

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

**STATEMENT OF
HAVANT BOROUGH COUNCIL**

**16 Selborne Avenue,
Havant
PO9 4PX**

**Local Planning Authority Reference:-APP/21/00353
Planning Inspectorate Reference:-
APP/X1735/W/21/3287602**

HAVANT BOROUGH COUNCIL

TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)

APPEAL BY Mr Len Sturgess AGAINST REFUSAL of Erection of 1No. 2 bed dwelling AT 16 Selborne Avenue, Havant, PO9 4PX

Planning Inspectorate Reference: APP/X1735/W/21/3287602

LPA Ref: APP/21/00353

1.0 INTRODUCTION

- 1.1 The officer's report already forwarded with the appeal questionnaire sets out the position of the Local Planning Authority and is considered sufficiently detailed to form the basis of the LPA's Statement of Case. This appeal statement will not duplicate, but will simply provide an update on relevant issues, in particular with regard to Policy, Housing Five Year Supply, the Habitats Regulations, Site History, and commentary on the Appellants Grounds of Appeal.
- 1.2 The Borough Map and 1:1250 Location Plan are provided at **APPENDIX A**.

2.0 PLANNING POLICY UPDATE

The Havant Borough Local Plan (emerging Plan)

- 2.1 The Inspector is respectfully advised that The Havant Borough Local Plan was withdrawn from examination on 16 March 2022 (please see Statement of Fact document forwarded with questionnaire) and work has started on a new Local Plan for Havant Borough. Therefore, the policies referred to within the officer's report and decision notice as "emerging" are now withdrawn and no longer relevant.
- 2.2 It is considered that the key adopted policies relevant to this appeal, namely CS15, CS16, CS11 and DM24, contained in the Havant Borough Local Plan (Core Strategy) 2011, and Havant Borough Local Plan (Allocations) 2014, are broadly consistent with the NPPF's approach to climate change and flooding, character and design, and the natural environment, and as such should still be afforded great weight in accordance with paragraph 219 of the NPPF.

3.0 HOUSING FIVE YEAR SUPPLY AND PLANNING BALANCE UPDATE

- 3.1 Since the planning application was determined in August 2021, the Borough's five-year housing land supply has further decreased. Following receipt of the Inspector's interim findings into the Examination of the Submission Havant Borough Local Plan, some of the sites have been removed from the Council's anticipated supply. The Council's Five-Year Housing Land Supply Update at November 2021 indicates the Borough's housing land supply position has therefore fallen to 3.9 with 20% buffer applied. See latest published document:

[Related studies and strategies | Havant Borough Council](#)

- 3.2 This shortfall engages Paragraph 11d) of the NPPF and its presumption in favour of development in principle. However, because the appeal site lies within flood zone 3, then footnote 7, that makes exceptions for areas at risk of flooding, is also engaged. It is contended that the flood risk issues of this appeal case provide a clear reason for refusing development.
- 3.3 It is nevertheless noted that the proposal, within the main urban area of Havant, would only make a modest contribution to housing supply and this benefit of the appeal proposal must be afforded limited weight in the overall planning balance. It is contended that the adverse impacts of the development on flood risk, local character, amenity, and nature conservation, as per the decision notice, would significantly and demonstrably outweigh the modest housing supply benefit of a single dwelling when assessed against the policies of the NPPF as a whole.

4.0 HABITATS REGULATIONS UPDATE

- 4.1 The Habitats Regulations Assessment (HRA) and Appropriate Assessment (AA) undertaken at application stage concluded there would be a likely significant effect on several Solent European Sites due to both the increase in recreational pressures and the water quality issues that would arise from an additional residential unit. The appropriate mitigation packages were not received at application stage and have still not been received at appeal stage.
- 4.2 However, on 16 March 2022 Natural England updated their advice regarding Water Quality and achieving Nutrient Neutrality. There is now a new National Generic Nutrient Neutrality Methodology and updated Nutrient calculator. Therefore, the Nitrogen Budget currently submitted is out of date and no longer uses the most up to date scientific information, which in turn negates the HRA and AA undertaken to date.
- 4.3 As Competent Authority it will be for the Inspectorate to now ensure the likely significant effects on the Solent European Sites arising from the appeal scheme are adequately mitigated to comply with the Conservation of Habitats and Species Regulations 2017 (as amended). Please see the LPAs website for the latest updates on Nutrient Neutrality from Natural England:

[Nutrient neutrality - what developers need to know | Havant Borough Council](#)

- 4.4 It is the opinion of the LPA that the development, without appropriate mitigation packages secured via Unilateral Undertaking, would adversely affect the integrity of the Habitats sites and as such, in accordance with paragraph 182 of the NPPF the presumption in favour of sustainable development again does not apply. Footnote 7 of criteria (i) of paragraph 11 (d) of the NPPF also includes Habitat sites. The lack of mitigation for these Habitat sites remains, giving a clear reason for refusing development as per paragraph 11 d) (i), and as such the fourth reason for refusal is considered to remain relevant to the appeal and has not been overcome.

5.0 SITE HISTORY UPDATE

- 5.1 Since the determination of the application the subject of this appeal, a further planning application has been submitted and determined on the appeal site as follows:

APP/21/01403 – Certificate of Lawful Development for a double garage
Certificate issued 08/02/2022

- 5.2 The submitted details for the proposed detached double garage met the criteria of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). It was confirmed at the time that the site would remain a single-family dwelling and the garage would be incidental to the enjoyment of the occupiers of 16 Selborne Avenue. On this basis the Certificate was issued.
- 5.3 Please see copy of plans, Delegated Report and Decision Notice attached at **APPENDIX B**.

6.0 COMMENTARY ON GROUNDS OF APPEAL

- 6.1 Within the site information of the Appellant's statement it is suggested the Environment Agency did not object to the technical Flood Risk Assessment. This is not the case. The appeal development proposes a finished floor level of 12.22mAOD which falls below the required finished floor level of 12.80mAOD to avoid flood risk to future occupiers. The Environment Agency set out their objection to the proposed section plan Drawing Number P04 with its substandard finished floor level, in their letter dated 16 August 2021 – copy attached at **APPENDIX C** for reference.
- 6.2 It is noted that the Environment Agency's initial consultation response, dated 18 May 2021, did suggest a finished floor level condition – but that height was stipulated as 12.80mAOD. To achieve such a raised finished floor level the external appearance and design of the appeal proposal would have to be substantially altered. The LPA therefore consider the imposition of the suggested condition inappropriate and have therefore not included any finished floor level condition in the list of suggested conditions. Should the Inspector conclude that permission should be granted, it would be necessary for him/her to consider whether a further finished floor level condition, and at what level this should be set, was necessary and reasonable.

