

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

**STATEMENT OF
HAVANT BOROUGH COUNCIL**

23 Padnell Road, Waterlooville, PO8 8DZ

**Local Planning Authority Reference:-APP/20/01026
Planning Inspectorate Reference:-
APP/X1735/W/21/3271208**

HAVANT BOROUGH COUNCIL

TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)

APPEAL BY Mr T Link AGAINST REFUSAL of PLANNING PERMISSION for the following development:

Following demolition of the existing garage and summer house construction of 1No. detached 3 bedroom bungalow with associated soft and hard landscaping and parking

At 23 Padnell Road, Waterlooville PO8 8DZ

Planning Inspectorate Reference: APP/X1735/W/21/3271208

LPA Ref: APP/20/01026

1.0 THE APPEAL SITE AND ITS SURROUNDINGS

- 1.1 No.23 Padnell Road consists of a detached, brick and tile chalet style bungalow which has been subject of previous extensions, and is located on the north side of Padnell Road in an established residential area to the east of the A3 London Road. The dwelling has a long rear garden (approximately 40m in depth) which rises in level to the rear. There is an area of hardstanding to the front to provide onsite parking and a driveway/set back garage to the side. A 'summerhouse' structure has been attached to the garage building. The garden has been terraced into several levels to provide flatter areas, and there is a 1.8m fence to the garden boundaries.
- 1.2 The surrounding area is residential with nearby properties on Padnell Road consisting of a mix of chalet style, two-storey and single storey dwellings most of which are set in good sized plots with quite large rear gardens.
- 1.3 The adjoining sites to the east (no.25 Padnell Road) and to the west (no.21 Padnell Road) are two storey properties, and the site shares a rear boundary with bungalows no 21 Crestland Close (which is extended by a rear roof dormer) and no.19 Crestland Close to the north.
- 1.4 The site has been subject of two previous planning refusals for a new dwelling to the rear of the existing house under planning refs. APP/10/00293 and APP/11/00309. Application APP/11/00309 was taken to appeal and dismissed.
- 1.5 The Borough Map and 1:1250 Location Plan are provided at **APPENDIX A**.

2.0 PLANNING HISTORY

- 2.1 The following planning applications are considered relevant to the consideration of this appeal:

APP/12/00482 - Single detached garage to rear (PERMITTED)

APP/11/00309 – Construction of 1.no 3 bed bungalow (revised application) (REFUSED 23.05.2011) Refused for 2 reasons; noise and disturbance impact of parking/turning areas, harm to character of the area and street scene

This 2011 refusal of planning permission by the Local Planning Authority was subject to an appeal to the Planning Inspectorate Ref: APP/X1735/A/11/2158130/NWF. The appeal was subsequently Dismissed on the 6th January 2012. Copies of the relevant plans and Appeal Decision are attached at **APPENDIX B**.

Inspectors comments in appeal decision report:

In respect of the impact on character of the area:

'There is a range of residential types and styles in Padnell Road but I saw no backland development with the same characteristics as the proposal before me. Most nearby dwellings sit within relatively large plots with quite large back gardens. The proposed dwelling would sit to the back of no.23, with the access being immediately adjacent to the side elevation of the host property. Views of the access, turning area and parts of the dwelling itself would be seen from the

road and the dwelling would be seen from neighbouring properties and gardens. The proposal would constitute an intensification of development which would appear incongruous and out of character with the overall appearance of the street. PPG3: Housing advises that design which is inappropriate in its context should not be accepted and that development should be well integrated with and complement the local area. The proposal would not achieve these objectives'

In respect of the impact on neighbour amenity:

'The proposed access would run between the boundary with no.21 [Padnell Road] and the side elevation of the host dwelling and very close to the boundary with the back garden of no.25 [Padnell Road] The turning area would be adjacent to the back garden of no.21 [Padnell Road] . The access, turning and parking areas would introduce a new level of activity into what is currently a relatively quiet back garden area and the introduction of noise from these activities, albeit only from a single dwelling, would be to the detriment of the living conditions of neighbours. The appellant refers to other garages in Padnell Road that are set back but they are not, in general, set as far back into the plot as would be the case here and they do not incorporate turning areas. The circumstances are not therefore identical... HBCS policy CS16 requires the protection of the amenity of neighbours and this proposal would not meet that requirement, in terms of noise generation. I conclude that the proposal would cause significant harm to the living conditions of neighbours'

APP/10/00293 - Construction of 1No. 3 bed bungalow with new access onto Padnell Road (REFUSED 06.09.2010) Refused for 4 reasons; noise and disturbance impact of parking/turning areas, visual amenity impact on no.25 Padnell Road, harm to character of the area and street scene, lack of information/demonstration that the development would not cause risk to highway safety, no appropriate contribution to HCC transport policy.

04/60118/000 - Raising the roof, build up gable end to provide living accommodation in roof space, dormer windows to front and rear elevations (PERMITTED).

3.0 THE APPLICATION

- 3.1 The application for *Following demolition of the existing garage and summer house construction of 1No. detached 3 bedroom bungalow with associated soft and hard landscaping and parking* was validated by the Local Planning Authority on the 11th November 2020 and subsequently refused for the following reasons on the 4th February 2021:

First Reason:

The proposal would substantially increase the built-up appearance of the site and would constitute an intensification of development that would appear incongruous and out of character with the street scene of Padnell Road. The proposal would not respect the local context or respond positively to local character, and would result in harm to the character and appearance of the area. The proposal is therefore contrary to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011, and guidance contained in the National Planning Policy Framework.

Second Reason:

Due to the position of the access drive, turning and parking areas to serve the new dwelling, the proposal would have a detrimental impact on the living conditions of the host dwelling (no.23 Padnell Road), and adjacent neighbouring properties (no.21 and no.25 Padnell Road) by reason of noise and disturbance. The proposal is therefore contrary to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011, guidance contained in paragraph 5.27 of the Havant Borough Design Guide SPD, and guidance contained in the National Planning Policy Framework.

Third Reason:

Given the constrained size, depth, and north facing aspect of the amenity space of the proposed dwelling, and given the size of dwelling proposed, the proposal would not result in a sufficient high quality amenity space for the future users of the development. The proposal is therefore contrary to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011, and guidance contained in the National Planning Policy Framework.

Fourth Reason:

The proposal, without completion of the appropriate binding arrangements to secure a contribution towards the Solent Recreation Mitigation Project, is contrary to the Council's Policy on contributions towards measures of mitigation adopted by the Local Planning Authority. These seek to ensure that the provision is made from new development towards mitigating against increasing recreational pressure on the Solent SPA. The development is therefore contrary to policies CS11 and CS21 of the Havant Borough Local Plan (Core Strategy) 2011 Policy DM24 of the Havant Borough Local Plan (Allocations) 2014, emerging Policy E16 of the Pre-Submission version with changes Havant Borough Local Plan 2036 and the National Planning Policy Framework.

Fifth Reason:

In the absence of a suitable agreement to secure appropriate mitigation measures in respect to water quality, the development would be likely to have a significant effect on the Solent European Sites as specified in the Habitats Regulations Assessment that has been undertaken in relation to this planning application. The development would be likely to result in detriment to water quality and as such, it is contrary to policies CS11 and CS21 of the Havant Borough Local Plan (Core Strategy) 2011, emerging Policies E16 and EX1 of the Pre-Submission version with changes Havant Borough Local Plan 2036, The Conservation of Habitats and Species Regulations 2017 (as amended) and the National Planning Policy Framework.

4.0 PLANNING POLICIES

4.1 National Policy:

National Planning Policy Framework

4.2 Adopted Local Policies

The Council has an adopted Local Plan, made up of the Core Strategy (2011) and the Allocations Plan (2014). Policies relevant to the current appeal, which have already been forwarded with the Appeal Questionnaire, are as follows:

Havant Borough Local Plan (Core Strategy) 2011

CS9 (Housing)

CS11 (Protecting and Enhancing the Special Environment and Heritage of Havant Borough)

CS16 (High Quality Design)

CS17 (Concentration and Distribution of Development within the Urban Areas)

CS21 (Developer Requirements)

DM13 (Car and Cycle Parking on Residential Development)

Havant Borough Local Plan (Allocations) 2014

AL1 (Presumption in Favour of Sustainable Development)

AL2 (Urban Area Boundaries and Undeveloped Gaps between Settlements)

DM24 (Recreational Disturbance to Special Protected Areas (SPAs) from Residential Development)

Adopted Supplementary Planning Guidance

Havant Borough Council Borough Design Guide SPD 2011

Havant Borough Council Parking SPD 2019

4.3 Emerging Policies

Emerging Havant Borough Local Plan

The Pre-submission Havant Borough Local Plan 2036 was approved by the Council on 30 January 2019 and was subsequently published under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012. Public consultation took place between 4 February

2019 to 18 March 2019 and the consultation responses were analysed. A number of changes arose from responses and the ongoing nutrient neutrality issue and proposed changes were considered and approved by Cabinet on 1st July 2020 and by Full Council on the 9th September 2020. Further consultation on the changes took place from the 3rd November until the 17th December 2020.

