

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

**STATEMENT OF  
HAVANT BOROUGH COUNCIL**

**2 Chalton Crescent  
Havant  
PO9 4PT**

**Local Planning Authority Reference:-APP/19/01237  
Planning Inspectorate Reference:-  
APP/X1735/W/20/3248524**

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**APPEAL BY Mr Azad Gulabakh AGAINST REFUSAL of Loft conversion with dormer to create self contained flat with external access via staircase to rear. AT 2 Chalton Crescent, Havant, PO9 4PT**

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**Planning Inspectorate Reference:** APP/X1735/W/20/3248524

**LPA Ref:** APP/19/01237

### **1.0 THE APPEAL SITE AND ITS SURROUNDINGS**

- 1.1 2 Chalton Crescent is an end of terrace post war dwelling located immediately adjacent a public footpath and opposite an area of open space. It is therefore in a prominent position with both the front and side elevation being highly visible from the public area. The footpath comprises adopted highway.

### **2.0 PLANNING HISTORY**

APP/18/01054 – Loft conversion with rear dormer windows. Withdrawn 17/12/2018

- 2.1 There were design concerns over the previous dormer proposed, which resulted in the loss of the rear eaves line. It did however retain the site as a single family dwelling, and should the Inspector wish to view the details, they can be viewed on the link below:

[https://planningpublicaccess.havant.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=DCAPR\\_244711](https://planningpublicaccess.havant.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=DCAPR_244711)

### **3.0 THE APPLICATION**

- 3.1 The proposal is for the insertion of a rear dormer with projecting balcony and spiral staircase to enable independent occupation as a self-contained flat/bedsit. The dormer would be flat roofed and extend across most of the rear roof slope – the proposed balcony/landing would be 1m deep, extending to 1.8m to access a freestanding spiral staircase having a diameter of 2.2m. This structure would therefore overhang the eaves line and rear façade and be sited within 0.5m of the eastern side boundary with the public footpath. There is an existing pedestrian gate in this side boundary at this point, which would provide access to the spiral stairs and flat.
- 3.2 A 1.9m high privacy screen is proposed to the landing area. It is also proposed to provide one on site parking space at the front of the property.

### **4.0 PLANNING POLICIES**

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

CS16 (High Quality Design)

CS17 (Concentration and Distribution of Development within the Urban Areas)

CS21 (Developer Requirements)

DM10 (Pollution)

DM13 (Car and Cycle Parking on Residential Development)

Havant Borough Local Plan (Allocations) July 2014

AL1 (Presumption in Favour of Sustainable Development)

AL2 (Urban Area Boundaries and Undeveloped Gaps between Settlements)

AL7 (Hermitage Stream)

DM24 (Recreational Disturbance to Special Protected Areas (SPAs) from Residential Development)

## Pre-submission Havant Borough Local Plan 2036

- 4.1 The Pre-submission Havant Borough Local Plan 2036 was approved by the Council on 30 January 2019 and was subsequently published under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012. Public consultation took place between 4 February 2019 to 18 March 2019 and the consultation responses have now been analysed. A number of changes have arisen from responses and the ongoing nutrient neutrality issue and proposed changes have been considered and approved by Cabinet on 1<sup>st</sup> July 2020. Further consultation will take place and the changes will have material weight, should Full Council approve them when they are considered (date TBC). After this period, the next stage in the plan preparation will be the submission of the Local Plan for independent examination and thereafter adoption.
- 4.2 Until this time, the Pre-Submission Local Plan is a material consideration in the assessment of this planning application in accordance with paragraph 48 of the NPPF, which confirms that weight may be given to policies in emerging plans following publication unless other material considerations indicate otherwise. Based on the current stage of preparation, along with the fact that the policies are compliant with the NPPF, the policies within the Pre-Submission Local Plan referenced below are currently afforded some weight, dependent on the level of objection received to each individual policy during the consultation process. Also of relevance is the Position Statement on Nutrient Neutral Development which was approved on 26 June 2019 and is available at [www.havant.gov.uk/localplan](http://www.havant.gov.uk/localplan) (it is envisaged that the Position Statement will be updated in the near future).

The relevant planning policies of the emerging Local Plan are:

IN3 - Transport and parking in new development

E1 – High Quality Design

E12 - Low Carbon Design

E14 – The Local Ecological Network

E16 – Solent Special Protection Areas

E22 - Amenity

H1- High Quality Homes

EX1 – Water Quality impact on the Solent European Sites (whilst this policy is included as a ‘change’ in the local plan and does not yet have material weight, it indicates the direction of travel of the emerging Local Plan on this matter)

- 4.3 Copies of these emerging policies not already included within the appeal Questionnaire are included in **Appendix B** for the Inspectors attention, namely policies IN3, E12, E14, E16 and EX1, which can also be found at the following link:

<https://havant.moderngov.co.uk/documents/s30200/Appendix%20A%20Havant%20Borough%20local%20Plan%20pre%20Submission%20Version%20with%20Changes.pdf>

## **5.0 PLANNING CONSIDERATIONS**

- 5.1 The attached officers report (**Appendix C**) 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 and commentary on the appellants grounds of appeal.

### **HABITAT REGULATIONS**

- 5.2 As the Planning Inspectorate are now the Competent Authority under Regulation 63 of the Habitats Regulations, it will be necessary for the Inspectorate to undertake a Habitats Regulations Assessment, taking into account the impacts of development on the internationally designated sites and the likelihood of significant effects. These fall into **two key areas** and an update with regard to each is provided below:

### **Solent Recreation Mitigation Strategy**

- 5.3 The application site falls within the 5.6km zone of Chichester and Langstone Harbours SPA which are large estuarine basins that contain extensive intertidal mudflats and sandflats that support internationally and nationally important numbers of overwintering and breeding bird species. Please

find additional information about the characteristics of the area, the reasons for its designation, interest features and conservation objectives on the link to Natural England's website below:  
<https://designatedsites.naturalengland.org.uk/Marine/MarineSiteDetail.aspx?SiteCode=UK9011011>

- 5.4 The potential effects of new residential development on the Chichester and Langstone Harbour SPA is outlined in a table contained within **Appendix D**. The evidence base to support the mitigation strategy can be found on the link below:  
<http://www.birdaware.org/research>
- 5.5 Natural England's advice in regard to all new housing development within the 5.6km zone is that it is likely to have a significant effect on the SPA. Policy DM24 of the Allocations Plan covers this issue and allows for a financial contribution to be made towards mitigation measures. Additional information 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>
- 5.6 On 1st April 2018, the Solent Recreation Mitigation Strategy came into force and applies to new residential development (this was as approved by Havant Borough Councils Cabinet on the 7th February 2018.) The Strategy uses a sliding scale to calculate the SRMS contribution for new residential development built within 5.6km of the coastline. As such, the contribution is now calculated based on the number of bedrooms per individual dwelling. In this case, the single bedroom unit development would require a contribution of £346.00 plus 5% monitoring fee of £17.30 and administration fee of £20 such that the total contribution required would be £383.30.
- 5.7 It is confirmed that the Unilateral Undertaking, dated 4<sup>th</sup> February 2020 and correct payment of £383.30 has been received by the LPA. This therefore satisfies this recreational pressure mitigation element of the Habitat Regulations in accordance the Definitive Strategy and policy DM24.

### **Water Quality**

- 5.8 The second likely significant effect on the Solent European Sites arises from a decrease in water quality from the proposed development. The European Court of Justice recently determined a case related to considering water quality in Appropriate Assessments. This is generally referred to as The Dutch Case (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>  
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.
- 5.9 Natural England began to issue revised advice regarding planning applications to Local Planning Authorities on 1 April 2019 as a result of the Dutch Case. Considering this advice and the implications of the case law, it can only be concluded that some forms of new development, including the proposed C3 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 in turn leads to harm to the species which use them – a likely significant effect. The only way that a new 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'.
- 5.10 Havant Borough Council is committed to achieving sustainable development, including the relevant environmental protections. Part of the consideration of this is whether there would be a detrimental impact on the water quality of any European Designated Nature Conservation Sites.
- 5.11 On 26 June 2019, Havant Borough Council's Cabinet approved a 'Position Statement on Nutrient Neutral Development' (please see **Appendix E**). This puts in place mechanisms for development to achieve nutrient neutrality. For development on sites currently used for agricultural purposes, there must be an aim to achieve nutrient neutrality on-site. However, for development on non-agricultural sites, particularly brownfield sites, this is not possible. The Position Statement sets out how development proposals should consider the issue, and in turn the implications for the development the subject of this appeal in particular. The Position Statement then goes on to suggest the use of a planning condition to secure an appropriate avoidance and mitigation package – Paragraphs 57-67 refer.

- 5.12 As part of this approach the LPA have devised a European Site avoidance and mitigation checklist and in this case the Appellant agreed to the imposition of a Grampian style condition to secure appropriate mitigation to achieve nutrient neutrality prior to occupation. The consultation with Natural England to date was on this basis and they have agreed with the findings of the assessment and the use of such a condition as a means to overcome the significant effect which otherwise would have been likely.
- 5.13 Havant Borough Council continue to work on a solution to achieving nutrient neutrality and a mitigation package. As part of the proposed changes to the Pre-Submission HBLP 2036, a new policy EX1 is being established. This policy clarifies that proposals for all new dwellings need to provide a nutrient budget and will only be permitted if a mitigation package can remove the likely significant effect. Should the Council's mitigation solution package be completed and become available prior to the determination of this appeal, then an update will be sent to the Appellant and Inspectorate.
- 5.14 As the Planning Inspectorate are now the Competent Authority under Regulation 63 of the Habitats Regulations, I trust this update will be of assistance to the Inspector when making their deliberations on this case.

#### **COMMENTS ON APPELLANTS STATEMENT OF CASE**

- 5.15 At paragraph 3.4 it is indicated that the existing standard height close boarded fence would help to obscure the lower section of the spiral staircase. However, being sited within only 0.5m of this fence the upper sections of the spiral staircase would be very imposing and overbearing to users of the path. With a total height of some 6.6m the fence would not mitigate the impacts of the upper section of the spiral stairs either visually or from overlooking and overbearing effects.
- 5.16 The dormer shown in Appendix 5 of the Appellants statement relates to a rear dormer serving a single family dwelling and as such is likely to have been constructed under permitted development rights. It has no balcony or Juliette openings and the perception of any overlooking from within its rooms would be limited. In contrast the appeal case proposes a similar sized dormer plus landing/balcony and external spiral staircase that would be in constant use, introducing people at roof height in a residential area. It is the cumulative effect of both the design of the dormer and its spiral staircase and balcony, in combination with the way it would be used as access and outdoor space, in a very prominent location adjacent a footpath, that is considered an inappropriate form of development.
- 5.17 At paragraph 4.3 and 4.6 the Appellant argues that the proposed studio-flat would contribute to meeting the Council's housing need and provide a smaller unit of accommodation. However, it is noted that the Council's Five Year Housing Land Supply Update as of December 2019 indicates that the Council can demonstrate a 5.4 years worth of housing supply, including the recovery of a shortfall (173 units) with a 5% buffer which has accumulated since 2016, as per the document below. Nevertheless, it is noted that the development of 1 flat would contribute a very modest amount to these figures. However, in terms of size, the proposed flat would be so small that it would not meet the nationally described space standards and would be contrary to emerging policy H1, failing to provide an adequate standard of accommodation for future occupiers.
- 5.18 Paragraph 4.3 of the Appellants statement also discusses design detail and the provision of the privacy screen. The quotes included in this section have been taken from the Havant Borough Design Guide SPD, 2011, and the Inspector can see this document in full at the following link if necessary:
- <https://www.havant.gov.uk/sites/default/files/documents/Borough%20Design%20Guide%20SPD%20V2%20with%20Copyright.pdf>
- 5.19 Whilst the provision of the privacy screen would help to reduce overlooking from the balcony, it would not prevent any overlooking from the staircase, nor would it reduce any noise associated with the use of both the stairwell and balcony. The internal size and layout of the proposed flat is such that the entire dormer would comprise complete habitable accommodation. The living area and kitchen would have a direct outlook from the proposed windows and door, which is very different to a standard dormer on a house which usually serves just a bedroom and bathroom. The activity associated with the proposed flat at roof level is not considered commensurate with an area

otherwise characterised by two storey family dwelling houses. It is the LPA's opinion that the proposal fails to comply with both adopted policy CS16 that seeks a high standard of design, and also the supporting the Design Guide SPD.

