

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

**STATEMENT OF
HAVANT BOROUGH COUNCIL**

108 Woodgreen Avenue, Havant, PO9 3EE

**Local Planning Authority Reference:
APP/18/00885**

**Planning Inspectorate Reference:
APP/X1735/W/19/3230318**

HAVANT BOROUGH COUNCIL

TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)

APPEAL BY MR & MRS KERRIGAN AGAINST THE DECISION OF HAVANT BOROUGH COUNCIL TO REFUSE TO GRANT PLANNING PERMISSION FOR PROPOSED 2NO. 1 BED DWELLINGS WITH ASSOCIATED PARKING AND BIN STORAGE

Planning Inspectorate Reference: APP/X1735/W/19/3230318

LPA REF: APP/18/00885

1.0 THE APPEAL SITE AND ITS SURROUNDINGS

- 1.1 The site lies within the urban area of Bedhampton (to the west of Havant) and the exiting property No.198 Woodgreen Avenue is an end of terrace house situated on the corner of Woodgreen Avenue and Fraser Road. The house fronts onto Woodgreen Avenue and is set higher than both adjoining roads. The plot is restricted to the rear with an angled rear boundary. The area is characterised by mainly terraced properties with brown bricks and concrete roof tiles.
- 1.2 The site is particularly prominent from the adjoining roads being on a prominent corner and on rising ground. No. 108 has parking to the rear with a drive and garage providing space for three cars. The Borough Map and 1:1250 Location Plan is shown at **APPENDIX A**.

2.0 PLANNING HISTORY

None Relevant

3.0 THE APPLICATION

- 3.1 The application was validated on the 15th October 2018 and subsequently refused on the 10th December 2018 for the following reasons:

Reason 1

The proposed development of two houses on this prominent corner plot elevated in relation to the adjacent roads would result in a visually intrusive form of development to the harm of the streetscene removing the existing set back spacious nature of development from the corner of Woodgreen Avenue and Fraser Road. The proposals are considered to result in an overdevelopment of the site and a cramped form of development. Furthermore the two dwellings would not be designed to reflect the width, rhythm, fenestration and design of the existing terrace and host dwelling which would be detrimental to the character and appearance of the existing terrace. The proposal would therefore conflict with the policy CS16 of Havant Borough Local Plan (Core Strategy) 2011, Havant Borough Council Borough Design Guide SPD 2011 and the National Planning Policy Framework.

Reason 2

The proposed development would result in restricted private external amenity space to both the existing dwelling (No. 108 Woodgreen Avenue) and to the proposed dwellings

to the harm of the residential amenities of the existing and proposed occupants. The proposed dwellings also provide limited internal space for future residents of the new properties. Overall it is considered that the dwellings would fail to provide a suitable living environment for future and existing residents. The development is therefore contrary to policies CS16 of the Havant Borough Local Plan (Core Strategy) 2011, Havant Borough Council Borough Design Guide SPD 2011 and the National Planning Policy Framework.

Reason 3

The proposed car parking shown in relation to the development fails to meet the Councils car parking standards both in terms of the quantum of parking (for the existing dwelling) and design and usability of the proposed parking spaces. The development is therefore contrary to policy DM13 of the Havant Borough Local Plan 2011, Havant Borough Council Parking SPD 2016 and the National Planning Policy Framework.

Reason 4

Without the appropriate financial mitigation, the development would be likely to have a significant effect on the Chichester and Langstone Harbours Special Protection Area and so is contrary to Policy DM24 of the Havant Borough Local Plan (Allocations Plan) and the Conservation of Habitats and Species Regulations 2017.

4.0 PLANNING POLICY

4.1 The Development Plan for Havant comprises The Havant Borough Local Plan (Core Strategy) 2011, the Havant Borough Local Plan (Allocations) 2014 and the Hampshire Minerals and Waste Plan 2013 the last of these is not considered relevant to this appeal. In addition, the Councils Havant Borough Local Plan 2036 has been progressed to the Pre-Submission Draft and was subject to public consultation from 4th February to 18th March 2019.

4.2 The NPPF was updated in February 2019 and with respect to this proposed development and appeal, continues to have a presumption in favour of sustainable development (paragraph 11). The following parts are considered particularly relevant:

Part 2 provides guidance on achieving sustainable development,

Part 3 Plan Making confirms that *'The planning system should be genuinely plan-led'*,

Part 4 Highlights the importance of pre-application engagement and front loading and that *Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.*

Part 11 Making effective use of Land states in paragraph 118 that *Planning policies and decisions should: (c) give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs,....*paragraph 122 continues *Planning policies and decisions should support development that makes efficient use of land, taking into account: (amongst other matters) (d) the desirability of maintaining an area's prevailing character and setting (including residential gardens), or of promoting regeneration and change; and e) the importance of securing well-designed, attractive and healthy places.*

Part 12 relates to achieving well-designed places. Paragraph 124 states:

The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Being clear about design expectations, and how these will be tested, is essential for achieving this. So too is effective engagement between applicants, communities, local planning authorities and other interests throughout the process.

Paragraph 127 requires policies and decisions to ensure that developments (amongst other matters):

- a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;*
- b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;*
- c) 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);*
- d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;*

Annex 2 sets out the definition of previously developed land and excludes land in built-up areas such as residential gardens.

