officers reports recommending approval of the application together with the relevant minutes are attached at **Appendices 1 & 2**.

1.2 The application the subject of this appeal was registered on 3 May 2019 and refused on 26 March 2020 against Officers recommendation for the following reasons;

1. *The proposed development would adversely affect the open character and appearance of the setting to this part of the Old Bedhampton Conservation Area by reason of the scale of the development and the loss of agricultural land which provides a setting to the Conservation Area. These adverse effects are not outweighed by the benefits of the scheme. The proposal is therefore contrary to Policies CS11 and CS16 of the Havant Borough Local Plan (Core Strategy) 2011, Policy DM20 of the Havant Borough Local Plan (Allocations) 2014, and the National Planning Policy Framework.*
2. *Binding arrangements are not in place to secure the following aspects of the development, as a result of which it is not considered that the development could be undertaken in a satisfactory manner:*
 1. *Affordable Housing*
 2. *S106 monitoring fee*
 3. *Open Space, orchard, children’s allotments and associated infrastructure should be provided by the developer and arrangements for maintenance incorporated in the Management Plan. Including measures to ensure that the open space is managed in a Nutrient Neutral manner*
 4. *Solent Recreation Mitigation Strategy contribution currently £33,975.70*
 5. *SUDS bond*
 6. *A contribution towards Health of £8,000*
 8. *Mitigation Payment to the SWBGS of £329,036.40 for loss of secondary support habitat*
 7. *Permissive paths*
 8. *A contribution towards a Community worker of £12,500*
 9. *Delivery of site access works via a S278 agreement, prior to commencement of development.*
 10. *Financial contribution of £23,489 to be paid towards the route to school improvements identified in drawing number ITB12174-GA-007 Rev A prior to occupation of any dwelling.*

The carrying out of the development in the absence of such provision would result in an unsatisfactory and unsustainable form of development having due regard to Policies CS1, CS7, CS8, CS9, CS11, CS13, CS15, CS16, CS19, CS20, CS21, DM13 and DM8 of the Havant Borough Local Plan (Core Strategy) 2011; Policies DM20, DM23 and DM24 of the Havant Borough Local Plan (Allocations) 2014; the Conservation of Habitats and Species Regulations 2017 (as amended); and the National Planning Policy Framework.

1.3 The application the subject of this appeal had been subject to extensive pre-application discussions with the Planning Officers, thorough Community Engagement and an extensive dialogue during the determination of the application to ensure that all matters raised had been appropriately resolved in order to enable the Planning Officer to recommend the application for approval.

2.0 THE SITE AND ITS CONTEXT

- 2.1 The appeal site comprises 3.85 hectares of relatively level agricultural land to the south of Lower Road, Bedhampton immediately adjoining the urban settlement boundary, whilst to the north of Lower Road are found relatively modern residential properties dating from pre-dominantly the 20th Century which provide the immediate suburban setting to the site. The site does not lie within any area designated for its landscape or heritage importance, although part of the site lies adjacent to an outlying area of the Old Bedhampton Conservation Area known as Character Area 5 - Old Manor Farm. This 'Character Area' is divorced from the main historic part of the Conservation Area and, unusually, stands in isolation as a small group of buildings which were added to the Conservation Area in September 2019 during the consideration of the appeal application. The original buildings themselves are not particularly historic, dating from around the beginning of the 20th Century with no outstanding or remarkable features of note. Their conversion to residential use has dramatically changed their function and overall character such that they relate more to the 20th Century dwellings to the north side of Lower Road than to their agricultural past. The Conservation Area Appraisal which was undertaken to support this extension confirms;

C. Old Manor Farm buildings

7.6 These buildings provide insight into the agricultural past of the settlement. Whilst they are no longer in their original agricultural use, they retain some interesting architectural features and the relationship between the buildings is distinctly that of a farmyard arrangement.