This was the position at the time of determination of the planning application the subject of this appeal.

Following this period the Local Plan has been submitted to the Planning Inspectorate for independent examination and thereafter adoption. The first stage of Examination took place in July 2021, with the second stage to follow in Autumn/Winter 2021/22.

Until this time, the Submission Havant Borough Local Plan is a material consideration in the assessment of this planning application in accordance with paragraph 48 of the NPPF, which confirms that weight may be given to policies in emerging plans following publication unless other material considerations indicate otherwise. Based on the current stage of preparation, along with the fact that the policies are compliant with the NPPF, the policies within the Submission Local Plan referenced below are currently afforded some weight, dependent on the level of objection received to each individual policy during the consultation process

The relevant planning policies of the emerging Local Plan are:

E1 (High Quality Design)
E12 (Low Carbon Design)
E14 (The Local Ecological Network)
E16 (Solent Special Protection Areas)
E20 (Drainage infrastructure in new development)
E22 (Amenity and pollution)
IN1 (Effective provision of infrastructure)
IN3 (Transport and parking in new development)
H1 (High Quality New Homes)
EX1 (Water Quality impact on the Solent European Sites)

- 4.4 Also of relevance is the Position Statement and Mitigation Plan for Nutrient Neutral Development August 2020 the Position Statement and Mitigation Plan can be viewed at the following address: <https://www.havant.gov.uk/sites/default/files/documents/Appendix%201%20-%20Revised%20Position%20Statement%20and%20Mitigation%20Plan%20020920.pdf>

5.0 PLANNING CONSIDERATIONS

- 5.1 The attached officers report (**APPENDIX C**) 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 the Habitats Regulations and commentary on the appellants grounds of appeal.

HABITAT REGULATIONS

- 5.2 As the Planning Inspectorate are now the Competent Authority under Regulation 63 of the Habitats Regulations, it will be necessary for the Inspectorate to undertake a Habitats Regulations Assessment, taking into account the impacts of development on the internationally designated sites and the likelihood of significant effects. These fall into **two key areas** - the Council's original screening of the proposal under Regulation 63(1)(a) found that there was likely to be a significant effect on several Solent European Sites due to both the increase in recreation and the decrease in water quality that would result from the proposed development of one new residential unit. An explanation and update with regard to each is provided below:

Solent Recreation Mitigation Strategy

- 5.3 The application site falls within the 5.6km zone of Chichester and Langstone Harbours SPA which are large estuarine basins that contain extensive intertidal mudflats and sandflats that support internationally and nationally important numbers of overwintering and breeding bird species.

Please find additional information about the characteristics of the area, the reasons for its designation, interest features and conservation objectives on the link to Natural England's website below:

<https://designatedsites.naturalengland.org.uk/Marine/MarineSiteDetail.aspx?SiteCode=UK9011011>

- 5.4 The potential effects of new residential development on the Chichester and Langstone Harbour SPA is outlined in a table contained within **APPENDIX D**. The evidence base to support the mitigation strategy can be found on the link below:
<http://www.birdaware.org/research>
- 5.5 Natural England's advice in regard to all new housing development within the 5.6km zone is that it is likely to have a significant effect on the SPA. Policy DM24 of the Havant Borough Local Plan (Allocations) 2014 covers this issue and allows for a financial contribution to be made towards mitigation measures. Additional information in relation to the Bird Aware Solent Strategy can be viewed via the following web address:
<http://www.birdaware.org/CHttpHandler.ashx?id=29372&p=0>
- 5.6 On 1st April 2018, the Solent Recreation Mitigation Strategy came into force and applies to new residential development (this was as approved by Havant Borough Councils Cabinet on the 7th February 2018.) The 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, a three bedroom unit development would require a contribution of £681 plus 5% monitoring fee of £34.05 and administration fee of £23 such that the total contribution required would be £738.05.
- 5.7 With respect to this mitigation package the applicant was asked if they wished the Council to draw up the appropriate agreement and Deed given that the recommendation was to be the refusal of the application for other reasons. The applicant was made aware that if the relevant agreement and payment were not made that the lack of mitigation would form an additional reason for the refusal of the application. The applicant did not request that the agreement was drawn up, and the LPA was asked to proceed to decision. As a result, there would be a likely significant effect to the Chichester & Langstone Harbours SPA due to recreation. It cannot therefore be concluded that the development meets the requirements of the Conservation of Habitats and Species Regulations 2017 (as amended), Solent Recreation Mitigation Strategy, Policies CS11 and CS21 of the Havant Borough Local Plan (Core Strategy) 2011, Policy DM24 of the Havant Borough Local Plan (Allocations) 2014, emerging Policy E16 of the Submission Havant Borough Local Plan or the National Planning Policy Framework.

Water Quality

- 5.8 The second likely significant effect on the Solent European Sites arises from a decrease in water quality from the proposed development. The European Court of Justice 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/legal-content/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.
- 5.9 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 some forms of new development, including the proposed residential 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 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'.
- 5.10 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.

- 5.11 In this regard, it should be noted that the Council has published a 'Position Statement and Mitigation Plan for Nutrient Neutral Development (August 2020)' (**Appendix E**). The Position Statement and Mitigation Plan includes the Council's strategic mitigation scheme at Warblington Farm which can be used by developers where nutrient neutrality cannot be achieved on site. It requires the applicant to submit a European Avoidance and Mitigation Checklist, and to indicate whether they wish to use the Council's mitigation scheme. The scale of financial contribution towards the Council's mitigation scheme is proportionate to the nitrogen load of the development, which is calculated using a nutrient budget. As part of the nutrient budget, development is expected to achieve a maximum water use standard of 110 litres per person per day (l/p/p/d) which is secured via two conditions. The wording of these conditions is outlined on pages 5-6 of the Position Statement.
- 5.12 As part of the evolution of the Submission Havant Borough Local Plan, a new policy EX1 has been established. This policy clarifies that proposals for all new dwellings need to provide a nutrient budget and will only be permitted if a mitigation package can remove the likely significant effect.
- 5.13 Since the Council has a strategic mitigation solution in place, then it would be possible for the appeal development to address the significant effect which would otherwise be likely to result from the proposed three bed residential development. With respect to this mitigation package the applicant was asked if they wished the Council to draw up the appropriate agreement and Deed given that the recommendation was to be the refusal of the application for other reasons. The applicant was made aware that if the relevant agreement and payment were not made that the lack of mitigation would form an additional reason for the refusal of the application. The applicant did not request that the agreement was drawn up, and the LPA was asked to proceed to decision. As a result, the development would be contrary to Policies CS11 and CS21 of the Havant Borough Local Plan (Core Strategy) 2011, emerging Policies E16 and EX1 of the Submission Havant Borough Local Plan, The Conservation of Habitats and Species Regulations 2017 (as amended) and the National Planning Policy Framework.
- 5.14 Following the decision, the Appellant has not provided the LPA with any further documents appertaining to this subject or sought advice on how to proceed with this matter. Therefore, an updated Habitats Assessment and Screening has not taken place, nor has Natural England been re-consulted. As the Planning Inspectorate are now the Competent Authority under Regulation 63 of the Habitats Regulations, the LPA trusts this update will be of assistance to the Inspector when making their deliberations on this case.