- 4.3 It is considered that the new NPPF continues to place an emphasis on the importance of plan led development patterns, pre-application engagement and good design are emphasised. Importance is placed on maintaining an areas prevailing character and setting. Therefore, the new NPPF continues to be relevant and the LPA are confident that the decision to refuse planning permission was made in accordance with the guidance contained within the updated NPPF.

The Development Plan

- 4.4 The following policies of the Havant Borough Local Plan (Core Strategy) 2011 (HBLP (CS) 2011) are considered to be particularly relevant to the determination of this appeal:
- CS9 (Housing)
 - **CS16 (High Quality Design)**
 - **DM13 (Car and Cycle Parking on Residential Development)**

Those policies in bold are included in the reasons for refusal.

Havant Borough Local Plan (Allocations) 2014

- 4.5 The following policy of the Havant Borough Local Plan (Allocations) 2014 (HBLPA 2014) is considered to be particularly relevant to the determination of this appeal:
- DM24 Recreational Disturbance to Special Protected Areas (SPAs) from Residential Development

More details in relation to the relevance of these policies will be provided in parts 4 and 6 of this appeal statement.

The Planning Inspectorate have previously been forwarded copies of the relevant planning policies.

Emerging Policy

Havant Borough Local Plan 2036 Pre-Submission Draft

- 4.6 With respect to the Local Plan, the Council is preparing a new Local Plan and consulted on a Draft (Regulation 18) version of the Havant Borough Local Plan 2036 (HBLP 2036) between 8 January to 16 February 2018. The responses to the public consultation are currently being assessed. Whilst the Plan has limited weight in decision-making at this stage in the plans preparation, the Draft Local Plan, is of relevance in setting out the Council's direction of travel.
- 4.7 With respect to this appeal the draft Design Policy E1 reiterates the Council's commitment to achieving high quality design that respects its context and new draft policy H1 seeks High Quality Design specifically for New Homes and sets out spatial criteria.

Other Relevant Strategy

'Definitive' Solent Recreation Mitigation Strategy

- 4.8 The development would increase the number of dwellings within the 5.6km zone identified as significant in potentially increasing recreational pressure on the Solent SPA. Natural England's advice with regard to all new housing development within this 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.
- 4.9 On 1st April 2018, the ('Definitive') Solent Recreation Mitigation Strategy replaced the 'Interim' and the 'Definitive' Strategy now applies to new residential development (this was as approved by Havant Borough Councils Cabinet on the 7th February 2018.) The updated 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 two No one bedroom dwellings would require a contribution of £692 plus 5% monitoring fee of £20 and Administration Fee of £20 such that the total contribution required would be £746.60
- 4.10 The contribution and a unilateral undertaking was paid following the determination of the application. Therefore, it is the opinion of the Local Planning Authority that the appropriate mitigation measures have been adequately secured to meet the Definitive Strategy and policy DM24 of the Allocations Plan. Reason for refusal 4 will not therefore be argued by the Local Planning Authority in relation to this appeal.

Nutrient Neutrality

- 4.11 It should also be noted that following the Councils determination of this planning application the Court of Justice of the European Union (CJEU) issued a judgement (People over Wind, Peter Sweetman v Coillte Teoranta) which ruled that Article 6(3) of the Habitats Directive must be interpreted as meaning that mitigation measures (referred to in the judgement as measures which are intended to avoid or reduce effects) should be assessed within the framework of an appropriate assessment and that it is not permissible to take account of measures intended to avoid or reduce the harmful effects of the plan or project on a European site at the screening stage. PINS Note 05/2018 refers to the judgement.

- 4.12 In this case, the development is located within a zone of influence of an SPA, the Local Planning Authority undertook HRA screening which included the requirement for avoidance and mitigation measures in terms of the Interim Solent Recreation Mitigation Project (now Definitive Solent Recreation Mitigation Strategy).
- 4.13 As a result of the above judgement and consequent update in case law, an Appropriate Assessment is also now necessary in accordance with Regulation 63 of the Habitats Regulations. Natural England are a statutory consultee on the Appropriate Assessment stage and the LPA have consulted Natural England on this appeal. Their response in relation to the application stage is attached at **Appendix B**. As the Inspectorate are now the competent determining authority in relation to this appeal, it will be necessary for the Inspectorate to determine whether this is satisfactory to address the new case law.
- 4.14 The following comments set out Havant Borough Council's approach to the issue of nutrient neutrality, which has arisen as a material consideration since the Council made its decision on the planning application and is referenced in the Council's Appeal Statement accordingly.
- 4.15 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/legalcontent/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.
- 4.16 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 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 in turn leads to harm to the species which use them – a likely significant effect. 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'.
- 4.17 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.
- 4.18 On Wednesday 26 June, Havant Borough Council's Cabinet approved a 'Position Statement on Nutrient Neutral Development' The Position Statement is attached at **Appendix C**. 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 particular suggests the use of a planning condition to secure an appropriate avoidance and mitigation package – Paragraphs 57-67 refer.
- 4.19 As the Inspectorate are now the competent determining authority in relation to this appeal, it will be necessary for the Inspectorate to determine a Habitats Regulations Assessment taking into account the impacts of development on the internationally designated sites and the likelihood of significant effects.