- 5.20 Overall the site is acknowledged as being within the urban area where the principle of further development is accepted. Within the Appellant's statement there is a reliance on housing need and it is not disputed that the provision of a single small flat would make a small contribution to the Borough's housing targets. However, the policy advice contained within paragraph 11 of the NPPF sets out that developments should only be approved if there are no adverse impacts that would outweigh the benefits. Policy CS16 of the adopted Core Strategy also requires developments to respect local context and not cause unacceptable harm to amenity from privacy, overlooking, outlook and noise. It is considered that the detailed considerations of this proposal highlight adverse impacts to both the visual appearance of the area and to the amenity of nearby residents from overlooking and noise and disturbance. It is considered that these harms would outweigh the benefits of a new dwelling, and the appeal should not be supported.

## **6.0 CONCLUSIONS**

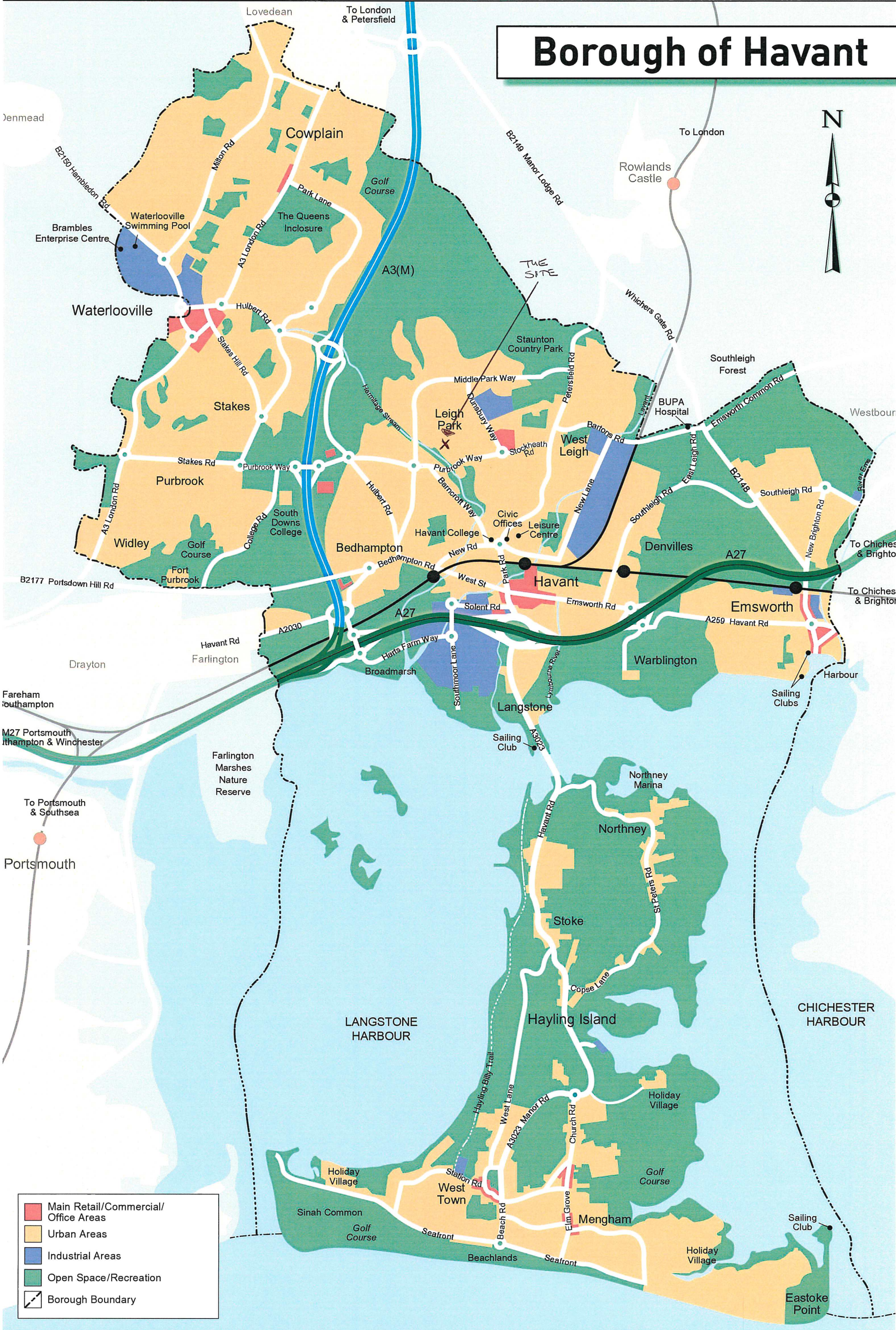
- 6.1 The proposed dormer and its external spiral staircase and balcony/landing is considered an over large and dominant design that does not respect the domestic scale of the host dwelling or character of immediate area. Being in such a prominent location adjacent a public footpath, the proposed development would be a visually incongruous feature. Furthermore, the use of the spiral stairs and balcony area at roof level would result in unacceptable levels of overlooking and noise. In weighing the balance to be struck between achieving additional housing on a site within the urban area, and protecting the environmental qualities of that area, it is considered that the harm that would be caused to the character and appearance of the area and neighbouring amenity, would outweigh the benefits of providing a single flat.
- 6.2 Furthermore, essential mitigation measures in relation to the development's impact upon the Solent SPA sites in relation to water quality have not been secured. The outstanding issues regarding water quality could however be addressed through the use of a Grampian style condition.
- 6.3 Overall the proposed development is considered contrary to adopted policies CS16 and DM10 and emerging policies E1, E22, H1 and EX1 and the Inspector is therefore respectfully requested to dismiss the appeal.

## **APPENDICES**

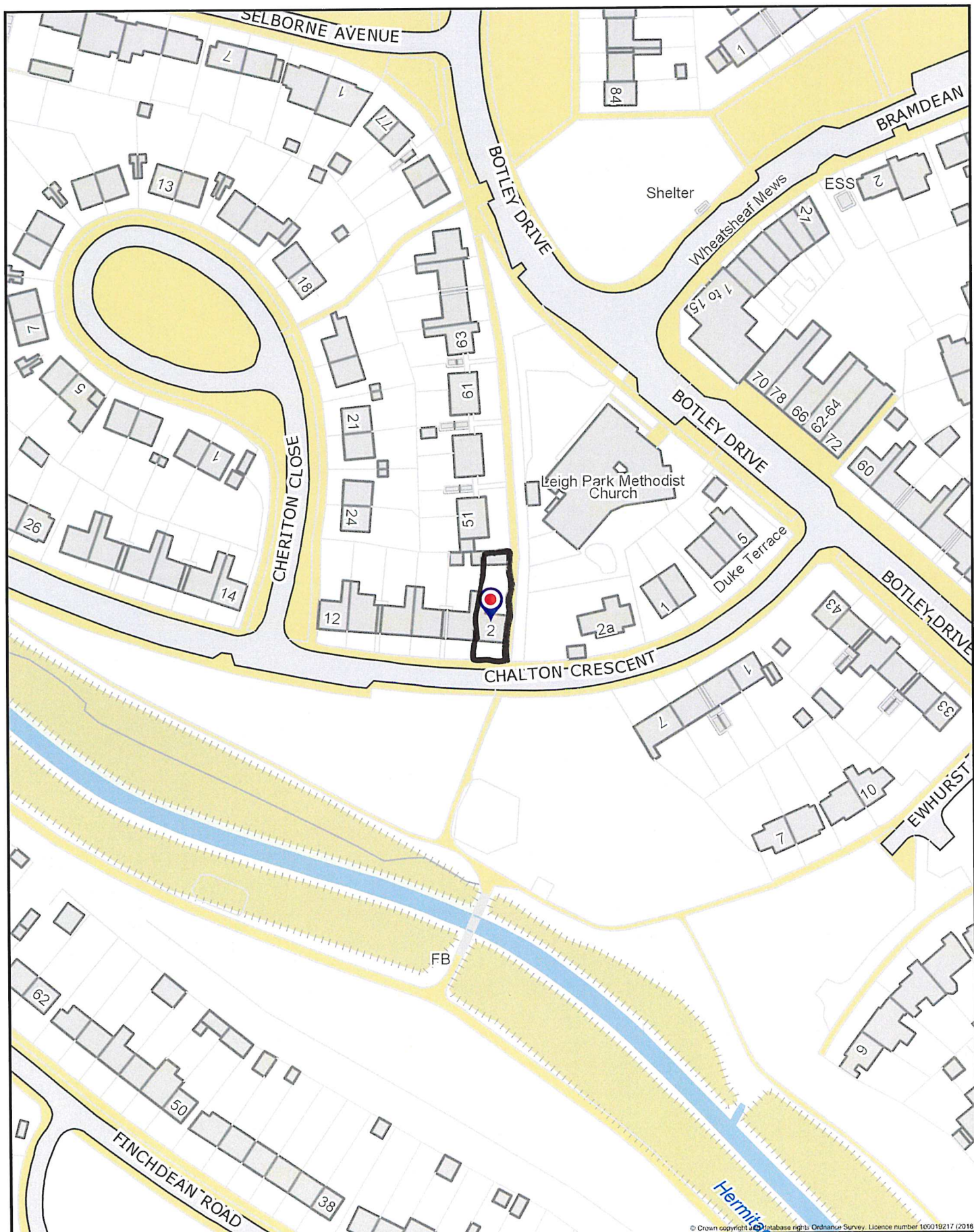
- (A) Borough Map and 1:1250 Location Plan
- (B) Policies IN3, E12, E14, E16 and EX1 from Pre-Submission version with changes Havant Borough Local Plan, 2036
- (C) Officers delegated report for this application
- (D) Potential effects on SPA of residential development
- (E) Havant Borough Council's Position Statement on Nutrient Neutral Development

# APPENDIX A

# Borough of Havant



- Main Retail/Commercial/Office Areas
- Urban Areas
- Industrial Areas
- Open Space/Recreation
- Borough Boundary



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## 2 Chalton Crescent

N Scale: 1:1250

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**Havant**  
BOROUGH COUNCIL

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# APPENDIX B

## IN3 | Transport and parking in new development

### Why this policy is needed

- 4.28 There are many things designers of new development can do to ensure that new places are safe to get around, connect well to the surrounding area and encourage people to use sustainable modes of transport.
- 4.29 The Council and its partners are committed to investing in transport improvements to support the development proposed in this Plan (see Policy IN2). Developers must play their part by designing their development for safe and easy movement by a variety of modes. They must also mitigate any transport impacts on the highway network beyond their site, which are likely to be caused or severely exacerbated by their development.
- 4.30 The Government is committed to accelerating the shift to low carbon transport, ending the sale of conventional petrol and diesel vehicles by 2040, developing one of the best electric vehicle charging networks in the world, and investing to make cycling and walking the natural choice for shorter journeys<sup>39</sup>. This shift can only take place at a national level if it takes place locally.