Old Manor Farm buildings themselves have been converted to residential use and, more recently, a substantial new dwelling has been erected, which, together with the residential extensions, substantial double garages and domestic paraphernalia, detract from the historic significance of these buildings. However, with respect to the surrounding agricultural land, which includes the appeal site, the CA Appraisal confirms;

7.8 Although these areas form part of the setting to the conservation area, and historic connections can be evidenced from mapping and other sources, they are mainly fields that do not have the special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance. Therefore, these areas are not included within the revised boundary of the conservation area.

- 2.2 The context to the appeal site is therefore very much derived from its immediate proximity to Bedhampton, now a large suburb of Havant, a substantial town which provides access to extensive local services, employment opportunities and public transport facilities which reinforce the sustainable credentials of the site. A full description of the appeal site and its surrounding context, including a thorough heritage impact assessment of the proposals will be provided within the Appellant's Proofs of Evidence.

3 RELEVANT PLANNING HISTORY

- 3.1 The relevant planning history to the appeal site, including the site's allocation under Policy H20 – Land South of Lower Road of the emerging Havant Local Plan 2036, will be described fully within the Appellant's Proofs of Evidence. Policy H20 is highly relevant as it has been endorsed by the Council's Cabinet for submission to Examination shortly, subsequent to the refusal of planning permission. It confirms that the appeal site should accommodate "about 50 dwellings" and does not set an upper or lower limit of dwellings subject to compliance with a number of criteria which are fully satisfied by the appeal proposals. As a consequence, significant weight can be given to this emerging policy which

is fully supported by the Council and which is relied upon to justify its stated 5 Year HLS position. By allocating the site the Council accepts that it can accommodate about 50 dwellings without compromising the setting of the adjacent Conservation Area or other matters, a position the Council has formally adopted since including the site within its Interim Housing Position Statement in 2016.

- 3.2. There are no current Public Rights of Way across the site. However, a Right of Way is being claimed by local residents and this is a separate matter that will be determined by Hampshire County Council in due course. Without prejudice to the Appellant's view that such a claim is without merit, the proposed layout has been amended to fully accommodate the claimed right of way which lies to the east of any new built development.

4 THE PROPOSALS

- 4.1 As stated above, the proposals comprise the erection of 50 dwellings, (including 30% affordable homes) together with a new access from Lower Road, landscaping and Public Open Space. The proposals have been subject to extensive negotiation and discussion with the Council and the design approach, particularly with regard to the setting of the Conservation Area, will be fully explored within the Appellant's Proofs of Evidence. In addition, it will be demonstrated by reference to the submitted application documents and to statutory consultee responses to the application, that there are no technical reasons why the development cannot proceed and it is the Appellants firm intention to deliver these much-needed homes as soon as possible should this appeal be allowed.

5 PLANNING POLICY

The Development Plan

- 5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out a requirement that planning applications be determined in accordance with the Development Plan unless other material considerations indicate otherwise. This represents the s.38(6) 'tilted balance'. In the case of this appeal, the Development Plan comprises;

- The Havant Borough Local Plan (Core Strategy) (The 'Local Plan') adopted March 2011 (covering the period 2006 to 2026)
- The Havant Local Plan (Allocations) adopted 2014 (The ALP 2014)

In addition, there are a number of other documents which are relevant to the determination of this appeal, including;

- The Pre-submission Havant Borough Local Plan 2036 (The "emerging Local Plan") and associated background evidence with specific reference to the draft allocation of the site for the erection of about 50 dwellings on the appeal site;
- The Old Bedhampton Conservation Area Appraisal September 2019
- The Local Plan Housing Statement December 2016 (Now revoked following the publication of the Pre-Submission Havant Local Plan 2036).
- Havant Housing Supply Update December 2019 which relies on the appeal site for making a significant contribution to the Council's HLS