Supplementary Planning Guidance

Havant Borough Council Borough Design Guide SPD December 2011

- 4.20 The aim of the Havant Borough Council Design Guide Supplementary Planning Document (SPD) is to provide detailed information that supplements Policy CS 16 of the Havant Borough Core Strategy, to raise the standard of design across the Borough and set out what the Council expects developers to deliver in terms of the design of new developments and how the distinctive character and qualities of the Borough should be respectfully improved and enhanced through development.
- 4.21 The SPD has been prepared for use by both planning and design professionals and the public.
- 4.22 The SPD is a material planning consideration in the determination of planning applications in the Borough.

Havant Borough Council Parking SPD Adopted July 2016

- 4.23 This document sets out Havant Borough Council's off-street parking standards relating to new development in the Borough. Applications for planning permission will be assessed against the guidance set out in this document. Parking in proposed developments should not create undue impact on the built environment, street congestion, road safety issues or create tensions within a community.
- 4.24 Guidance is given on the levels of car, cycle, motorcycle and disabled parking that should be provided. The inclusion of design advice demonstrates how car parking should be integrated into a high-quality external space that is accessible to all.
- 4.25 The parts of the SPD's considered to be most relevant to the consideration of this appeal are considered in part 6 of this statement.

5.0 REPRESENTATIONS

- 5.1 No third party letters of representation were received in relation to this appeal.

6.0 PLANNING CONSIDERATIONS

- 6.1 Having regard to the relevant policies of the development plan, and the reasons for refusal given in the Decision Notice dated 13th August 2018, it is considered that the main issues for consideration are as follows:

Reason 1

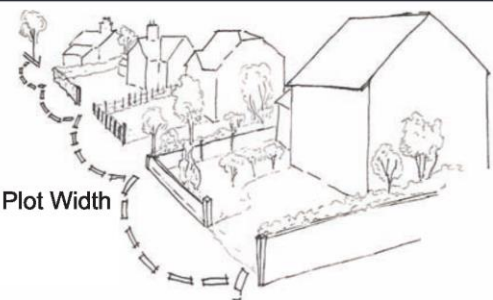
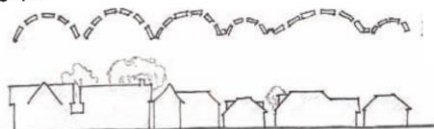
The proposed development of two houses on this prominent corner plot elevated in relation to the adjacent roads would result in a visually intrusive form of development to the harm of the streetscene removing the existing set back spacious nature of development from the corner of Woodgreen Avenue and Fraser Road. The proposals are considered to result in an overdevelopment of the site and a cramped form of development. Furthermore the two dwellings would not be designed to reflect the width, rhythm, fenestration and design of the existing terrace and host dwelling which would be detrimental to the character and appearance of the existing terrace. The proposal would therefore conflict with the policy CS16 of Havant Borough Local Plan (Core Strategy) 2011, Havant Borough Council Borough Design Guide SPD 2011 and the National Planning Policy Framework.

- 6.2 The proposal would result in the provision of two additional dwellings at the end of a terrace of four houses. The existing houses are regular in design with a house width of approximately 5.4m and regular window spacing at first floor. The proposed dwellings would have an individual width of approximately 3.9m and 3.7m. Dwelling 1 would also be orientated with an access door to the side /rear rather than to Woodgreen Avenue. The window and door pattern would contrast to that of the existing terrace. Overall the proposed dwellings are considered to contrast with the existing terrace design and rhythm and would appear as an out of character addition to the host terrace. This would be contrary to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 this policy requires that (amongst other matters), all development should demonstrate that its design:

1. Responds to, draws inspiration from and respects local context and:

- a) Identifies and responds positively to existing features of natural, historic or local character within or close to the proposed development site;*
- c) Uses the characteristics of the locality to help inform the design of the new development including heights, massing, existing buildings lines, plot widths and depths, materials and proportions of windows and doors;*

- 6.3 The two dwellings would be positioned in a prominent position in the street scene on the corner of Woodgreen Avenue and Fraser Road. The site is elevated from both roads and would be easily viewed when approaching the site from the east, south and west in particular. Dwelling 1 would be set approximately 1m from the pavement of Fraser Road (ground floor) and 2.3m back at first floor level. This contrasts with the current set back of 10.3m and that of No.79 Woodgreen Avenue (opposite side of the junction) of 4.3m (minimum). These setbacks are an important part of the character of the area and the existing spaciousness to the road junctions in an otherwise fairly high density area providing green gaps and mature gardens.
- 6.4 Havant Borough Design Guide SPD provides further guidance in Table 4.1 in relation to local patterns of Development – Analysis and response and is reproduced below:

Table 4.1 - Local Patterns of Development – Analysis and Response	
The layout of development should reflect the layout and pattern of development in the neighbouring area, looking to adjoining properties first.	
1. Layout and form	
Plot width This is the typical plot and building width that addresses the main street. The width of the plot and width of the proposed building should be similar to that prevailing in the local area, looking to immediate neighbours first.	
Street build up Existing gaps. Regular rhythm.  Extending into gaps. Broken rhythm. 	This looks at the amount of the street that is built up. The gaps between buildings, or the lack of gaps between buildings plays an important part in forming the character of an area. The gaps can provide us with views to the countryside or landscape to the rear of properties. In town and village centres the buildings often form a continuous frontage to streets, or in the case of Havant Town Centre the continuous frontage is broken in places by gaps and routes through called Twittens, which are unique to Havant. New development should follow the established of pattern of properties on the street.

