

PLANNING APPLICATION RESPONSE OF PLANNING POLICY

Application No:	APP/20/00376
Site Address:	Fowley Cottage, 46 Warblington Road, Emsworth, PO10 7HH
Development:	Retain the existing 'Fowley Cottage' dwelling and tennis court and construct nine new dwellings and 1 No. garden studio (Revised).
Case Officer:	Daphney Haywood
Comments by:	Jade Ellis
Date of Comments:	22 June 2020

Policy Status:

The [Local Plan \(Core Strategy\)](#) and the [Local Plan \(Allocations\)](#), together with the [Hampshire Minerals and Waste Plan](#), provide the development plan for the borough. The [Pre-submission Havant Borough Local Plan 2036](#) (HBLP 2036) was approved by the Council on 30 January 2019 and can be afforded limited weight.

The following Adopted Local Plan policies are of particular relevance:

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

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

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

In addition to the above, the Council published changes to the Pre-Submission Plan which were due to be considered at Cabinet and Council on 25 March 2020. Those changes have subsequently been recommended to the Full Council by the Cabinet when it met on 1 July.

Whilst these changes to the Pre-Submission Plan may not have weight in development management, they are intended to address the main issues arising from the Regulation 19 consultation at the beginning of 2019 and indicate the direction of travel of the Local Plan.

As such, it is still recommended that they are considered as it is perfectly possible that by the point of determination, they could have at least limited weight.

Importantly, the [Emsworth Neighbourhood Plan \(ENP\)](#) has also reached an advanced stage of preparation, and the examiner's report was received on 6 January 2020. A referendum was scheduled to take place alongside the local elections on 7 May 2020 but has been postponed due to Covid-19. The Government subsequently issued updated Planning Practice Guidance which indicates that a neighbourhood plan can be given significant weight in decision-making in advance of a referendum.

The following policies from the ENP are of relevance:

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

This application is a revised submission following the refusal of planning permission reference APP/19/00623 on 29 April 2020 for the retention of the existing 'Fowley Cottage' dwelling and the construction of 6 No. 5 bed detached dwellings.

Principle of Development:

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

The site is identified for about 40 dwellings under Policy H13 in the Pre-Submission version of the Plan. However, the proposed changes to the Pre-Submission Plan include a reduction of the site capacity of the emerging allocation 'to around 20 dwellings'.

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

For allocations in the Pre-Submission Plan, yields were calculated using the net developable area considering any high-level mappable constraints including access, ground conditions, flood risk and contamination. In this case, the Flood Zones 2 and 3 affecting the southern part of the site were taken into account, reducing the net developable area to approximately

1ha. More detailed information was submitted by the applicant during the previous application reference (APP/19/00623) which indicated a developable area of no more than 0.5ha, having regard to the tree constraints and sewer easement. As such, the proposed changes to the Pre-Submission Plan indicate a reduction in the site capacity of the allocation from 40 dwellings to 20 dwellings.

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

Whilst the changes to the Pre-Submission Plan anticipate the delivery of 20 dwellings, it is acknowledged the site capacities of allocations are set at 'about' rather than minimums or maximums. This is because depending on the form of development proposed through a planning application, it could be that different numbers of homes are achieved subject to other relevant policies or material considerations in the Plan.

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

Housing Density:

National Policy Context

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

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

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

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

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

Local Policy Context

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

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

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

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

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

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

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

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

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

Site Specific Constraints

Paragraph 6.33 of the supporting text for emerging Policy H3 indicates that site-specific constraints and local character may justify a different approach having regard to the site context. In such circumstances, a detailed Design and Access Statement must fully explain the rationale to the proposed approach to the design and layout of the scheme. In this respect, Section 2 of the submitted Design and Access Statement provides an assessment of the site constraints which have influenced the arrangement and design of the proposed houses, including important trees, the extent of flood risk affecting the southern part of the site; sewers, residential amenity of neighbouring occupiers and a restrictive covenant (which

would not be a material consideration) on Curlew Close which allows a maximum of 5 dwellings to the south of the existing house.

The submitted Constraints Plan a quantitative assessment of the likely developable area which takes into account the site's constraints including easement needed for the sewer, the TPOs and the root protection areas. This indicates a maximum deliverable area of 0.486ha. It is also understood that the applicant has not further explored the capacity of the southern part of the site at this time due to the covenant affecting Curlew Close or looked at any alternative design solutions for the site e.g. taking access through the tennis court (which is also required to remain under covenant).