6.0 COMMENTS ON APPELLANTS STATEMENT OF CASE

- 6.1 It is not intended to comment on aspects of the appellants statement of case where matters have previously been addressed in this Appeal Statement or in the Officers Delegated Report (**APPENDIX C**). The following comments are made by way of amplification or explanation only.
- 6.2 Page 3 – comments on previous appeal decision:
The appellant acknowledges that the context for the proposal is similar to the previous appeal, but argues that backland development is now '*more established*' as a means of achieving sustainable development. However, most nearby properties sit within relatively large plots with quite large back gardens. This was noted in the previous Inspectors report, as well as there being no backland development of the type proposed under this application. This has not changed since the dismissed appeal, and the proposed dwelling would have a garden far shorter than is common in the area.

The current NPPF confirms that good design is a key aspect of sustainable development and, at Paragraph 130, sets out the following criteria for decisions to meet:

- 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*

6.3 The appellant also refers to a change to (or 'evolved') character since the dismissed appeal caused by large side extensions and garages changing the way that the area is viewed from Padnell Road, and it is noted that the application property itself has constructed a hipped roof garage to the side of the property since the appeal decision which extends back further into the site. However, it is not considered that the appearance of garages - usual in residential areas - has the same impact on character as sub-division of the plot, and views of a dwelling-house to the rear of the property; and the area is still considered to have a prevailing spacious character resulting from the relatively large plots and long gardens. The nearby Church and retirement apartment building (Nightingale Lodge) also referred to in the submitted Appeal Statement, were already constructed at the time of the 2011 decision and appeal, and are considered to have a differing context (i.e. adjacent to an existing church of larger scale and mass), and are not comparable to the proposed scheme.

6.4 Page 4 – Planning Policy

It is acknowledged that the site lies within the built up area where further development is acceptable in principle subject to the usual development management criteria. Furthermore the proposal would provide one additional residential unit, to which some weight must be given. However, the scheme must also be assessed against all the policies of the development plan, and it is considered that the Council's delegated report at paragraph 7.3 demonstrates how the quality of the environment in the area would be harmed by the development proposed.

6.5 Page 6 – Access

The commentary in the Appeal Statement addresses the functionality of the access alone, and does not address the adverse impacts of its use on the residential amenity and living conditions of the host property and adjacent neighbouring properties.

6.6 Page 7 – Design

It is acknowledged that the bungalow design of the dwelling means that it need not dominate the street frontage, and further clarification of intended ground levels could be requested by condition. However, the proposed bungalow would be set on slightly higher ground compared to street level which would increase its visibility to an extent, and the proposed building would extend beyond the side elevation of the existing dwelling across much of the width of the site. Thus views of the access, fencing to the host dwelling's amenity space, hardstanding and parts of the dwelling would be visible from Padnell Road between the buildings, as well as being seen from neighbouring properties and gardens. The proposal would increase the hard landscaped and built-up appearance of the site, and constitute an intensification of development that would appear incongruous and out of character with the street, resulting in harm to the character and appearance of the area and street scene.

6.7 General

It is noted that the submitted Appeal Statement makes no direct submissions as regards Reason 3 of the Council's decision (adequacy of amenity space). In addition to the arguments set out in the Officer's Delegated Report (Paragraph 7.4) the Inspector's attention is also drawn to the Council's Borough Design Guide SPD which at Paragraph 5.05 sets out that a minimum garden length of 10 metres should be provided between the dwelling and the boundary. This is considered particularly pertinent, given that the proposals is for a three-bedroomed bungalow and thus likely to be occupied by a family.

6.8 It is also noted that the submitted Appeal Statement makes no submissions regarding Reasons 4 and 5 of the Council's decision. The harmful impact of the development upon the Solent SPA sites in relation to recreation and water quality has therefore not been addressed.

7. CONCLUSIONS

7.1 In conclusion, the proposal would result in the provision of one additional residential unit, however the benefits this very modest contribution makes to the borough housing supply is not considered to outweigh the significant harm caused to the character of the area, the amenity of neighbours and the host dwelling, and insufficient quality amenity space for the proposed 3 bedroomed dwelling. The proposal is thus contrary to Policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011, guidance contained in the Council's Design Guide SPD, and the guidance contained in the NPPF. Consequently, it is recommended that planning permission is refused for these reasons.

- 7.2 Furthermore, essential mitigation measures in relation to the development's impact upon the Solent SPA sites in relation to recreation and water quality have not been secured. In the absence of suitable agreements to secure mitigation measures, the development would be likely to have a significant effect on the Solent European Sites as specified in the Council's initial screening of the proposal. As such the development would be contrary to adopted and emerging policy as set out in the Decision Notice, the Conservation of Habitats and Species Regulations 2017 (as amended) and to the National Planning Policy Framework.
- 7.3 The Inspector is therefore respectfully requested to dismiss the appeal. In the event that the Appeal is allowed recommended conditions will be forwarded separately.

APPENDICES

- (A) Borough Map and 1:1250 Location Plan
- (B) Planning History **APP/11/00309** plans and Appeal Decision
- (C) Officers delegated report for this application
- (D) Potential effects on SPA of residential development
- (E) Havant Borough Council's Position Statement and Mitigation Plan for Nutrient Neutral Development, dated August 2020

APPEAL BY Ms Linda Gutteridge AGAINST REFUSAL of Construction of 1No. 2 bed bungalow to the rear of 17A/B Avondale Road, with access via Brooklyn Drive and associated bin store and parking

AT 17A-17B Avondale Road, Waterlooville, PO7 7ST

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:
Location, Site and Roof Plan Drawing Number 8880 01
Proposed Floor Plan and Elevations Drawing Number 8880 02
Proposed Site Levels and Indicative Perspectives Drawing Number 8880 03 Rev A
Reason: To ensure provision of a satisfactory development.
3. 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; all measures necessary to meet the agreed waste efficiency calculation must be installed before first occupation and retained thereafter;
 - 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 Havant Borough Local Plan (Core Strategy) 2011 and Policy E14 of the Pre-Submission Havant Borough Local Plan 2036.

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 110 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, Policy CS11 of the Havant Borough Local Plan (Core Strategy) 2011, and Policy E14, EX1 and E12 of the Pre-Submission Havant Borough Local Plan.
5. 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/or 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.
6. 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 or SUDs features 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. If soakaways are proposed details of BRE testing would need to be included to demonstrate the suitability or otherwise of this drainage proposal, 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.
7. 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.
8. No development shall commence on the site until details of the design, depth and type of building foundations and the layout, with positions, dimensions and levels, of service trenches, ditches, drains and other excavations on site, insofar as they affect culvert pipes on or adjoining the site, have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
Reason: To safeguard the amenities of the locality and ensure against undue damage to existing underground water pipes and having due regard to policies CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 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 dwelling hereby approved shall not be occupied until a detailed hard and soft landscaping 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.

