

APPEAL UNDER SECTION 78 (2) OF THE TOWN AND COUNTRY PLANNING ACT 1990

Against the decision of Havant Borough Council to refuse detailed planning permission for the retention of 'Fowley Cottage' and the construction of 7 No. detached dwellings, two on the Warblington Road frontage and five to the rear garden area. Access to Plot 5 to be taken off Warblington Road, access to Plots 1-4, 6 and 7 to be taken off Curlew Close

on land at

46 Warblington Road
Emsworth
Hampshire
PO10 7HH

on behalf of Mr Charles Glanville

LPA Reference: APP/19/00623

Genesis Reference: 17045/SoC

May 2020



RTPI

Chartered Town Planners



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1.0 INTRODUCTION

- 1.1 This Statement of Case has been prepared by Genesis Town Planning Limited. It contains the full particulars of the case in support of the Appellant (Mr Charles Glanville) against the decision of Havant Borough Council (HBC) to refuse detailed planning permission (APP/19/00623) for the retention of 'Fowley Cottage' and the construction of 7 No. detached dwellings, two on the Warblington Road frontage and five to the rear garden area. Access to Plot 5 to be taken off Warblington Road, access to Plots 1-4, 6 and 7 to be taken off Curlew Close on land at 46 Warblington Road, Emsworth, Hampshire, PO10 7HH.
- 1.2 In setting out the case in support of the appeal, this Statement will consider national policy/guidance and relevant Development Plan policies. It provides the appellant's formal response to Reasons for Refusal Numbers 1, 2, 3 and 4 setting out why the appeal should be allowed.
- 1.3 The evidence prepared and provided in this Statement is true and has been prepared and is given in accordance with the guidance of The Royal Town Planning Institute. The opinions expressed are true and professional opinions.

2.0 DESCRIPTION OF THE APPEAL SITE AND THE SURROUNDING AREA

The Appeal Site

- 2.1 The appeal site is approximately 0.82 hectares (2.02 acres) in size and forms part of the grounds of Fowley Cottage, 46 Warblington Road, Emsworth which in total is about 1.12ha (2.76 acres). It comprises most of the existing residential curtilage of Fowley Cottage (the Cottage and tennis court are excluded) and includes part of a private access road known as Curlew Close, located to the west, which provides vehicular access to three adjacent houses. The southernmost part of the garden area of Fowley Cottage falls within Flood Zones 2 and 3 and is excluded from the appeal site boundary. This part of the site also falls within an area defined as the Coastal Zone.
- 2.2 The site lies within the urban area boundary of Emsworth. Fowley Cottage is a large two storey house with a clay tile roof constructed in the early to mid-20th Century. The house is set back from the public realm and is set in substantial grounds. It also contains a tennis court and several small outbuildings including a garage. These features are not clearly visible from the public realm owing to a number of trees (some of which are the subject of Tree Preservation Orders (TPOs), some being part of a group and others being individual) and hedges within the site plus boundary fencing.
- 2.3 The property is currently accessed via a gated entrance onto Warblington Road (to the north). Curlew Close (which is a private road) is adjacent to parts of the western boundary. Havant footpath 56 (Wayfarer's Way), which forms part of public footpath network around the waterfront, is adjacent to the southern boundary of the property.

The Surrounding Area

- 2.4 The immediate surrounding area to the north, east and west is primarily residential in character comprising mainly two storey detached dwellings set in landscaped grounds. Chichester Harbour is located to the south of the house and grounds which is a designated Area of Outstanding Natural Beauty (AONB). The harbour also forms part of a Site of Special Scientific Interest (SSSI), the Chichester and Langstone Harbours Special Protection Area (SPA), and the Solent Maritime Special Area of Conservation (SAC).
- 2.5 Emsworth town centre is located approximately 800 metre walking distance to the west; about 1.1km from Emsworth Railway Station and about 3.0km east of Havant Town Centre.

3.0 THE APPEAL SCHEME

- 3.1 The appeal scheme seeks detailed planning permission for the following:
- Retention of Fowley Cottage and tennis court which are outside the appeal site boundary;
 - The demolition of the existing garage and outbuildings located to the north of the tennis court;
 - The construction of seven two-storey dwellings in the following mix:
 - 2 x 3-bedroom detached houses
 - 5 x 4-bedroom detached houses
 - Plots 1, 2, 3, 4 and 7 would be accessed via a new drive that connects into Curlew Close;
 - Plots 6 would be accessed directly from Curlew Close;
 - The existing access to Fowley Cottage from Warblington Road would be relocated approximately 6m to the east. This new access will serve Plot 5 and the retained Fowley Cottage; and
 - The provision of a new private footpath link to the waterfront (Havant Footpath 56 – Wayfarer’s Way) for the residents of the proposed development.
- 3.2 The layout of the proposed development is shown on Drawing No. 15048-RFT-00-ZZ-DR-A-0121-S1 Revision P13 which was submitted to Havant Borough Council in October 2019 during the course of the application. This superseded the original layout plan for the retention of Fowley Cottage and the construction of six new dwellings.
- 3.3 To reflect the variation in ground levels, the dwellings on plots 1 and 2 would be built on brick plinths at their southern end.
- 3.4 The layout and the dwellings have been designed to provide each property with harbour views and the dwellings would be constructed of untreated vertical timber boarding on grey brickwork plinths with riven slate for pitched roofs and planted single storey green roofs. The vehicular access and drives would be constructed of permeable bonded gravel.
- 3.5 The proposed eaves height would be in the region of 6.2m above finished floor, and the ridge 8.45m above finished floor. Each plot would generally sit roughly about 150mm above existing ground floor level at the entrance onto Warblington Road. The site has a natural fall away to the sea, so external patios would have steps down to the existing garden levels, and those properties at the southern end of the site would be elevated by 400 to 500mm above existing ground level.

4.0 RELEVANT PLANNING HISTORY

Planning Applications

- 4.1 Several applications have been submitted in respect of the property over the years. The majority relate to works to protected trees. Several applications relate to the development of additional dwellings within the site. Applications displayed on the Havant Borough website of most relevance to this appeal are set out below:

91/51660/001: Renewal of outline permission 16871/4 for two chalet bungalows with garages. Permitted 21 February 1991.

94/51660/002: Renewal of outline consent for two chalet bungalows with garages. Permitted 31 March 1994.

98/51660/003: Residential development comprising seven detached houses and garages, including a new access for two of those houses from Warblington Road, and modifications of an existing private drive from Warblington Road to serve five of those houses. Permitted 3 July 1998.

01/51660/005: Renewal of outline application 98/51660/3 for seven detached houses and garages with new access for two of those dwellings onto Warblington Road and modifications of an existing private drive from Warblington Road to serve five of those houses plus Fowley Cottage. Permitted 3 December 2001.

APP/19/00623: Retain existing 'Fowley Cottage' dwelling and construction of seven dwellings, two on Warblington Road and five to rear garden area. Access to Plot 5 to be taken off Warblington Road, access to Plots 1-4, 6 and 7 to be taken off Curlew Close. Refused 29 April 2020 - (current appeal).

- 4.2 When the application was originally submitted it sought planning permission for the retention of Fowley Cottage and the construction of six 4-bedroom detached dwellings, two on the Warblington Road frontage and four in the rear garden area. During the course of the application and following discussions with the Case Officer (Daphney Haywood) the application was amended to seek permission for the retention of Fowley Cottage and the construction of 7 no. dwellings in the grounds.
- 4.3 In response to issues raised by the County Ecologist and Environment Agency at the initial consultation stage the applicant submitted an Ecological Impact Appraisal in respect of Bats and updated Flood Risk Assessment in August 2019, respectively. Despite the submission of this additional information the Borough Council did not reconsult the respective consultees and decided to refuse planning permission on 29 April 2020 for the reasons set out below:

1. *In the absence of a suitable agreement to secure appropriate mitigation measures, the development would be likely to have a significant effect on the Solent Special Protection Areas and so is contrary to Policy DM24 of the Havant Borough Local Plan (Allocations) 2014 and the conservation of Habitats and Species Regulations 2017.*
2. *At a density of 8.5 dwellings per hectare (gross)/14.4 dwellings per hectare (net) the application fails to make efficient use of land and is therefore contrary to the requirements of the National Planning Policy Framework and Policies H3 and H13 of the Pre-Submission Havant Borough Local Plan 2036.*
3. *The submitted Flood Risk Assessment (FRA) does not comply with the requirements for site specific flood risk assessments, as set out in paragraphs 30 to 32 of the Flood Risk and Coastal Change Section of the Planning Practice Guidance. The FRA does not therefore adequately assess the flood risks posed by the development and as such the proposal is contrary to Policy CS 15 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.*
4. *The submitted information does not accord with the requirement of the NPPF, Circular 06/2005 and Natural England Standing Advice on Protected Species in that full, up-to-date ecological information including all necessary survey, assessment and mitigation information has not been provided and therefore it has not been possible to conclude on the basis of full knowledge about the ecological impacts of the proposal that any impacts can and will be appropriately mitigated. As such the proposal is contrary to policies CS11 and DM8 of the of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.*

Planning Policy History

- 4.4 The draft Havant Borough Local Plan 2036 was published for public consultation during January and February 2018. Draft Policy H13 – Land at Fowley Cottage allocated the site for a residential development of about 7 dwellings. At the next stage of the Development Plan process (the Pre-submission stage in February 2019) draft Policy H13 was amended and now sought a residential development of about 40 dwellings. No justification within the Pre-Submission Plan was provided setting out the reasoned approach to the substantial increase in density from seven dwellings to 40. The Pre-Submission Plan Policy H13 continued to recognise a raft of constraints associated with the site.
- 4.5 The appellant (and others) made representations objecting to this change. These are summarised in paragraph 1.161 of the Pre-Submission Consultation Summary: Main Issues raised published by HBC in November 2019. (Extracts from this document form Appendix 15 of this Statement). Should Policy H13 of the Submission version of the Local Plan not revert to seven dwellings the Appellant will be making further representations at the Examination stage.

Conclusion on Planning History Summary

- 4.6 The planning history summary referred to above demonstrates that the principle of various forms of residential development (ranging from two chalet bungalows to seven detached houses) on the appeal site together with the construction of modified access arrangements onto Warblington Road and from Curlew Close have been acceptable in the past. There is also an outstanding objection to the proposed Local Plan Policy H13 allocation for about 40 dwellings which will be considered as part of the Examination into the emerging Local Plan 2036. Until consideration of the Pre-Submission Plan takes place at the Examination Policy H13 in the emerging plan should be afforded very limited weight in accordance with paragraph 48(b) of the Framework.

5.0 RELEVANT PLANNING POLICY CONSIDERATIONS

5.1 Planning policy and guidance exists at the national and local levels. For the purposes of this appeal and Section 38(6) of the Planning and Compulsory Purchase Act 2004, the Development Plan comprises the following:

- Havant Borough Core Strategy (March 2011) which sets out key planning policies for the District;
- Havant Borough Local Plan (Allocations) July 2014; and the,
- Hampshire Minerals and Waste Plan (2013).

5.2 The following Development Plan policies of most relevance to the determination of this appeal are:

Havant Borough Core Strategy

5.3 This Core Strategy was adopted in March 2011 (now over nine years ago). Since then national policy has shifted significantly and the context within which planning is developed and delivered has also changed. Paragraph 33 of the National Planning Policy Framework (NPPF) 2019 confirms that policies in local plans and spatial development strategies should be reviewed to assess whether they need updating at least every five years and should then be updated as necessary. Reviews should be completed no later than five years from the adoption of the plan and should take into account changing circumstances affecting the area, or relevant changes in national policy. As a consequence, due care must be applied to the Core Strategy and its policies to ensure that they are applicable and up to date in the current context of significantly boosting the supply of housing (as set out in paragraph 59 of the NPPF).

5.4 The Council has stated four reasons of refusal but only two of the reasons refer to Core Strategy Policies. These are contained in Reason No. 3 which refers to Policy CS15 and Reason No. 4 which refers to Policies CS11 and DM8. The Officer's delegated report (forming Appendix 1 of this Statement), where it summarises the Planning Policy consultation response, does however refer to various other Core Strategy Policies including CS8, CS9, CS16, CS17, CS19, CS21, DM8, DM10 and DM13

5.5 The policies of most relevance to this appeal and the weight that should be afforded to these policies, having regard to the tests set out in national policy are considered further below:

5.6 **Policy CS9** sets out various criteria relating to the provision of housing. Criterion 1 seeks to achieve the delivery of a net total of 6,300 new houses across the Borough between 2006 and 2026. This equates to 315 dwellings per annum (dpa), which is significantly less than the 486dpa required by the Standard Methodology figure for the Borough as set out in paragraph 1.15 of

the Council's *'Five Year Housing Land Supply Update of December 2019'* which forms Appendix 2 of this statement. It is clear that criterion 1 of Policy CS9 does not provide sufficient homes to meet the current housing need of the borough as required by paragraph 11b) of the NPPF. This can only mean that this part of Policy CS9 is **out of date** and **carries no weight**.

- 5.7 Criterion 4 of Policy CS9 seeks to achieve a suitable density of development for the location, taking into account accessibility to public transport and proximity to employment, shops and services in addition to respecting the surrounding landscape, character and built form. Paragraphs 6.21 to 6.23 of the explanatory text for this policy consider housing density.
- 5.8 Paragraph 6.21 confirms that the density of new housing will depend on its design and appropriateness to its location. It refers to minimum density thresholds which are based on the Havant Borough Townscape, Landscape and Seascape Character Assessment and levels of accessibility to a range of facilities. These include:
- High Density - Minimum of 60 dwellings per hectare (dph)
 - Medium Density - Minimum of 45 dph
 - Low Density - Up to 45 dph
- 5.9 Paragraph 6.23 confirms that it is not intended that density requirements should be too prescriptive as it is often a difficult balance between maximising the use of the land and reflecting surrounding built character and the amenity of neighbouring residents. It goes on to state that this is therefore best assessed through individual planning proposals through the development process.
- 5.10 Criterion 4 and the associated explanatory text are in general conformity with paragraph 122d) of the NPPF, which supports development that makes efficient use of land where it takes into account the desirability of maintaining an area's prevailing character. As a result, Criterion 4 of Policy CS9 should be accorded **significant to full weight**.
- 5.11 **Policy CS11** provides for the protection and enhancement of the Special Environment and Heritage of Havant Borough. It confirms that planning permission will be granted for development that meets various criteria. Criterion 2 requires the protection and where possible the enhancement of the Borough's statutory and non-statutory designated landscape, habitats and features of biological, hydrological or geological interest. Criterion 3 requires development to have regard to the various nature conservation designations including Special Protection Areas (SPAs); Special Areas of Conservation (SACs) and Ramsar (International).
- 5.12 Criterion 8 seeks to protect wildlife habitats and wildlife corridors to prevent the fragmentation of existing habitats and to allow species, for example Brent Geese, to respond to the impacts of climate change by making provision for habitat adaptation e.g. coastal managed realignment and species migration. This policy is generally consistent with the NPPF and should be accorded **significant to full weight**.

- 5.13 **Policy CS12** permits development where it carefully assesses the impact of individual proposals and their cumulative effect, on the Chichester Harbour AONB, and its setting. This policy is generally consistent with the NPPF and should be accorded **significant to full weight**.
- 5.14 **Policy CS15** is concerned with flood risk and coastal erosion. The policy sets out the circumstances when development will be permitted including:
1. It meets the sequential and exception test (where required) in relation to PPS25.
 2. The site is located in a low hazard area as defined in the Strategic Flood Risk Assessment.
 3. A site specific flood risk assessment demonstrates that the development will be safe, including the access, without creating flood risk elsewhere, and, where possible, will reduce flood risk overall.
 4. The scheme incorporates flood protection, flood resilience and resistance measures appropriate to the character and biodiversity of the area and the specific requirements of the site.
 5. Appropriate flood warning and evacuation plans are in place.
 6. New site drainage systems are designed taking account of events which exceed the normal design standard.
- 5.15 Although this policy refers to PPS25 which was replaced by the NPPF in 2012 it is broadly consistent with the current NPPF and should be accorded **significant weight**.
- 5.16 **Policy CS16** requires high quality design, protection of residential amenity and developments that produce a positive relationship between buildings, streets and spaces. The policy sets out a range of criteria based requirements which new development should aim to meet. These include:
- Identifying and responding positively to existing features of natural or local character within or close to the proposed development site;
 - Integrating with the existing local landscape features;
 - Using the characteristics of the locality to inform design, including height, mass, plot widths/ depths, materials and proportions;
 - Ensuring development connects and integrates with the immediate local area;
 - Avoiding unacceptable harm to the amenity of neighbours through smell, the loss of privacy, outlook, noise and overlooking;
 - Creating positive relationships between buildings, street and spaces, reducing the opportunities for crime, avoiding streets dominated by traffic and creating legible layouts;
 - Making a positive contribution to the public realm through the use of high quality hard and soft landscape materials; and
 - Be inclusive, recognising the needs of those with disabilities.