### IN3 | Transport and parking in new development

Development proposals will be permitted, provided that the site is designed so that:

- a. Safe and suitable access to the site is provided for all people and modes of transport;
- b. Sustainable modes of travel are encouraged and supported through on and/or off-site measures;
- c. The site layout encourages lower vehicle speeds, and prioritises the safe and convenient movement of pedestrians and cyclists within the site;
- d. Pedestrian and cycle routes are provided which conveniently reach all parts of the site, and link with the wider network beyond the site, providing a high level of permeability;
- e. Any existing public rights of way are safeguarded and where appropriate improved, and new routes provided where appropriate;
- f. The streets and public and private parking areas contribute positively to the design of the development and deliver a high quality public realm, including the use of high quality materials and integration of landscaping;
- g. Sufficient visibility and lighting is provided for the safe and convenient use of the roads, cycle routes, walking routes and parking places;
- h. Adequate provision is made for varying sizes of vehicles, including refuse and emergency vehicles, to access all parts of the site, park, load, unload and turn safely and conveniently;
- i. Provision is made for the parking of cars, motor cycles and cycles in line with Council standards;
- j. Electric Vehicle charging infrastructure is provided for:
  - i. Each new residential unit with private off-street parking;
  - ii. An appropriate number of spaces in shared parking at residential and commercial development where long-term parking for staff or residents is provided.
- k. Where required, a satisfactory Transport Statement or Transport Assessment is submitted in support of the planning application to evaluate transport impacts, and to demonstrate that

<sup>39</sup> [Clean Growth Strategy - Department for Business, Energy & Industrial Strategy \(October 2017\)](#)

proposed transport improvements will meet the needs of the development and mitigate adverse impacts;

- l. The traffic generated by the development, taking into account any proposed avoidance and mitigation measures, would not result in severe cumulative impacts on the transport network or the environment;
- m. Where required, a Travel Plan is provided in support of a planning application where appropriate in relation to the scale and type of development.

## How this policy works

- 4.31 Developers are expected to consider carefully the traffic and transport implications of their development, both within the site itself as well as on the local network surrounding the site and the wider strategic network. The aim must be to facilitate easy, convenient and safe travel to/from and movement around the site for everyone, with a focus on minimising the need to travel by car.
- 4.32 Applicants should refer to *Manual for Streets*<sup>40</sup> and other recognised guidance and standards<sup>41</sup>, to ensure that their designs are fit for purpose.
- 4.33 It is important that streets, including footways, and public parking areas in new development are not only safe and fit for purpose in highway terms, but also deliver an attractive public realm which uses high quality materials and relates well to the buildings in the scheme.
- 4.34 Street design, layout, materials and street furniture should make the public areas and streets safe, pleasant and sociable places, which encourage use by pedestrians and cyclists (see also Policy E1 – High Quality Design). Opportunities should also be taken to improve cycle and pedestrian connectivity beyond the site. Applicants' Design and Access Statements (and/or Transport Statements) will be expected to specifically address how sustainable modes of travel have been encouraged, with particular reference to criteria a-g of this policy.
- 4.35 Adequate provision must be made for the parking of cars, motorcycles and cycles to discourage informal parking within the site or an increase in parking in the surrounding area. Compliance with this will be assessed against published parking standards for Havant Borough<sup>42</sup>.
- 4.36 Where applicants rely on garages to comply with parking standards, the Borough Council will remove permitted development rights which would allow residents to convert the space into living accommodation without planning permission.
- 4.37 It will not be acceptable for management companies to ban unreasonably the parking of certain types of vehicles, such as vans, on new developments. Where such restrictions are in force, this prevents the free use of the parking spaces provided in compliance with parking standards, and can lead to unacceptable overspill of these vehicles into neighbouring areas. To address this, the Council will only agree management plans which do not place unreasonable restrictions on the parking of certain types of vehicles.
- 4.38 Providing well-located, safe, and secure cycle parking helps to encourage increased numbers of people to cycle. It is expected that all cycle parking should therefore be conveniently located both in relation to buildings and to roads and/or cycle routes; located in an actively used area, well-lit

<sup>40</sup> *Manual for Streets – Department for Transport (2007)*

<sup>41</sup> Including HCC's *Technical Guidance Notes*

<sup>42</sup> The Parking Standards are set out in the *Parking Supplementary Planning Document (July 2016)*, or any subsequently published update to that SPD.

and overlooked, and made of vandal resistant materials. Every residential development will therefore be expected to provide long stay, dry and secure (overnight) cycle parking for residents, with larger development providing short term spaces also. Non-residential development will be expected to provide both long and short stay cycle parking, to meet the needs of those who are likely to be at the property for extended periods, such as staff, and those who might only remain for a few minutes or hours, such as visitors and customers. Detailed standards are set out in the Parking Standards SPD.

- 4.39 The Council expects all applicants to consider how the physical design as well as the future operation of the development can encourage and support travel by non-motorised modes and by public transport, and to put forward proposals as part of their application. Proposed measures should be commensurate with the nature and scale of the development scheme. They may be on or off-site physical works, and/or softer measures related to the future operation of the development. On larger schemes, it may be necessary to provide for bus access into the site with suitably located bus stops, and pre-application discussions on this matter are encouraged.
- 4.40 Looking to the future, the demand for electric vehicle charging will grow, as electric vehicles begin to replace those powered by petrol and diesel. New development will last well into the era when electric vehicles are likely to be commonplace. To avoid the need for difficult and expensive retrofitting in the future, new developments should include electric vehicle charging infrastructure. This applies both to new homes and to commercial development as set out below. An EV charging point will be expected for each new home with private off-street parking. In other developments, applicants should consider and justify the level of EV charging point provision proposed. As a minimum, in residential schemes with shared parking (such as flats) and commercial development where users are likely to park for significant periods (such as workplaces and hotels), the Council expects a minimum of 10% of the spaces to provide charging points. In addition, the Council expects developments to be future proofed so that they are able to accommodate a future increase in the demand for on-site electric vehicle charging points. This could include installation of ducting and ensuring sufficient electrical capacity for parking areas.
- 4.41 In terms of the impacts of development on the wider transport network beyond the site, applicants are expected to demonstrate that their proposals would not have severe impacts on the network, either by themselves or cumulatively. This includes both the Local and the Strategic Road Network.
- 4.42 Applicants are required to submit a Transport Assessment or a Transport Statement to explore the potential transport impacts of their proposal. Transport Assessments are thorough assessments of the transport implications of development. Transport Statements are a 'lighter touch' evaluation, to be used where this would be more proportionate to the potential impact of the development (i.e. in the case of developments with anticipated limited transport impacts). Applicants should agree with the Council at the pre-application stage what evaluation is needed in each instance. Advice is also available from Hampshire County Council as Highway Authority<sup>43</sup>.
- 4.43 Where the transport impacts of development are likely to be insignificant, for example for very minor development proposals, it may be that no Transport Assessment or Statement is required. Equally, a Transport Assessment or Statement may be required where cumulative effects are expected.
- 4.44 Transport Assessments and Transport Statements may propose mitigation measures where these are necessary to avoid unacceptable impacts. The Council will use this evidence to establish

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<sup>43</sup> See [Highways Development Planning](#) on Hantsweb

whether the residual transport impacts, taking into account the proposed mitigation, are likely to be “severe”, which may be a reason for refusal, in accordance with the National Planning Policy Framework<sup>44</sup>.

- 4.45 For allocated sites across the Borough, the strategic Transport Assessments for the mainland and Hayling Island are a useful starting point for considering likely transport impacts. For Hayling Island and Langstone, a microsimulation model is available to assess highway impacts in this part of the Borough in more detail. To support this plan, it was used to assess the impact of the sites allocated on the island, together with mitigation, which is reflected in the Infrastructure Delivery Plan and Policy IN2. Applicants for developments on unallocated Hayling Island sites or in Langstone will be expected to use the microsimulation model to assess the impact of their proposals on the highway network and to model their proposed mitigation measures.
- 4.46 In assessing the expected impacts and effectiveness of the proposed mitigation package for a development scheme, the Council will not accept undue reliance on assumed uptake of sustainable travel choices. Therefore, transport assessments should assume that all users of a development will choose the worst impact modes of travel, and any mitigation package should be designed to address these effects on the highway network in full. Nevertheless, the Council expects proposals to include measures to encourage sustainable travel, in order to minimise the impacts.
- 4.47 S106 agreements will be used to secure any necessary transport mitigation measures, alongside S278 agreements, which are used to facilitate necessary changes to the public highways, such as creating a new access for a site.
- 4.48 Where a Travel Plan is required, the results of any Transport Statement or Transport Assessment should also be used to inform the content of that plan. The primary purpose of a Travel Plan is to identify opportunities for delivering sustainable transport initiatives and for avoiding unnecessary travel, to reduce the demand for travel by less sustainable modes. Travel Plans can therefore play an effective role in taking forward those mitigation measures which relate to on-going occupation and operation of the development.

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<sup>44</sup> NPPF paragraph 109

## E16 | Solent Special Protection Areas

### Why this policy is needed

- 5.202 The Solent is internationally important for its wildlife. Each winter, the Solent hosts over 90,000 waders and wildfowl including 10 to 30 per cent of the global population of Brent Geese. These birds come from as far as Siberia to feed and roost before returning to their summer habitats to breed. The three Solent Special Protection Areas (SPAs) were designated by the Government predominantly to protect these over-wintering geese and breeding terns<sup>95</sup>. The SPA of relevance for Havant Borough is the Chichester & Langstone Harbours SPA.
- 5.203 The Habitats Regulations<sup>96</sup> set out the sequence of steps to be taken by the competent authority when considering authorisation for a plan/project that may have an impact on a European site and its species before deciding to authorise that project. Avoidance and mitigation measures can be considered by the Council as the competent authority under the regulations. The competent authority shall agree to the project only after having ascertained that it will not adversely affect the integrity of the SPA and its species.
- 5.204 An acknowledged issue for any new residential development within 5.6 km of the Solent coast is the impact which disturbance, much of which is caused by recreation, can have on the protected species which use the Solent SPAs. This zone of influence includes the vast majority of Havant Borough and is shown in Figure 21 and the Policies Map. Development can increase the human population near the coast and thus increase the level of recreation and disturbance. This means that birds are not able to feed as effectively and spend more energy avoiding the disturbance.
- 5.205 Human disturbance can ultimately increase bird mortality or reduce the amount of energy which the individual bird has available at the end of the winter period to fly back to its breeding grounds. If, as a consequence, the birds are unable to complete their migratory journey or are not in sufficiently good condition to breed when they arrive, this will lead to a reduction in the bird population.
- 5.206 Extensive research was undertaken during 2009-2013 under the Solent Disturbance and Mitigation Project (SDMP) to assess the impact of recreational activity on wintering birds on the Solent coast. Based on this research, Natural England issued formal advice to the Council in March 2013. This stated, "Natural England's advice is that the SDMP work represents the best available evidence, and therefore avoidance measures are required in order to ensure a significant effect, in combination, arising from new housing development around the Solent, is avoided."
- 5.207 Since then, the Council has been working with the local authorities along the Solent coast, Natural England and other organisations, as part of the Bird Aware Solent Partnership<sup>97</sup>, to prepare the Solent Recreation Mitigation Strategy (SRMS)<sup>98</sup>. The SRMS was approved by Havant Borough Council and has been implemented since 1st April 2018 through Bird Aware Solent. It is considered that the SRMS is based on the best available scientific evidence for delivering recreational mitigation and, therefore, is the most appropriate mechanism for mitigating recreational disturbance to the SPAs created by new residential development.