- 6.3 The remainder of the Appellant's statement appears to repeat information previously provided rather than provide any new information. It does not appear to have addressed the reasons for refusal or provide any argument as to why permission should be granted. Therefore, the following comments are purely to aid the Inspector and provide some clarification on the background to the case:
- 6.4 When originally discussing the sequential test with the applicant/agent in 2019, the LPA advised that it was only necessary to carry out the sequential test for the area of Leigh Park, or post code area PO9 – as the sub-area of Havant within which the appeal site is located. Throughout the previous applications made on the site, the LPA has stood by this original advice, despite since producing a Guidance Document for dealing with Flood Risk Sequential & Exception Tests in October 2020. This document is not a formal SPD, but a general guidance document available to the public and agents on the LPA's website via the following link:
- [Flood Risk Sequential Test & Exception Test.pdf \(havant.gov.uk\)](#)
- 6.5 With respect to sequential tests and the area of search, this document has since suggested at section 3.5 and the chart provided, that in fact the starting search area for residential schemes should be the whole of the borough, after all each dwelling contributes to the borough's housing need.
- 6.6 Notwithstanding this fact, the sites identified by the LPA within the Leigh Park area as representing reasonably available alternative sites in the delegated report (see paragraph 7.7) have not since had their conditions discharged – although APP/18/01141 has since technically expired. One further permission in the previously agreed search area has been issued since the delegated report: APP/21/00401 at 210 Dunsbury Way, Havant, PO9 5BQ for an end of terrace dwelling, granted permission on 07/10/21; but it is acknowledged that its conditions have been discharged and it is therefore assumed not to be reasonably available. In addition, there are 2 current, undetermined applications for individual dwellings within the PO9 search area: APP/21/01242 at 23 Winterslow Drive, Havant, PO9 5DX and an Outline application at 2 North Street, Bedhampton, Havant, PO9 3HD – APP/22/00096 refers.
- 6.7 These applications demonstrate that there is a constant trickle of applications for single dwellings in the PO9 search area that lie outside the flood zone and are supportable in principle. The LPA would argue that this shows there are sustainable alternative sites available where development could be directed and as such the appeal site, in flood zone 3, fails the sequential test and does not represent sustainable development.
- 6.8 In terms of the allocated site L146 referred to in the sequential assessment, for the Inspectors information this site is allocated by Policy LP2 of the Allocations Plan and comprises a Parking Area off Forestside Avenue comprising 0.03ha. It is located adjacent 2 Forestside Avenue close to the junction with Bartons Road – please see the map extracts of this allocation in context of the wider Leigh Park area and immediate 1:1250 context contained in **APPENDIX D**. For the reasons expressed in paragraph 7.8 of the delegated report, the LPA remain of the view that this site represents a suitable alternative site.
- 6.9 With respect to the exception test, again no new evidence has been submitted at appeal stage to expand on how SuDs might provide a wider community benefit sufficient to outweigh the flood risks and be safe for its lifetime when the development has a substandard finished floor level. As was made clear in paragraphs 7.10 and 7.11 of the delegated report the site suffers from Fluvial flooding from the rivers to the west and south, and SuDs would not mitigate that type of flooding – see Environment Agencies Flood Map:
- [Flood risk information for this location - Flood map for planning - GOV.UK \(flood-map-for-planning.service.gov.uk\)](#)
- 6.9 Given the likely unsuitability of SuDs to provide appropriate flood risk mitigation, the requirement for SuDs detail including management and maintenance (as required by Southern Water) via condition seems unreasonable to the LPA. Instead, details of a more general drainage strategy taking into account soil conditions, that ensures flood risk is not increased elsewhere is considered more appropriate as a condition should the Inspector grant planning permission. Please see list of

conditions provided and it would be for the Inspector to consider whether an additional specific SuDs condition was necessary.

- 6.10 In the absence of any new information the LPA remain firmly of the view that there are better sites outside of any flood risk for such a residential development and sequentially the site is unsustainable. The appeal proposal is considered to fail the sequential test, as well as the exception test and would not be safe for its lifetime. Policy CS15 seeks to resist development in areas at risk of flooding unless the sequential and exception test are passed – there is a clear breach of this policy.
- 6.11 Turning to the other issues of character of area and residential amenity, again no new comments have been provided. The LPA therefore considers its comments within the delegated report are sufficiently detailed to cover these issues and the Inspector is respectfully requested to refer to that report.

7.0 CONCLUSIONS

- 7.1 In the absence of any new information submitted at appeal stage, the LPA consider their original delegated report covers all the necessary issues. Together with the updates provided above, this brief statement is considered sufficient to represent the LPA's statement of case.
- 7.2 The four reasons for refusal in the decision notice dated 27/08/21 cover the 4 main issues relating to flood risk, character of area, residential amenity and Habitats Regulations. It is considered that there is identified harm within each issue that is contrary to the relevant adopted policies and NPPF. Since two of the issues cover areas and assets of particular importance as defined by footnote 7 of paragraph 11 d), (i.e., habitats sites and areas at risk of flooding) then the presumption in favour of permission is negated by the identified clear reasons for refusing the development. Paragraph 182 of the NPPF is clear that in such circumstances where there is no up to date Appropriate Assessment then the presumption in favour of sustainable development does not apply.
- 7.3 The Inspector is therefore respectfully requested to dismiss the appeal. In the event that the Appeal is allowed, a list of recommended conditions is provided.

APPENDICES

- (A) Borough Map and 1:1250 Location Plan
- (B) Planning History APP/21/01403 – plans, Delegated Report and Decision Notice
- (C) Environment Agency letter dated 16 August 2021
- (D) Map Extracts identifying allocated site L146 from Policy LP2 of Havant Borough Local Plan (Allocations) 2014 – both wider Leigh Park Policies Map and 1:1250 Site Plan

**APPEAL BY Mr Len Sturgess AGAINST REFUSAL of Erection of 1No. 2 bed dwelling
AT 16 Selborne Avenue, Havant, PO9 4PX**

Planning Inspectorate Reference: APP/X1735/W/21/3287602

LPA Ref: APP/21/00353

List of Suggested Conditions

1. The development must be begun not later than three years beginning with the date of this permission.
Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:
Design & Access Statement on Council's website dated 16 April 2021
Original Flood Risk Assessment by Geo Smart Information Ltd report ref 72330R1 dated 7/11/2019
GeoSmart Response/Statement dated 14/5/2020
Updated Sequential and Exception Test Addendum by ARK Environmental dated July 2021
Location & Block Plan Drawing P01A
Proposed Floor Plans Drawing P02A
Proposed Elevations Drawing P03A
Section Drawing P04
Reason: To ensure provision of a satisfactory development.
3. The development hereby permitted shall not be occupied until:
 - a) 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
 - b) 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 120 litres of water per person per day shall be consumed within the development, and this calculation has been submitted to, and approved in writing by, the Local Planning Authority; all measures necessary to meet the agreed waste efficiency calculation must be installed before first occupation and retained thereafter; and
 - c) All measures forming part of that mitigation package have been provided to the Local Planning Authority.

Reason: There is existing evidence of high levels of nitrogen and phosphorus in the water environment with evidence of eutrophication at some European designated nature conservation sites in the Solent catchment. The PUSH Integrated Water Management Strategy has identified that there is uncertainty as to whether new housing development can be accommodated without having a detrimental impact on the designated sites within the Solent. Further detail regarding this can be found in the appropriate assessment that was carried out regarding this planning application. To ensure that the proposal may proceed as sustainable development, there is a duty upon the local planning authority to ensure that sufficient mitigation for is provided against any impacts which might arise upon the designated sites. In coming to this decision, the Council have had regard to Regulation 63 of the Conservation of Habitats and Species Regulations 2017, Policy CS11 of the Havant Borough Local Plan (Core Strategy) 2011.

4. At all times following occupation of the development hereby approved, all measures necessary to meet the approved water efficiency calculation shall be maintained so as to ensure that no more than 120 litres per person per day shall be consumed in the development in perpetuity.

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 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, and Policy CS11 of the Havant Borough Local Plan (Core Strategy) 2011.

5. No development hereby permitted shall commence until a drainage strategy that ensures flood risk is not increased elsewhere, taking into account soil types and ground conditions, has been submitted and approved in writing by the Local Planning Authority. The scheme shall include details of the layout, depth and capacity of all surface water drains and floodplain storage solutions. 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 minimise flood risk, 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 CS15, CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

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

7. The car parking, cycle stores, refuse storage and all other servicing and 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.

8. The dwelling hereby approved shall not be occupied until a detailed hard and soft landscaping scheme that accords with the drainage scheme, for all open parts of the site has been submitted to and approved in writing by the Local Planning Authority. Such scheme shall specify the surface materials; distribution and species of shrubs/hedge plants and 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 and DM9 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

9. 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 front boundary detail shall have regard to the pedestrian intervisibility (condition 10) and height limit of 0.6m, and all approved structures shall thereafter be retained.