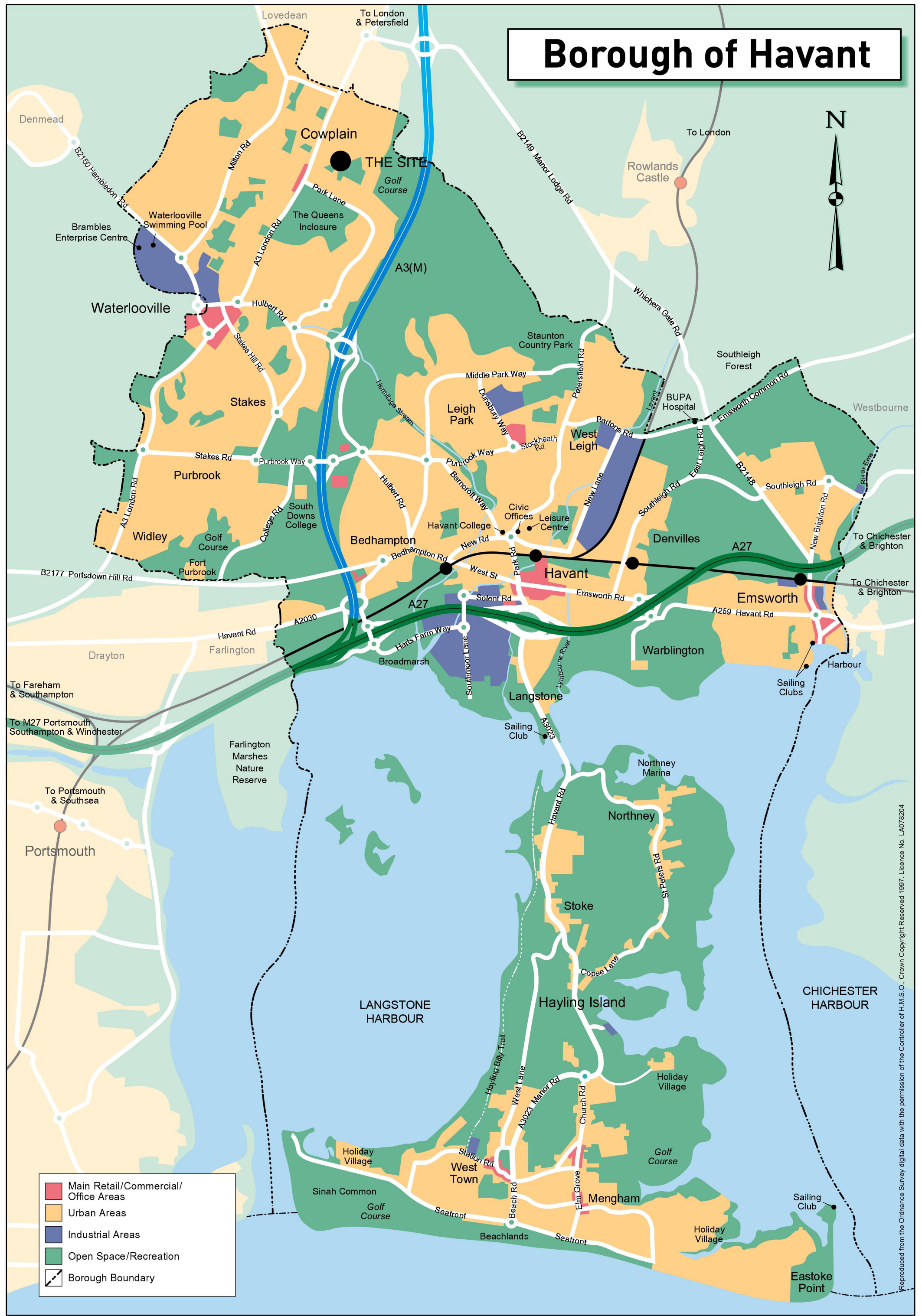
The implementation of all such approved landscaping shall be completed in full accordance with such approved timing provisions. Any tree or shrub planted or retained as part of such approved landscaping scheme which dies or is otherwise removed within the first 5 years shall be replaced with another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

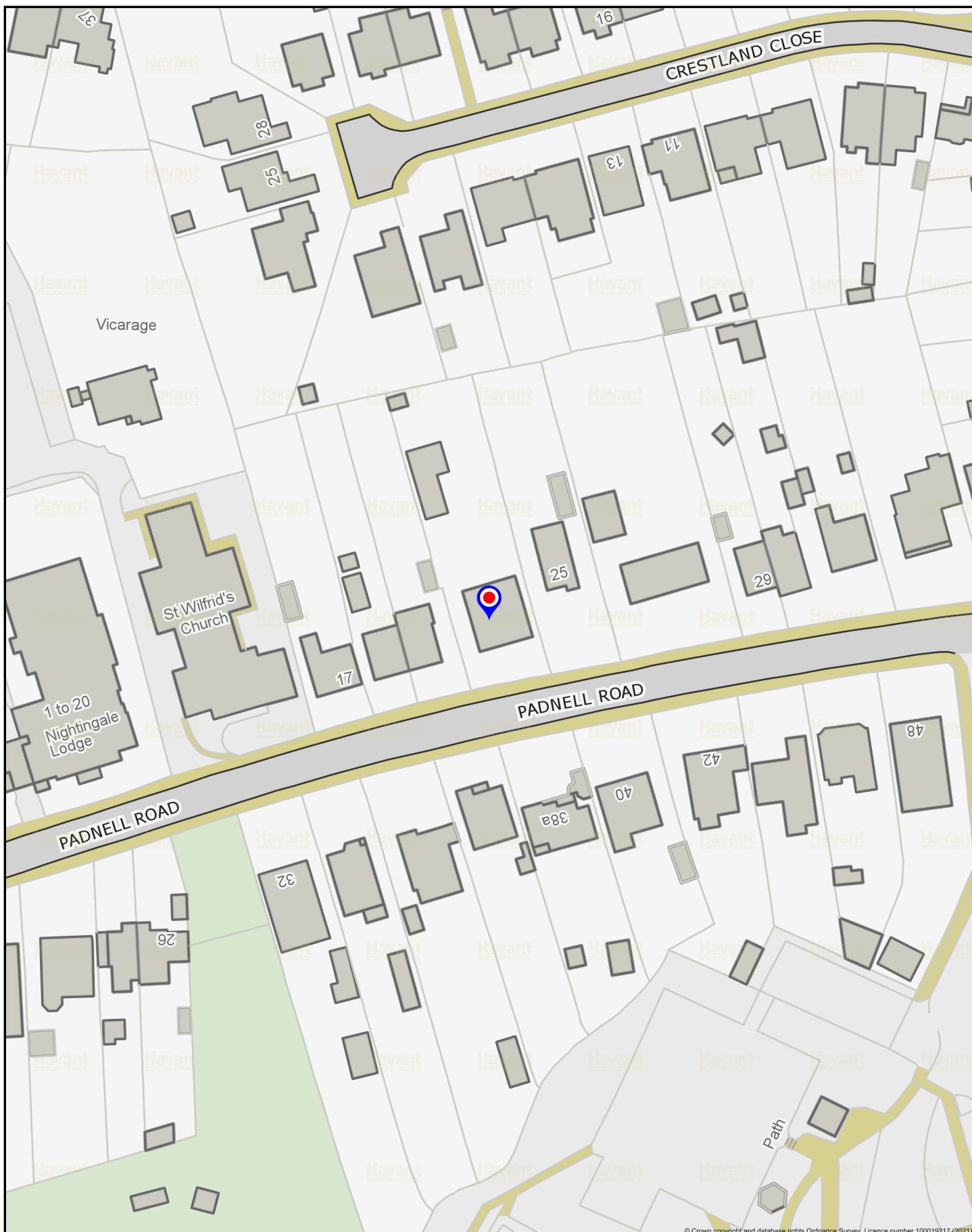
11. No part of the development shall be first occupied until details of the type, siting, design and materials to be used in the construction of all means of enclosure including boundaries, screens or retaining walls, have been submitted to and approved in writing by the Local Planning Authority and 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 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.
12. 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 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



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3271208 - 23 Padnell Road, Waterloo, PO8 8DZ