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<sup>95</sup> Little, Common and Sandwich Tern

<sup>96</sup> The Conservation of Habitats and Species Regulations (2017 as amended).

<sup>97</sup> Formerly known as the Solent Recreation Mitigation Partnership (SRMP).

<sup>98</sup> Solent Recreation Mitigation Strategy – Bird Aware Solent (December 2017)

## E16 | Solent Special Protection Areas

Planning permission will be granted for new dwellings that mitigate the likely significant effect on the Solent SPAs. This mitigation can be provided through either:

- a. A financial contribution consistent with the Solent Recreation Mitigation Strategy (SRMS); 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 SPAs; 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 SPAs either alone or in combination with other plans or projects.

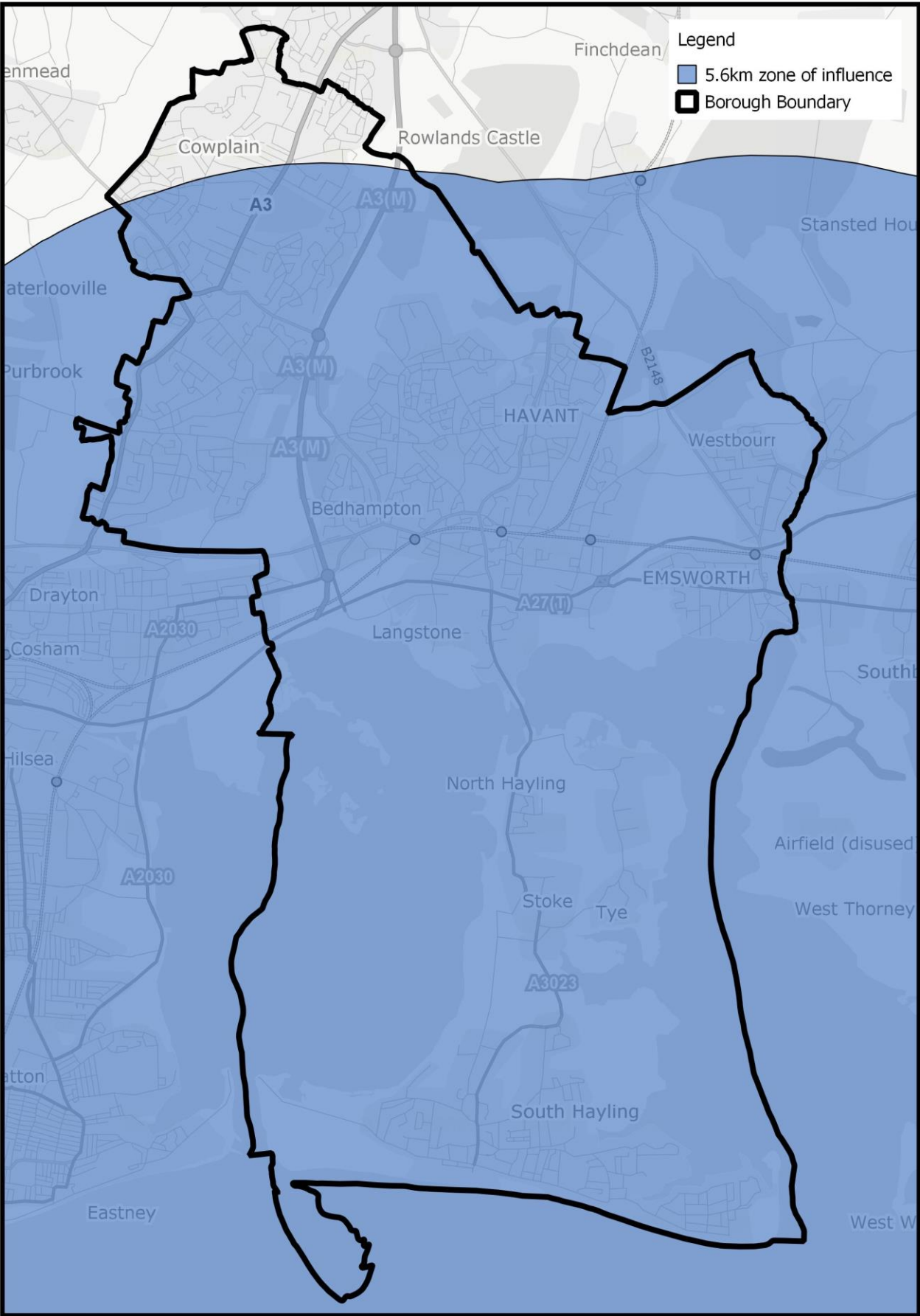
## How this policy works

- 5.208 The Council will continue to be part of the Bird Aware Solent Partnership to provide a strategic framework to address this issue. This provides a straightforward and practical solution to make sure that housebuilding can continue to take place whilst also protecting the Solent SPAs as required by law.
- 5.209 The mitigation framework for individual new developments can be provided through a financial contribution consistent with the SRMS. It is expected that the majority of schemes will provide mitigation packages in this way. The scale of the financial contribution is based on the number of net additional dwellings, varied by the number of bedrooms per dwelling. These figures will be increased on 1st April each year in line with the Retail Price Index. Further information is contained in the Council's Developer Contribution Guide<sup>99</sup> and the SRMS itself.
- 5.210 In this context, 'dwelling' is defined through the SRMS and includes conversions and changes of use (including through permitted development). The need for mitigation for the recreational impact of other types of residential accommodation, such as holiday accommodation (including hotels) and accommodation specifically for the elderly, will be assessed on a case-by-case basis by the Council.
- 5.211 Any developer not providing a financial contribution consistent with the SRMS will need to support their proposed package of bespoke mitigation measures with evidence to support how this would be effective and consistent with the requirements of the Habitat Regulations.
- 5.212 Some housing schemes, particularly very large ones or those located close to the boundary of a SPA, may need to provide mitigation measures in addition to making the SRMS financial contribution to ensure effective avoidance/mitigation of impacts on the SPA. A very large scheme could have a much greater impact on sections of coast compared to the dispersed impact of smaller schemes providing the same overall number of new homes. Similarly, mitigation in addition to the developer contribution may be needed for new dwellings which are close to the SPA because the occupants are much more likely to visit the coast with the potential for a greater impact. The Council, with advice from Natural England, will consider the mitigation requirements for such housing proposals on a case-by-case basis. Developers are encouraged to hold early discussions with the Council on the mitigation needed for such schemes.

<sup>99</sup> [Havant Borough Council Developer Contributions Guide](#)

- 5.213 Separate mitigation may be required for other impacts which may arise from new housing such as direct habitat loss or light pollution onto the SPA. Those will be assessed by the Council, in liaison with Natural England, to identify whether, and if so what, mitigation is required.
- 5.214 The Council will produce an HRA as part of the committee or delegated report at the full or outline planning stage on all development proposals that include residential development. For most development, if a planning obligation to secure the financial contribution is agreed prior to the granting of planning permission which provides the necessary level of mitigation, then it should be possible for the HRA to conclude that a significant effect as a result of the development is unlikely.
- 5.215 New housing proposed under the General Permitted Development Order will require a separate HRA to be completed by the Council, alongside the prior approval process. As part of this process, mitigation, likely in the form of a financial contribution, will need to be secured from the new development, proportionate to the scale of development being proposed.
- 5.216 The measures set out in the SRMS, except for Suitable Alternative Natural Greenspaces (SANGs) are not considered to be infrastructure under Regulation 123 of the Community Infrastructure Levy (CIL) Regulations. As a result, they can be secured from new development using a legal agreement.

Figure 21: 5.6km zone of influence



## E14 | The Local Ecological Network

### Why this policy is needed

- 5.154 An extensive, high quality natural environment is a key part of the environmental pillar of sustainable development and can improve quality of life, support biodiversity and stimulate the economy. Nature conservation is not just desirable but is essential to the Borough's future. It can provide a wealth of benefits which include:
- The protection and enhancement of habitat and movement corridors for a variety of animal and plant species;
  - The protection and enhancement of the Borough's landscape and cultural heritage which helps to create a sense of place and identity;
  - The protection and enhancement of the Borough's water resources, such as groundwater reserves, springs and rivers to provide water to the Borough's homes and businesses;
  - Vital amenity and recreational space for residents; and
  - Opportunities for people to take part in sport and engage in physical activity thus improving health and wellbeing.
- 5.155 The Borough has a rich and diverse ecological network as documented by the protected international, national and local designations, as well as its range of natural features. The Local Ecological Network comprises an extensive coastline, which includes Chichester and Langstone Harbours, as well as trees, woodlands, hedgerows, streams, rivers, wildlife and river corridors, springs, ditches and ponds. The Borough's ancient woodlands and mature trees are the remnants of the ancient Forest of Bere, which once stretched across southern Hampshire from Eastleigh to Emsworth. The Local Ecological Network project has identified a number of opportunity areas. Within these it is possible to reconnect and enhance nodes in the Local Ecological Network in order to achieve biodiversity net gain.
- 5.156 Development that takes place in Havant Borough is expected to make a positive contribution to the existing natural environment. It is considered that development which does not do this is contributing to the continuing decline of biodiversity and would not constitute sustainable development.
- 5.157 A breakdown of the different types of international, national and local nature conservation designations found in Havant Borough is presented below in Table 7. A full breakdown of the Borough's nature conservation designations can be found in the Havant Borough Biodiversity Strategy<sup>88</sup>. These sites form key nodes in the Local Ecological Network. However, it is important to stress that the network of designated sites is not the entirety of the Local Ecological Network and it is vital to consider the corridors and linkages between the sites as well as the sites themselves. Such considerations must not be limited to the Borough boundary as Havant's Local Ecological Network feeds into a wider network beyond our boundaries.
- 5.158 Species which are protected outside of the designations listed below are covered in Policy E15.

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<sup>88</sup> [Havant Borough Biodiversity Strategy](#)

| International                                                                      | National                                   | Local                                                                                         |
|------------------------------------------------------------------------------------|--------------------------------------------|-----------------------------------------------------------------------------------------------|
| Ramsar Site<br>Special Protection Area (SPA)<br>Special Area of Conservation (SAC) | Site of Special Scientific Interest (SSSI) | Site of Importance for Nature Conservation (SINC) <sup>89</sup><br>Local Nature Reserve (LNR) |

Table 7: A breakdown of the different types of international, national and local nature conservation designations.