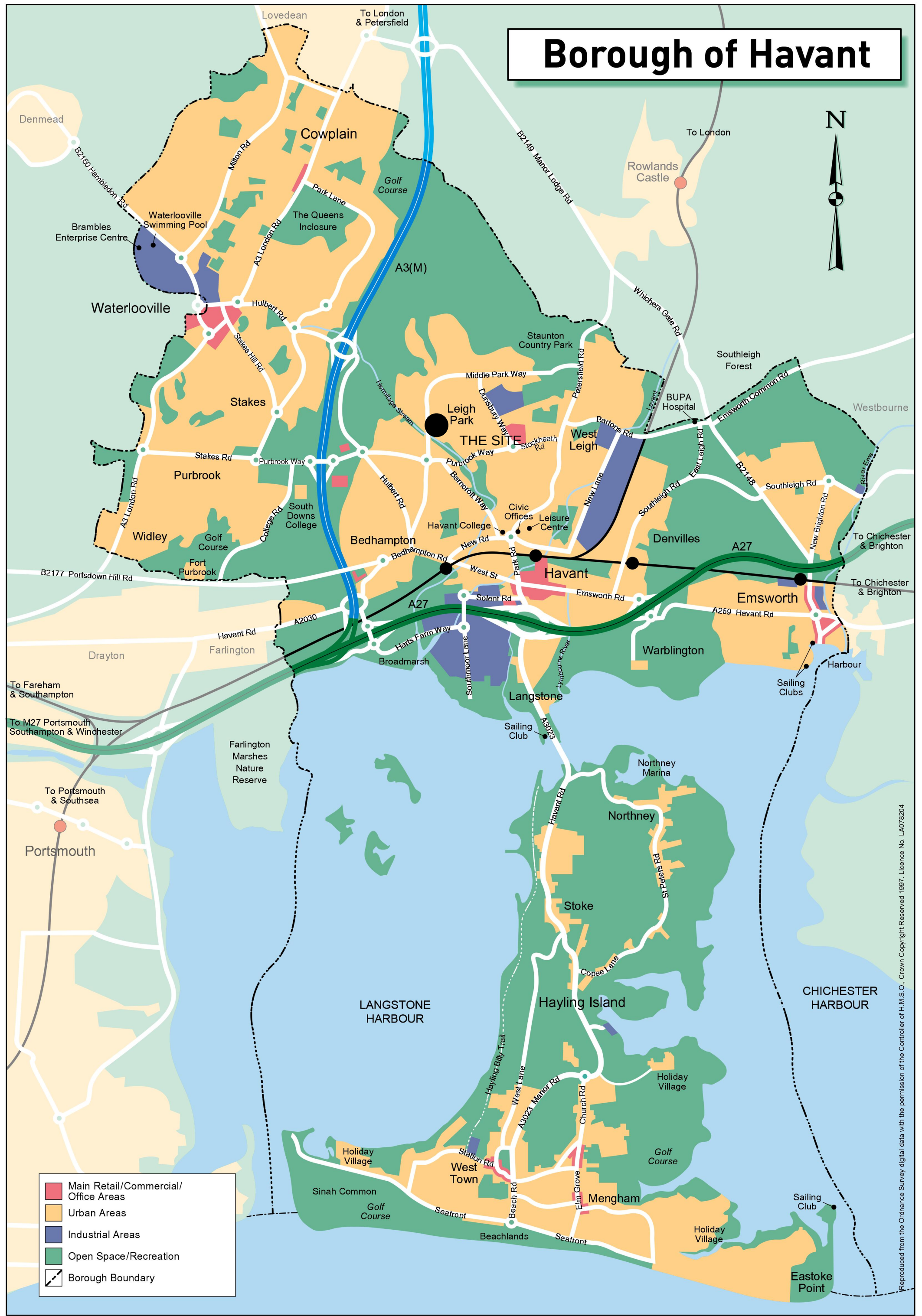
Reason: To safeguard the amenities of the locality and occupiers of neighbouring property and having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

10. The access hereby approved shall not be provided and the dwelling occupied unless and until details to demonstrate suitable pedestrian visibility splays of 1.5m x 1.5m to either side of the proposed access, with maximum height of 0.6m, have been submitted to and approved in writing by the Local Planning Authority. The approved visibility splays shall thereafter be provided and retained in accordance with the approved details.

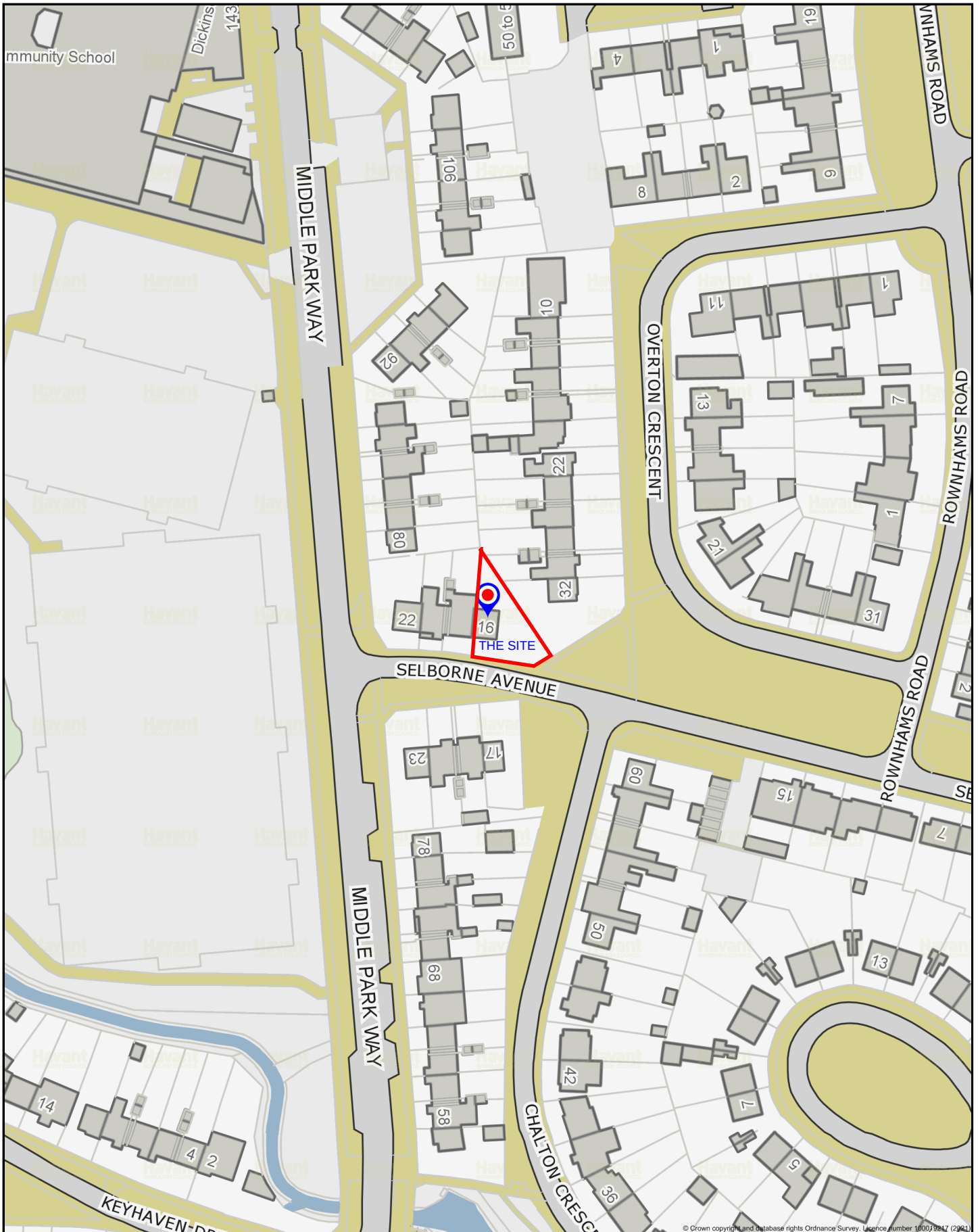
Reason: In the interests of highway safety and having due regard to policies CS20 and DM11 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