The Planning Policy context to the appeal site, including both the evolution of the current and emerging Development Plan, will be explained more fully within the Proof of Evidence of David Jobbins, MRTPI, Director at Luken Beck MDP. This will include the Council's adopted position within

the Local Plan Housing Statement 2016 in which it was advised in respect of the appeal site (referenced as Site UE30) and other sites on which the Council now relies to support its 5-year HLS;

3.14 The sites listed in Table 2 have all been considered through the 2016 SHLAA process to be deliverable or developable. As such they are free of constraints that cannot be mitigated, are available for development, and sustainable development could be achieved on the site. Whilst development on these sites would be contrary to Policies CS17 and AL2 which indicate that residential development should be resisted, it is necessary to make a departure from the Adopted Local Plan given the high level of housing need that exists. As such, the Council will support the principle of residential development on the sites ahead of the adoption of the Havant Borough Local Plan 2036, subject to compliance with the remainder of the policies in the Adopted Local Plan and the Guiding Principles in this Housing Statement.

In addition, it will be explained why the appeal proposals do not conflict with the 3 Policies referred to within the decision notice and consequently there is no conflict with the Local Plan.

National Planning Policy

5.2 The following documents will be referred to within the Appellant's Proofs of Evidence with specific reference to the Appeal Proposals, the Council's alleged 5 Year Housing land Supply and the resulting impact of the development upon heritage assets, namely the Old Bedhampton Conservation Area.

- National Planning Policy Framework (NPPF) and National Planning Policy Guidance
- Relevant DCLG Announcements
- Laying the Foundations: A Housing Strategy for England (November 2011)
- The Housing White Paper: Fixing our Broken Housing Market (February 2017)
- Changes to Current Planning System (August 2020)
- White Paper: Planning for the Future (August 2020)
- Historic England's Good Practice Advice, in particular GPA1 - Local Plan Making, GPA 2- Managing Significance in Decision-Taking in the Historic Environment and GPA 3 – The Setting of Heritage Assets;
- Conservation Principles for the sustainable management of the historic environment – Consultation Draft 2017
- British Standard 7913: Guide to the Conservation of Historic Buildings 2013
- Barker, Dr. N. 2015 'Heritage assets and their setting: Views from a practitioner' Joint planning law conference Oxford
- Any future Government consultations or policy statements relevant to the appeal

5.3 In addition to the above, the Appellant will rely on a detailed assessment of the Council's position on its Housing land Supply together with established case law and relevant appeal decisions to support the view that the Council does not currently have a 5 Year Housing land Supply and therefore, the 'tilted balance' is currently in play. It will be argued that the appeal proposals comprise a highly sustainable form of development which cause no material harm to the setting of heritage assets, which, together with other significant and compelling material planning considerations, are sufficient to outweigh any potential conflict with the out-of-date Local Plan. In addition, significant weight can now be given to the Policy H20 of the emerging Local Plan which allocates the site for development of about 50 dwellings. Therefore, on balance, it will be demonstrated that there are well-founded and robust reasons to justify an approval of planning permission.

6 THE APPELLANT'S CASE/APPROACH TO REASONS FOR REFUSAL

The Council's 5 Year Housing land Supply Position

6.1 The Appellant will provide evidence within the Proof of Evidence of Mr Steven Brown MRTPI of Woolf Bond Planning LLP to demonstrate that the Council does not have a 5 Year Housing Land Supply (HLS) and consequently, the 'tilted balance' within Paragraph 11 of the NPPF is engaged. Evidence will be produced that shows the Council has incorrectly assessed its housing requirement and also that, having reviewed the Council's alleged supply, the Council is unable to demonstrate a 5-year HLS for the relevant period 1st April 2019 – 31st March 2024. It is also notable that the Council relies upon the appeal site when calculating its HLS together with other sites which do not qualify as being deliverable. It is therefore contended that, at the time of writing this Statement, the Council's HLS only amounts to 3.7 years. The following case law and appeal decisions will be referenced to support this position within the forthcoming Proofs of Evidence together with any other appeal decisions or case law that may become available prior to the Inquiry in respect of HLS;