- 6.5 The development would introduce two new dwellings to a restricted site area which is further reduced by the sloping and limited rear garden area. The development is considered to represent a cramped form of development resulting in an overdevelopment of the site out of character with the existing pattern of development in the locality.

Reason 2

The proposed development would result in restricted private external amenity space to both the existing dwelling (No. 108 Woodgreen Avenue) and to the proposed dwellings to the harm of the residential amenities of the existing and proposed occupants. The proposed dwellings also provide limited internal space for future residents of the new properties. Overall it is considered that the dwellings would fail to provide a suitable living environment for future and existing residents. The development is therefore contrary to policies CS16 of the Havant Borough Local Plan (Core Strategy) 2011, Havant Borough Council Borough Design Guide SPD 2011 and the National Planning Policy Framework.

- 6.6 The existing property No. 108 Woodgreen Avenue would be left with a much more restricted private garden area averaging approximately 9.2m and with a width of 5m. This would be below the guidance for rear gardens provided in the Havant Borough Design Guide SPD 2011 which states in paragraph 5.13

As stated, the garden of a two storey home should be a minimum of 10 metres in length to provide appropriate daylight and to minimise overlooking, with an additional 4 metres for every storey added.

- 6.7 Paragraph 5.05 in relation to back to back distances also states (amongst other matters) that:
- *Garden length should normally allow 10 metres between the dwelling and the boundary*
- 6.8 Whilst it is recognised that the depth of this garden remains the same its current spacious width helps to increase the usable garden area and provides more spaciousness to the rear of No.108. There are also concerns with regard to parking considered below.
- 6.9 Turning now the residential amenities of future residents, there is a concern that the proposed dwellings would have severely restricted private amenity space. Dwelling 1 would have a rear garden depth averaging 4.3m with a width of about 2.4m when accounting for car parking. The area to the front would not be useable as a private amenity space given the public views into this area.
- 6.10 Dwelling 2 would have an average garden depth of approximately 6.6m with a width of 3.4. These external amenity spaces are considered to be severely restricted and would provide inadequate external amenity space to serve the dwellings and be contrary to the design guidance of the Havant Borough Design Guide SPD stated above.
- 6.11 In terms of internal space it is noted that the floorspace for the two dwellings is stated as 101.6sqm. The Technical housing standards - nationally described space standard provides guidance on minimum internal space standard stating:

Table 1 - Minimum gross internal floor areas and storage (m2)

1 bed 2 person 2 storey dwellings should have minimum floorspace of 58sqm

This would total 116sqm. Therefore, there are concerns that the internal floorspace is also very limited. Overall, it is not considered that the proposed dwellings would provide appropriate residential amenities for future residents.

Reason 3

The proposed car parking shown in relation to the development fails to meet the Councils car parking standards both in terms of the quantum of parking (for the existing dwelling) and design and usability of the proposed parking spaces. The development is therefore contrary to policy DM13 of the Havant Borough Local Plan 2011, Havant Borough Council Parking SPD 2016 and the National Planning Policy Framework.

- 6.12 With regard to parking, the current position is that there are three parking spaces (including a garage) serving what is understood to be a two bedroom house. The proposal introduces two additional 1 bed dwellings. Policy DM13 of the Havant Borough Local Plan (Core Strategy) 2011 states that:

Residential development will only be permitted where it provides car parking and cycle storage in accordance with the standards set out in the Residential Car Parking and Cycle Provision Supplementary Planning Document.

- 6.13 The Councils car parking standards are provided in the Havant Borough Council parking SPD 2016. This sets out a minimum car parking requirement of 1 space per 1 bed units and

2 spaces for two bed units. Minimum parking space dimensions are also provided:

4.06 An individual car parking space should measure a minimum 2.4m in width by 4.8m in length. Space should also be provided for car doors to be opened and car boots to be accessed or garage doors to be opened. These should be regarded as minimum lengths as cars continue to increase in size.

- 6.14 In this case it is noted that one space is provided for No.108, this space measures 2.4 x 4.4m and therefore does not meet the minimum depth required.
- 6.15 The space for dwelling 2 is shown as 2.6 x 4.2 (positioned in of front projecting porch) and is again below minimum depth it is also noted that bins are shown to be stored within this space further restricting usability.
- 6.16 The space to Fraser Road for dwelling 1 is angled and averages 2.6 x 5m. The Development Engineer (Highways) has raised concerns regarding the practical use of this space. This would require reversing at an angle and turning further west of the site to eventually turn around and travel east.
- 6.17 The parking is considered to conflict with the Councils parking standards. Whilst a parking survey was submitted with the application, it was not been readily practical to interpret the results. A spatial analysis of the spaces that could be practically used by residents of the three units has not been provided. It is not considered that the submitted survey adequately demonstrates the availability of practical on street parking close to the site. Further comments in relation to the revised parking survey submitted with this appeal are provided in paragraph 6.25.
- 6.18 Given the inadequate on site parking provision it is considered that the development would be likely to result in unacceptable on street parking at peak times leading to amenity issues for existing and proposed residents in the vicinity of the site.