APPENDIX A

Borough of Havant



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



16 Selborne Avenue, Havant, PO9 4PX 3287602

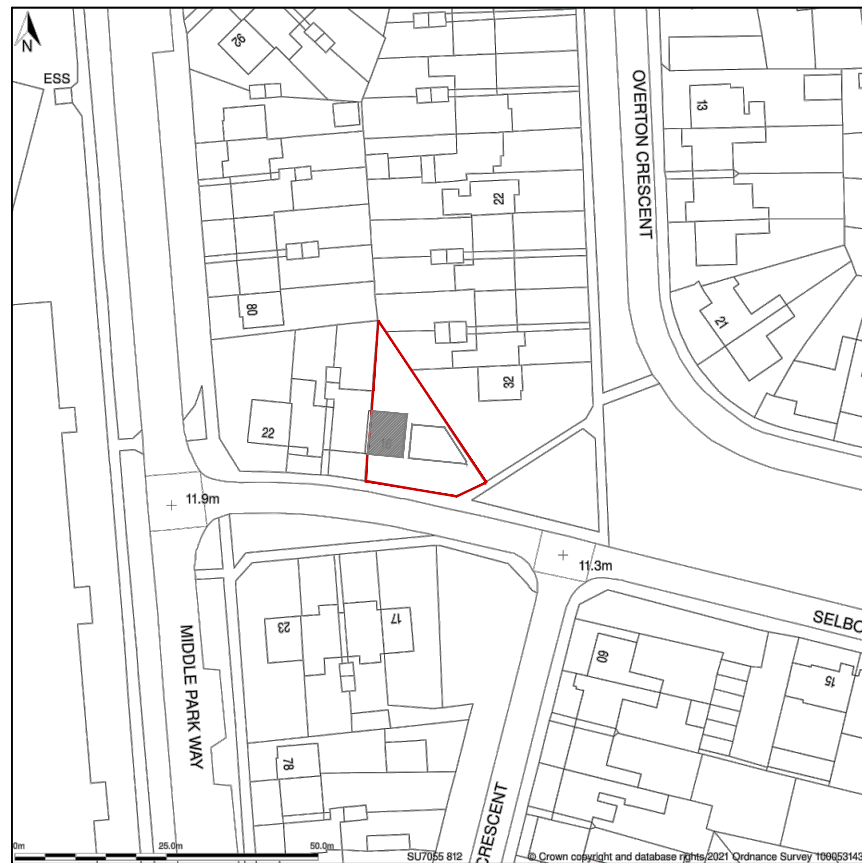


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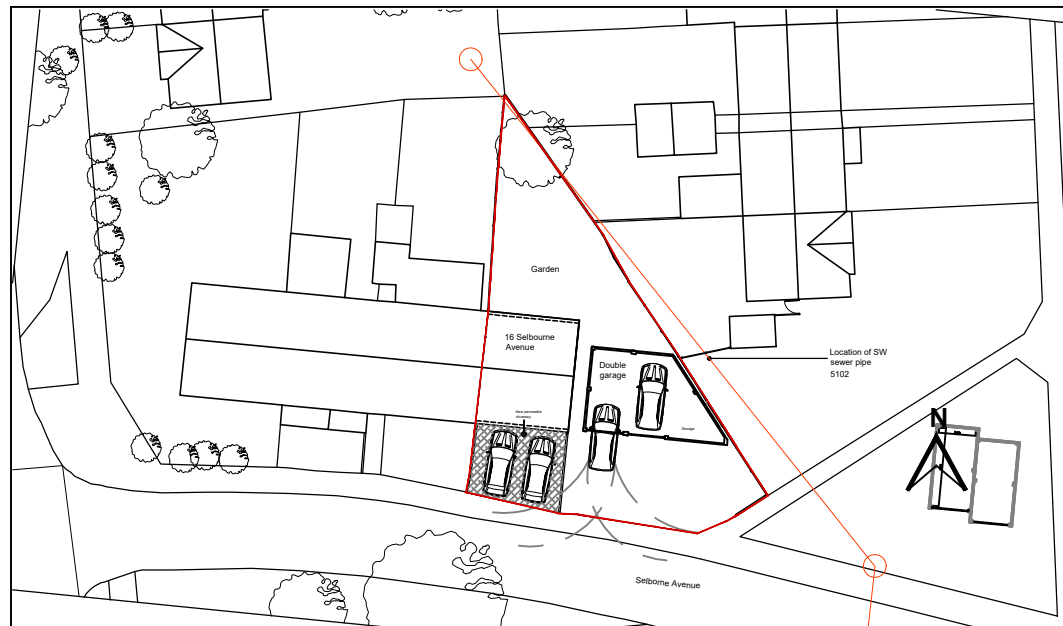
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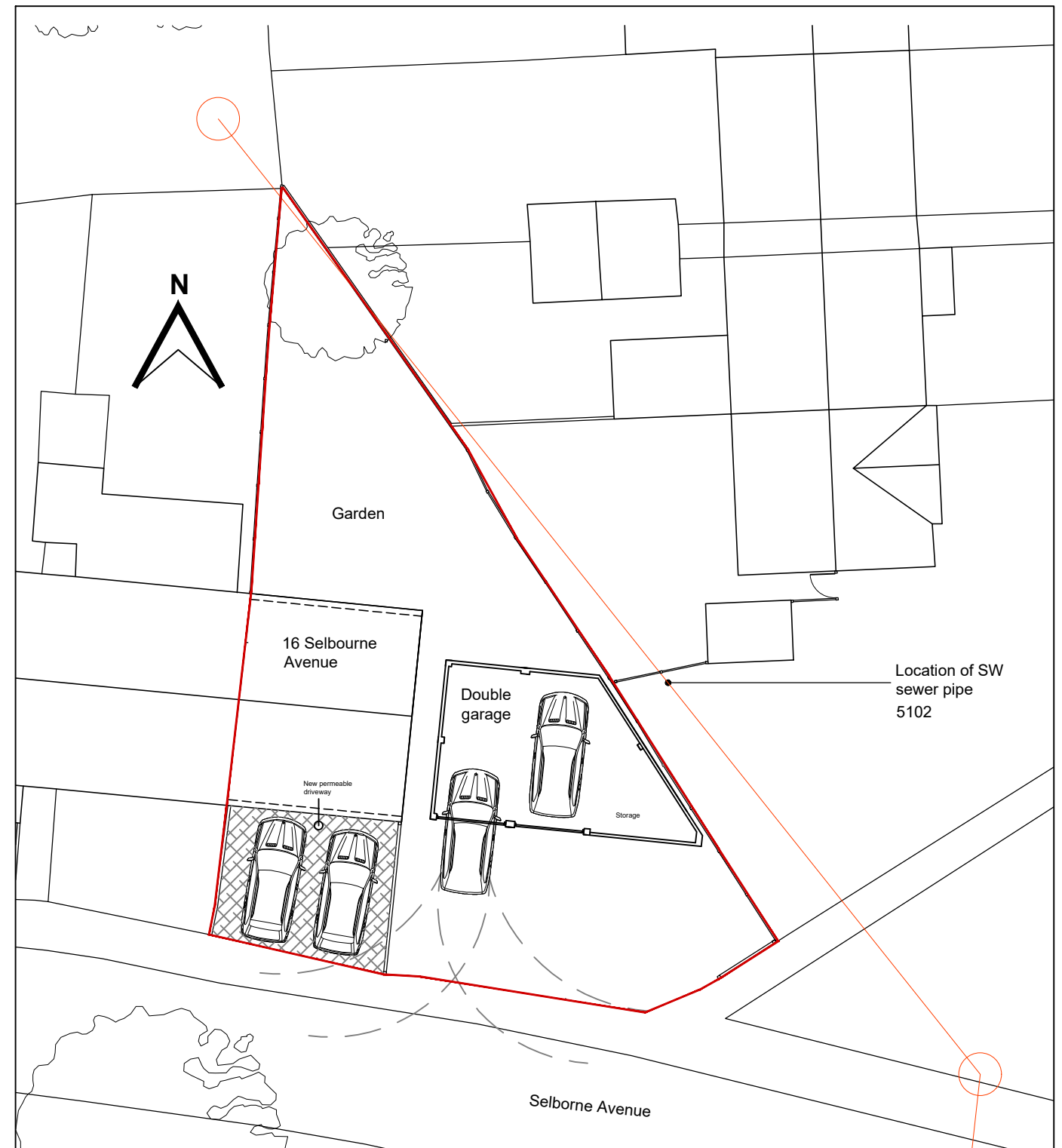
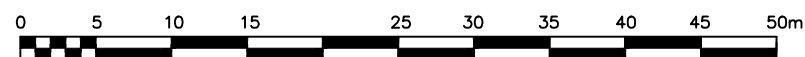
APPENDIX B