- 5.17 This policy does not include all of the elements/criteria of paragraph 127 of the NPPF such as criterion c) which requires developments that are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities). As result it should be given **moderate** to **significant weight**.
- 5.18 **CS17** encourages the most effective use of land including the concentration of development within existing urban areas of the Borough, including Emsworth. Criterion 2 prioritises development on previously developed land, including redundant, derelict or underused land and buildings within the urban area. It does not however include a reference to the desirability of maintaining an area's prevailing character and setting (including residential gardens), or of promoting regeneration and change as per criterion d) of paragraph 122 of the NPPF. As such should be given **moderate** to **limited weight**.
- 5.19 **DM8** only permits development where it protects and enhances local habitats and landscape distinctiveness and which addresses all of the relevant criteria as set out below:
1. Protects natural features of nature conservation and/or amenity importance on the site, for example trees, woodlands, hedgerows, soils, streams, stream corridors, springs, ditches or ponds from damage, destruction and deterioration in quality.
 2. Sympathetically incorporates existing features into the overall design of the scheme including measures taken to ensure their continued survival.
 3. Provides new landscape works that integrate successfully within the local environment and existing natural features, using local materials and plant species and making provision for future maintenance of new landscape works associated with new developments.
 4. Ensures sequences of greenspaces are maintained and protects the attractiveness and visual amenity of all green open spaces that contribute to the identity of the borough.
- 5.20 This policy is broadly consistent with the NPPF and should be accorded **significant** to **full weight**.
- 5.21 **DM9** relates to development in the Coastal Zone. Plots 1 and 2 fall within this designation. This policy confirms that planning permission for development in the Coastal Zone will only be granted where it addresses all the relevant criteria:
1. Has no harmful effects on nature conservation within the Chichester and Langstone Harbour SSSIs and SPA, Solent Maritime SAC and Ramsar Site, or any SINC and Local Nature Reserves;
 2. Maintains and enhances the appearance and distinctiveness of existing settlements and landmarks along the coast;
 3. Contributes positively to the landscape and has regard to best practice on the design of new buildings in coastal locations;

4. Upgrades existing footpaths and ensures that public access is retained and provided to connect existing paths along the waterfront where appropriate;
5. Would result in improvements to or redistribution of moorings, marine berths or launch on demand facilities (dry births) in the harbours;
6. Would not be detrimental to infrastructure for, and quality of, water-based recreation, or be detrimental to the safety of navigation; and
7. Provides recreational opportunities that do not adversely affect the character and appearance of the coast.

5.22 This policy is broadly consistent with the NPPF and should be accorded **significant** to **full weight**.

Havant Borough Local Plan (Allocations) – July 2014

5.23 This Plan was adopted in July 2014 and should therefore be in compliance with the NPPF of 2012. It follows on from the Core Strategy. It sets out the Borough's vision for the delivery of housing and economic development up to 2026. The main aim of the Plan is to assist the Borough's delivery of new housing and employment land through a planned release of allocation sites. The Plan also replaces the remaining saved policies for the Havant Borough District-Wide Local Plan and includes a number of policies in addition to those contained in the Core Strategy.

5.24 **Policy AL1** is concerned with the presumption in favour of sustainable development emphasising that the Borough Council will take a positive approach that reflects the advice and guidance set out in national planning policy. The policy confirms that planning permission will be granted for sustainable development unless material considerations indicate otherwise.

5.25 Emsworth is identified as one of five areas within the Borough earmarked for new housing development with the aim delivering between 745-826 dwellings in the plan period. Of this total around 179-260 dwellings remain to be allocated to meet need between 2013 and 2026. As the dwelling requirement figures for Emsworth are based on the Core Strategy housing requirement, which is out of date (as explained in paragraph 5.6 above), this part of Policy AL1 is **out of date** and **carries no weight**.

5.26 **Policy AL2** relates to the urban area boundaries and undeveloped gaps between settlements. It refers to the urban area boundaries for Emsworth, Havant and Bedhampton, Hayling Island, Leigh Park and Waterlooville. Paragraph 2.06 of the explanatory text confirms the principle of concentrating development within these five urban areas. This part of Policy AL2 is generally consistent with the NPPF and should be afforded **full weight**.

5.27 **Policy DM24** grants planning permission for residential development that avoid or mitigates a likely significant effect on Special Protection Areas, caused by recreational disturbance through the in-combination effect of net additional dwellings. This mitigation can be provided through:

- a) A financial contribution.
- b) A developer package of measures associated with the proposed development designed to avoid or mitigate any significant effect on the SPAs subject to meeting the tests of the Habitats Regulations.
- c) A combination of measures in a) and b) above.

5.28 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, there would not be an adverse effect on the integrity of the SPAs. This policy is consistent with the NPPF and should be afforded **full weight**.

5.29 **Policy DM25** confirms that planning permission will be granted for developments within the Emsworth urban area boundary that can demonstrate how post development runoff has been reduced by the greatest percentage rates and volumes that are possible in the context of cost, technical feasibility and viability.

Emerging Development Plan Policy

Havant Borough Local Plan 2036 – Pre-Submission Draft 2019

5.30 The emerging Local Plan was published for consultation in February/March 2019. As a result of comments made during the consultation and ongoing work being carried out on nutrient neutrality and on transport, the draft plan will be amended and subject to further public consultation. A date for this has yet to be confirmed.

5.31 Although the new plan is at a relatively advanced stage, some key stages need to take place before its policies are afforded considerable weight. Given that the Plan has not yet completed its formal consultation stage and has not been submitted to the Secretary of State it can only be afforded ***limited to moderate weight*** in the decision-making process. Nevertheless, the emerging policies give direction to the Borough's strategy moving forward and those emerging policies are potentially more up to date and in-line with current national policy when compared to the adopted Core Strategy and Allocations Local Plan. Reason for Refusal No. 2 refers to two emerging policies in the draft Local Plan 2036 which are:

5.32 **Emerging Policy H3** which is concerned with housing density. It confirms that any residential development must maximise its contribution to addressing housing need. It confirms that for residential developments comprising a net gain of five or more dwellings, planning permission will be granted where the development achieves the following densities:

- Within Havant and Waterlooville town centres, Leigh Park and Emsworth District Centres – 70dph;
- Within the defined opportunity area – 55dph; and
- Elsewhere in the Borough – 40dph.

- 5.33 The policy also requires new development to provide distinctive character and articulation within the overall building design. Development providing artificially lowered density will be refused.
- 5.34 Paragraph 6.33 of the explanatory text confirms that whilst this policy sets local density standards, site specific constraints and local character may justify a different approach having regard to the context of the site. It goes on to confirm that in such cases, pre-application discussions are encouraged to determine whether there is a robust design justification which warrants a deviation from the density standard; and that this should be detailed in the Design and Access Statement. Figure 23: Emsworth District Centre Opportunity Areas, which also forms part of the explanatory text to this policy, includes the northern part of the appeal site within the '*Area of search for 55dph*'. As this policy has yet to be the subject of Examination it can only be afforded **moderate to limited weight**.
- 5.35 **Emerging Policy H13** relates specifically to Fowley Cottage which is set out in full below.

H13 | Fowley Cottage

Residential development of about 40 dwellings will be permitted where:

- a. Sufficient information is submitted to address the site-specific planning considerations. This is to be agreed at the pre-application stage and is expected to include the following:
 - i. Archaeological Assessment;
 - ii. Flood Risk Assessment;
 - iii. Design and Access Statement;
 - iv. Landscape and Visual Impact Assessment;
 - v. Ecological Assessment;
 - vi. Arboricultural Assessment;
 - vii. Noise Impact Assessment;
- b. The developer provides a drainage solution on site which reduces surface water run-off and contributes towards identified flood alleviation schemes in the area, in line with Policies E19 and E20;
- c. Opportunities have been explored for the prior extraction of minerals to the satisfaction of Hampshire County Council; and
- d. The design and layout:
 - i. Maximises the waterfront location of the site;
 - ii. Conserves and enhances the AONB to the southern boundary of the site in line with Policy E5;
 - iii. Locates residential development in areas not at risk of flooding in line with Policy E19;
 - iv. Avoids unacceptable harm to the amenity of neighbouring residents through loss of privacy, noise, outlook and overlooking; and
- v. Provides suitable easement for the sewer that crosses the site;
- vi. Provides a safe and convenient access to Havant Footpath 56 (Wayfarer's Way) to the southern boundary of the site.