Havant
BOROUGH COUNCIL



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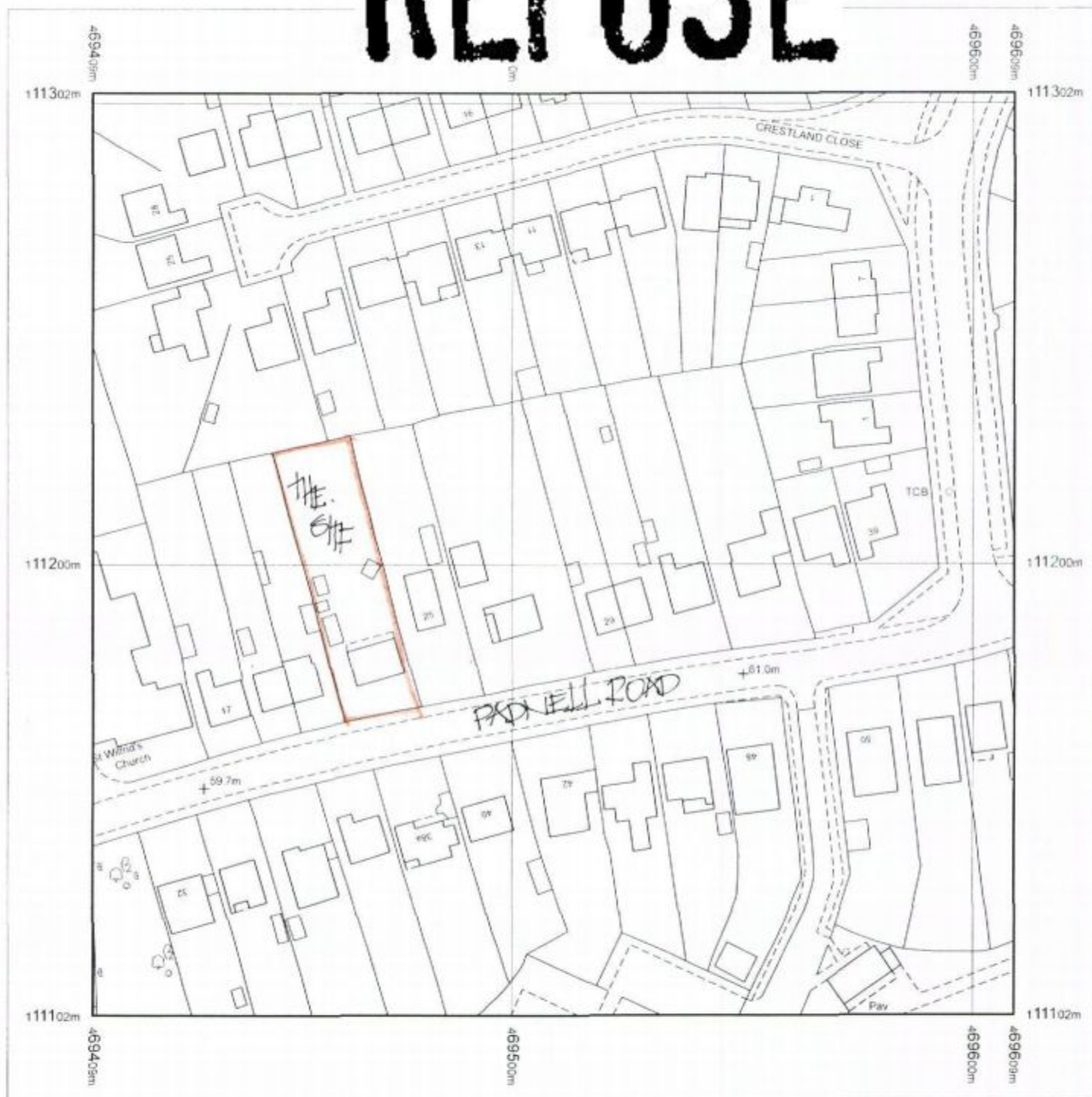
APPENDIX B



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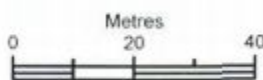
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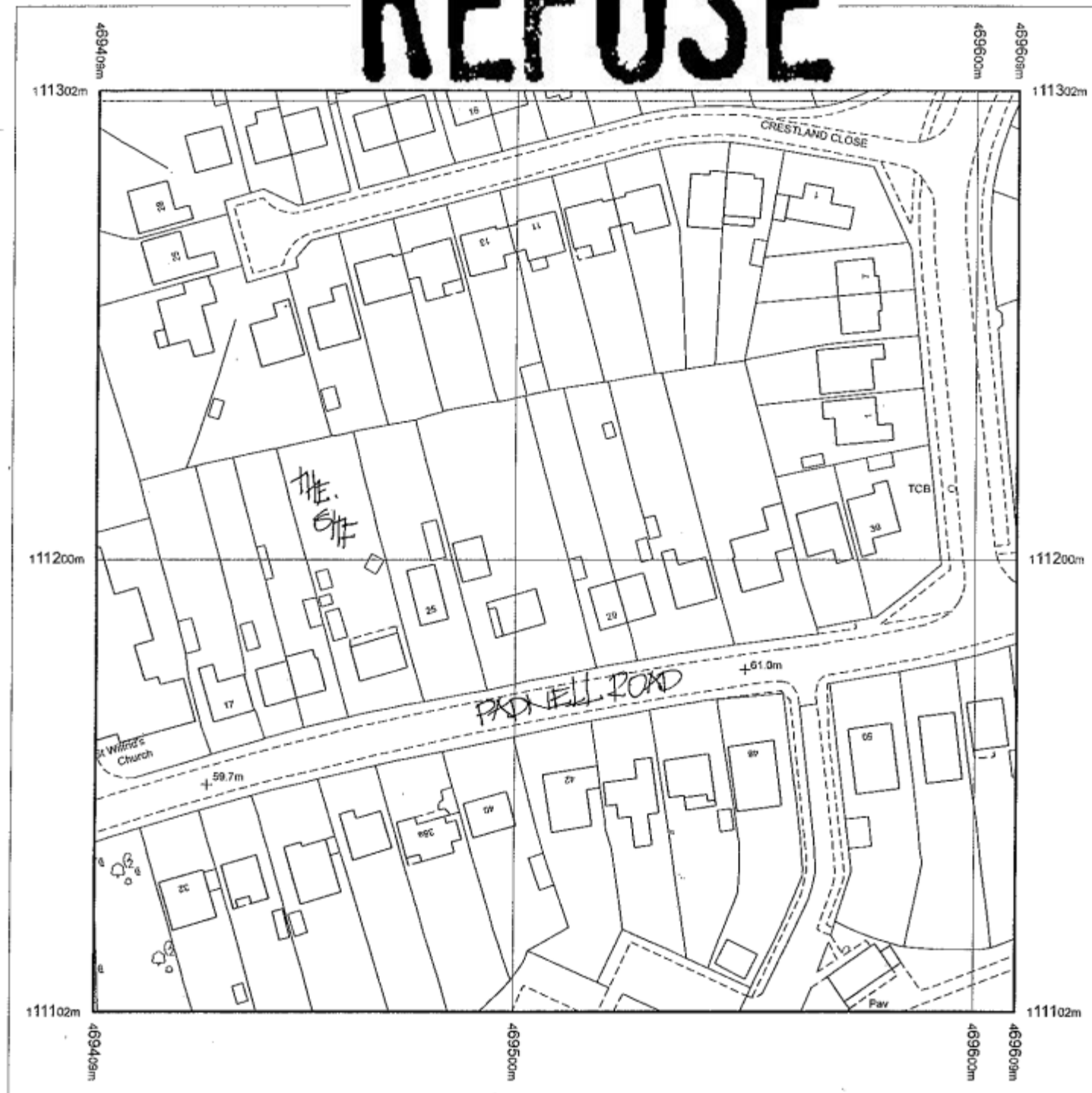
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HAVANT BOROUGH
COUNCIL

