

## Planning Application Response of Planning Policy

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| <b>Application No:</b>   | APP/22/01351                                                                                                                                    |
| <b>Address:</b>          | Land south of Saltmarsh Lane, Hayling Island                                                                                                    |
| <b>Development:</b>      | Outline application for erection of up to 60 dwelling units with access; associated landscape and highway works on land south of Saltmarsh Lane |
| <b>Case Officer:</b>     | LO                                                                                                                                              |
| <b>Comments by:</b>      | JB                                                                                                                                              |
| <b>Date of Comments:</b> | 12 May 2022                                                                                                                                     |

### Policy Status

The [Local Plan \(Core Strategy\)](#) and the [Local Plan \(Allocations\)](#), together with the Hampshire Minerals and Waste Plan provide the development plan for the Borough.

In addition, the Council has adopted a [Housing Delivery Position Statement](#). It does not form part of the development plan but is relevant to this application.

### Principle of development

As the applicant acknowledges, the site lies outside of the urban area as defined by policies CS17 and AL2. These policies seek to restrict development in these locations, except in exceptional circumstances. It is not considered that any of the exceptions for housing would apply here.

The Council's [Five Year Housing Land Supply Update \(November 2021\)](#) indicates the Council has 3.9 years supply with a 20% buffer applied. This is below the five year supply threshold.

The proposed scheme is not in the five year supply in whole or part. There would be a gain of 60 units to address the five year housing supply requirement.

*Five year requirement with 20% buffer  
= 3,629 dwellings / 5 years  
= 725.8 dwellings a year*

*60 dwellings / 725.8 dwellings  
= 0.08 years*

The lack of five year supply has the potential to trigger a presumption in favour of sustainable development in line with paragraph 11d of the NPPF (NB exceptions apply; see further below regarding habitats regulations and flood risk). The scheme's potential contribution to the 5 year supply must be afforded weight in the overall planning balance.

In addition, the Housing Delivery Position Statement explains further how the Council intends to deal with the 5 year supply situation, and how it will apply the presumption in favour of sustainable development. This statement is referenced in detail throughout these comments.

Crucially, the Statement makes a distinction between sites where the principle of development has already been accepted (through the work on the now withdrawn Local Plan and associated evidence base) and those where it is not. The principle of development on the application site has not been supported through that process, and therefore Decision Making Principle 4 applies. Under this principle, it is for the applicant to demonstrate that their proposal constitutes sustainable development in accordance with the NPPF, by demonstrating that:

- The remaining requirements of the Development Plan and decision making principles set out in the Statement are complied with; and
- There will not be a significant and demonstrable adverse effect from the development where mitigation is provided to the satisfaction of the local planning authority, taking into account advice from statutory consultee(s).

In this context, even in the context of the 5 year supply position, a number of matters will have to be carefully addressed to support a departure from the development plan. Key points are discussed below:

### **Flood Risk**

The NPPF, at paragraph 159 succinctly summarises the position regarding development in areas at risk of flooding: *'Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future)* [my emphasis]. *Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.* Footnote 7 linked to paragraph 11d, indicates that areas at risk of flooding fall within the category of sites where the presumption does not apply if the policies in the NPPF provide a clear reason for refusal.

It is suggested that flood risk has not sufficiently been addressed by the applicant's submission. A flood risk assessment has been submitted, as required for all sites above 1 hectare regardless of their flood zone. However, since it does not consider future flood risk from the sea by making no reference to future flood zones, it is suggested that it cannot be concluded that the development will be safe for its lifetime.

In addition, the applicant was advised through the pre-application process that due to the future flood risk, the Council requires a sequential test. This advice has not been accepted and instead the applicant sets out why the test is not required. In this regard, the applicant is referred to the Council's own guidance on sequential testing at <https://www.havant.gov.uk/planning-policy/supplementary-planning-documents>, as well as national sequential test guidance for applicants, which confirms that *'you also don't need to do a sequential test for a development in flood zone 1 unless there are flooding issues in the area of your development. You can check this in your local planning authority's strategic flood risk assessment.'* The SFRA shows the application site to be at risk in the future. Further, the national flood zone and flood risk tables include a note that states: *'The Flood Zones shown on the Environment Agency's Flood Map for Planning (Rivers and Sea) do not take account of the possible impacts of climate change and consequent changes in the future probability of flooding. Reference should therefore also be made to the Strategic Flood Risk Assessment when considering location and potential future flood risks to developments and land uses.'* It is therefore not accepted that the applicant is exempt from undertaking the sequential test on the basis that the site lies in current flood zone 1, and policy advice remains that the applicant should submit such a test for the LPA to consider.