OTHER MATTERS

- 6.19 The proposal is for the development of 2 new dwellings. Although it is noted that this would provide a contribution to the housing supply of the Borough this is by a very modest amount and would have to be weighed against any harm caused to the semi-rural character of the area. A recent review of the Five Year (housing) Supply Update – Published January 2019 confirms that the Council does have and can provide a 5.1 year supply of housing land with a 5 percent buffer (**Appendix D**) and so is therefore able to meet the need for housing without these proposed dwellings. Given this, a tilted balance should not be applied in decision making. Therefore, the harm caused as a result of the proposal is not considered to outweigh the modest contribution made to housing supply.
- 6.20 The CIL rates to be applied to development are set out in the Havant Borough Community Infrastructure Levy Charging Schedule, which was adopted by the Council on the 20th February 2013. This followed two public consultation exercises and an Examination into the Charging Schedule by an independent Examiner. The Examiners Report concluded that the Havant Borough Council Community Infrastructure Levy (CIL) Charging Schedule provided an appropriate basis for the collection of the levy in the borough. The levy is charged at £80 per square metre plus indexing on new floorspace (measured as gross internal area). If consent is granted at appeal the Local Planning Authority would progress CIL requirements in consultation with the applicant.

COMMENTS ON APPELLANTS STATEMENT OF CASE

- 6.21 It is considered that most of the matters raised by the appellant have been addressed in the Councils Statement of Case and the following comments are made by way of amplification only.
- 6.22 In paragraph 1.3 reference is made to pre-application advice being sought. This advice related to the provision of two flats at the site. The advice concluded that the development could not be supported as proposed.
- 6.23 Reference is made to a number of other developments nearby, the cases raised at the time of the planning application were considered and addressed in the officers report as follows:

Whilst a number of other permissions have been raised in the Design and Access Statement, however, none are considered to be directly comparable to the two dwelling scheme currently under consideration, furthermore each application should be considered on its own planning merits. In this case a detailed consideration has been undertaken in relation to the current proposal.

- 6.24 In paragraph 6.17 it is stated that the Technical housing standards - nationally described space standard are met. As the proposals relate to 1 bed 2 storey dwellings a minimum gross internal floor area and storage should be 58sqm. This is not achieved.
- 6.25 In paragraph 7.13 it is stated that a further parking survey has been provided, this was not available prior to the planning decision. It is noted that the survey took place on two dates and at one time. There are also concerns that the wide area covered for the survey would appear to go beyond areas that are likely to be reasonably parked in by occupiers of the two dwellings.

7.0 CONCLUSION

- 7.1 In conclusion, the development would be harmful to the established pattern of development on this prominent site. The proposal would also fail to provide adequate residential amenities for existing and future residents. Furthermore, the proposals would not provide appropriate on site parking or meet the Councils parking standards.
- 7.2 The Inspector is therefore respectfully requested to Dismiss this appeal. If the appeal is however granted a list of recommended conditions will be forwarded separately.