## E14 | The Local Ecological Network

All development in Havant Borough is expected to protect, conserve and enhance the Borough's Local Ecological Network. Planning permission will only be granted where:

- The development of one dwelling or more or a new commercial building results in biodiversity net gain;
- The development avoids the fragmentation of the Local Ecological Network;
- The applicant has identified and assessed the level of ecological value of the site through adequate and proportionate information and any matters arising have been addressed through an avoidance or mitigation plan; and
- Any necessary mitigation plan includes provision for ongoing management and maintenance.

In addition to the above, priority habitats in the Borough are afforded protection by specific nature conservation designations. Development proposals which could affect a designated site will need to consider the impact and respond appropriately.

### International Nature Conservation Designations

Development which has the potential to have an impact on an international nature conservation designation will be subject to a Habitats Regulations Assessment and, if necessary, an Appropriate Assessment, to determine the potential for likely significant effects. Development that is likely to have an adverse effect, either alone or in combination with another project/plan, on the integrity of an international site will not be permitted unless it can be demonstrated that:

- Necessary avoidance or mitigation is secured such that in combination with other development there will be no adverse effects on the integrity of the designated sites; or
- There are no alternative sites for the proposal, there are reasons of overriding public benefit/interest and compensatory provision is secured.

### National Nature Conservation Designations

In addition to criteria a) to d), planning permission will only be granted on or adjacent to a national nature conservation designation where:

- Development is unlikely to have an adverse effect either individually or in combination with other developments.

An exception to j) will only be made where:

- The benefit of development clearly outweighs the likely impact on the feature(s) of the designation; and
- Mitigation and/or compensation measures are secured to offset any likely impacts.

<sup>89</sup> A SINC is a non-statutory designation

### **Local Nature Conservation Designations**

In addition to criteria a) to d), planning permission will only be permitted on or adjacent to a local nature conservation designation where:

- j. The value of the designation is retained and, where possible, enhanced in line with its original criteria for designation through avoidance and/or mitigation measures; or
- k. The benefit of the development can be shown to clearly outweigh the substantive nature conservation value of the site, and where the impact cannot be avoided nor mitigated, compensation is provided.

### **Joint working**

The Council will continue to work collaboratively with its PUSH partners to develop a strategic approach towards water quality and air quality.

Under duty-to-cooperate, the Council is committed to developing a shared Nitrogen Action Plan for the Farlington area (Portsmouth) in partnership with Portsmouth City Council and other appropriate partners.

## **How this policy works**

- 5.159 There is a great deal of pressure on the Borough's natural environment as a result of climate change and an increasing population. Therefore, the Council's priority will be to focus on protecting, enhancing and linking together the existing natural environment.

### **Biodiversity net gain**

- 5.160 In line with national policy, the Council expects substantial development proposals to achieve a net gain in biodiversity on the site and the surrounding area. The Council encourages pre-application discussions to determine potential methods for enhancements.
- 5.161 Almost any development can achieve biodiversity net gain. Even smaller developments can include the use of design features to integrate biodiversity attributes into the building itself. At least every new dwelling, or commercial developments that involve the construction of a new building can include boxes or bricks for bats and birds, and other features can additionally be incorporated within larger developments. Further guidance on how to do this and the kinds of products that are available is in the Biodiversity Strategy.

### **Application requirements**

- 5.162 The Council will require ecological assessments (including the relevant sections of Environmental Statements and information to support HRAs) to be submitted with an application and be of an appropriate level of detail. The scope and detail of any assessment must be appropriate to the nature conservation value of the site. For any application proposing the development of one or more residential units (apart from conversions), it is expected that a site-specific ecological assessment will be needed. The need for the assessment and its scope would be discussed at the pre-application stage.
- 5.163 For householder development, any development affecting roof materials or roof voids may impact roosting bats and certain nesting birds, and those affecting trees or areas of dense woody vegetation may impact nesting birds.
- 5.164 A development may also impact features outside the site but within the development's zone of impact. The Biodiversity Checklists for Householder and Full applications provide useful information

for determining the risk of impacts and applicants are expected to use the Checklists to inform their applications. Applicants may need to request data searches from the Hampshire Biodiversity Information Centre (HBIC) to inform their assessments. Submitted ecological assessments must highlight the impact of the development upon the natural environment and demonstrate what mitigation measures will be put in place to the satisfaction of the Council's Ecologist and Natural England.

- 5.165 Notwithstanding the above, a site's ecological value can be unpredictable. Sites that may appear through a desktop analysis to have little or no ecological value may in fact have some. As such, the information about the site's ecological status could change through the lifetime of a planning application and further information may be needed in order to determine the application.

### **Avoiding and mitigating harm**

- 5.166 As set out in the NPPF, if significant harm cannot be avoided (by locating development in a way which does not create the impact), then such harm should be adequately mitigated. Where it cannot be adequately mitigated then such harm must be compensated for. Where it cannot be compensated for, planning permission will be refused.
- 5.167 Applicants on larger sites or those which are likely to have a greater impact on the natural environment are expected to engage with the Council at an early stage in the process to ensure that the potential implications are taken into account in the preparation of proposals and suitable surveys are commissioned.
- 5.168 There will be a presumption against any development involving the net loss of biodiversity or the loss of any natural features, unless there are wider public benefits that outweigh the harm of this loss. The Council expects applicants to approach considering an impact on biodiversity in the following order:
- Avoid
  - Mitigate
  - Compensate

### **The Local Ecological Network**

- 5.169 The mapping of the Local Ecological Network (LEN)<sup>90</sup> has been undertaken by the Hampshire Biodiversity Information Centre. As such, data searches should be used to inform ecological assessments accompanying development proposals. The mapping is available through a request to the Hampshire Biodiversity Information Centre.
- 5.170 The effect of the proposed development on components of the LEN must be assessed both in terms of its proximity, the proposed end use and the impact of that use on it. The impact of any construction activity must also be considered.
- 5.171 There are several ways in which the impact of development on the LEN can be mitigated and improvements to it achieved. This can be done through careful design of layouts to facilitate the movement of wildlife, the use of new landscape planting which is informed by priorities in the Biodiversity Strategy and the inclusion of specific building design features.

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<sup>90</sup> Hampshire County Council – Information we hold. Hampshire Biodiversity Information Centre – Ecological network mapping on behalf of the Local Nature Partnership

- 5.172 Where new open space is proposed, its design should consider multifunctionality and how biodiversity can be incorporated without compromising its recreational function.
- 5.173 The Council will use planning conditions and/or obligations to secure appropriate enhancement and site management measures. Where the impacts are unavoidable, mitigation or compensatory measures will be required.
- 5.174 The Council has a strong track record of working in partnership with Natural England and neighbouring authorities to investigate and prevent harm to nature conservation designations. This approach will continue in the future to improve public understanding of biodiversity, manage public access to designated sites and prevent harm to nature conservation designations. As such, the Council recommends that applicants use Natural England's pre-application development advice service (DAS) before submitting any application.

### **International and National Nature Conservation Designations**

- 5.175 Internationally designated sites are highlighted in Table 7 and are afforded a high level of legal protection.
- 5.176 Any development which is likely to have a significant effect on these designations will require a project level Habitat Regulations Assessment (HRA) and in all likelihood an Environmental Impact Assessment (EIA) by law. A project level Habitats Regulations Assessment (HRA) will be prepared by the Council as the competent authority as part of the determination of the planning application and the applicant will need to provide the necessary information to inform that assessment. The HRA will assess the effects of the proposal both alone and in combination with other plans and projects. If the development proposal is shown to have an adverse effect on an internationally designated conservation site, then planning permission cannot be lawfully granted.
- 5.177 As well as the designated harbours, the wader and wildfowl species for which the SPAs are designated also use sites on land to feed and roost. The impact of development on the Solent SPAs, both in terms of buildings and recreational disturbance from human activity is considered through Policies E16 and E17.
- 5.178 Sites of Special Scientific Interest (SSSIs) are nationally designated nature conservation site. A SSSI is an area of land notified under the Wildlife and Countryside Act 1981 as being the country's best wildlife and geological sites. SSSI's in England are designated by Natural England.
- 5.179 Where necessary, an ecology strategy must include monitoring to ensure its effectiveness. This will be determined on a case by case basis.
- 5.180 Further information regarding development around Chichester Harbour can be found in Policy E5 and the Joint Chichester Harbour AONB SPD adopted by both Havant and Chichester Councils.

### **Local Designations**

- 5.181 There are many other important sites, outside of the network of internationally and nationally designated sites, which also contribute to the ecological network of an area. These sites are designated as Sites of Importance for Nature Conservation (SINCs) (referred to as Local Wildlife Sites in the NPPF) or Local Nature Reserves.
- 5.182 Designating an area as a SINC or Local Nature Reserve raises awareness of its importance for wildlife and ecology and its value to the Borough's communities. SINCs and Local Nature Reserves are essential in maintaining a network of habitats as they allow for the movement of flora and fauna through the landscape. With this, they may support legally protected species or habitats recognised

as being of principle importance under the Natural Environment and Rural Communities (NERC) Act. The presence of these habitats or species is addressed through Policy E15.

- 5.183 There are six Local Nature Reserves wholly within the Borough: Brook Meadow, Gutner Point, Hayling Billy, Sandy Point, The Kench and West Hayling; part of two others (Farlington Marshes and Hazleton Common) in the Borough. The SINCs in the Borough are listed<sup>91</sup> in the Havant Borough Biodiversity Strategy.
- 5.184 The Hampshire Biodiversity Information Centre (HBIC) periodically surveys sites to assess whether they meet the criteria for SINC designation. Prior to being recommended to the Council for designation, each site, boundary change or criteria change is assessed by a panel comprising Hampshire County Council, Natural England and the Hampshire and Isle of Wight Wildlife Trust. If the site is found to meet the criteria for selection, the landowner is notified by HBIC and the site is recommended to the Council for designation.
- 5.185 Sites may be recommended to the Council for designation but are not yet formally designated through the Local Plan. The Council will consider these as if they were designated and assess development proposals which could affect them in line with the policy proposals for designated SINCs.
- 5.186 Sites are identified at a management unit scale (such as a field). However, that does not mean that the ecological interest of the site is present throughout, indeed it is likely to be concentrated in only a few sections of the site. Early pre-application engagement with the Council and making sure that appropriate data searches take place through HBIC, will ensure that applicants and their ecological advisers have the information necessary to avoid and mitigate an impact on the local designation.
- 5.187 Local nature conservation designations are a material consideration when determining planning applications, but they are not afforded legal protection, unlike international and national designations. Nevertheless, any development proposal which incorporates a SINC or Local Nature Reserve area will have to demonstrate how the value of the area will be retained, and where possible, enhanced through appropriate mitigation.

### **Joint working**

- 5.188 The Council will work jointly with PUSH to develop mitigation measures for air quality and water quality issues relevant to Havant borough and the wider sub-region. There is a potential requirement to develop a nutrient neutral approach (such as in the form of a Supplementary Planning Document) to address the impacts of resulting from development in this Plan on the Solent Maritime SAC and the Chichester and Langstone Harbours SPA and Ramsar. As part of this, the Council will continue to monitor NO<sub>x</sub> background concentrations through Defra forecasts in partnership with PUSH.
- 5.189 The Council is committed to developing a shared nitrogen action plan for the Farlington area (Portsmouth) in partnership with Portsmouth City Council and other appropriate partners under a duty to cooperate. This is to ensure no adverse effect on the integrity of the Solent Maritime SAC as a result of development proposed in Havant borough and other neighbouring authorities.

