



TOWN & COUNTRY PLANNING ACT 1990

APPEAL BY: MR KIRKPATRICK, TRUSTEES OF THE BARFORD TRUST

LOCATION: LAND REAR OF 57 LONDON ROAD, COWPLAIN, HANTS, PO8 8UJ

PROPOSAL: Erection of a pair of semi-detached 1 bed dwellings, following demolition of existing wall with associated parking and access.

COUNCIL REF. NO: APP/21/00433

APPEAL REF. NO: APP/X1735/W/22/3299101

APPELLANTS RESPONSE TO LPA'S STATEMENT OF CASE

1. The LPA's statement of case begins by stating that *"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 and the Habitats Regulations"*.
2. The LPA then moves on to paragraph 4.5 where it acknowledges that the appellant secured appropriate mitigation towards nitrates under the then Habitats Regulations. However, as the scientific data has now changed that this secured mitigation is now obsolete. **"Whilst the Council carried out an HRA/AA at planning application stage and secured appropriate mitigation packages and consulted Natural England (my emphasis), that was based on the previous methodology and practice at the time. It is the opinion of the LPA that the development, without appropriate and up-to-date mitigation packages secured using the latest scientific information and methodologies, 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 does not apply. Footnote 7 of criteria (i) of paragraph 11 (d) of the NPPF also**

includes Habitat sites. The lack of up-to-date mitigation for these Habitat sites would give a clear reason for refusing development as per paragraph 11 d) (i)” (paragraph 4.5 of LPA statement of case).

3. Are the Council now suggesting that all decisions made and secured under the previous mitigation measures are being revisited and existing unimplemented permissions being stopped? It stands to reason that mitigation accepted and secured must stand. Had planning permission been granted the level of mitigation would have stood as secured, with the appellant benefitting from three years to implement.
4. Notwithstanding the above the LPA’s statement is incorrect. The appellant has secured the necessary mitigation and paid the appropriate contributions at that time. The updated calculator now shows an occupancy figure of 1.4 instead of 1.6, with an increase in the amount payable for a one-bedroom dwelling increased by £44. This means that the mitigation is still exactly the same as already secured with a difference in fee amounts of £88. The LPA are therefore urged to explain how they have arrived at the claim that mitigation has not been secured, when the fact of the matter is that the fee amounts have changed, and they would like the extra amount.
5. If the Inspector considers that this additional £88 towards mitigation should be secured then the appellant should be given time to update the original undertaking submitted and provide this nominal amount, to account for this very late change identified by the LPA. The appellant also wishes to put parties on notice that this is the first we have been made aware of this change and that such a late change, with the introduction of a new reason for refusal amounts to unreasonable behaviour on the part of the LPA, for which a claim for costs on behalf of the appellant would be reasonable and should be considered if a suitable resolution cannot be found within the determination of the appeal.
6. Appendices 1, 2 and 3 provide the original mitigation information and secured legal undertaking towards the Solent Recreation Mitigation Strategy and Nitrates. Appendices 4 and 5 show the updated forms for mitigation purposes, with the differences identifies above in paragraph 4.
7. In respect of housing shortfall, the local authority accepts that it is unable to meet its housing needs and that this proposal would contribute to that deficit. It is

noted however that at paragraph 3.5 that the local authority seeks to play down this contribution by stating that *“It is nevertheless noted that the proposal is for two 1 bed dwellings, within the main urban area of Waterloooville, which 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.”* The appellant maintains that the proposal may only offer a small contribution on its own however collectively these sites, in combination with similar sites collectively make a significant contribution. Especially in the absence and ability to deliver major housing schemes to fulfil this deficit.

APPELLANTS RESPONSE TO LPA’SUGGESTED CONDITIONS

The only comment relates to suggested condition 7, holistic removal of permitted development rights. The appellant would query the necessity of such a condition given that the proposal could not benefit from any of the allowances or provisions other than that allowed by Class C.

In respect of Class C, it is not clear how the provision of additional rooflights would be harmful and warrant such a restriction.