LOCATION plan
Scale 1:1250



BLOCK plan
Scale 1:500



SITE plan
Scale 1:200



BESPOKE architects

Tel: 01243 373245

Mobile: 07970439156

Project:
16 Selborne Avenue, Havant
Lawful development Certificate

Drawing:
Garages
Location and site plan

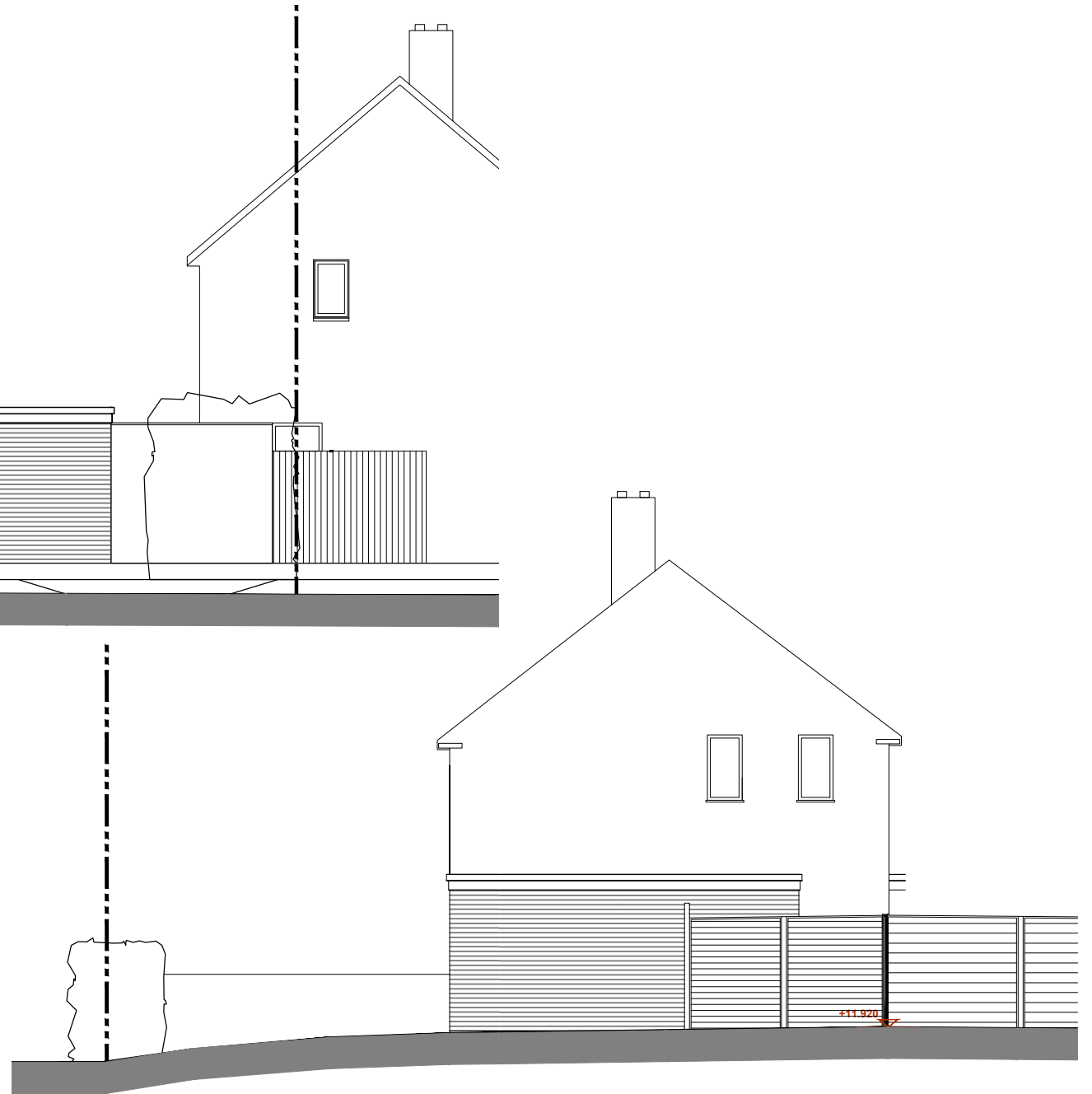
21.208

Drawing: **P01A**

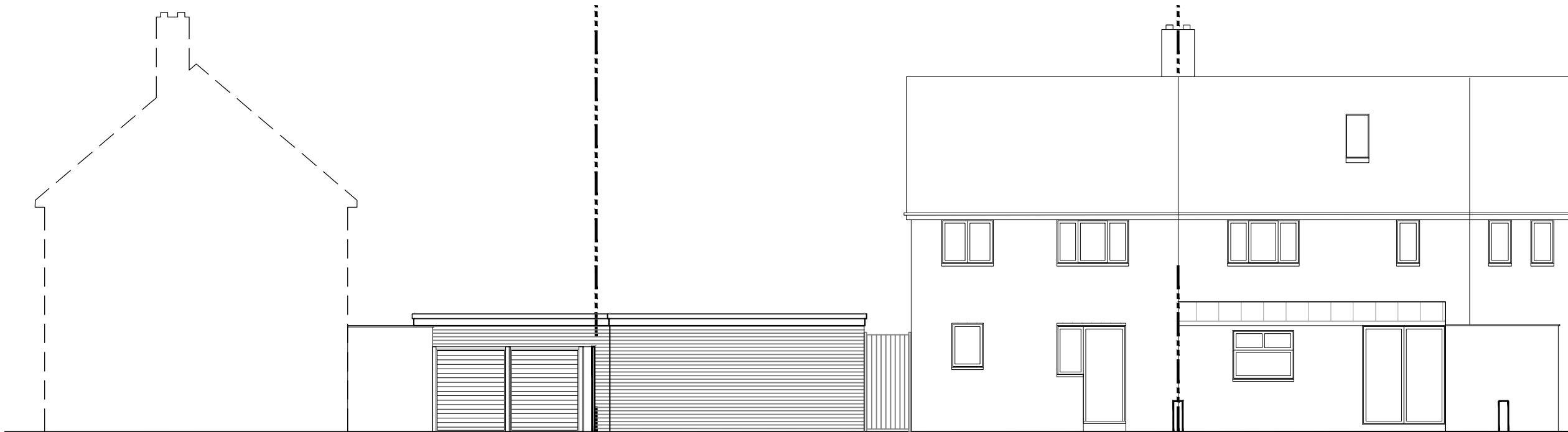


PROPOSED south elevation

Scale 1:100 at A3



PROPOSED east elevation



PROPOSED north elevation

BESPOKE architects

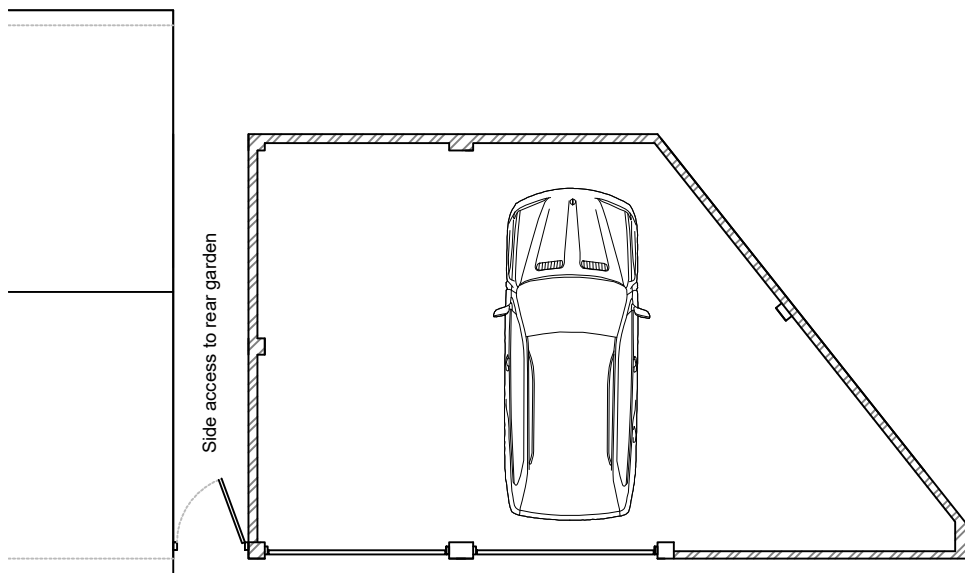
Tel: 01243 373245 Mobile: 07970439156

Project:
16 Selborne Avenue, Havant
Lawful development Certificate

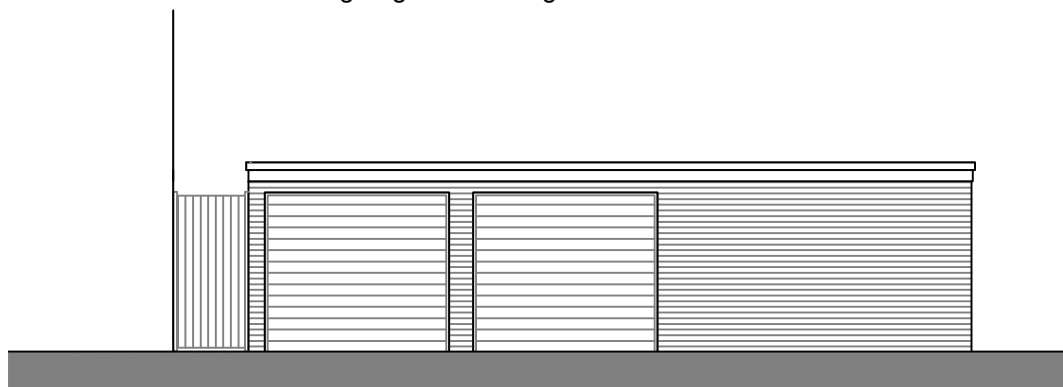
Drawing:
Garages
Proposed elevations

21.208

Drawing: **P03A**



PROPOSED floor plan
Double garage with storage



PROPOSED front / south elevation



PROPOSED side / east elevation



PROPOSED rear / north elevation



Scale 1:100 at A4

BESPOKE architects

Tel: 01243 373245

Mobile: 07970439156

Project:

16 Selborne Avenue, Havant
Lawful development Certificate

Drawing:

Garages
Plan and elevations

21.208

Drawing: P02A

Mrs T Parker
Bespoke Architects
1 Potters Corner
The Avenue
Hambrook
Chichester
PO18 8TT

For: Mr L Sturgess

Ref No.: APP/21/01403

**Town and Country Planning Act 1990: Section 191 and 192 (as amended by
Section 10 of the Planning and Compensation Act 1991)
Town and Country Planning (Development Management Procedure) (England) Order
2015
Article 39
CERTIFICATE OF LAWFUL USE OR DEVELOPMENT**

Havant Borough Council, as Local Planning Authority, certifies that the development described in the First Schedule to this certificate in respect of land described in the Second Schedule and as shown edged in red on the submitted location plan would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended) for the following reason(s):

The proposed development falls within permitted development allowances as set out in Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Planning Services

08 February 2022

FIRST SCHEDULE:

This certificate relates to the following development:

Application for Certificate of Lawfulness relating to a proposed double garage as described in the written particulars submitted with your application on 08 December 2021, and the amended plans and other documents submitted with your application received 31 January 2022 which are referenced as follows:

Drg No. PO1A - Block & Location Plan
Drg No. PO2A - Proposed Floor & Elevations
Drg No. PO3A - Proposed Elevations

SECOND SCHEDULE:

Our Ref: APP/21/01403

This certificate relates to land at 16 Selborne Avenue, Havant, PO9 4PX, as shown edged red on the submitted Block and Location Plan received 31 January 2022.

OTHER IMPORTANT INFORMATION:

- (1) This certificate is issued on the basis that the agent confirmed via email on 25 January 2022 that the proposed double garage (with storage) would be used for a purpose incidental to the enjoyment of the dwellinghouse.
- (2) This Certificate is issued solely for the purpose of Sections 192 of the Town and Country Planning Act 1990 (as amended). It does not relate to any other application that may be required under any other part of the Town and Country Planning Act, the Building Regulations or under any other Act, Regulation, Byelaw or Order where the Council's approval may be needed. For further guidance as to the need for consent under the Building Regulations please phone 023 9244 6571.
- (3) It certifies that the development specified in the First Schedule taking place on land described in the Second Schedule would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended) on the specified date and thus would not have been liable to enforcement action under part 7 of the 1990 Act on that date.
- (4) The certificate only applies to the extent of the development specified in the First Schedule taking place on land described in the Second Schedule and identified on the attached plan. Any development which is materially different from that described or which relates to other land may render the owner/occupier liable to enforcement action under section 172 of the 1990 Act.
- (5) The effect of the certificate is also qualified by the provision in section 192(4) of the 1990 Act (as amended), which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matter relevant to determining such lawfulness.
- (6) Your attention is drawn to the attached information regarding your right to appeal to the Department for Transport Local Government and the Regions, if you are aggrieved by the Council's decision.