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<sup>91</sup> 110 sites covering a total area of 549 hectares as at 31/03/17.

## E12 | Low carbon design

### Why this policy is needed

5.116 The UK Climate Change Risk Assessment 2017<sup>71</sup> outlines how climate change will increase risks to human health and wellbeing, agricultural food productivity, public water supply and natural assets, as well as intensify flooding and coastal change. Havant Borough is particularly vulnerable to the effects of climate change due to its coastal location. However, by reducing greenhouse gas emissions, the impacts of climate change can be lessened in the future.

5.117 To meet international obligations, the UK Climate Change Act 2008 requires a reduction in the nation's greenhouse gas emissions by 57% compared to 1990 levels by 2032, and at least 80% by 2050<sup>72</sup>. In combination with Section 182 of the Planning Act (2008)<sup>73</sup> and the Planning and Energy Act (2008)<sup>74</sup>, the need to reduce the nation's emissions was reinforced by the ratification of the United Nations Framework Convention on Climate Change (UNFCCC) Paris Agreement in November 2016. The Paris Agreement committed its signatories (including the UK) to:

*"holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels"*<sup>75</sup>

5.118 Given the significant amount of housing and commercial development over the lifetime of the Plan, it is critical that development is planned and designed considering its full environmental footprint. This includes designing development to encourage active travel and public transport use. Orienting development layouts to take advantage of the high sunshine hours along the south coast and making new buildings as energy efficient as possible will all substantially help to mitigate climate change. In addition, the Council is also exploring how district heat can be used to provide heat and electricity to new development in the Civic Campus area.

5.119 By designing and constructing buildings using low carbon design principles, developments can not only reduce energy consumption, overheating and the Borough's carbon footprint, but also lower the overall costs of running the building for occupants and mitigate the need for costly retrofits later. This will also help meet the aspirations of the Government's Clean Growth Strategy (2017)<sup>76</sup> for all homes to be of an Energy Performance Certificate (EPC) B and C standard by 2035. At the same time, there is a need to consider the issue of internal overheating. Overheating is an increasing concern with peak summer temperatures continuing to rise, as it can adversely affect comfort, health (especially for older persons) and productivity. Without design intervention, developments could become increasingly dependent on active cooling systems which would lead to increased greenhouse gas emissions.

5.120 The Council's Energy Strategy<sup>77</sup> sets out the direction of travel to improve energy security, reduce fuel poverty and maximise economic benefits by improving energy efficiency and increasing local energy generation. In doing so, energy efficient buildings will be cheaper to heat, cool and light making them more attractive to homeowners and commercial occupiers.

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<sup>71</sup> [UK Climate Change Risk Assessment 2017](#) - HM Government

<sup>72</sup> [Climate Change Act 2008](#)

<sup>73</sup> [Planning Act 2008](#)

<sup>74</sup> [Planning and Energy Act 2008](#)

<sup>75</sup> [United Nations Framework Convention on Climate Change \(Paris Agreement\)](#):

<sup>76</sup> [Clean Growth Strategy 2015](#)

<sup>77</sup> [Havant Borough Council's Energy Strategy](#)

**E12 | Low carbon design**

New development is expected to address climate change through low carbon design. Development proposals which are intended to improve the energy efficiency of existing buildings or provide low or zero carbon energy will be supported in principle. Development proposals which involve an increase in non-residential floorspace or the construction of new homes will be expected to:

- a. Reuse existing buildings' construction materials wherever possible;
- b. Appropriately integrate solar gain, natural ventilation or ventilation with heat recovery, fabric performance and Passivhaus principles into the layout and design;
- c. Minimise greenhouse gas emissions and improve energy efficiency of buildings; and
- d. Use district heat or combined heat and power (CHP or CCHP) (existing or proposed or on-site), where appropriate;

**Non-residential development**

- e. As well as addressing points a) to d) above, proposals for non-residential development are expected to achieve the following standards of the Building Research Establishment's Environmental Assessment Method (BREEAM):

| Gross floorspace to be built (sqm) | BREEAM level to be achieved                        |
|------------------------------------|----------------------------------------------------|
| 0-499                              | Achieving at least Pass under BREEAM is encouraged |
| 500-999                            | Very Good                                          |
| 1000+                              | Excellent                                          |

**Residential development**

As well as addressing points a) to d) above, proposals for residential development are expected to achieve the following standards:

- f. A reduction in CO<sub>2</sub> emissions of at least 19% of the Dwelling Emission Rate (DER) compared to the Target Emission Rate of Part L of the Building Regulations is achieved; and
- g. The development has demonstrated its long-term sustainability and cumulative impacts using one or both of the following tools as appropriate:
  - i. Assessment under the Home Quality Mark (HQM) ONE, or equivalent, for any development of one dwelling or more (gross)
  - ii. Assessment under the BREEAM Communities scheme, or equivalent, for any development of 100 dwellings or more (gross)

**How this policy works**

5.121 Addressing climate change in new development is essential for proposals to be supported in principle. The requirements set out in this policy are designed to be minimum standards, and developers are encouraged to aim higher. Applicants will be expected to use the design and access statement, together with any necessary bespoke assessments or reports, to demonstrate how the requirements of this policy have been incorporated into the proposed development.

### **District Heat Network**

- 5.122 A heat mapping and masterplanning report was prepared in 2016 to identify areas for potential development of heat networks in the Borough<sup>78</sup>. An area of concentrated buildings to the north of Havant Town Centre is a key opportunity area (under Policy KP1). Development proposals in that area should evaluate the feasibility of district heat or combined heat and power, particularly where an existing network or proposed network may exist. The evaluation should consider the heat load of the proposed development and proximity to an established or planned pipeline.

### **Non-Residential Development**

- 5.123 The Building Research Establishment's Environmental Assessment Method (BREEAM)<sup>79</sup> rewards performance in terms of environmental, comfort and/or health benefits, on a scale of Good to Outstanding, above the regulatory minimum. BRE's briefing paper<sup>80</sup> offers more detail about how BREEAM supports climate change adaptation.
- 5.124 Applicants must use the most up-to-date BREEAM New Construction Scheme when designing their development proposals to meet criterion e). It will be necessary to submit a pre-assessment estimator, the interim (design stage) and final (post completion stage) certificate for any planning applications proposing the construction of 500 sqm or more of non-residential floorspace. Appropriate conditions will be used to secure the certificate rating issued at the pre-construction and post-occupation stages.
- 5.125 If the required rating is financially unviable or technically unfeasible, then this will need to be demonstrated with appropriate evidence in support of a planning application. In this instance, the applicant will be expected to meet the highest percentage BREEAM score that is viable.

### **Residential Development – CO<sub>2</sub> Reductions and Overheating**

- 5.126 New residential development will need to achieve at least a reduction in CO<sub>2</sub> emissions of 19% of the Dwelling Emission Rate (DER) compared to the Target Emission Rate (TER) of Part L of the Building Regulations. This can be achieved at minimum cost through a range of measures including, although not exhaustive to, building fabric efficiency measures, principles of Passivhaus<sup>81</sup> and/or on-site renewable/low carbon energy generation. The Council will expect building fabric efficiency measures to be prioritised over technological solutions.
- 5.127 If schemes can provide above the 19% improvement, then this will be a material consideration in the determination of that scheme. If the required 19% reduction is financially unviable or technically unfeasible, then this will need to be demonstrated with appropriate evidence in support of a planning application. In this instance, the applicant will be expected to achieve the most significant CO<sub>2</sub> reduction viable in the circumstances.
- 5.128 In terms of overheating, more specifically, the Chartered Institution of Building Services Engineers (CIBSE) design methodology for the assessment of overheating risk in homes (as amended)<sup>82</sup> provides best practice examples to reduce the impact of overheating.

### **Residential Development – HQM ONE and BREEAM Communities**

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<sup>78</sup> [Havant Borough heat demand mapping and energy masterplanning \(2016\)](#)

<sup>79</sup> [BREEAM](#)

<sup>80</sup> [Mitigation, adaptation, resilience: managing climate change risk through BREEAM](#)

<sup>81</sup> Passivhaus or [Passive House Principles](#) include proper insulation, no air leakage, no thermal bridges, triple glazing, as well as orientation for winter sun/summer shade.

<sup>82</sup> [CIBSE TM59 Design Methodology for the Assessment of Overheating Risk in Homes](#)

- 5.129 In addition to the above, the Council encourages assessment under the Home Quality Mark (HQM) ONE<sup>83</sup> and/or BREEAM Communities scheme(s). Those proposals which have, or are demonstrably committed to, achieving HQM ONE or BREEAM Communities certification will be looked upon favourably.
- 5.130 The HQM ONE provides a five-star rating with key indicators which communicate the performance of a new home's design, construction, and in use potential. The framework assesses water and energy use, internal comfort and health (including air quality, daylighting, noise and access to green spaces and amenity), resilience and safety (including flood risk and adaptability), in addition to the home occupier experience. It enables developers to demonstrate the quality of their homes to a range of stakeholders including prospective home buyers and tenants.
- 5.131 BREEAM Communities is a framework used to improve, measure, and demonstrate the social, environmental and economic sustainability of large-scale development plans by embedding sustainability principles into the early planning and design stages of a development. The standard assists both developers and residents by providing a framework that helps to create sustainable communities that are good for the environment, people and are also economically successful. Furthermore, the use of this scheme will aid pre-application discussions which, in turn, will improve efficiency during the planning process and reduce the likelihood of design and layout redesigns.
- 5.132 Not only do both schemes provide a holistic framework which drives better design outcomes, they also provide an added layer of delivery assurance via their certification processes. To demonstrate that such provisions can be met, applicants undertaking these assessments will need to submit a pre-assessment estimator and design-stage certificate at the appropriate stage (for BREEAM Communities this would be the pre-application enquiry, for HQM ONE this is likely to be full or reserved matters stage) and a final certificate post completion. Planning conditions and/or obligations will be used to secure the standard and performance ratings as appropriate.
- 5.133 In the instance that an applicant wishes to use an alternative third-party assessment, this should be discussed with the Council at the pre-application stage.