- 5.36 As this policy is the subject of detailed objections by the appellant and others (see paragraph 4.4 above) this policy has yet to be the subject of Examination and can only be afforded **very limited weight** like the rest of the draft Plan. This is because the outstanding objections remain unresolved and are considered to be significant in accordance with the requirements of paragraph 48(b) of the NPPF.

Emsworth Neighbourhood Plan 2019-2036

- 5.37 The Emsworth Neighbourhood Plan is at an advanced stage having been made the subject of an Examination in the Summer/Autumn of 2019. The Examiner's Report was published on 6 January 2020. The Examiner confirmed that the draft Plan meets the basic conditions subject to a series of recommended modifications. The Borough Council decided to accept the Examiners recommendations and was intending to hold a Referendum on 7 May 2020 at which it would be decided whether the Neighbourhood Plan should be used to decide planning applications in the Neighbourhood Area. Unfortunately, the Referendum has been postponed for the time being because of the Coronavirus pandemic. The Government has advised in situations like this that the Neighbourhood Plan can be given significant weight in decision making in advance of a Referendum.
- 5.38 Policies contained in the Post Examination version of the Neighbourhood Plan which are of most relevance to this appeal include the following:
- 5.39 **Policy D1: General Design Policy** confirms that all new developments and redevelopment proposals across the neighbourhood plan area should be of high quality, in accordance with the other policies and the other provisions contained within the neighbourhood plan. Criterion b) confirms that the impact of any development, along with any required landscape mitigation measures, should be specified in a Design & Access Statement; and c) development proposals should have regard to the Design Checklist forming part of the plan.
- 5.40 **Policy D2: Height, Mass & Materials** confirms in Criterion a) that all new buildings should enhance the character of the area and be appropriate in height, mass and materials. In most cases this will mean buildings constructed or clad in materials typical for the area with any pitched roofs being of slate or tile. Criterion b) states that other than in exceptional circumstances, new buildings should be no more than three storeys in height, including the use of the roof to provide for up to four floors of useable space; and, criterion c) confirms that proposals for the use of upper floors for residential development in new developments will be supported where, as appropriate to the nature of the development concerned, they are to a high design standard and respect the scale of neighbouring buildings.
- 5.41 **Policy D3: Layout, Form & Density** confirms that the layout, form and density of new developments should reflect the historic urban grain of the historic parts of the neighbourhood area and its specific characteristics, unless site specific conditions suggest otherwise. It goes on

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

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

Criterion c) confirms that proposed residential development that does not demonstrably optimise the density of the site will not be supported.

5.42 Pages 70 to 78 of the Neighbourhood Plan set out a Design Check List which is based upon the Emsworth Design Statement which was published in 2008. Paragraphs 43 to 45 on page 74 deal with Density and Scale. Paragraphs 43 and 44 are of particular relevance to this appeal and state:

“43/ The density of new developments should be in character with the local surrounding area, and outside of the town centre should be designed to give an impression of spaciousness with opportunity for green landscape between buildings.

44/ New buildings should be in scale with the context of the surrounding buildings and located where they will not overwhelm their surroundings.”

National Planning Policy Framework (NPPF) 2019

5.43 Although the recently updated NPPF does not form part of the Development Plan it provides the most up to date national planning guidance along with the PPG that should be taken into consideration in determining planning applications and appeals. This guidance plus appropriate levels of weight given to extant Development Plan policies should be taken into account in determining this appeal.

5.44 The NPPF confirms that the principle of determining planning applications shall continue to be in accordance with the Development Plan unless material considerations indicate otherwise (paragraph 2). Paragraph 11 deals with the presumption in favour of sustainable development which for decision taking on planning applications, means:

- Approving development proposals that accord with the development plan without delay; or
- Where there are no relevant development plan policies or the policies which are most important for determining the application are out of date, granting permission unless:
 - The application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed, or
 - Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

- 5.45 In respect of emerging policy, it states that weight can be given to emerging policy depending on the stage of preparation, the extent of any unresolved objections and degree of consistency with national policy in the Framework (paragraph 48).
- 5.46 Section 11 provides guidance on making effective use of land. Paragraph 117 confirms that planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. The above is also reflected in paragraph 122 which supports development that makes efficient use of land and goes on to set out various criterion that should be considered. Criteria d) refers to the desirability of maintaining an area's prevailing character and setting (including residential gardens) or promoting regeneration and changes.
- 5.47 On design, section 12 seeks to ensure that developments function well and are visually attractive as a result of good design, layout and effective landscaping. Paragraph 127 c) confirms that developments should be sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities). Paragraph 128 encourages discussion between applicants and the LPA about the design of emerging schemes and applications that demonstrate proactive engagement should be looked on more favourably than those that do not. Where design accords with expectations in plan policies it should not be used by the decision maker as a valid reason to object to development (paragraph 130).
- 5.48 Section 14 deals with climate change and flooding. Paragraph 155 confirms that development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Paragraph 163 confirms that when determining any planning application, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood risk assessment.
- 5.49 The conservation and enhancement of the natural environment is considered in Section 15. Paragraph 170 confirms that planning policies and decisions should contribute to and enhance the natural and local environment. Paragraph 172 states that great weight should be given to conserving and enhancing the landscape and scenic beauty of the AONB. The scale and extent of development within these designated areas should be limited.

Planning Practice Guidance (PPG)

- 5.50 PPG was originally published in March 2014. It is only available on-line and is a working document updated periodically over time. It contains various sections that relate to specific topic areas including 'Effective Use of Land' and 'Flood Risk and Coastal Change'.

- 5.51 The section headed 'Effective Use of Land' raises various questions including *'What tools are available to local planning authorities to help identify appropriate densities?'* (Paragraph 004 Reference ID: 66- 004-20190722). In response it states the following:

"A range of considerations should be taken into account in establishing appropriate densities on a particular area. Tools that can assist with this include:

- Accessibility measures such as distances and travel times to key facilities, including public transport stops or hubs (and taking into consideration service capacity and frequencies and destinations served). A range of tools are available to support such assessments.*
- Characterisation studies and design strategies, dealing with issues such as urban form, historic character, building typologies, prevailing sunlight and daylight levels, green infrastructure and amenity space*
- Environmental and infrastructure assessments, such as the capacity of services and presence of environmental risks (e.g. flood risks or overheating), and the opportunities to address these: and*
- Assessments of market or site viability."*

- 5.52 Paragraphs 030 to 032 of the section on 'Flood Risk and Coastal Change' are of relevance. Paragraph 030 Reference ID:7-030-20140306 confirms that a site-specific flood risk assessment should be carried out to assess the flood risk. This should demonstrate to the decision maker how flood risk will be managed now and over the time of the development's lifetime, taking into account climate change. Paragraph 031 Reference ID:7-031-20140306 confirms that information provided in flood risk assessments should be credible and fit for purpose. Site specific flood risk assessments should always be proportionate to the degree of flood risk and make optimum use of information already available. Paragraph 032 Reference ID:7-032-20150415 confirms that the local planning authority should assist the developer and set out and agree the scope of the flood risk assessment using the Environment Agency Standing Advice on Flood Risk.

National Design Guide

- 5.53 In October 2019 the Ministry of Housing, Communities & Local Government published the National Design Guide. The guidance recognises the requirements set out within the NPPF, and also places a greater emphasis on the need for well-designed places. The design of new developments now has greater significance in the determination of applications. Part 2 of the Design Guide sets out Ten Characteristics. The first of these relates to 'Context' and the need for any development to recognise, respond and reflect that context.
- 5.54 Paragraph 39 confirms that well-designed spaces are:
- Based on a sound understanding of the features of the site and the surrounding context;
 - Integrated into their surroundings so that they relate well to them;
 - Influenced by and influence their context positively; and
 - responsive to local history, culture and heritage.