22 MAR 2011

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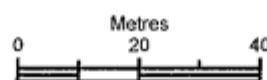
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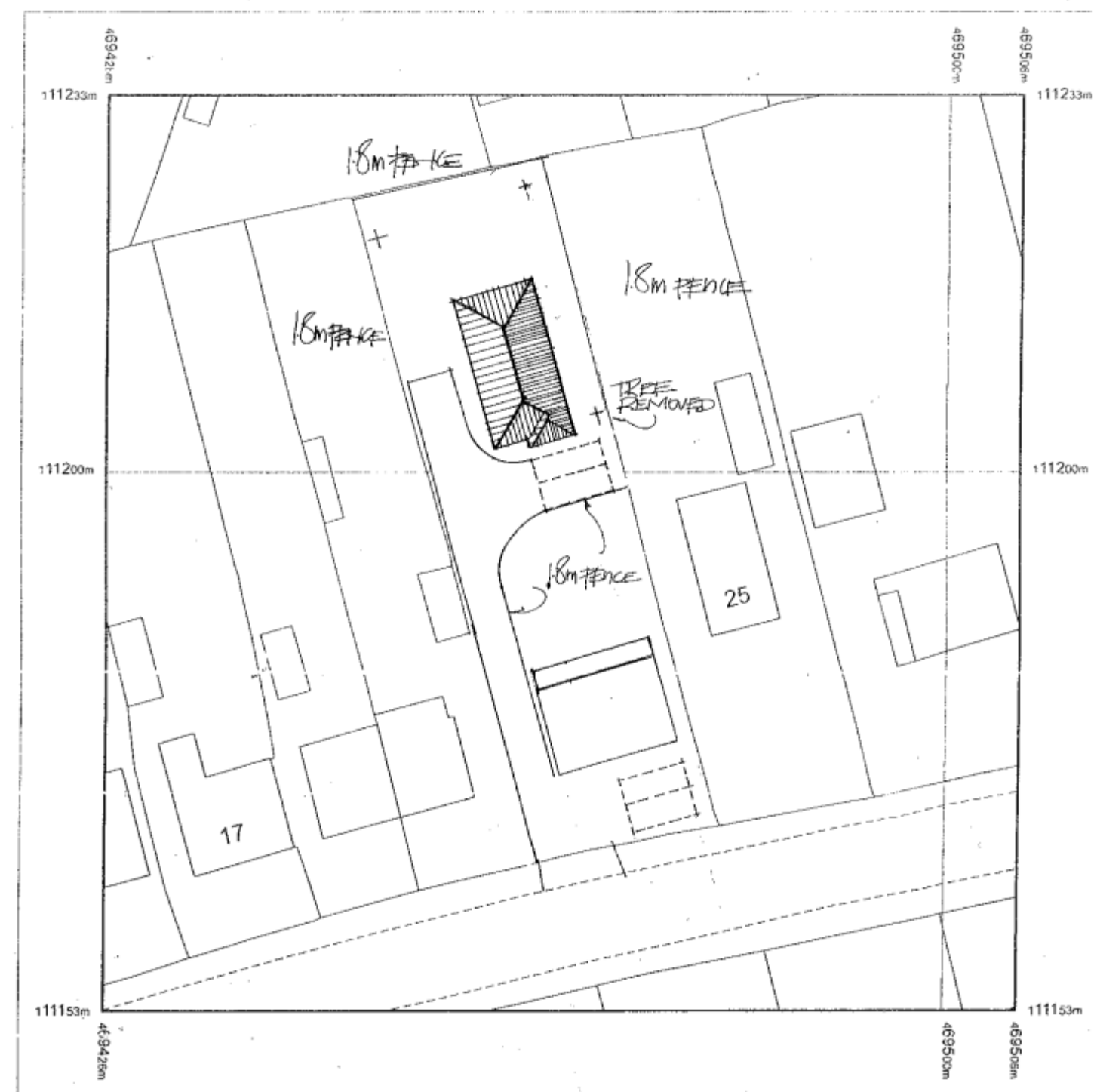
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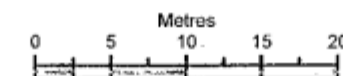
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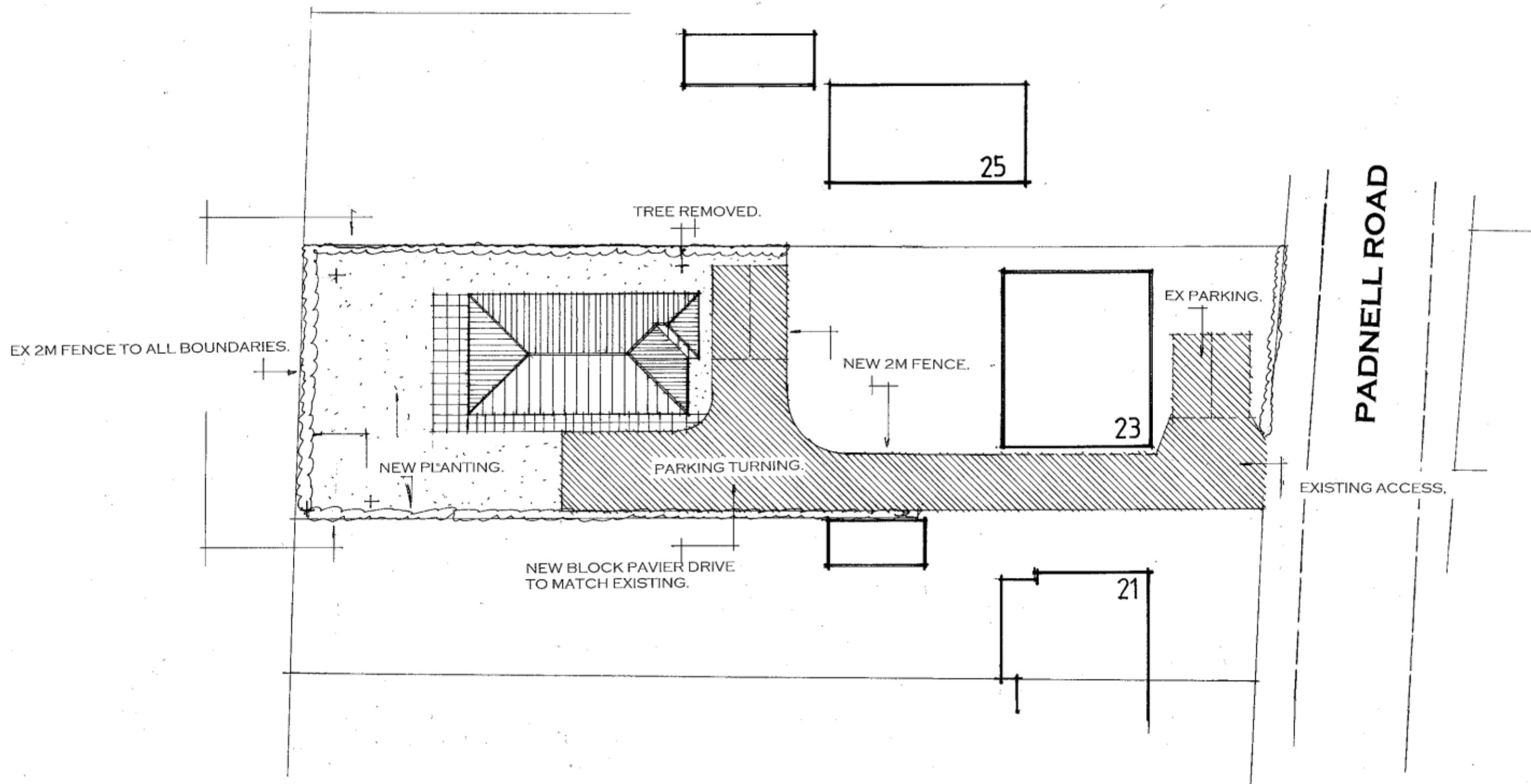
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REFUSE

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R OF 23, PADNELL ROAD, COWPLAIN, HANTS.
J. LINK.



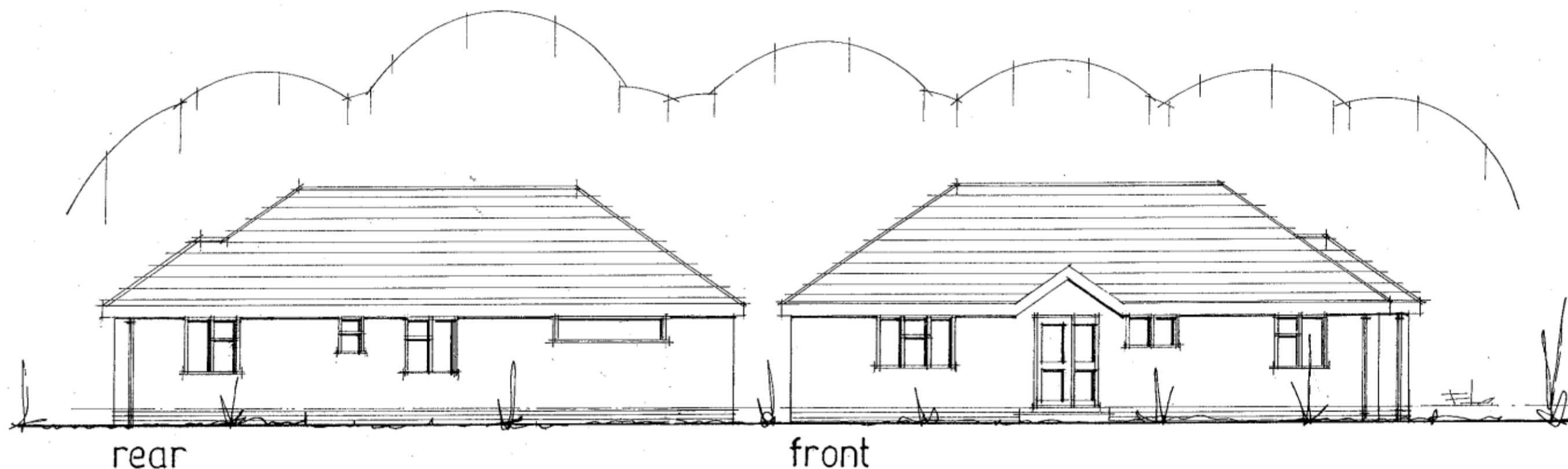
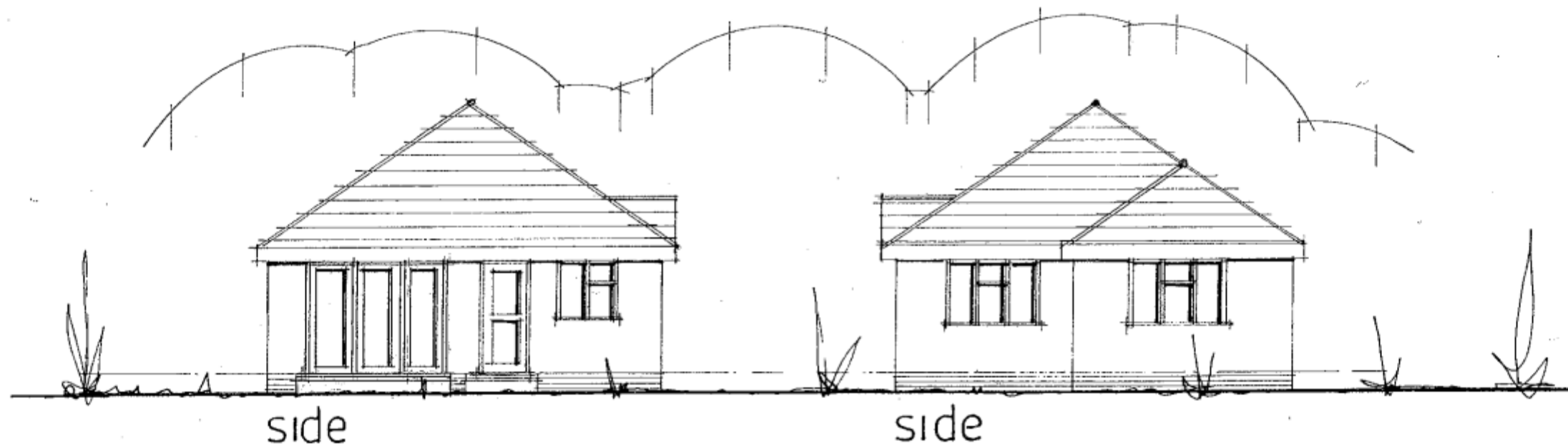
date march 2011
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PETER J. WALKER MRICS
CHARTERED SURVEYOR
182 SEAFRONT, HAYLING ISLAND, HANTS
PO11 9 AN