Simon Jenkins

Simon Jenkins
Director of Regeneration and Place

08 February 2022

TOWN AND COUNTRY PLANNING ACT 1990

NOTIFICATION TO BE SENT TO AN APPLICANT WHEN A LOCAL PLANNING AUTHORITY REFUSE PLANNING PERMISSION OR GRANT IT SUBJECT TO CONDITIONS

- These notes are for information only and do not purport to set out the law on the subject.
- Only the applicant possesses the right of appeal.

Appeals to the Secretary of State

- If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.
- If this is a decision on a planning application relating to the same or substantially the same land and development as is already the subject of an enforcement notice and you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of this notice.
- If an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of service of the enforcement notice, or within 6 months [12 weeks in the case of a householder appeal] of the date of this notice, whichever period expires earlier.
- If this is a decision to refuse planning permission for a householder application and you want to appeal against your local planning authority's decision then you must do so within 12 weeks of the date of this notice.
- If this is a decision to refuse planning permission for a minor commercial application and you want to appeal against your local planning authority's decision then you must do so within 12 weeks of the date of this notice.
- If this is a decision to refuse express consent for the display of an advertisement and you want to appeal against your local planning authority's decision then you must do so within 8 weeks of the date of receipt of this notice.
- If this is a decision to refuse consent to work on a tree which is subject to a Tree Preservation Order and you want to appeal against your local planning authority's decision then you must do so within 28 days of the date of this notice.
- If this is a decision to refuse any other type of application and you want to appeal against your local planning authority's decision then you must do so within 6 months of the date of this notice.
- **Appeals can be made online at: <https://www.gov.uk/planning-inspectorate>.**
If you are unable to access the online appeal form, please contact the Planning Inspectorate to obtain a paper copy of the appeal form on tel: 0303 444 5000.
- The Secretary of State can allow a longer period for giving notice of an appeal but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

If you intend to submit an appeal that you would like examined by inquiry, then you must notify the Local Planning Authority and Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. [Further details are on GOV.UK.](#)

Our Ref: APP/21/01403

IMPORTANT NOTICE FOR APPLICANTS WITH REGARD TO BUILDING REGULATIONS

This notice only relates to the decision of Havant Borough Council under the Town and Country Planning Acts. It does not relate to any other application that may be required any other Act, Regulation, Byelaw or Order where the Council's approval may be needed.

For further guidance as the need for consent under the Building Regulations, please telephone Havant Borough Council's Building Control team on:

023 9244 6571

Site Address:	16 Selborne Avenue, Havant, PO9 4PX		
Proposal:	Application for Certificate of Lawfulness relating to proposed double garage.		
Application No:	APP/21/01403	Expiry Date:	08/02/2022
Applicant:	Mr L Sturgess		
Agent:	Mrs T Parker	Case Officer:	Lewis Ford
	Bespoke Architects		
Ward:	Barncroft		

Recommendation: **GRANT A CERTIFICATE OF LAWFUL USE**

1 Site Description

16 Selborne Avenue, Havant, PO9 4PX

2 Planning History

APP/19/00860 - Erection of 1No. 3 bedroom detached dwelling., WD,16/10/2019
GEN/19/00922 - Sequential Test, UNK,
APP/19/01254 - Erection of 1No. 3bedroom detached dwelling.(Revised)., REF,06/03/2020
APP/20/00302 - Erection of 1No. 3bedroom detached dwelling.(Revised)., REF,03/06/2020
GEN/20/00414 - Erection of a 2 bed property or group of garages., ,10/08/2020
APP/21/00353 - Erection of 1No.2bed dwelling., REF,27/08/2021

3 Proposal

Application for Certificate of Lawfulness relating to proposed double garage.

4 Policy Considerations

Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

5 Statutory and Non Statutory Consultations

Not relevant for an application for a Certificate of Lawfulness of Proposed Development.

6 Community Involvement

Not relevant for an application for a Certificate of Lawfulness of Proposed Development.