- 5.55 Paragraph 41 states that *“...well-designed development proposals are shaped by an understanding of the context that identifies opportunities for design as well as constraints upon it. This is proportionate to the nature, size and sensitivity of the site and proposal.”*
- 5.56 In terms of the ‘Identity’ characteristic, the advice requires new development to respond to existing local character and identity.
- 5.57 Under the ‘Built Form’ characteristic paragraph 64 confirms that well-designed new development makes efficient use of land with an amount and mix of development and open space that optimises density. It also relates well to and enhances the existing character and context. Paragraph 65 goes on to confirm that *“...the appropriate density will result from the context, accessibility, the proposed building types, form and character of development”*.

Conclusion

- 5.58 This section confirms that some of the policies contained in the Core Strategy and the Local Plan (Allocations) are consistent with NPPF whilst others are not. The degree of consistency determines the weight that should be given to the policies in determining this appeal. The Emsworth Neighbourhood Plan is at a very advanced stage in its preparation and should be given significant weight. The emerging Local Plan 2036 is not at a sufficiently advanced stage and can only be afforded very limited weight.
- 5.59 National guidance in the NPPF confirms that the efficient use of land is an important objective in meeting the Government’s aim of significantly boosting the supply of new homes. However, in accordance with paragraph 122 of the Framework, this should not be at the expense of maintaining an area’s prevailing character and setting. These broader objectives are further embodied in policies within the PPG and more recently, in substantially more detail, within the National Design Guide. These documents confirm that an understanding of the sites context and surroundings are key elements in defining the form, scale and layout of new development. Respect for the setting of a site, the density and form of development and the prevailing natural features of an area should be the basis upon which the fundamental design principles of new development are founded. To disregard these elements would be a flagrant breach of national policy.

6.0 HOUSING LAND SUPPLY AND HOUSING DELIVERY TEST POSITION

- 6.1 The matter of the status of housing land supply (HLS) is important for the determination of this appeal. If Havant Borough Council cannot demonstrate a five year supply of deliverable sites against its housing target then paragraphs 11c) and 11d) plus footnote 7 of the NPPF apply. Paragraph 11c confirms that in decision – taking this means approving *“development proposals that accord with an up-to-date development plan without delay”*
- 6.2 As set out in para 11d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date⁷, then planning permission should be granted unless:
- i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies if this Framework is taken as a whole.
- 6.3 As set out in Chapter 5 of this statement, the Development Plan comprises the adopted Core Strategy (2011) and the Local Plan (Allocations) of 2014. Whilst some of the relevant policies in these Development Plan documents are consistent with the NPPF others are not. One of these is Criterion 1 of the Core Strategy Policy CS9 which provides for 6,300 new dwellings between 2006 and 2026 which equates to 315dpa. According to Havant Borough Councils *“Five Year Housing Land Supply Update (December 2019)”*, which forms Appendix 2 of this Statement, the housing requirement based on the Government’s Standard Methodology is 486dpa. As such Policy CS9 fails to provide sufficient new homes to meet the housing requirement/need of the Borough.

Current Housing Land Supply Position

- 6.4 According to paragraph 1.17 of the above HLS Report the minimum annual housing need requirement is 486 dwellings and the five-year housing requirement amounts to 2,430 dwellings. Including the shortfalls during 2017/18 and 2018/19 the requirement increases to 2,603 dwellings. With the addition of a 5% buffer this increases to 2,733 dwellings which equates to about 547dpa. According to the table in paragraph 2.8 the identified supply between 2019/20 and 2024/25 amounts to 2,936 which equates to a 5.4 year supply (a surplus of 203 dwellings). Accordingly, whilst the Council’s housing requirement falls in line with the Government’s Standard Methodology, it can currently demonstrate a 5 year supply.
- 6.5 Paragraph 117 of the NPPF encourages the effective use of land in meeting the need for homes and other uses confirming that *“...strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or ‘brownfield’ land.”* This statement, however, recognises that such

increases in density should not take place “...*where this would conflict with other policies in this Framework, including causing harm to designated sites of importance for biodiversity*” (footnote 44 to the paragraph). Furthermore, given that the Council can demonstrate a 5-year supply of deliverable housing, there is no pressure to unduly increase density to meet a need as required by paragraph 118(d) of the NPPF. Accordingly, the most appropriate approach to adopt in those circumstances is set out in paragraph 122 and sub-paragraph (d) thereto – which re-affirms that in achieving appropriate densities it is appropriate to have regard to the desirability of maintaining and areas prevailing character and setting when considering new development proposals.

Housing Delivery Test (HDT) Position

- 6.6 The most recent HDT was published in February 2019. This confirms that the number of new homes required over the three year period (2016/17 to 2018/19) amounted to 1,195 and the amount of homes delivered over this period was 1,206. This equates to 101% of the HDT 2019 measurement and as a result no consequences apply to Havant Borough.

7.0 CONSIDERATION OF THE REASONS FOR REFUSAL

- 7.1 As set out in the Decision Notice for the appeal scheme the application was refused for four reasons which are set out and responded to below:

Reason for Refusal No. 1 – In the absence of a suitable agreement to secure appropriate mitigation measures, the development would be likely to have a significant effect on the Solent Special Protection Areas and so is contrary to Policy DM24 of the Havant Borough Local Plan (Allocations) 2014 and the conservation of Habitats and Species Regulations 2017.

- 7.2 At various times during the application process the applicant's agent made it clear that the applicant would agree to the completion of an agreement to provide suitable mitigation measures in respect of the developments likely effects on the Solent SPAs. This is evident by the applicant's completion of the *"Appendix 1: European Site Avoidance and Mitigation Checklist"* form completed on 23 October 2019. This is contained in Appendix 3 of this statement.

- 7.3 On 8 April 2020 Havant Borough Council carried out a Habitats Regulations Assessment (HRA) – Screening and Appropriate Assessment (AA) for the application now the subject of this appeal. (A copy of this contained in Appendix 4 of this Statement). This confirms on page five that a financial payment of £5,423.30 is required to provide a suitable avoidance and mitigation package and that this will need to be secured by a legal agreement. It also acknowledges that the applicant has confirmed through a European Site Avoidance and Mitigation Checklist that they commit to providing a mitigation package.

- 7.4 Unfortunately at the time the application was determined the required legal agreement had not been completed and hence the Council's reason for refusal No. 1. The appellant will complete the legal agreement that secures the financial contribution for required SPA mitigation and send a certified copy of this to the Planning Inspectorate within seven weeks from the appeal start date. Upon the completion of this Reason for Refusal No. 1 will fall away and would no longer be relevant to the determination of this appeal.

Reason for Refusal No. 2 - At a density of 8.5 dwellings per hectare (gross)/14.4 dwellings per hectare (net) the application fails to make efficient use of land and is therefore contrary to the requirements of the National Planning Policy Framework and Policies H3 and H13 of the Pre-Submission Havant Borough Local Plan 2036.

- 7.5 This reason for refusal relates solely to the density of the appeal scheme and is the main area of disagreement between the Borough Council and the Appellant.
- 7.6 As set out in the Design and Access Statement and in correspondence between the applicants' agents and the case officer, the proposed density is derived from a number of factors which include the following:

Physical Constraints

7.7 The appeal site is affected by a number of physical constraints. These are referred to below and are shown the Constraints Plan (Drawing No. 15048-RFT-00-XX-DR-A-0124 Rev PO1) forming Appendix 5 of this Statement.