- East Northamptonshire Council V Secretary of State for Housing, Communities and Local Government – Case Number CO/917/2020
- Appeal Decision by the Secretary of State the Oxford Brookes Wheatley Campus allowed on 23rd April 2020 (Appeal Ref: APP/Q3115/W/19/3230827)
- Appeal Decision by the Secretary of State allowing residential development off Audlem Road/Broad Lane, Nantwich (Appeal Ref: APP/R0660/A/13/2197532).
- Appeal Decision allowing residential development on Land on East side of Green Road, Woolpit, Suffolk (Appeal Ref: APP/W3520/W/18/3194926)
- Appeal Decision dismissing residential development at Longdene House, Hedgehog Lane Haslemere (Appeal Ref: APP/R3650/W/16/3165974)
- Appeal Decision allowing residential development on Land west of Cody Road, Waterbeach Cambridge (Appeal Ref: APP/W0530/A/13/2207961)
- Appeal Decision by the Secretary of State allowing residential development on land North and South of Flitch way, Pods Brook Road, Braintree (Appeal Ref: APP/Z1510/W/18/3197293)
- Appeal Decision by the Secretary of State dismissing residential development on land South of Oakridge, Highnam Gloucestershire (Appeal Ref: PCU/APP/G1630/W/3184272)
- Appeal Decision allowing residential development on land at Long Street Road, Hanslope, Milton Keynes (Appeal Ref: APP/Y0435/W/17/3177851)
- Appeal Decision allowing development at 38 London Road, Purbrook, Havant (Appeal Ref: APP/X1735/W/16/3145929)

It is further contended that the Council's HLS will be demonstrably worse should the proposed changes to the Standard Method for assessing local housing need be introduced (Predicted to increase from 504 dwellings pa to 963 dwellings pa).

6.2 Paragraph 11 of the NPPF confirms that Plans and decisions should apply a presumption in favour of sustainable development. It further advises that for Plan-making this means plans should positively seek opportunities to meet the development needs of their areas and be sufficiently flexible to adapt to rapid change and that, **as a minimum**, they should provide for objectively assessed needs for housing and other uses. For decision-making, this means approving plans that accord with an up-to-date development plan without delay or, where the policies most important for determining the application are out-of-date, then granting permission unless policies within the NPPF that protect areas or assets of particular importance provides a clear reason for refusing permission or any adverse

impacts of granting approval would significantly and demonstrably outweigh any benefits when assessed against the policies in the NPPF as a whole.

6.3. It is the Appellants firm view that the tilted balance is in operation at this appeal for two independent reasons as set out within Paragraph 11 of the NPPF namely;