Referring back to the requirements of NPPF paragraphs 11 and 159 then, it is suggested that the presumption in favour of sustainable development cannot be applied, as the applicant has neither sought to avoid development in an areas of risk, nor demonstrated that development will be safe for its lifetime. Thereby they have not complied with the policies in the NPPF in relation to areas at risk of flooding, which, on a footnote 7 site, provides a clear reason for refusal, in line with 11.d) i.

### **Brent Geese and Waders**

Paragraph 182 of the NPPF provides that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the

integrity of the habitats site. This approach is also confirmed in Decision Making Principle 1 of the Housing Delivery Position Statement.

It is noted that the applicant is proposing to provide mitigation for the loss of functionally linked land for over-wintering birds. Any such mitigation must be to the satisfaction of the Council's ecologist and Natural England. The outcome of a habitats regulation assessment remains fundamental with regard to the acceptability of this proposal. Until an appropriate assessment concludes that the plan or project will not adversely affect the integrity of the habitats site, the presumption in favour of sustainable development cannot be applied to this site.

### **Summertime transport implications of development on Hayling Island**

The Council acknowledges concerns raised by the Local Plan Inspector in 2021, which included uncertainty regarding the impact of development on Hayling Island, in particular in the summertime.

Decision Making Principle 3 of the Housing Delivery Position Statement therefore requires a site specific Transport Assessment to demonstrate that:

- There will not be an unacceptable impact on highway safety; and
- The residual cumulative impact on the road network will not be severe, including during tourist periods and at weekends.

The applicant has submitted a transport assessment, but there appears to be no specific consideration within it of summertime or weekend traffic conditions, likely because this requirement had not yet been published at the time of the preparation of the TA. This should be added to the TA to address these concerns. In accordance with Decision Making Principle 3, it may be necessary to enter into a planning performance agreement with the applicant to clearly identify the actions and timescales needed in this regard.

### **Development Quality**

Decision Making Principle 5 makes clear that Council expects development of high quality, and in order to be considered sustainable development, the criteria in this principle must be met. A checklist has been provided at <https://www.havant.gov.uk/housing-delivery-position-statement>, and the applicant should be encouraged to complete this to assist in the assessment of the acceptability of this application.

It is acknowledged that some of the matters covered by this principle relate to the reserved elements of this scheme. Nevertheless, the matters it is possible to address at outline stage should be justified, while an indication of the proposed strategy to satisfy any detailed points through the reserved matters would also be welcomed.

### **Conclusions**

It is acknowledged that the Council is not currently able to demonstrate an up-to-date five year housing land supply position. The scheme would contribute 0.08 years' supply of housing and would therefore have the potential to increase the Borough's housing land supply to about 3.98 years. This should be afforded weight in the determination of this application.

Nevertheless, the development plan remains the starting point in decision making. There is an 'in principle' policy objection to the proposal in the context of that plan, because the site is located outside of the urban area/settlement boundary, and there would be no exceptional circumstances here which would apply. It is also at risk of flooding in the future and known concerns about highways impacts of development on Hayling Island.

The Housing Supply Position Statement sets out the circumstances under which development may nevertheless be supported. As it stands, it is suggested that further work by the applicant is required to demonstrate that the development represents sustainable

development that warrants a departure from the development plan, even in the face of the Council's 5 year supply position.

As suggested to the applicant in pre-application advice, it is suggested that in the face of the significant policy hurdles to the approval of development on this site, a better approach would be for the applicant to promote the site, together with the neighbouring site north of the Oysters, through the next local plan. This would allow comprehensive approach to all the issues facing these sites, and proper consideration of the potential role this land might have in the development strategy for the borough and in meeting housing need.

**End Note: Delivery without delay**

If the applicant wishes to persist with this application, and if all the matters above can be addressed and it is found that the proposal can provide sustainable development without causing adverse impacts that would significantly and demonstrably outweigh the benefits, permission should be granted. In that case, in accordance with Decision Making Principle 4, it is recommended that a condition should be attached requiring a shorter than standard timeframe for the submission of a valid reserved matters application. This is in order to ensure that the planning permission makes a contribution to the five year supply.