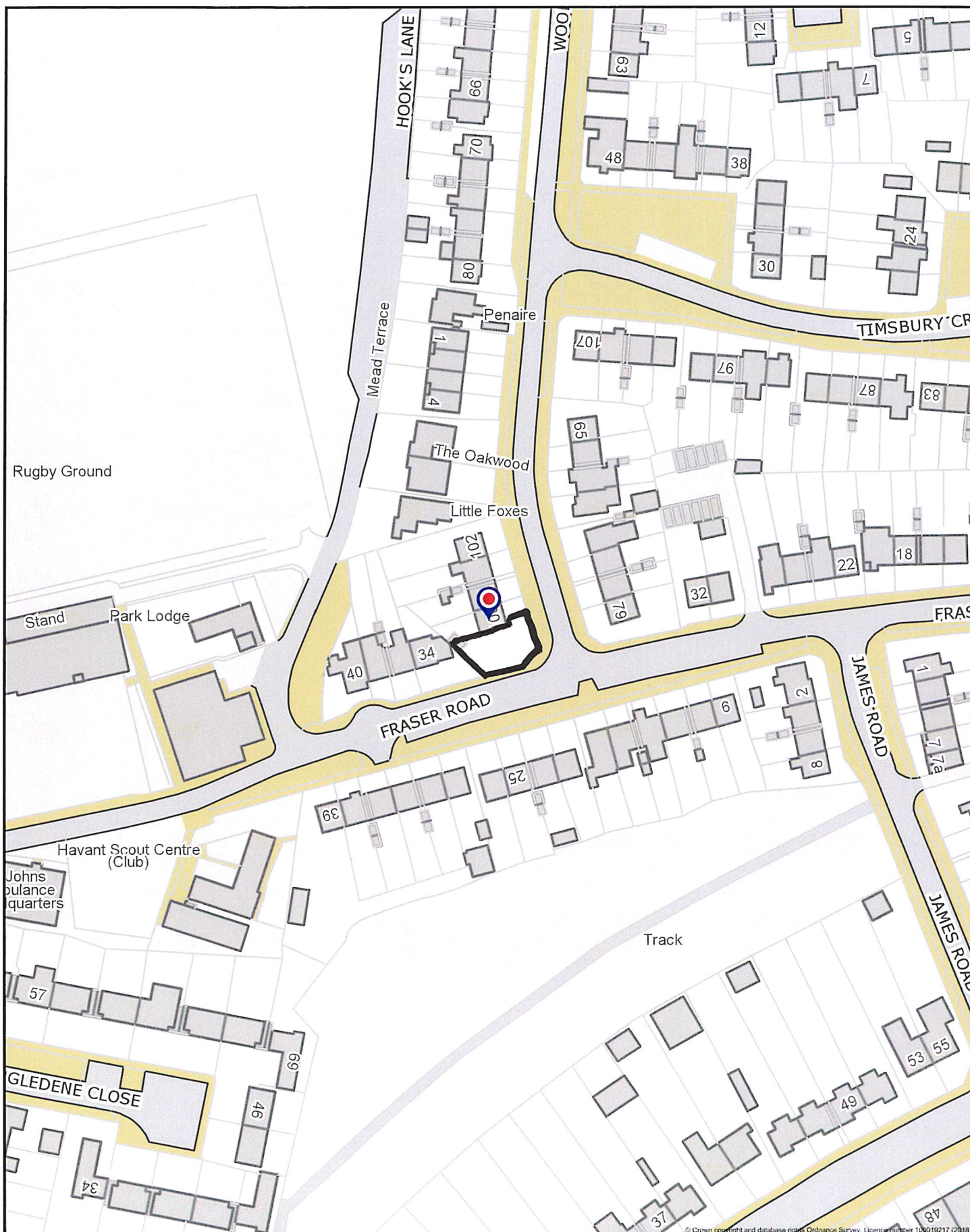
APPENDICES

- (A) The Borough Map and 1:1250 Location Plan
- (B) Natural England Consultation response (at application stage)
- (C) Position Statement on Nutrient Neutral Development
- (D) Five Year (housing) Supply Update

APPENDIX A

Borough of Havant





108 Woodgreen Avenue

Havant
BOROUGH COUNCIL

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Printed on: 2019-07-25 10:43:21

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APPENDIX B

Application: APP/18/00885 Appropriate Assessment - Proposed 2x1 bed dwellings with associated parking and bin storage

Location: 108 Woodgreen Avenue, Havant, PO9 3EE

Thank you for consulting Natural England on the above consultation.

No objection subject to mitigation

Natural England notes that your authority, as competent authority under the provisions of the Habitats Regulations, has undertaken an Appropriate Assessment of the proposal, in accordance with Regulation 63 of the Regulations. Natural England is a statutory consultee on the Appropriate Assessment stage of the Habitats Regulations Assessment process.

Your appropriate assessment concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question. Having considered the assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we concur with the assessment conclusions. Provided the applicant is fully compliant with the Solent Recreation Mitigation Partnership Definitive Strategy and an appropriate planning condition or obligation is attached to any planning permission to secure the contributions towards this mitigation measure, Natural England is satisfied that the applicant has mitigated against the potential adverse effects of recreational disturbance on the integrity of the European site(s).

Please note we have not assessed this application and associated documents for impacts on protected species. Natural England has produced [standing advice](#) to help planning authorities understand the impact of particular developments on protected species. We advise that the standing advice is interpreted for you by your district ecologist, or an equivalent independent party with the necessary expertise. Natural England will only provide bespoke advice on protected species where they form part of a SSSI or in exceptional circumstances.

Should the proposals change please consult us again.

Kind regards

Rachael Clemson

Solent Planning Adviser

Dorset, Hampshire and Isle of Wight Area Team

APPENDIX C

Position statement on nutrient neutral development

Introduction

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

Context

The Habitats Regulations

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

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

Pressures

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

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

Eutrophication

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

Recent case law

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

European designated nature conservation sites which are affected

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

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

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

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

The impact of development on the Solent's water quality

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

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

³ Which includes Havant Borough Council.

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

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

28. The Council is already committed to development only taking place if it is sustainable development that includes relevant environmental protections. Part of the consideration of this is whether there would be a detrimental impact on the Solent's water quality, given the presence of the Solent's European Sites, the conservation objectives of which are sensitive to eutrophication.
29. There has been no change to the level of nitrogen that is proposed to be emitted from new development. Nitrogen emitted from urban areas is relatively small and from new development extremely small.
30. However there has been a change in terms of how this is assessed under the Habitats Regulations and whether this level of nitrogen is considered a significant effect. The Council considers that under this new approach, the development of new overnight accommodation would be likely to cause a significant effect on several European Sites.
31. The Council considers that, due to the cause of the issue being recent case law, that the issue itself should be addressed through any one or a combination of the following:
- A national review of the nitrogen discharge consents of wastewater treatment works to include increases in nitrogen as a result of new development.
 - Government provided 'mitigation banking', potentially through a delivery arm such as Homes England.
32. Failing a central solution, there should be a PUSH-wide solution to enable development to come forward comprehensively across the Solent area. However, neither of these potential solutions can be enacted in the short term to enable planning permissions to be granted for much needed new housing.
33. As such, the Council accepts that it will be necessary to provide short term mitigation to enable development to continue to come forward in the Borough. The Council also accepts that it will be necessary to ensure that a nitrogen neutral Local Plan is prepared for submission and longer term mitigation options are explored.