Based on the applicant's analysis, the northern part of the site has a net developable area of 0.119 ha and the southern part of the site has a developable area of 0.367 ha. Based on the submitted scheme of 9 dwellings, this would provide a density of about 18.5 dph. However, the northern part of the site falls within the 'area of search for 55 dph' as defined by Figure 23 in the Pre-Submission Local Plan, whilst the southern part of the site would be expected to provide 40 dph under the emerging policy.

Based on the revised net developable area, it is considered that a more realistic site yield is likely to be around 22 dwellings (rounded), or 19 dwellings if 40 dph is applied across the entire site (provided for context, acknowledging that this is not what Policy H3 sets out). Either figure is a far greater number of dwellings than envisaged by the revised scheme (9 dwellings).

Northern part of the site – 0.119ha x 55 dph = 6.5 dwellings

Southern part of the site – 0.367ha x 40 dph = 14.7 dwellings

40 dph across the entire site – 0.119ha + 0.367ha = 0.486 x 40 dph = 19.4 dwellings

Despite acknowledging that there would likely to be a "middle ground" between the 'about 40 dwellings' and the previously submitted scheme of 6 dwellings, there has only been a marginal increase in the number of dwellings proposed on the site. However, this does not address our previous concerns in relation to the optimisation of the developable area.

Local character

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

The proposed development would provide for a total of nine dwellings, of which two would be 2 bedroom dwellings and two would be 3 bedroom dwellings. However, these would be substantial when compared to the Nationally Described Space Standards:

	Floorspace (Gross Internal Area)	Nationally Described Space Standards GIA¹	Comparison
2 x 2-bedroom detached houses	100	79 (4 person)	+126%
2 x 3-bedroom detached houses	170	95 (6 person)	+179%

¹ Assumes largest number of persons for each dwelling size

5 x 4-bedroom detached houses	145 to 278	124 (8 person)	+145-191%
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The above table shows that the small dwellings (2 bedroom units) would be at least one and a quarter the size of NDSS for two-bedroom dwellings. The 3 and 4 bedroom units would around one and a half times the size when compared NDSS.

As such it cannot be concluded that the revised scheme would make an efficient use of the available land under Policy CS17. As such, it cannot be concluded that the proposed form of development would fully maximise the potential of the site to address housing needs and would therefore be contrary to the aims and objectives of emerging Policy H3 and paragraph 123 of the NPPF. Paragraph 123 section c) of the 2019 NPPF is clear that local planning authorities should refuse applications which they consider fail to make efficient use of land, taking into account the policies in the Framework.

Coordination of Development

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

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

In this particular case, it is noted the applicant is the current owner of the existing house and the tennis courts are in the same ownership and are to be retained as part of a shared communal facility. However, arguably this prevents a development coming forward on a larger area of land and seeks to circumvent other developer requirements. This is considered in further detail below.

Housing mix and affordable housing

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

Paragraph 6.24 of the Core Strategy states that a mix of dwelling types should sought from one and two bedroom flats to terrace and larger detached houses. It is noted that the proposal would provide five no. 5 bedroom detached dwellings.

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

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

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

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

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

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

Design

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

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

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

Health and wellbeing

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

The site also includes common parts, including vehicular and pedestrian access to the southern properties from Curlew Close. At the south of the site there is an access to Chichester Harbour and Footpath 56 (Wayfarers Way), which runs along the coast from Emsworth to Langstone. However, this is private access for use by residents only. Policy E2 of the Pre-Submission Local Plan highlights the need to enhance existing and facilitate new opportunities for active travel (walking and cycling) ...by...creating and improving pedestrian and cycle routes linkages within the Borough and to surrounding areas, particularly...along the coast. The need for a safe and convenient access to Footpath 56 is also highlighted in the allocation for the site (H13). In this respect, it is also noted that criterion f of Policy E1 indicates that the layout should provide safe and convenient access for all users. It is recognised that consideration should be given to the need for natural surveillance and lighting, ensuring that the latter does not adversely affect designated habitats or the landscape.

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

Development Requirements:

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

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

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

Parking:

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

Summary:

Emerging policy H3 must be afforded some weight particularly given the clear direction in national policy to optimise the use of land. The NPPF in and of itself is also a material consideration in the determination of planning applications.

The development proposals would provide for a significantly lower density than set out by emerging policies H3 and H13. As such the development proposals are not be capable of support in their current form. The area which has been made for development prevents development coming forward on a larger area of land. Furthermore, the proposed form of development seeks to artificially lower the density of the site, and thereby circumvent the requirements for housing mix and affordable housing.

Whilst there are site specific constraints which reduce the net developable area, the proposed form of development seeks to artificially reduce the capacity of the site. On this basis, it cannot be concluded that the revised development form would make an efficient use of land and optimise the use of the site.