TEL: 02392 467571

REFUSE

THREE BEDROOM BUNGALOW.
OF 23, PADNELL ROAD, COWPLAIN, HANTS.
LINK.



date march 2011
scale 1:100

PETER J. WALKER MRICS
CHARTERED SURVEYOR
182 SEAFRONT, HAYLING ISLAND, HANTS
PO11 9 AN

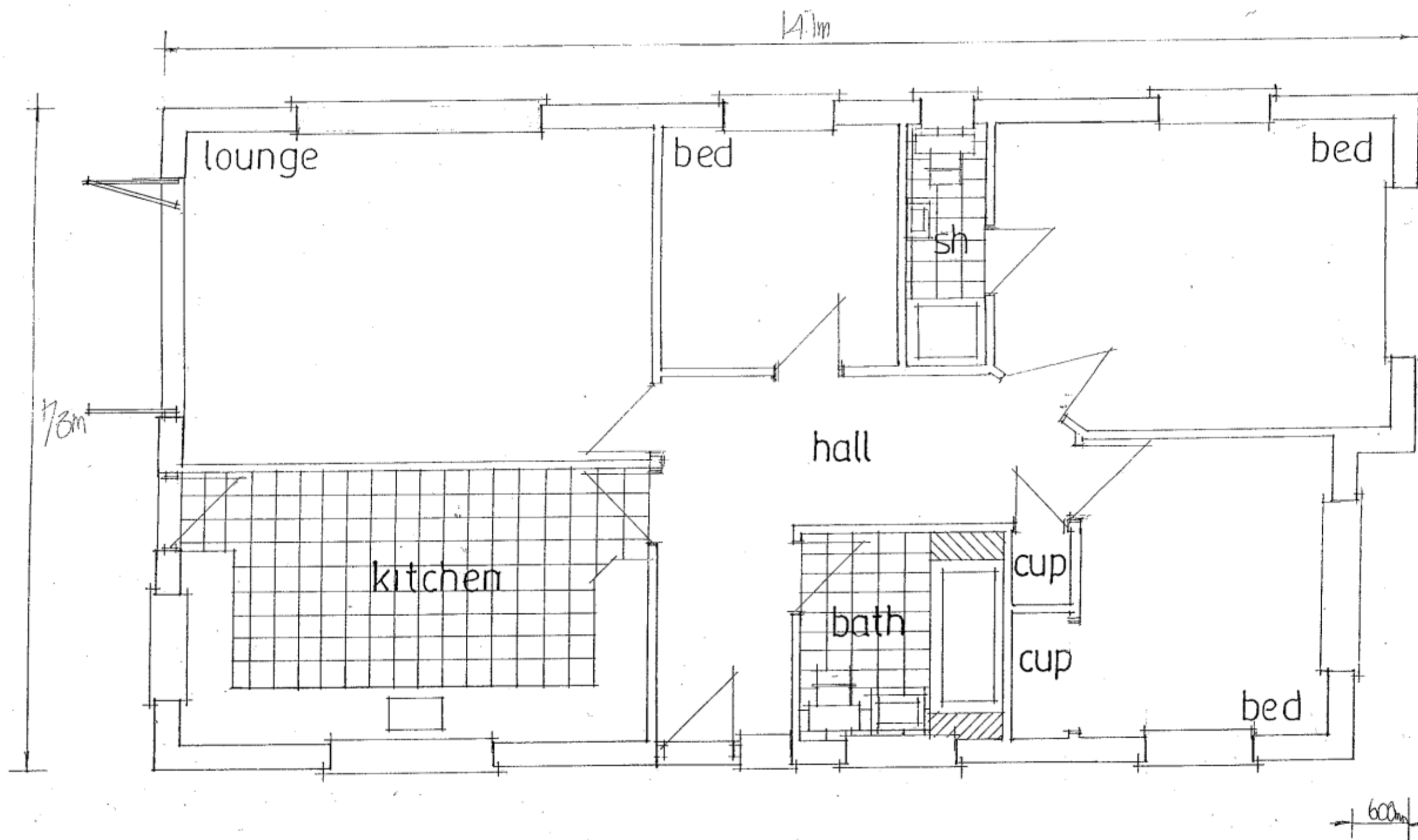
TEL: 02392 467571

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NK.



date march 2011
scale 1:50

PETER J. WALKER MRICS
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The Planning
Inspectorate

Quality Assurance Unit
Temple Quay House
2 The Square
Bristol, BS1 6PN

Direct Line: 0117 372 8252
Customer Services: 0117 372 6372

Miss Karen Wooden
Havant Borough Council
Business Development & Support
Team
Civic Centre
Havant
Hampshire
PO9 2AX

Your Ref:

Our Ref:

Date:

APP/X1735/A/11/2158130/NWF

6 January 2012

Dear Miss Wooden

Town and Country Planning Act 1990

Appeal by Mr T J Link

Site at 23 Padnell Road, Cowplain, Waterloooville, PO8 8DZ

I enclose a copy of our Inspector's decision on the above appeal.

If you have queries or complaints about the decision or the way we handled the appeal, you should submit them using our "Feedback" webpage at www.planningportal.gov.uk/planning/appeals/planninginspectorate/feedback. This page also contains information on our complaints procedures and the right of challenge to the High Court, the only method by which the decision can be reconsidered.

If you do not have internet access, or would prefer hard copies of our information on the right to challenge and our complaints procedure, please contact our Quality Assurance Unit on 0117 372 8252 or in writing to the address above.

Please note the Planning Inspectorate is not the administering body for High Court challenges. If you would like more information on the strictly enforced deadlines for challenging, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

Yours sincerely

Erin Lindell

COVERDL1





Appeal Decision

Site visit made on 20 December 2011

by David Hogger BA MSc MRTPI MCIHT

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6 January 2012

Appeal Ref: APP/X1735/A/11/2158130

23 Padnell Road, Waterlooville, Hampshire PO8 8DZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr T J Link against the decision of Havant Borough Council.
 - The application Ref APP/11/00309, dated 18 March 2011, was refused by notice dated 23 May 2011.
 - The development proposed is a three bedroom bungalow on land to the rear of No 23 Padnell Road.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal firstly on the character and appearance of the area and secondly on the living conditions of neighbours, particularly in terms of noise and nuisance from vehicular activity.