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<sup>83</sup> [Home Quality Mark ONE Technical Standard](#)

# 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 C

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|                 |                                                                                                       |               |             |
|-----------------|-------------------------------------------------------------------------------------------------------|---------------|-------------|
| Site Address:   | 2 Chalton Crescent, Havant, PO9 4PT                                                                   |               |             |
| Proposal:       | Loft conversion with dormer to create self contained flat with external access via staircase to rear. |               |             |
| Application No: | APP/19/01237                                                                                          | Expiry Date:  | 14/02/2020  |
| Applicant:      | Mr Gulabakh                                                                                           |               |             |
| Agent:          | Mr Hasnath                                                                                            | Case Officer: | Tina Pickup |
|                 | studioAH Architects                                                                                   |               |             |
| Ward:           | Barncroft                                                                                             |               |             |

Recommendation: **REFUSE PERMISSION**

---

## **1 Site Description**

- 1.1 The application site relates to an end of terrace two storey traditional dwelling, located on the north side of Chalton Crescent. It is constructed of red multi stock bricks beneath a dark concrete tiled roof, with existing solar panels on the front roof slope. The front forecourt area is bounded by a low wall. Immediately to the site's east is a public footpath that is part of the adopted highway. Within this footpath, and approximately aligned with the rear elevation of the application dwelling is a mature tree.
- 1.2 To the rear the property has a small flat roofed attached outbuilding that is back-to-back with the neighbours at number 4, and this appears to have recently been converted to living space with a new entrance door. The remaining western boundary comprises a brick wall, and across the northern rear boundary is a flat roofed outbuilding that appears to have been subject to recent works including new entrance doors. The eastern boundary to the footpath is in part a low wall with close boarded fencing above. There is a side gate close to the rear of the house.
- 1.3 The site is relatively flat and surrounded by high density residential development to its north and west. The property to the immediate north (Nos. 51) is set at 90 degrees to the application dwelling, having its primary elevation fronting the footpath with side elevation facing the application site. There is a mature evergreen tree within the frontage of Nos 51, close to the footpath. However the context of the site varies to the east, with a detached dwelling set in a relatively spacious plot located adjacent the footpath. This dwelling is set at the eastern side of its plot such that its private side garden lies adjacent the footpath and application dwelling. This garden is bounded by high hedging. To the north-east is a Methodist church used by the community for various activities including a regular pre-school, whose outdoor play space is located in the south-west corner of the church grounds, bounded by open palisade style fencing abutting the footpath.
- 1.4 Opposite the site to the south, is open space, grassed with further children's play equipment and a footpath bridge over the hermitage stream. There are no parking restrictions outside the site in Chalton Crescent, and the site lies just beyond flood zones 2 and 3.

## **2 Planning History**

APP/18/01054 - Loft conversion with rear dormer windows., Withdrawn, 17/12/2018

- 2.1 This application proposed a large extension to the rear roof slope that effectively resulted in a flat roofed third storey addition as it resulted in the loss of the rear eaves line. It was to provide an additional bedroom and bathroom as an integral part of the existing dwelling ie the dwelling would have remained a single family dwelling. However, due to design concerns, this application was withdrawn.

## **3 Proposal**

Loft conversion with dormer to create self contained flat with external access via staircase to rear.

- 3.1 This revised application proposes a large rear dormer to enable the loft area to be converted into a single self contained flat/bedsit. This would create an internal space of about 30 sqm. The bedsit would be independently occupied, separately to the house below, with access taken via an external spiral staircase and railed landing at the rear of the dwelling. During the course of determining this application, amended plans have been submitted providing a 1.9m high obscured privacy screen to the landing and one car parking space on the frontage of the site to serve the proposed flat.

## **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

|      |                                                                        |
|------|------------------------------------------------------------------------|
| CS16 | (High Quality Design)                                                  |
| CS17 | (Concentration and Distribution of Development within the Urban Areas) |
| CS21 | (Developer Requirements)                                               |
| DM10 | (Pollution)                                                            |
| DM13 | (Car and Cycle Parking on Residential Development)                     |

### Havant Borough Local Plan (Allocations) July 2014

|      |                                                                                           |
|------|-------------------------------------------------------------------------------------------|
| AL7  | (Hermitage Stream)                                                                        |
| 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 for this work

Compliance with Approved Document B to be shown re

- 1) Windows within 1.8m of staircase to be fire rated and fixed shut
- 2) Access to floor to comply with AD B 5 (fire authority access)
- 3) Solid waste (bins) not located to comply with AD H
- 4) Cooking facilities to be 1.8m away from exit door
- 5) Dormer wall within 1m of notional boundary to be fire rated inside and outside

Also

Sound and fire proofing to separating floor / wall needed

Foul drainage not shown

### **Community Infrastructure**

CIL liable: <http://www.havant.gov.uk/community-infrastructure-levy-charging-schedule>

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

See also information on Nutrient Neutrality: [www.havant.gov.uk/nitrogen](http://www.havant.gov.uk/nitrogen)

### **Crime Prevention**

None received

### **Hampshire Highways**

Whilst the provision of on-site parking is a matter for the LPA, in this case I would recommend the provision of some where none exist already. The highway is very heavily parked and unless the applicant is prepared to justify the non-provision of parking by a survey at numerous times of the week, which I believe to be unnecessary for this level of development. Instead I would recommend the conversion of the whole front garden which appears to be some 8m. wide to accommodate three car parking spaces. One of which should be allocated to the proposed development, the other two to replace the two spaces that will be lost by the removal of some 12m. of kerb length currently used for the parking of vehicles.

I therefore confirm the Highway Authority have no objection subject to :-

#### Condition

Prior to occupation a parking area for three spaces shall be provided on the front garden and shall be surfaced in a non-migratory material. The area shall be maintained for this purpose and in this condition at all times thereafter.

#### Note to Applicant

Before undertaking any work which affects a public highway you must obtain specific written approval from the Director of Economy, Transport and Environment at Hampshire County Council and enter into or secure any necessary legal agreements or consents to enable the works on a public highway to proceed. It is an offence to carry out unauthorised works on a public highway. This requirement applies not only to the creation of new vehicle accesses involving excavation within a footway, verge or carriageway but also to the stopping of existing access(es) or other works on or to the public highway. For further information, please contact [highways.development.control@hants.gov.uk](mailto:highways.development.control@hants.gov.uk)

**Hampshire Highways - on revised plans**

I am disappointed the applicant has not followed the advice given in my response dated 9 January. The submission does not increase the available parking space for the new unit because whilst one is provided on the site, one is lost on the highway. As parking is a matter for the LPA I can only repeat my recommendation given previously and leave it to you to decide if you wish to either invite a further amended plan, cover the matter by condition, require the necessary parking surveys, or refuse the application. If approval is the LPA's choice, the condition and note to applicant previously advised is requested again.

**Natural England**

Natural England notes that your authority, as competent authority, has undertaken an appropriate assessment of the proposal in accordance with Regulation 63 of the Conservation of Species and Habitats Regulations 2017 (as amended). Natural England is a statutory consultee on the appropriate assessment stage of the Habitats Regulations Assessment process, and a competent authority should have regard to Natural England's advice.

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 any adverse effects, it is the advice of Natural England that we concur with the conclusion of the HRA, provided all mitigation measures are adequately secured with any permission.

**Solent Recreation Mitigation Strategy – no objection subject to mitigation**

Since this application will result in a net increase in residential accommodation, impacts to the coastal Special Protection Area(s) and Ramsar site(s) may result from increased recreational pressure. Havant Borough Council has measures in place to manage these potential impacts through the agreed strategic solution which we consider to be ecologically sound.

Subject to the appropriate financial contribution being secured, Natural England is satisfied that the proposal will mitigate against the potential recreational impacts of the development on the site(s). It is Natural England's view that the Solent Mitigation Recreation Strategy Contribution adequately mitigates the effects of the development on potential recreational impacts on the designated sites.

**Nutrient Neutrality – no objection subject to mitigation**

Natural England is aware that your authority has adopted an interim strategy using Grampian conditions to address nutrient impacts from developments currently in the planning system and we have been working with the Council to develop this approach. It is noted that the mitigation would be secured through a Grampian condition, requiring the mitigation package to be agreed, provided to the Council and implemented prior to the occupation of the development.

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. With regard to deterioration of the water environment, it is noted that the approach to address the positive nitrogen budget for this development is to offset against the interim strategy, with measures to ensure this approach can be adequately secured

and accounted for.

It is Natural England's view that in this case, provided the Council as competent authority, is satisfied that the approach will ensure the proposal is nutrient neutral and the necessary measures can be fully secured; Natural England raises no further concerns.

Please consult Natural England on the discharge of the Grampian condition.

### **Public Spaces**

None received

### **Traffic Management**

The Traffic Team would raise the concern that there appears to be an insufficient amount of parking for this proposed development, as per HBC Parking Supplementary Planning Document July 2016

### **Waste Services Manager**

None received

## **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: 5

Number of site notices: 1

Statutory advertisement: Not applicable.

Number of representations received: 2

2 letters of objection have been received, from the same address, one to the original plans and one to the revised plans:

| <b>Comment</b>                                                                                                                                                                                                             | <b>Officer Comment</b>      |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| Note presence of tree adjacent footpath which currently affords large amount of privacy but acknowledge that it could be pruned or removed by the Council at any time;                                                     | Noted - see section 7 below |
| proposed external staircase would afford grandstand view over our property, currently seasonally, but if tree removed, in summer as well;                                                                                  | Noted - see section 7 below |
| landing/balcony area would be a natural gathering point for smokers and people standing on balcony with music playing and overlooking our garden; potential noise and disturbance if late at night when sounds carry more; | Noted - see section 7 below |

|                                                                                                                                                                                      |                                                                                                                                                   |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| metal staircase and landing would be noisy and deteriorate over time becoming an eyesore; structure imposing and unattractive;                                                       |                                                                                                                                                   |
| household currently made up of taxi drivers with lots of activity at night with vehicles coming and going into early hours; new self contained unit would add to activity and noise; | Noted - provided no more than 6 residents living together as a single household then existing dwelling remains as C3 with permitted change to C4. |
| Parking - Chalton Crescent currently parked up, esp at night, partly due to No 2 being occupied by several taxi drivers and flats that access road via footpath;                     | Noted - see section 7 below                                                                                                                       |
| note nothing else similar in area and would be out of character with area                                                                                                            | Noted - see section 7 below                                                                                                                       |
| <u>On amended plans:</u>                                                                                                                                                             |                                                                                                                                                   |
| proposed screening only obscures view from the landing, not the spiral staircase that will still afford a view of our property;                                                      | Noted - see section 7 below                                                                                                                       |
| screening could fall into disrepair and be ineffective;                                                                                                                              |                                                                                                                                                   |
| screening does not overcome noise issues of metal stairway;                                                                                                                          |                                                                                                                                                   |
| agree that single parking space does not remove any cars from the highway due to dropped kerb;                                                                                       | Noted - see section 7 below                                                                                                                       |

## 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
- (iv) Parking
- (v) Compliance with Habitats Regulations
- (vi) CIL

(i) Principle of development

7.2 The application site is situated within an urban area where further sustainable development is considered acceptable subject to the usual development control criteria. The proposal is for an additional dwelling and whilst this modest contribution to the Council's housing needs is acknowledged, nevertheless the determination of this application must balance this benefit against other considerations.

- 7.3 The existing dwelling currently appears to be occupied by unrelated tenants, but provided there are no more than 6 living together and sharing the kitchen and bathroom then the site would remain a C3 dwelling with permitted change of use to C4 small house in multiple occupation. The proposed dormer would create an additional bedsit at the site. The emerging Havant Borough Local Plan 2036, pre-submission draft, currently has limited weight in decision making, but indicates the direction of travel of policies. Within this HBLP36 emerging policy H1 relates to high quality new homes and requires new homes to meet the appropriate internal space standards as set out in the nationally described space standards. The proposed bedsit amounts to only about 30 sqm which falls significantly below the 1 bed gross internal floor area within the technical guide of 50 sqm if 2 person and 37 sqm if 1 person. However policy H1 is an emerging policy only and currently does not have sufficient weight for the non-compliance with the space standards to warrant a reason for refusal in its own right. It is further noted that if the site is in use as a HMO then an Environmental Health License may also be required which also considers space standards.