- the existing Havant Local Plan is out-of-date irrespective of the 5 Year Housing Land Supply position and those Policies relied upon in the decision notice are inconsistent with the NPPF for the reasons given below;
 - The Local Plan was adopted in 2011, before the publication of the NPPF and its subsequent revisions. This renders it out of date due to inconsistencies between the policies of the Local Plan and the objectives of the NPPF and the presumption in favour of sustainable development. There are significant and material inconsistencies between the policies of the Local Plan and the NPPF which do not reflect current objectives or the need to “significantly boost” housing provision. In addition, the NPPF provides more up-to-date guidance with respect to heritage assets and assessment of any potential impact such as the impact the setting of Conservation Areas and the degree of harm (if any) and how this should be assessed.
 - The Council in its decision notice relies on Policies CS11, CS16 and DM20 which are inconsistent with the NPPF for the following reasons;
 - **Policy CS11** (Protecting and Enhancing the Special Environment and Heritage of Havant Borough) and **Policy CS16** (High Quality Design) of the Havant Local Plan 2011 and Strategic **Policy DM20** (Historic Assets) of the Havant Local Plan (Allocations) 2014, none of which are up-to-date or reflect current guidance. The NPPF 2019 provides more up-to-date guidance and in the case of less than substantial harm, requires the decision-maker to balance such harm against the public benefits of the proposals. There is no mention of the public balance in any of these policies nor to the setting of designated heritage assets which renders these policies inconsistent with current guidance. Furthermore, Policy DM20 sets out the requirements for the submission of a planning application all of which have been met by the appeal proposals. Notwithstanding this, and without prejudice to the Appellant’s position, evidence will be produced which shows that the appeal proposals comply all of these policies and the more up-to-date guidance within Paragraphs 185 – 196 of the NPPF
 - The evidence base on which the Local Plan was prepared is over 10 years old which reinforces our view that the current Local Plan is out of date.
- The Council does not have a 5 Year Housing Land Supply as will be demonstrated within the evidence of Steven Brown;
- For the above reasons the tilted balance is in play;
- The titled balance is a significant and compelling consideration and of material importance to the determination of this appeal;
- The appeal proposals comprise sustainable development to which substantial weight should be given and the significant contribution to economic, social and environmental objectives will

be demonstrated to be sufficient to outweigh any potential harm, notwithstanding the Appellants view none will arise.

- The Council has failed to produce any convincing evidence to justify the decision to refuse planning permission which is based upon the impact upon the setting of the very recently designated extension to the Conservation Area, namely the Manor Farm Buildings; and the Appellant will produce compelling evidence to demonstrate that, should any harm arise, (which is disputed) it is less than substantial harm as defined by Paragraph 196 of the NPPF. As such, it is outweighed by the substantial public benefits that would arise through the provision of 50 new homes (including 30% affordable) and other economic, social and environmental benefits.
- The emerging Local Plan can be given significant weight and Draft Policy H20 allocates the site for “about 50 dwellings” and the appeal proposals are considered to be in full accord with this emerging policy
- The concerns expressed by third parties are not sufficient to outweigh any of the economic, social or environmental benefits of the appeal proposals and do not justify refusal of planning permission
- It is therefore the Appellants view that the overall planning balance is strongly in favour of the appeal proposals and there are no over-riding material planning considerations which support the refusal of planning permission.

Reason for Refusal 1

6.4. With respect to Reason for Refusal 1, John Trehy of Terence O Rourke Ltd, will produce evidence to demonstrate that the proposals will cause no harm to the significance of the Conservation Area and specifically Character Area 5, owing to the Design Approach adopted. As such the development will not be contrary to Policies CS11 and CS16 of the Havant Local Plan 2011 or Policy DM20 of the ALP 2014. Notwithstanding the Appellant’s firm view that no harm will arise, should the Inspector consider that less than substantial harm occurs, it will be demonstrated that any such harm is outweighed by the provision of a highly sustainable development which delivers much needed housing (including 30% affordable housing) together with other contributions towards the three objectives set out within Paragraph 8 of the NPPF, namely Economic, Social and Environmental. Reference will be made to the following case law together with relevant appeal decisions to support the Appellant’s case;

- East Northamptonshire District Council, English Heritage and the National Trust v Secretary of State for Communities and Local Government and Barnwell Manor Wind Energy Ltd (Case CO/4231/2012; Appeal Case No. C1/2013/0843)
- The Forge Field Society & Ors, R (on the application of) v Sevenoaks District Council [2014] EWHC 189 (Case CO/16932/2013)
- Palmer v Herefordshire Council & Anr Case No: C1/2015/3383 Court of Appeal (Civil Division) [2016] EWCA Civ 1061 WL 06476219
- Forest of Dean District Council v SoSCLG & Gladman Case no. CO/4852/2015 EWHC421

6.5. In addition, David Jobbins MRTPI, Director of Luken Beck MDP Ltd, will produce evidence which sets out the relevant Planning Policy Framework and will provide an assessment of the various contributions to sustainable development that will be brought about by the proposals which weigh

heavily in favour of allowing the appeal and against which the ‘tilted balance’ should be considered. He will further appraise the decision with respect to its reasonableness in the face of a robust recommendation of approval and the weight to be applied in respect of Policy H20 of the emerging Local Plan which was endorsed on 1st July 2020 by the Council’s Cabinet for submission to the Secretary of State for Examination.