- ***TPO Trees and Other Important Trees*** – The Arboricultural Method Statement, the Design and Access Statement (DAS) and the Officers Delegated Report confirm that there are a number of trees and groups of trees that are the subject of individual or group TPOs plus other high value trees that should be retained. This combined with the need to provide various tree protection measures limits the developable area of the site, which in turn influences the layout of the proposed development. In short, the existing arboricultural constraints have informed the layout approach for the site.
- ***Public Foul Water Sewer*** – This crosses the southern part of the appeal site. The route of this is shown on the Constraints Plan referred to above and the submitted Proposed Site Plan (Drawing No. 15048-RFT-00-ZZ-DR-A-0121-S1 Rev P13), both of which refer to a required 3m easement. The route of the sewer pipe is also shown on the plan forming part of the consultation response of Southern Water of 11 July 2019 (a copy of this forms Appendix 6 of this Statement). The response refers to various standoff distances including:
 - “- *No development or new tree planting within 3.5 meters on each side of the external edge of the public surface water sewer (450mm) and 3.0 meters of the public foul sewer (300mm) respectively.*
 - *No soakaways, attenuation storage or other water retaining or conveying features should be located within 5 meters of public or adoptable sewers.*
 - *All existing infrastructure should be protected during the course of construction works.*”
- ***Flood Zones 2 & 3*** - The southern part of the existing residential curtilage of Fowley Cottage which is excluded from the appeal site (edged blue on the submitted Location Plan and Proposed Site Plan) falls within Flood Zones 2 and 3. This is confirmed by Figure 3 – Flood Zone Map (Source: EA) of the updated Flood Risk Assessment (FRA) report of August 2019 by Bellamy Roberts LLP. A copy of the FRA comprises Appendix 7 of this Statement. As a result, the proposed layout only shows new built development within the part of the site that falls within Flood Zone 1.
- ***Close Proximity to Chichester Harbour Area of Outstanding Natural Beauty (AONB)*** – Although the appeal sites falls within the defined built up area of Emsworth the southern boundary of the existing residential curtilage abuts the Chichester Harbour AONB, which has a sensitive landscape character. As a result development proposals are required to consider the setting and appearance of the AONB and preserve the open landscape character of the southern part of the appeal site to mitigate long distance views from the harbour and reduce the impact of new development adjacent to the coastal path.

- ***Close Proximity to the SPA/SAC*** – the Chichester and Langstone Harbour Special Protection Area (SPA) and the Solent Maritime Special Area of Conservation (SAC) lie to the south of the appeal site. These areas are form part of a major estuarine system. The mudflats range from low and variable salinity in the upper reaches of the estuaries to very sheltered, almost fully marine muds in Chichester and Langstone Harbours. Although not directly impacted by the development proposals they are material local constraints that should be taken into account in the layout, density and design of the site.

Restrictive Covenant

- 7.8 The southern part of the appeal site to the south of the Fowley Cottage and the tennis court is the subject of a restrictive covenant, dated as recently as March 2019, that limits the use of Curlew Close as an access. The covenant only allows a maximum of five dwellings to south of the existing house (Fowley Cottage) to be accessed from Curlew Close. The tennis court is also restricted to remain under the covenant. Whilst it is acknowledged restrictive covenants are not normally a material consideration in determining planning applications the parties that benefit from the covenant have confirmed that they will not remove or relax it. As such it acts as a constraint on the amount of development that can be provided on the site and the deliverability of a planning permission that is not in accordance with the limitations imposed by the covenant.

The Character of the Surrounding Area

- 7.9 The character of the surrounding area is an important consideration in the determination of this appeal. The appeal site is the last remnant of original mid-20th century housing in this part of Emsworth. It comprises a single detached dwelling set within a residential curtilage of about 1.1 hectares. By modern standards this is a very low density for a property that falls within the defined built up area boundary of Emsworth, which is one of the five main settlements within the Borough.
- 7.10 The appeal site is surrounded by existing residential development to the north, east and west. This mainly comprises detached dwellings of mixed age and design, which are typical of the wider character area in this part of Emsworth. Appendix 8 of this Statement comprises Drawing No. 15048-RFT-00-ZZ-DR-A-0122-S1 Rev 01 - Figure Ground as Existing which shows the layout and grain of the surrounding area. This shows an area of 16.7 hectares within which there are 173 dwellings. This results in a gross density of about 10.35 dwellings per hectare (dph). The appeal scheme has a site area of 0.82 hectares which results in a gross density of 8.5dph. When the constraints referred to in paragraphs 7.7 and 7.8 above (i.e. TPO trees/retained trees and the foul sewer easement) are taken into consideration and are excluded from the overall site area it results in a net density of about 14.4dph which is comparable to the gross density of the nearby surrounding area.

- 7.11 With regard to density this was not considered to be an issue at the pre-application enquiry stage. Appendix 9 of this statement contains a copy of the Pre-Application Enquiry response made by the Borough Council on 7 November 2016. It is acknowledged that the NPPF has been updated twice (first in July 2018 and again in February 2019) since the pre-application response was made and that the Borough Council has published the Pre-Submission version of the emerging Local Plan 2036 in February 2019. However, neither the 2012, 2018 or 2019 NPPFs deviate from the fact that both density and good design should go hand in hand alongside the principles of sustainable development, however that may have been articulated. The character, context and setting of the area has always been regarded as a key driver in determining the character and form of new development. As set out in paragraph 5.35 of this Statement Policy H13 of the Pre-Submission Local Plan is seeking to allocate a residential development of about 40 dwellings on the appeal site. In the Appellant's view this is a substantial departure from the character of the area and is an emerging policy which has not been justified by the Council at any stage of the development plan process.
- 7.12 The updated Planning Policy consultation response on the appeal scheme was issued on 18 October 2019 (contained in Appendix 10 of this Statement), which is summarised in the Officers Delegated Report. This refers to both Policy H3 and H13 of the emerging Local Plan and guidance contained in the 2019 version of the NPPF. The fourth and fifth pages of the updated Planning Policy response considers the Site Specific Constraints relating to the site and based on this analysis it considers that a more realistic site yield is likely to be around 22 dwellings (rounded) or 19 dwellings if a 40dph is applied across the entire site. This approach demonstrates that in preparing the draft Local Plan Policy H13 for the Fowley Cottage no detailed consideration was given to the constraints of the site (despite them being referred to in the policy). The Council claims this revised site capacity is based on the identified physical constraints of the site and the net site area, but still does not take into account the character of the surrounding area.
- 7.13 At various places within the updated Planning Policy response reference is made to HBC's Residential Density Evidence Paper (January 2019) which forms part of the background evidence for the emerging Local Plan. A copy of this evidence paper forms Appendix 11 of this statement. This paper is relatively short at only 17 pages long (including appendices). Section 2 sets out the Policy Context and Section 3 Local Circumstances. Paragraphs 3.6 and 3.7 under the heading Local Character and Design state:
- "3.6 To support development of an appropriate density, due regard should be given to the character of the local area as well as the design of the development as discussed at paragraph 1.10.*
- 4.2 Information relating to the landscape character areas of the Borough can be found in the Council's 2015 Landscape Capacity Study. The Landscape Capacity Study assessed the capacity of different areas of the borough to accommodate development, using a 35dph benchmark and two and three storey dwellings"*

- 7.14 Section 4 considers Opportunity Areas and confirms in paragraph 4.1 that the opportunities for higher residential development are dependent on accessibility to services that would support future occupants. Minimum Density Standards in Practice are considered in paragraphs 4.5 and 4.6. The latter paragraph confirms that it would not be appropriate to identify an upper limit to density, due to site specific characteristics and differing local character profiles. It goes on to state that to ensure that densities are achieved as far as possible, the applicant's design and access statement should clearly explain the rationale of the design and layout to justify the proposed density with reference to the accessibility to services and local character.
- 7.15 The accompanying *'Figure 2: Indicative density and mix characteristics'* comprises a table that shows a range of density figures based on urban and suburban characteristics. Paragraph 4.7 confirms that these are based on general characteristics. This table appears to have influenced the Town Centre and Ped-Shed Areas contained in Appendix 3 of the Background Paper. The plan for Emsworth District Centre shows the northern part of the appeal site falling within the area of search for 55dph. The Background Paper lacks detail and appears to apply a broad brush approach to setting out density zones which have been used to inform the emerging Local Plan 2036, and the various site allocations including Policy H13 - Fawley Cottage, which is allocated for about 40 dwellings. This view is supported by the updated Planning Policy response which now suggests that the site should accommodate 19 dwellings. The merits of draft Policies H3, H13 and the Background Evidence that supports the Local Plans approach have yet to be tested at Examination. Until the extent of the unresolved objections are known and the outcome of this Examination process is known only very limited weight should be given to these policies. This is particularly so since it is evident from the studies already produced and the pre-submission plan policies that more detailed work is necessary to underpin the Council's intended strategy in terms of density matters.
- 7.16 Based on the information published to date it appears to the Appellant that Havant Borough Council has made a decision to identify the allocation of the site for *"about 40 dwellings"* without carrying out a proper detailed assessment of the site, its surroundings or an understanding of the constraints. To achieve a density of 40dph on the Fowley Cottage site it would require a flatted development approach, which together with parking and hardstanding would be substantially at odds with the surrounding form of development, which is predominately detached two-storey residential houses set within soft landscaped gardens. The appeal site is also a sensitive waterside site, which would be completely transformed and have a character and form that does not integrate or reflect the character of the immediate surrounding area. This would be contrary to Core Strategy Policy CS16; paragraphs 43 and 44 (on page 74) of the Neighbourhood Plan Design Check List; and paragraph 122d) of the NPPF.
- 7.17 As previously mentioned at various points in this statement the emerging Local Plan 2036 and Policy 13 are just that i.e. emerging, at an early stage of the plan process and yet to go through formal examination. Furthermore, Policy 13 is the subject of duly made objections. As a result, the policy carries very limited weight in the determination of the appeal. This is supported by paragraph 48 of the NPPF which confirms that the weight which can be given to emerging policy depends on the stage of preparation, the extent of any unresolved objections and the degree of consistency with national policy. Emerging Policy H13 also identifies a number of constraints including:

- Potential for previously unidentified archaeological deposits
- Protected trees
- Potential for roosting bats, nesting birds and reptiles
- The southern end of the site is in tidal Flood Zones 2 & 3
- The southern boundary of the site abuts the Chichester Harbour AONB
- A sewer which crosses the site
- An area known to have drainage capacity issues
- The site overlays a Principal and Secondary Aquifer

7.18 The Policy then goes on to suggest that the design and layout should:

- Maximise the waterfront location (which is in Flood zone 2 & 3)
- Conserve and enhance the AONB
- Locate development not in areas at risk of flooding
- Avoid unacceptable harm to amenity
- Provide suitable easement for the sewer

7.19 The above constraints have been fully considered by the Appellant in the assessment of the sites development, which has resulted in the appeal scheme now the subject of this appeal. There is no evidence to the contrary that suggests the approach of the appeal scheme is flawed or that a higher density could be overcome given these identified constraints.

7.20 Whilst the adopted Core Strategy is now largely out of date because it is just over nine years old (it should have been reviewed by the end of March 2016), Policy CS16 is still of some relevance being afforded moderate to significant weight (see paragraph 5.17 of this statement). This Policy requires high quality design, protection of residential amenity and developments that produce a positive relationship between buildings, streets and spaces. The policy sets out a range of criteria based requirements which new development should aim to meet. These include:

- Responding positively to existing features of natural or local character;
- Integrating with the existing local landscape features;
- Using the characteristics of the locality to inform design, including height, mass, plot widths/depths, materials and proportions;
- Ensuring development connects and integrates with the immediate local area;
- Avoiding unacceptable harm to amenity;
- Creating positive relationships between buildings, street and spaces, reducing the opportunities for crime, avoiding streets dominated by traffic and creating legible layouts;
- Making a positive contribution to the public realm through the use of high quality hard and soft landscape materials; and
- Be inclusive, recognising the needs of those with disabilities;

- 7.21 The Borough Design Guide SPD on design is also a material consideration even though it was adopted in December 2011. This sets out the design requirements for new development in the Borough and reaffirms the objectives of Policy CS16 of the Core Strategy. It then goes on to address the seven key principles of good design:
- Distinctive Character
 - Ease of Movement
 - Good Legibility
 - Good Continuity and Enclosure
 - Good Quality Public Realm
 - Diversity and Detailing
 - Adaptability and Sustainability
- 7.22 Dealing with the relevant considerations, character is the most significant. Paragraph 4.04 states *"...the best way for new developments to respond to character, integrate and complement the existing area is to thoroughly understand the site and its context."* The appeal scheme has very carefully considered the context of the site, its specific constraints and limitations and designed a high-quality solution to deliver an appropriate development scheme upon it. The development respects the density and character of the surrounding area unlike the Borough Council's approach in emerging Local Plan Policy H13.
- 7.23 Good legibility is a fundamental element of a well-designed scheme. In this particular case the edges of the site are important since they are either constrained by trees, water features or national designations such as the AONB. Locating and laying out a development that respects those elements is a fundamental requisite of good design. A higher density would fail in that respect. These elements are further examined within section 4.2 of the SPD. Paragraph 4.46 states that *"...for new development to respond to and address the seven key principles of good design the applicant needs to have a thorough understanding of the site and its context, in particular local patterns of development."* Paragraph 4.47 reaffirms that this understanding should *"...inform the design of a proposal and reflect local character and distinctiveness, whilst allowing innovative design"*.
- 7.24 On matters of design, the Design Guide SPD sets out at table 4.1 a number of considerations. With regard to density it confirms that *"...different densities are appropriate in different places...the density of new development should be driven by the density of the neighbouring area"*. This is quite clear and unequivocally supports the approach that has been taken by the appeal scheme and does not support the approach taken by the Borough Council. Paragraph 4.51 further reinforces the implications of site constraints in dealing with the design and layout of new development which when taken into account may lead to a reduction in the developable area of the site.
- 7.25 Overall the Design Guide SPD is clear on the matter of design and density. Any reasonable assessment of its contents would not indicate that the appeal site should have a higher density than is currently proposed. The current proposals respond to and respect the surrounding context

of development. It creates blocks of development that are in keeping with the surroundings, and ensures that the overall design, layout and density characteristics of the surrounding residential area are appropriately maintained.

- 7.26 At a national level there is nothing in the NPPF that should lead to a different conclusion. On density, paragraph 117 makes it clear that the efficient use of land is a priority which has to be met alongside the need to safeguard and improve the environment. Paragraph 122 and 123 deal with density, reaffirming that in making efficient use of land, the desirability of maintaining an areas prevailing character and setting should be taken into account. The NPPF does not promote increased densities to the detriment of the character of an area. Paragraph 122(d) specifically refers to the desirability of maintaining an area's prevailing character and setting, which the appeal scheme achieves.
- 7.27 In addition to the above Local Plan Policies and the NPPF, consideration should be given to the National Design Guide of October 2019. The guidance recognises the requirements set out within the NPPF but places a greater emphasis on the need for well-designed places. Part 2 of the Design Guide sets out Ten Characteristics. The first of these relates to Context and the need for any development to recognise, respond and reflect that context. Paragraph 41 states that *"...well-designed development proposals are shaped by an understanding of the context that identifies opportunities for design as well as constraints upon it. This is proportionate to the nature, size and sensitivity of the site and proposal."* This is particularly pertinent to the appeal site and is reflected by the proposed development. The appeal scheme is based on a sound understanding of the features of the site and the surrounding context, and the proposed development would be well integrated into their surroundings
- 7.28 Based on the above it is clear that the only very limited weight can be given to emerging Local Plan Policies H3 and H13 as the plan has yet to reach Examination stage and there is an outstanding objection to H13, which seeks a reduction from its current allocation of about 40 dwellings back to the 7 dwellings proposed in the Draft Local Plan of 2018. No detailed assessment has been undertaken by the Borough Council to demonstrate how a high-density scheme of 40 dwellings could be accommodated on the site without significant adverse consequences for the character of the area and the amenities of nearby residents. Overall, the appeal scheme makes efficient use of land whilst also having regard to the characteristics of the locality and the physical constraints on the site. As such it accords with the NPPF; Policy CS16 of the Core Strategy; paragraph 43 of the Neighbourhood Plan Design Check List; The Borough Design Guide and the new National Design Guide.