7 Planning Considerations

- 7.1 Having regard to the relevant policies of the development plan, it is considered that the main issues arising from this application are:

(i) Principle of Development

- 7.2 A search of the planning history has not revealed any conditions that restrict permitted development rights, nor is the dwellinghouse part of an Article 4 direction.
- 7.3 The proposed development falls under, and so has been assessed against, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Class E provides permitted development rights within the curtilage of a dwellinghouse for:
- a) Any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or
 - b) A container used for domestic heating purposes for the storage of oil or liquid petroleum gas.
- 7.4 The proposed development would comprise a double garage with a storage area and would have a maximum width of approximately 9.65 metres, a maximum depth of approximately 5.6 metres, and a flat roof with a maximum height of approximately 2.5 metres. The total floor area is approximately 42 square metres.
- 7.5 There are two critical tests to be applied under Class E. The first is whether the use of the proposed development, in the context of the whole planning unit, is incidental or subordinate to the main use of the property as a dwellinghouse. The second is whether the proposed development is reasonably required to accommodate the use.
- 7.6 The proposed use does not provide primary living accommodation as the proposed development is to be used as a new double garage and storage area. This is considered incidental to the main use of the property as a dwellinghouse. In addition, the proposed development is also deemed to be reasonable to accommodate the proposed use. Furthermore, the use of the proposed development is considered incidental to the enjoyment of the main dwellinghouse and, as such, not subject to planning control.
- 7.7 The proposed development has been assessed against the following criteria under Class E.

E.1 Development is not permitted by Class E if –

- a) **Permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P, PA or Q of Part 3 of this schedule (changes of use).**

This is not applicable to the proposed development.

- b) **The total area of the ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse).**

The proposed development would not exceed this limit.

- c) **Any part of the building, enclosure, pool or container would be situated on**

land forward of a wall forming the principal elevation of the original dwellinghouse.

The proposed development would be flush with, and would therefore not be on land forward of, the wall forming the principal elevation of the original dwellinghouse.

d) The building would have more than a single storey.

The proposed development would be single storey.

e) The height of the building, enclosure or container would exceed -
i) 4 metres in the case of a building with a dual-pitched roof.
ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse; or
iii) 3 metres in any other case.

The proposed development would be within 2 metres of the boundary of the curtilage of the dwellinghouse and would be exactly 2.5 metres in height as specified by ii) above.

f) The height of the eaves of the building do not exceed 2.5 metres.

The proposed eaves would be exactly 2.5 metres in height.

g) The building, enclosure, pool or container would be situated within the curtilage of a listed building.

The proposed development would not be situated within the curtilage of a listed building.

h) It would include the construction or provision of a verandah, balcony, or raised platform.

The proposed development would not.

i) It relates to a dwellinghouse or a microwave antenna.

The proposed development would not.

j) The capacity of the container would exceed 3,500 litres.

This is not applicable to the proposed development.

E.2 In the case of any land within the curtilage of the dwellinghouse which is within -

- a) An Area of Outstanding Natural Beauty (AONB)**
- b) The Broads**
- c) A National Park; or**
- d) A World Heritage Site**

Development is not permitted by Class E if the total area of ground covered by

buildings, enclosures, pools and containers situated more than 20 metres from any wall of the dwellinghouse would exceed 10 square metres.

This is not applicable to the proposed development.

E.3 In the case of any land within the curtilage of the dwellinghouse which is article 2(3) land, development is not permitted by Class E if any part of the building, enclosure, pool or container would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse.

This is not applicable to the proposed development.

8 Conclusion

- 8.1 The proposed development falls within permitted development allowances as set out in **Schedule 2, Part 1, Class E** of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Therefore, a Lawful Development Certificate **can** be issued.

9 RECOMMENDATION:

That the Head of Planning be authorised to **GRANT A LAWFUL DEVELOPMENT CERTIFICATE** for application APP/21/01403 for the following reason:

The proposed development falls within permitted development allowances as set out in Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

FIRST SCHEDULE:

This certificate relates to the following development:

Application for Certificate of Lawfulness relating to a proposed double garage as described in the written particulars submitted with your application on 08 December 2021, and the amended plans and other documents submitted with your application received on 31 January 2022 which are referenced as follows:

Drg No. PO1A - Block & Location Plan
Drg No. PO2A - Proposed Floor & Elevations
Drg No. PO3A - Proposed Elevations

SECOND SCHEDULE:

This certificate relates to land at 16 Selborne Avenue, Havant, PO9 4PX as shown edged red on the submitted Block and Location Plan received on 31 January 2022.

OTHER IMPORTANT INFORMATION:

- (1) This certificate is issued on the basis that the agent confirmed via email on 25 January 2022 that the proposed double garage (with storage) would be used for a purpose incidental to the enjoyment of the dwellinghouse.
- (2) This Certificate is issued solely for the purpose of Sections 192 of the Town and Country Planning Act 1990 (as amended). It does not relate to any other application that may be required under any other part of the Town and Country Planning Act, the Building Regulations or under any other Act, Regulation, Byelaw or Order where the Council's approval may be needed. For further guidance as to the need for consent under the Building Regulations please phone 023 9244 6571.
- (3) It certifies that the development specified in the First Schedule taking place on land described in the Second Schedule would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended) on the specified date and thus would not have been liable to enforcement action under part 7 of the 1990 Act on that date.
- (4) The certificate only applies to the extent of the development specified in the First Schedule taking place on land described in the Second Schedule and identified on the attached plan. Any development which is materially different from that described or which relates to other land may render the owner/occupier liable to enforcement action under section 172 of the 1990 Act.
- (5) The effect of the certificate is also qualified by the provision in section 192(4) of the 1990 Act (as amended), which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matter relevant to determining such lawfulness.
- (6) Your attention is drawn to the attached information regarding your right to appeal to the Department for Transport Local Government and the Regions, if you are aggrieved by the Council's decision.

APPENDIX C

Havant Borough Council
Development Control
Civic Offices Civic Centre Road
Havant
Hampshire
PO9 2AX

Our ref: HA/2021/123171/02-L01
Your ref: APP/21/00353
Date: 16 August 2021

Dear Sir/Madam

**QUERY FROM LOCAL PLANNING AUTHORITY - ERECTION OF 1NO. 2BED
DWELLING 16 SELBORNE AVENUE, HAVANT, PO9 4PX**

Thank you for your query to the Environment Agency on the above application. We have reviewed the information submitted in relation to your query and set out our position below.

Environment Agency Position

In our written response HA/2021/123171/01, we stated that the proposed development would only meet the National Planning Policy Framework (NPPF) requirements for Flood Risk and Coastal Change if our planning condition requiring Finished Floor Levels to be set at 12.80AOD, as set out in the Flood Risk Assessment (FRA), was attached to any planning permission granted. We note that no update has been made to the FRA, however we have reviewed the additional information submitted.

We can see from the submitted information that the applicant proposes a SUDS system. It is our understanding that it is the responsibility of the Local Planning Authority to calculate whether the SUDS proposed will mitigate against the level of flooding in this case. However, our assessment, looking at the flood maps, is that the property will still likely flood to a 1 in 100 year plus 105% climate change allowance level of 12.50m AOD. Therefore, the SECTION_DRAWING-1514217 which shows a Finished Floor Level of 12.22m AOD would provide an inadequate level of mitigation, and would not meet the criteria of our condition or the National Planning Policy Framework (NPPF) requirements for Flood Risk and Coastal Change and would consequently likely result in an objection from the Environment Agency.

Please do not hesitate to contact me using the contact details shown below should you have any queries regarding the above information.

Environment Agency
Guildbourne House Chatsworth Road, Worthing, West Sussex, BN11 1LD.
Customer services line: 03708 506 506
www.gov.uk/environment-agency
Cont/d..