Havant Borough Local Plan 2036 – Initial Nutrient Budget

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

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

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

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

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

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

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

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

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

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

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

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

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

Development schemes that are could be affected

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

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

Area which is affected

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

Types of applications that will be affected

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

Residential (C3) dwellings

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

Other forms of development providing overnight accommodation

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

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

Commercial and other non-residential development

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

How this position Statement will be implemented through development management decisions

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

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

The development hereby permitted shall not be occupied until:

- a) A water efficiency calculation in accordance with the Government's National Calculation Methodology for assessing water efficiency in new dwellings has been undertaken which demonstrates that no more than 110 litres of water per person per day shall be consumed within the development, and this calculation has been submitted to, and approved in writing by, the Local Planning Authority;*
- b) A mitigation package addressing the additional nutrient input arising from the development has been submitted to, and approved in writing by, the Local Planning Authority. Such mitigation package shall address all of the additional nutrient load imposed on protected European Sites by the development when fully occupied and shall allow the Local Planning Authority to ascertain on the basis of the best available scientific evidence that such additional nutrient loading will not have an adverse effect on the integrity of the protected European Sites, having regard to the conservation objectives for those sites; and*
- c) All measures forming part of that mitigation package have been provided to the Local Planning Authority.*

Reason: *There is existing evidence of high levels of nitrogen and phosphorus in the water environment with evidence of eutrophication at some European designated nature conservation sites in the Solent catchment. The PUSH Integrated Water Management Strategy has identified that there is uncertainty as to whether new housing development can be accommodated without having a detrimental impact on the designated sites within the Solent. Further detail regarding this can be found in the appropriate assessment that was carried out regarding this planning application. To ensure that the proposal may proceed as sustainable development, there is a duty upon the local planning authority to ensure that sufficient mitigation for is provided against any impacts which might arise upon the designated sites. In coming to this decision, the Council have had regard to Regulation 63 of the Conservation of Habitats and Species Regulations 2017, Policy CS11 of the*

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

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

Ongoing monitoring and next steps

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

Appendix 1: European Site avoidance and mitigation checklist

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

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

Application details	
Site name:	
Site address:	

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

Water quality

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

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

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

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

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

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

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

APPENDIX D

Five Year Supply Update – Published January 2019

- 1.1 When assessing sites for potential inclusion within the boroughs five-year supply of housing regard was given to PPG guidance which states that:

“clear evidence is required to demonstrate that housing completions will begin on site within 5 years”
- 1.2 For sites with detailed planning permission that have already commenced - numbers are included within the 5-year supply for remaining dwellings to be completed as of 31st March 2018. Annual site visits are conducted to confirm the progress of sites under construction and trajectories updated accordingly. Trajectory and five-year supply figures are also updated based on communication with land owners and developers throughout the year.
- 1.3 Where there is clear pre-application work and intention to bring the site forward within five years these figures are included.
- 1.4 For any larger sites, delivery is split across several years to reflect how sites are incrementally brought forward. This often means that delivery is expected to commence within the five-year supply period and continue beyond it.
- 1.5 Windfall permissions of less than 5 dwellings are included within the five-year supply based on expected delivery. Windfall permissions have been calculated as delivering slightly more dwellings than expected within this monitoring period. Although it is not intended to adjust the windfall figure applied to the whole plan period windfall figures included within five-year supply calculations have been removed from the whole plan period supply of windfall to avoid double counting.
- 1.6 The 5-year land supply calculation clearly indicating buffers and shortfalls and the number of years of supply can be found at table 1.
- 1.7 Of note with regard to the Council’s 5-year housing supply position is the particularly high completion figures in the 2016/17 monitoring year within the Borough. This is due to sites from the Havant Borough Council Allocation Plan (2014) coming forward and completing and creating a peak in supply. Within the interim period the Council has released its Local Plan Housing Statement (2016) to maintain market confidence in the ability of new sites to come forward outside of the currently adopted plan. As well as providing enough allocated sites within the Havant Borough Local Plan 2036 to confirm continuing supply. Whole plan trajectory information is provided in the Council’s 2019 update to the Strategic Land Availability Assessment¹

¹ <http://www.havant.gov.uk/localplan/evidence-base>

Table 1: Five Year Supply – Data on completions and outstanding permissions taken from a particular point in time (April 2018)

**Five Year Supply Calculation for period 2018-2023 (Liverpool Method)			
	Calculating the required supply		Dwellings
a	OAN requirement 2016-2036		9,260
b	Completions 2016/17 - 2017/18		939
c	Remaining requirement	a-b	8,321
d	Remaining years of period		18
e	Annual requirement	c / d	462
f	Five year requirement	e x 5	2,311
f(i)	Five year requirement with 5% buffer		2,427
f(ii)	Five year requirement with 20% buffer		2,774
	Identified Supply		
g	Supply over 5 year period 2018-2023		2,479
	Five year land supply (expressed in years):		
	Excluding buffer	g / (f/5)	5.4
	With 5% buffer	g / (f(i)/5)	5.1
	With 20% buffer	g / (f(ii)/5)	4.5

- 1.8 The Council's Housing Implementation Strategy within the Havant Borough Council Strategic Land Availability Assessment (2019) provides details of risk associated with housing delivery projections. As well as the measures the Council has and could take to mitigate any shortfalls that would result from identified risks to supply.