Reason for Refusal No. 3 - The submitted Flood Risk Assessment (FRA) does not comply with the requirements for site specific flood risk assessments, as set out in paragraphs 30 to 32 of the Flood Risk and Coastal Change Section of the Planning Practice Guidance. The FRA does not therefore adequately assess the flood risks posed by the development and as such the proposal is contrary to Policy CS 15 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 7.29 A Flood Risk Assessment (FRA) was submitted as part of the original application submission. As part of the consultation process the Environment Agency (EA) responded on 30 July 2019. A copy of this contained in Appendix 12. The EA felt that the FRA did not comply with the requirements for site- specific flood risk assessments and did not therefore adequately assess the food risks posed by the development. The EA's main concerns were that it failed to:
- Take the impacts of climate change into account adequately. Flood risk mitigation measures to address flood risk for the lifetime of the development included in the design are inadequate because they would not make the development resilient to flood levels for 2115 of 4.5 AOD etc.
 - Consider the requirement for flood emergency planning including flood warning and evacuation of people for a range of flooding events up to and including the extreme event – safe access and egress routes.
 - Consider how a range of flooding events (including extreme events) would affect people and property – resistance and resilience measures.
- 7.30 In response the FRA was updated by Bellamy Roberts LLP in August 2019 and submitted to Havant Borough Council. A copy of the updated FRA (Version 5) forms Appendix 7 of this Statement. The updated FRA addresses the concerns made by the EA. Paragraph 1.15 and Figure 6 shows the tidal model for 2115 which considers likely climate change. The level indicated on the mapping provides a flooding level for 2115 of 4.5m AOD. Paragraph 1.16 states that due to the topography of the application site, part of the proposed development falls within the estimated future tidal flood risk area for 2115 and as such can be designed to mitigate this potential impact. Paragraph 3.8 confirms that the two southernmost properties will be affected and in this regard, it will be ensured that the finished floor levels (FFL) of these properties will be a minimum of 4.5m AOD, and therefore above the 2115 estimated flood level. As such an undertaking will ensure that future occupants will remain safe for the lifetime of the development, without the need for additional flood resistance and resilience measures. This arrangement is shown on Drawing No. 5042/004 Rev B contained in Appendix 6 of the updated FRA. Although the updated FRA of August 2019 relates to the application as originally submitted i.e. for the construction of six new dwellings, the location of the two southern most dwellings (Plots 1 and 2) remain the same as the amended seven unit scheme and the same principles would apply. These aspects could be satisfactorily addressed by a suitably worded planning condition.
- 7.31 Paragraph 3.9 considers safe access and egress routes. It confirms that a small section of the site access road at its southernmost extremity falls within the 2115 estimated future tidal flood risk area. Owing to the topography of the site, the remainder will not be affected. It goes on to confirm that to ensure safe access and egress to the entire development, it will be ensured that the level of the access road will be above the flood level estimated for 2115.
- 7.32 For the purposes of this appeal the FRA has been updated again (now Version 6 which forms Appendix 13 of this Statement) so that it relates specifically to the appeal scheme of seven new dwellings. This version of the FRA responds fully to the initial concerns raised by the EA and overcomes the third reason for refusal.

Reason for Refusal No. 4 - The submitted information does not accord with the requirement of the NPPF, Circular 06/2005 and Natural England Standing Advice on Protected Species in that full, up-to-date ecological information including all necessary survey, assessment and mitigation information has not been provided and therefore it has not been possible to conclude on the basis of full knowledge about the ecological impacts of the proposal that any impacts can and will be appropriately mitigated. As such the proposal is contrary to policies CS11 and DM8 of the of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 7.33 When the application now the subject of this appeal was submitted it was accompanied by a Phase 1 Ecological Survey dated 22 May 2019 by Ecosupport Limited. In error this was submitted with a Draft watermark across the document. The survey Report recommended that additional ecological surveys for wintering birds and roosting bats should be carried out. The Senior Ecologist (Tristan Norton) of Hampshire County Council was consulted and in his consultation of 4 July 2019 he suggested that the results of these surveys should be used to develop avoidance and mitigation measures; and these should be provided prior to determination.
- 7.34 In response, the applicant appointed ECOSA to prepare an Ecological Impact Assessment in respect of Bats. This was completed in August 2019 and submitted to the Borough Council. This confirmed that bat emergence/re-entry surveys were undertaken between July and August 2019 and that no bats were recorded emerging from the garage during the survey period.
- 7.35 The Assessment does, however, confirm that the site supports foraging and commuting bats; and that the appeal scheme has the potential to result in adverse impacts on foraging and commuting bats through the introduction of external lighting. This however could be overcome through suitable mitigation measures, which includes a sensitive lighting strategy. If this were to be implemented no adverse impacts on foraging and commuting bats would be anticipated as a result of the proposals. The report also suggests the incorporation of new bat roost units (Schwegler 1FR Bat tubes or similar alternative) into the new dwellings to provide enhancement measures. The appellant agrees to the form of mitigation proposed, which could be secured by a suitably worded planning condition.
- 7.36 The need to carry out wintering bird surveys was the subject of telephone and e-mail correspondence between the County Ecologist and Adrian Meurer of Hankinson Duckett Associates (acting on behalf of the Appellant) at the end of July 2019. Copies of the email correspondence form Appendix 14 of this Statement. This confirms that having considered further evidence that a wintering bird survey is not required prior to the determination of the application subject to a proportionate contribution towards the Solent Brent Goose and Water Strategy to manage potential cumulative effects of additional recreation arising as a result of the proposed development. This was confirmed in the e-mail response of Tristan Norton to Adrian Meurer on 26 July 2019.

- 7.37 Based upon the Borough Council's application pages for the application as displayed on its website, it does not appear that the County Ecologist was reconsulted by HBC on the Ecological Impact Assessment in respect of Bats (August 2019). As such there does not appear to be a second consultation response from the County Ecologist confirming that information submitted by the applicant meets the requirements of the NPPF, Circular 06/2005 and Natural England Standing Advice on Protected Species. The Appellant contends that the submitted information and relevant email correspondence accord with the requirements and with Policies CS11 and DM8 of the Havant Borough Local Plan (Core Strategy) 2011. As such Reason for Refusal No. 4 is overcome.

Other Considerations

- 7.38 In addition to the responses to the four reasons for refusal above, the appeal scheme has a number of other merits and benefits including:

Sustainable Location – The principle of residential development on the appeal site is accepted by virtue of it being located within the built-up area of Emsworth, which is one of the five main urban areas in the Borough. It is within walking distance of the town centre, the railway station and bus routes that link it to other larger settlements. This is supported by the NPPF and Policy CS17 of the Core Strategy.

Provision of Additional Housing - The appeal scheme would provide seven additional houses helping to reduce the need to develop on new greenfield sites. Whilst there is currently a 5.4 year supply of housing in the borough this will not always be the case given that the five requirement rolls forward every year. The appeal scheme will assist the Government's objective of significantly increasing the supply of homes in a sustainable and sensitive manner.

Design and Layout - The design of the appeal scheme is of high quality and respects its setting in this part of Emsworth and the close proximity to the Chichester Harbour AONB/SPA and SAC. None of the buildings would be more than two-storey in height, which is appropriate and in keeping with neighbouring properties and the surrounding area.

Residential Amenity - The appeal scheme is mindful of neighbouring properties and would not result in unacceptable harm to the amenity of the occupiers of neighbouring properties or the occupiers of the proposed development.

Access and Highway Matters - The Highways Department has assessed the proposed access and parking arrangements and has confirmed that these are acceptable.

Trees - The scheme retains most of the TPO trees and other high quality trees. Although there will be some tree loss and vegetation removal this will be offset by new tree planting and additional soft landscaping.

Waterfront Access - A private pedestrian access to the waterfront would be provided for the residents of the new development. This is in addition to the two nearby public access points to the waterfront, which include the public footpath from Beacon Square about 120m to the east and the public road/pavement from Kings Road about 140m to west.

8.0 SUMMARY AND CONCLUSIONS

- 8.1 The appeal proposal has arisen through the decision of Havant Borough Council to refuse detailed planning permission (APP/19/00623) for the retention of 'Fowley Cottage' and the construction of 7 No. detached dwellings, two on the Warblington Road frontage and five to the rear garden area.
- 8.2 This Statement demonstrates that:
- a) some policies in the Development Plan are out of date or have reduced weight.
 - b) the appeal scheme complies with the parts of the Development Plan relevant to this appeal and overall.
 - c) the appeal scheme complies with the NPPF and PPG.
 - d) The appellant will complete a Unilateral Undertaking to secure the required mitigation measures in respect of the Solent Special Protection Areas which will overcome Reason for Refusal No. 1
 - e) The appeal scheme amounts to an acceptable balance in term of making efficient use of land whilst also not harming the character and appearance of the surrounding area in accordance with paragraph 122(d) of the NPPF, Core Strategy Policies CS16 and CS17 and paragraph 43 of the Design Checklist in the Emsworth Neighbourhood Plan. Only limited weight should be given to Policies H3 and H13 of the emerging Local Plan 2036.
 - f) The updated Flood Risk Assessment (Version 6) May 2020 responds to and overcomes the concerns raised by the Environment Agency. The appeal proposal therefore accords with Policy CS15 of the Core Strategy and the NPPF.
 - g) The Phase 1 Ecological Appraisal; the Ecological Impact Assessment in respect of Bats, and email correspondence with the County Ecologist overcomes the fourth Reason for Refusal. As such the proposed development accords with Policies CS11 and DM8 of the Core Strategy and the NPPF.
- 8.3 Overall, the balance of policies and the material considerations indicate that planning permission should be granted for the appeal scheme.
- 8.4 It is for the above reasons that the Inspector is respectfully requested to allow the appeal.