(ii) Impact upon the character and appearance of the area

- 7.4 From the Chalton Crescent street scene the proposed dormer would not be visible. However due to the public footpath running adjacent the side of the property then the rear roof slope is highly visible from a public area and it is considered that the visual appearance of the large boxy dormer with associated external spiral staircase and landing would be visually intrusive and out of character with the area. No details are provided in terms of the materials for the proposed spiral staircase, but it is likely to be constructed of metal and could be painted/coated. The spiral stairs would have a height of some 6.7m with diameter of 2.2m, and the associated landing has a depth of 1.8m. Therefore this landing projects and overhangs beyond the rear facade of the host dwelling and would be supported by the stairs and a separate post. It is considered that the scale and bulk of this combined spiral staircase and landing structure is overly large and more akin to a commercial structure, and would be visually inappropriate to this residential area. Since the siting of the spiral staircase would be immediately adjacent the public footpath running adjacent the site, then the structure would be highly prominent to passing pedestrians.
- 7.5 The amended plans have added 1.9m high obscured glazed privacy screens around the landing area. The overall visual bulk of this dormer and landing at roof level would represent an overly bulky and dominant structure that fails to respect the domestic scale and character of the host dwelling and area. This would be contrary to adopted policy CS16 and the adopted Design Guide SPD and emerging policy E1.

(iii) Impact upon residential amenity

- 7.6 The layout of the immediate area is such that the proposed dormer and landing/balcony area would provide views over the rear private gardens of all the adjacent properties. Being a high density residential area then the use of spiral stairs and landing area would provide high level views into the gardens of, in particular, numbers 2a to the east, as well as number 4 and the play space of the church to the north. Whilst there is currently some limited screening from a deciduous tree in the footpath, this would not provide long term reliable screening adequate to sufficiently mitigate against the visual intrusion and overlooking resulting from the proposed development. It is likely that the spiral stairs and landing would be used as a sitting out area, somewhere to congregate. Whilst privacy screens have been added to the landing area, nevertheless there would still be privacy issues from the use of the spiral stairs that would enable views across the neighbouring area. Overall the proposed

development is considered to result in both perceived and real overlooking from the use of the spiral stairs and landing area, harmful to neighbours privacy and amenity, contrary to adopted policy CS16 and emerging policy E1.

- 7.7 As the third party letter notes, the use of the spiral stairs and landing area would also result in additional noise and disturbance. Metal stairs are noisy in use and the landing area provides opportunity to sit out and congregate with associated noise and disturbance from voices, music, light etc. This added noise and activity in close proximity to existing residential properties is considered to be harmful to the quiet enjoyment of neighbours amenity, contrary to adopted policies CS16 and DM10 and emerging policies E1 and E22.

(iv) Parking

- 7.8 The existing dwelling does not currently benefit from any on street parking and vehicles associated with the dwelling park on street where there are no parking restrictions. The adopted Parking SPD requires 1 space to serve a 1 bed unit, as well as secure cycle storage. The amended plans have shown the provision of a hard surfaced area to the frontage with new dropped kerb and indicated one car space. This would therefore comply with the Parking SPD by providing one space to meet the needs of the proposed development. It would be unreasonable to request additional on site parking provision for the existing dwelling where none currently exists.
- 7.9 Following discussion, retention of the eastern boundary wall is shown to provide a protective buffer to pedestrians using the adjacent footpath and to prevent pedestrians cutting across the sites fore court area. This would maximise safety for pedestrians. The frontage fore court area is only about 4.7m deep and to avoid overhang to the adopted highway the car space is shown at an angle. This lack of depth would prevent the provision of three right angled spaces as suggested by the Highway Authority.
- 7.10 Whilst it is accepted that the provision of the dropped kerb negates the on site provision, realistically it is expected that 2 cars would probably be able to park on the fore court area. Since this is not a classified road the provision of the means of access and associated hard surfacing does not in itself require planning permission and could be undertaken as permitted development. Overall it is considered that the provision of the one space would meet the demands of the proposed development and policy DM13 and it would be unreasonable to refuse the application on lack of parking or highways grounds.

(v) Compliance with Habitats Regulations

- 7.11 The Council has conducted a Habitats Regulations Assessment (HRA), including Appropriate Assessment (AA), of the proposed development under Regulation 63 of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019. The Council's assessment as competent Authority under those regulations is included in the case file. The screening under Regulation 63(1)(a) found that there was likely to be a significant effect on several Solent European Sites due to both the increase in recreation and the decrease in water quality that would result from the proposed development of one new residential unit.

7.12 The planning application was then subject to Appropriate Assessment under Regulation 63. This included two packages of avoidance and mitigation packages. The first is a package of measures based on the suggested scale of mitigation in the Solent Recreation Mitigation Strategy. The second is a package of measures based on the Position Statement on Nutrient Neutral Development. The applicant has indicated a willingness to enter into a legal agreement/accept a grampian style condition to secure the appropriate mitigation packages.

7.13 With respect to the Solent Recreation Mitigation Strategy the applicant has entered into the appropriate agreement and signed and returned the Deed and paid the appropriate sum of £383.30. Therefore it is considered that this recreational element of the impacts of development have been adequately mitigated against. With respect to the water quality issue, the applicant has indicated a willingness to accept a Grampian style condition to mitigate the harm, pending the Council's solution to the nitrates issue.

7.14 The Appropriate Assessment concluded that, subject to the securing of these packages through a legal agreement/condition, 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 and raise no objection on this basis. The applicant has indicated a willingness to enter into a legal agreement/condition to secure the mitigation packages. As such this matter could be dealt with by condition should permission be recommended, but since the application is being recommended for refusal it would not be appropriate to refuse the application for non provision of the appropriate mitigation package.

(vi) CIL

7.15 The development is CIL liable for the net additional internal floor space, which is indicated on the CIL forms to be 30.6sqm. The Havant Borough Community Infrastructure Levy Charging Schedule, was adopted by the council on the 20<sup>th</sup> February 2013 and 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 CIL Regulations require the use of the national All-in Tender Price Index published by the Build Cost Information Service and this index has now increased to 2019 - 39.73% and 2020 - 49.107%.

7.16 The levy to be charged for this development would be £80 per square metre on new floor space plus indexation. The Draft Liability Notice has been issued with a charge of £3,650.14.

## 8 **Conclusion**

- 8.1 It is considered that the proposed dormer with spiral staircase and overhanging landing area constitutes an over large and dominant form of development that does not respect the domestic scale of the host dwelling and residential character of the area. By virtue of the siting adjacent a public footpath the development would result in a prominent visual intrusion to the area, contrary to policy CS16. It is also considered that the use of the spiral stairs and landing area would result in overlooking and noise and disturbance, harmful to neighbouring amenity. Therefore the proposal is recommended for refusal.
- 

## 9 **RECOMMENDATION:**

That the Head of Planning be authorised to **REFUSE PERMISSION** for application APP/19/01237 for the following reasons

- 1 The proposed rear dormer with external spiral staircase and overhanging landing constitutes an over large and dominant form of development that would have a detrimental effect on the appearance of the host dwelling house and residential character of the area. By virtue of the siting adjacent a public footpath the proposal would be visually prominent and have an adverse effect on the visual amenities of the area. The proposal is therefore contrary to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011, emerging policy E1 of the Havant Borough Local Plan 2036, Pre-Submission Draft, and the National Planning Policy Framework.
- 2 The use of the proposed external spiral stairs and landing would be likely to give rise to direct overlooking of adjacent properties to the detriment of the amenities of the occupants of these properties. The use of the spiral stairs and landing area would also result in additional noise and disturbance, harmful to the quiet enjoyment of neighbours amenity. The proposal is therefore contrary to policies CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011, emerging policies E1 and E22 of the Havant Borough Local Plan 2036, Pre-Submission Draft, and the National Planning Policy Framework.

# APPENDIX D

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) | <p>Maintain or restore the population of each of the qualifying features.</p> <p>Maintain or restore the distribution of the qualifying feature within the site.</p> | All for Chichester and Langstone Harbours SPA. | Yes.<br>Indirect impact. Without mitigation, bird populations would be reduced and/or re-distributed by increased numbers of visitors leading to increased disturbance | <p><a href="#">Bird Aware Solent Strategy</a></p> <p>The Strategy proposes:-</p> <ul style="list-style-type: none"> <li>• a team of 5-7 coastal rangers to advise people on how to avoid bird disturbance, liaise with landowners, host school visits, etc.;</li> <li>• communications, marketing and education initiatives;</li> <li>• initiatives to encourage responsible dog walking;</li> <li>• preparation of codes of conduct for a variety of coastal activities;</li> <li>• site-specific projects to better manage visitors and provide secure habitats for the birds;</li> <li>• providing new/enhanced greenspaces as an alternative to visiting the coast;</li> </ul> |

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 E

# 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 stage<sup>1</sup> 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.

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<sup>1</sup> 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 Case<sup>2</sup>.
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):

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<sup>2</sup> 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)<sup>3</sup>, 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.

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<sup>3</sup> Which includes Havant Borough Council.

27. Natural England can also provide further advice to applicants through their Discretionary Advice Service<sup>4</sup>.

### **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

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

Draft Havant Borough Council Local Plan<sup>5</sup>, including the published allowance for windfall development<sup>6</sup>. 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)<sup>7</sup>). 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:

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<sup>5</sup> <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>

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

<sup>7</sup> 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 Inspectorate<sup>8</sup> 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.

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<sup>8</sup> 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 permission<sup>9</sup>, 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*

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<sup>9</sup> <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                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                              |               |                              |           |         |           |         |           |         |           |         |           |         |                                                                          |  |                                                                           |  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|---------------|------------------------------|-----------|---------|-----------|---------|-----------|---------|-----------|---------|-----------|---------|--------------------------------------------------------------------------|--|---------------------------------------------------------------------------|--|
| <p>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 <a href="http://www.birdaware.org/strategy">www.birdaware.org/strategy</a>) 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.</p> <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. |  |
| 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.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                              |               |                              |           |         |           |         |           |         |           |         |           |         |                                                                          |  |                                                                           |  |
| Please select <b>one</b> 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:                                                                                                                                                                                                                                                                                                                         |                     |  |                 |  |

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**APPEAL BY Mr Azad Gulabakh AGAINST REFUSAL of Loft conversion with dormer to create self contained flat with external access via staircase to rear. AT 2 Chalton Crescent, Havant, PO9 4PT**

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**List of 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:  
Location and Site Plan Drawing Number 001 Rev P3  
Proposed Plans and Elevations Drawing Number 101 Rev P2  
**Reason:** To ensure provision of a satisfactory development.
3. 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; all measures necessary to meet the agreed waste efficiency calculation must be installed before first occupation and retained thereafter;
  - 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 Havant Borough Local Plan (Core Strategy) 2011 and Policy E14 of the Pre-Submission Havant Borough Local Plan 2036.
4. The external materials used for the hereby approved dormer shall be as indicated on the submitted forms and hereby approved plans, or shall match, in type, colour and texture, those of the existing building so far as practicable.  
**Reason:** In the interests of the amenities of the area and having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.
5. No above ground construction works shall take place until a full specification of the materials to be used externally on the spiral staircase, landing/balcony and privacy screen, including type of material, colour and obscurity level, have been submitted to and approved in writing by the Local

Planning Authority. Thereafter, only the materials so approved shall be used, in accordance with any terms of such approval.

**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.

6. 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.