HAVANT BOROUGH COUNCIL

TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)

APPEAL BY MR & MRS KERRIGAN AGAINST THE DECISION OF HAVANT BOROUGH COUNCIL TO REFUSE TO GRANT PLANNING PERMISSION FOR PROPOSED 2NO. 1 BED DWELLINGS WITH ASSOCIATED PARKING AND BIN STORAGE

Planning Inspectorate Reference: APP/X1735/W/19/3230318

LPA REF: APP/18/00885

LIST OF SUGGESTED CONDITIONS

1. The development hereby permitted shall be begun before the expiration of 3 years from the date on which this planning permission was granted.
Reason: To comply with Section 51 of the Planning and Compulsory Purchase Act 2004.
2. No development shall take place until details of existing and finished floor and site levels relative to previously agreed off-site datum point(s) have been submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details.
Reason: In the interests of the character / appearance of the area and the residential amenities of adjoining residents having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.
3. No development shall take place until plans and particulars specifying the following matters have been submitted to and approved in writing by the Local Planning Authority: (i) The provision to be made within the site for contractors' vehicle parking during site clearance and construction of the development; (ii) The provision to be made within the site for a material storage compound during site clearance and construction of the development. Thereafter, throughout such site clearance and implementation of the development, the approved parking provision and storage compound shall be kept available and used only as such.
Reason: To safeguard the amenities of the locality and in the interests of traffic safety and having due regard to policies CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

4. No development hereby permitted shall commence until plans and particulars specifying the layout, depth and capacity of all foul and surface water drains and sewers proposed to serve the same, and details of any other proposed ancillary drainage works/plant (e.g. pumping stations) have been submitted to and approved in writing by the Local Planning Authority. Unless agreed otherwise in writing by the Local Planning Authority, the development hereby permitted shall not be brought into use prior to the completion of the implementation of all such drainage provision in full accordance with such plans and particulars as are thus approved by the Authority.
Reason: To safeguard the amenities of the locality and ensure that all such drainage provision is constructed to an appropriate standard and quality and having due regard to policies and proposals CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.
5. Notwithstanding any description of materials in the application no above ground construction works shall take place until samples and / or a full specification of the materials to be used externally on the building(s) have been submitted to and approved in writing by the Local Planning Authority. Such details shall include the type, colour and texture of the materials. Only the materials so approved shall be used, in accordance with any terms of such approval.
Reason: In the interests of the amenities of the locality and having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.
6. No development hereby permitted shall be commenced until a detailed soft landscaping scheme for all open parts of the site not proposed to be hardsurfaced has been submitted to and approved in writing by the Local Planning Authority. Such scheme shall specify the proposed finished ground levels in relation to the existing levels, the distribution and species of ground cover to be planted, the positions, species and planting sizes of the trees and shrubs to be planted and/or retained, and timing provisions for completion of the implementation of all such landscaping works.

The implementation of all such approved landscaping shall be completed in full accordance with such approved timing provisions. Any tree or shrub planted or retained as part of such approved landscaping scheme which dies or is otherwise removed within the first 5 years shall be replaced with another of the same species and size in the same position during the first available planting season.

Reason: To ensure the appearance of the development is satisfactory and having due regard to policies CS11, CS16, DM8 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2018.

7. No part of the development shall be first occupied until details of the type, siting, design and materials to be used in the construction of all means of enclosure including boundaries, screens or retaining walls, have been submitted to and approved in writing by the Local Planning Authority and the approved structures have been erected in accordance with the approved details. The structures shall thereafter be retained.
Reason: To safeguard the amenities of the locality [and/or] occupiers of neighbouring property and having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.
8. Notwithstanding the provisions of any Town and Country Planning General Permitted Development Order, no extension or building alteration shall be constructed within the curtilage of the site without the prior approval of the Local Planning Authority.
Reason: In the interests of the character and appearance of the area, to prevent overdevelopment of the site and to retain external amenity space having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011, Havant Borough Design Guide SPD 2011 and the National Planning Policy Framework.
9. 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.
10. The cycle storage and bin stores shown on drawing number 10 Rev C shall be provided prior to the occupation of the dwellings hereby approved and thereafter retained in accordance with the approved details.
Reason: To encourage non-car based travel options and to provide suitable refuse provision having due regard to policies DM10 and DM13 of the Havant Borough Local Plan (Core Strategy) 2011.
11. The development hereby permitted shall be carried out in accordance with the following approved plans:
Proposed Floor Plans & Elevations, Proposed Site Plan & Location Plan
Drawing No. 10 Rev C
Reason: - To ensure provision of a satisfactory development.