- 6.6. The Appellant fully intends to undertake the development should this appeal be allowed and will commence on site once any pre-commencement conditions have been satisfied. Therefore, the new houses, including the 30% affordable homes, together with other economic, environmental and social benefits will be delivered.

Reason for Refusal 2

- 6.7. With respect to Reason for Refusal 2 – The ‘Contributions Reason’, a Section 106 Agreement/Unilateral Undertaking will be completed which deals with all those issues referred to within the decision notice such that this Reason will be overcome.

7 RESPONSE TO THIRD-PARTY REPRESENTATIONS

- 7.1 There are no technical reasons why the appeal proposals should not proceed having regard to the submitted reports and responses from statutory consultees and in the absence of any compelling objections to the proposals. The various consultee responses are set out within the attached Planning Committee Reports which are comprehensive, balanced and well considered. The Planning Officer’s conclusions are fully supported and provide a useful summary in respect of the Third-Party representations, none of which outweigh the substantial contribution to the three objectives to sustainable development and the need to significantly boost housing supply on the site which is due to be allocated for development within the emerging Local Plan to which significant weight can now be afforded.

8 CONCLUSIONS

- 8.1 The Council’s decision to refuse planning permission is without merit for the following reasons;

- The Havant Local Plan 2011 and evidence base precedes the earlier NPPF, whilst the Havant Borough Local Plan (Allocations) 2014 pre-dates the more recent 2019 NPPF and therefore cannot be said to reflect current guidance within the NPPF or NPPG or the desperate housing crisis facing the country and the need to significantly boost housing supply. In addition, as will be demonstrated at the Inquiry, the Council does not have a 5-Year Housing Land Supply which consequently renders the housing supply policies of the Local Plan out of date. As such, the ‘tilted balance’ provided by Paragraph 11 of the NPPF applies.
- The proposals are in full compliance with the emerging Local Plan and in particular Policy H20 to which significant weight can be attached
- The appeal proposals will make a tangible and compelling contribution to the three objectives to sustainable development namely **Economic**, both during the construction phase and once complete; **Social** – by the provision of much needed housing including a significant proportion of affordable homes, along with the provision of large areas of Public Open Space which will encourage healthy lifestyles and **Environmental**, through the introduction of a well-designed development which has full regard to its context including the adjacent outlying part of the Conservation Area and by the removal of the existing, intrusive and inappropriate linear conifer belt which dominates the area and detracts from local character and also the significant biodiversity enhancements that will arise as a result of the development;

- The principal reason for refusal relates to the impact upon the setting of the very recently extended Conservation Area to include the Old Manor Farm Buildings, yet the significance of this small group has already been severely compromised by its conversion to residential and by the numerous extensions/alterations, substantial domestic garaging and residential paraphernalia evident on the site. In addition, the erection of a substantial new dwelling has further eroded its significance. The proposals have been purposefully designed to respect the context of this recent addition to the Conservation Area and cause no harm to its significance as acknowledged by the adopted Conservation Area Appraisal which states;

Although these areas [including land south of Lower Road] form part of the setting to the conservation area, and historic connections can be evidenced from mapping and other sources, they are mainly fields that do not have the special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance. Therefore, these areas are not included within the revised boundary of the conservation area.

(Paragraph 7.8 of Old Bedhampton Conservation Area Appraisal September 2019)

- With respect to Reason for Refusal 2, this will be overcome through the completion of a Section 106 Agreement which deals with each of the issues raised.