Yours faithfully

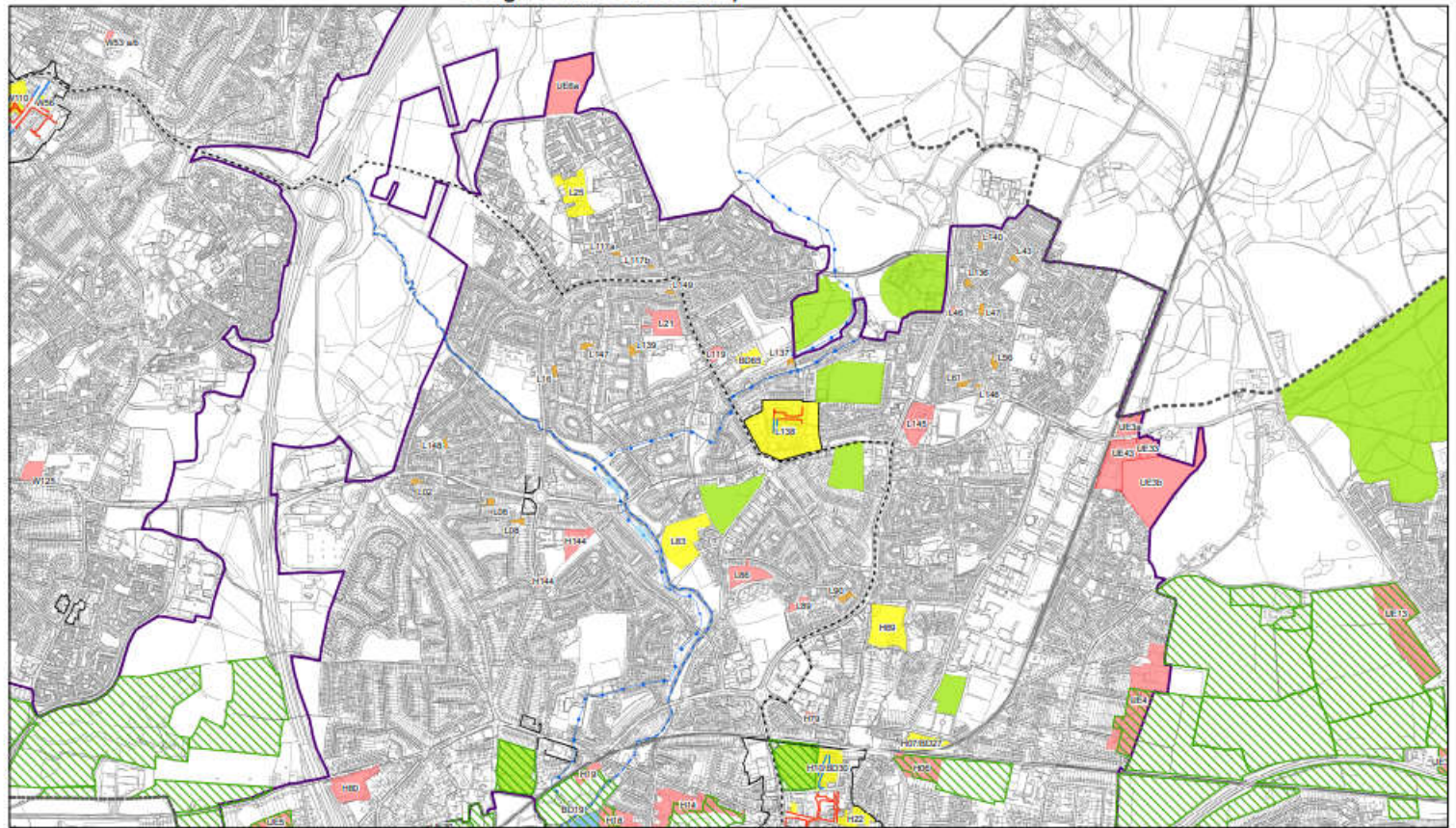
Mrs Sophie Brown
Sustainable Places Planning Advisor

Direct dial 02030 257250

Direct e-mail planningSSD@environment-agency.gov.uk

APPENDIX D

Leigh Park Policies Map



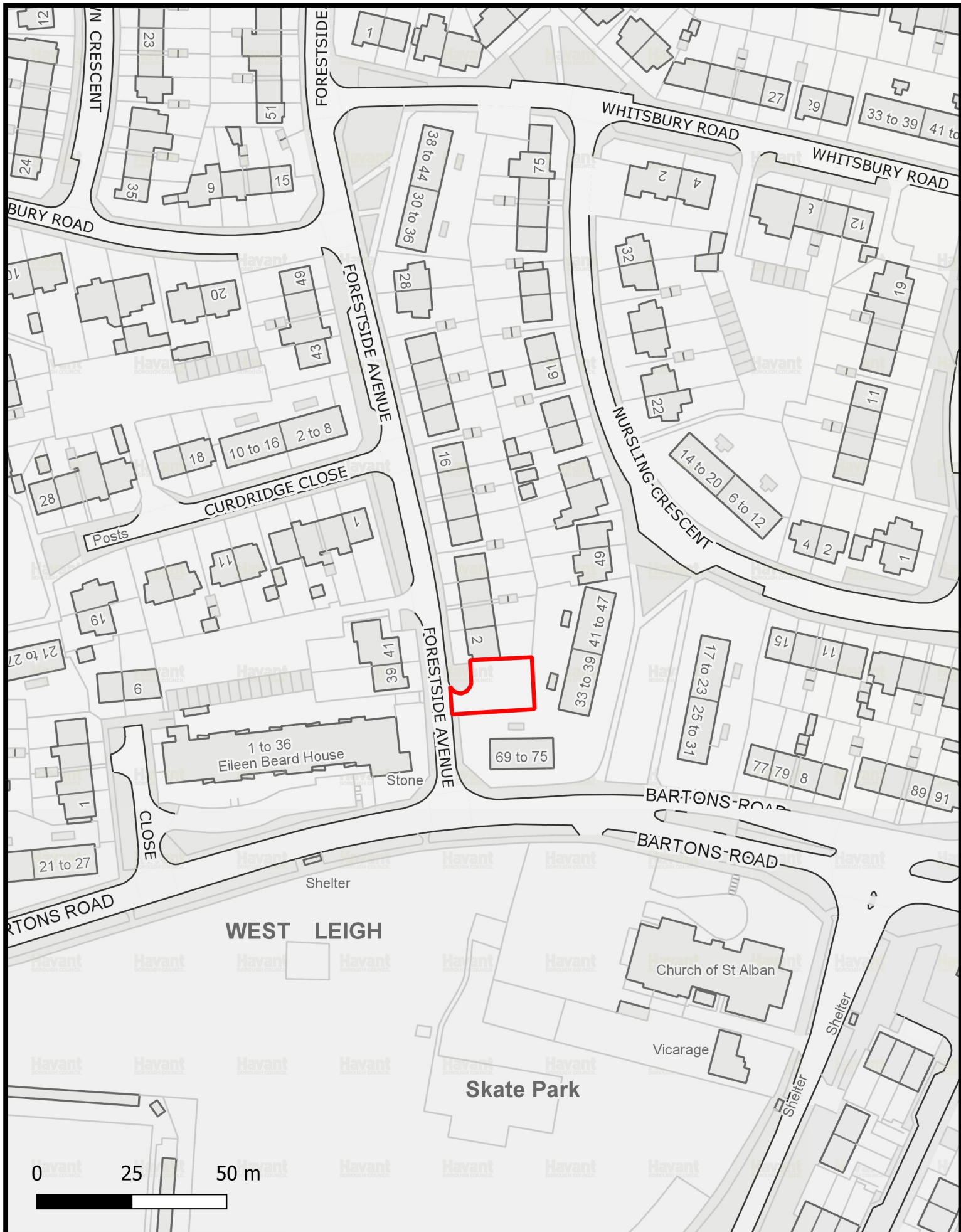
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| ----- Borough Boundary | ----- AL5 Indicative Cross Borough BRT Route | DM23 Uncertain Sites Brent Geese and/or Waders |
| AL2 Urban Area Boundaries and Undeveloped Gaps Between Settlements | AL6 Havant Thicket Reservoir Pipeline (Underground Water Storage) | DM23 Important Sites Brent Geese and/or Waders |
| AL3.1 Town, District and Local Centres | AL6 Havant Thicket Reservoir Pipeline (Route) | Housing Allocations |
| AL3.3 Primary Frontages | AL7 Hermitage Stream | Mixed Use Allocations |
| AL3.4 Secondary Frontages | AL8 Local Green Spaces | LP2 Leigh Park Housing |
| | | Allocations (garage courts and parking areas) |

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Solent Waders and Brent Geese Strategy 2010 Mapping Layers
used by permission created using OS OpenData
RMT, King, D. (2010) Solent Waders and Brent Geese Strategy 2010
Hampshire and Isle of Wight Wildlife Trust



Havant
BOROUGH COUNCIL



Havant
BOROUGH COUNCIL

Forestside Avenue Parking Area

Scale 1:1,250

Date: 25-04-2022

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