Reasons

Character and Appearance

3. There is a range of residential types and styles in Padnell Road but I saw no backland development with the same characteristics as the proposal before me. Most nearby dwellings sit within relatively large plots with quite large back gardens. The proposed dwelling would sit to the back of No 23, with the access being immediately adjacent to the side elevation of the host property.
4. Views of the access, turning area and parts of the dwelling itself would be seen from the road and the dwelling would be seen from neighbouring properties and gardens. The proposal would constitute an intensification of development which would appear incongruous and out of character with the overall appearance of the street. Planning Policy Statement 3: Housing advises that design which is inappropriate in its context should not be accepted and that development should be well integrated with and complement the local area. This proposal would not achieve those objectives.
5. Although it is not a matter on which my decision turns I consider that if I were to allow this appeal it would make it more difficult for the Council to resist other similar proposals nearby and this adds weight to my conclusion on the first issue.

6. On the first issue I conclude that the requirements of policy CS16 of the Havant Borough Core Strategy (HBCS) which seek to ensure that new development would respect local context and use the characteristics of the locality to inform its design, would not be met.

Living Conditions of Neighbours

7. The proposed access would run between the boundary with No 21 and the side elevation of the host dwelling and the parking area would be immediately behind the proposed rear fence of the host dwelling and very close to the boundary with the back garden of No 25. The turning area would be adjacent to the back garden of No 21.
8. The access, turning and parking areas would introduce a new level of activity into what is currently a relatively quiet back garden area and the introduction of noise from these activities, albeit only from a single dwelling, would be to the detriment of the living conditions of neighbours. The appellant refers to other garages in Padnell Road that are set back but they are not, in general, set as far back into the plot as would be the case here and they do not incorporate turning areas. The circumstances are therefore not identical.
9. I have taken into account the fact that there were no objections to the proposal, in terms of noise generation, from immediate neighbours but over the lifetime of the dwelling it is likely that nearby residents would come and go and it cannot be assumed that 'new' residents would be tolerant of a noise source from within the back garden area.
10. HBCS policy CS16 requires the protection of the amenity of neighbours and this proposal would not meet that requirement, in terms of noise generation. On the second issue I conclude that the proposal would cause significant harm to the living conditions of neighbours.

Other Matters and Conclusion

11. I have taken into account the Draft National Planning Policy Framework but because of its status I only attach limited weight to its contents.
12. For the reasons given above and having taken into account all other matters raised, the appeal should be dismissed.

David Hogger

Inspector

APPENDIX C

Site Address:	23 Padnell Road, Waterloo, PO8 8DZ		
Proposal:	Following demolition of the existing garage and summer house construction of 1No. detached 3 bedroom bungalow with associated soft and hard landscaping and parking.		
Application No:	APP/20/01026	Expiry Date:	06/01/2021
Applicant:	Mr Link		
Agent:	Mr C Flint	Case Officer:	Jane Burton
	Chris Flint Associates Ltd		
Ward:	Cowplain		

Recommendation: **REFUSE PERMISSION**

1 Site Description

No.23 Padnell Road consists of a detached, brick and tile chalet style bungalow which has been subject of previous extensions, and is located on the north side of Padnell Road. The dwelling has a long rear garden (approximately 40m in depth) which rises in level to the rear. There is an area of hardstanding to the front to provide onsite parking and a driveway/set back garage to the side. A 'summerhouse' structure has been attached to the garage building. Photographs submitted by the applicant and the site section plan show that the garden has been terraced into several levels to provide flatter areas, and there is a 1.8m fence to the garden boundaries.

The surrounding area is residential with nearby properties on Padnell Road consisting of a mix of chalet style, two-storey and single storey dwellings most of which are set in good sized plots with quite large rear gardens.

The adjoining sites to the east (no.25 Padnell Road) and to the west (no.21 Padnell Road) are two storey properties, and the site shares a rear boundary with bungalows no 21 Crestland Close (which is extended by a rear roof dormer) and no.19 Crestland Close to the north.

The site has been subject of two previous planning refusals for a new dwelling to the rear of the existing house under planning refs. APP/10/00293 and APP/11/00309. Application APP/11/00309 was taken to appeal and dismissed.

2 Planning History

APP/12/00482 - Single detached garage to rear (PERMITTED)

APP/11/00309 – Construction of 1.no 3 bed bungalow (revised application) (REFUSED 23.05.2011) (DISMISSED AT APPEAL) Refused for 2 reasons; noise and disturbance impact of parking/turning areas, harm to character of the area and street scene

Inspectors comments in appeal decision report:

In respect of the impact on character of the area:

'There is a range of residential types and styles in Padnell Road but I saw no backland development with the same characteristics as the proposal before me. Most nearby

dwellings sit within relatively large plots with quite large back gardens. The proposed dwelling would sit to the back of no.23, with the access being immediately adjacent to the side elevation of the host property. Views of the access, turning area and parts of the dwelling itself would be seen from the road and the dwelling would be seen from neighbouring properties and gardens. The proposal would constitute an intensification of development which would appear incongruous and out of character with the overall appearance of the street. PPG3: Housing advises that design which is inappropriate in its context should not be accepted and that development should be well integrated with and complement the local area. The proposal would not achieve these objectives'

In respect of the impact on neighbour amenity:

'The proposed access would run between the boundary with no.21 [Padnell Road] and the side elevation of the host dwelling and very close to the boundary with the back garden of no.25 [Padnell Road] The turning area would be adjacent to the back garden of no.21 [Padnell Road] . The access, turning and parking areas would introduce a new level of activity into what is currently a relatively quiet back garden area and the introduction of noise from these activities, albeit only from a single dwelling, would be to the detriment of the living conditions of neighbours. The appellant refers to other garages in Padnell Road that are set back but they are not, in general, set as far back into the plot as would be the case here and they do not incorporate turning areas. The circumstances are not therefore identical... HBCS policy CS16 requires the protection of the amenity of neighbours and this proposal would not meet that requirement, in terms of noise generation. I conclude that the proposal would cause significant harm to the living conditions of neighbours'

APP/10/00293 - Construction of 1No. 3 bed bungalow with new access onto Padnell Road (REFUSED 06.09.2010) Refused for 4 reasons; noise and disturbance impact of parking/turning areas, visual amenity impact on no.25 Padnell Road, harm to character of the area and street scene, lack of information/demonstration that the development would not cause risk to highway safety, no appropriate contribution to HCC transport policy.

04/60118/000 - Raising the roof, build up gable end to provide living accommodation in roof space, dormer windows to front and rear elevations (PERMITTED).

3 Proposal

The proposal consists of the demolition of the existing garage and summerhouse and erection of a 3-bedroomed dwelling in the rear garden, accessed via the existing driveway at the site. The building would be hipped roofed and single storey in height (to a max height of approximately 4.7m), to a width of approximately 13.3m, and would have a front and a rear projecting element lower in height (to a max height of approximately 3.8m and 4.2m respectively). The building would have its main front elevation facing south and a parking/turning area to the front.

The submitted site sections show that due to the gradient of the site the building would sit approximately 0.6m higher than the ground level at the rear of the existing house, and approximately 1m higher than the ground level at the front of the existing house. The proposed building would be set down from the ground level at the rear of the site by approximately 0.8m and the layout plan shows a pathway around the house and patio area to the rear, and a lawned area to the rear of this (approximately 4m in depth).

The amenity space of the existing 'host' dwelling would be divided off by a boundary fence and the two existing parking spaces to the front would continue to serve this dwelling.

The proposal differs from the layout of previously refused schemes APP/11/00309 and APP/10/00293 in that under APP/11/00309 the proposed dwelling had its main axis running north-south, extending further forward, but not beyond the west facing (side) elevation of the existing house. The proposed building was set further from the side boundaries compared to the current scheme. The parking area was approximately 3m further forward and closer to the side boundary with no.25 Padnell road than the current scheme. Under APP/11/00309 the dwelling was of lesser footprint and had a larger garden area than under the current scheme. The proposal differs from APP/10/00293 in that under APP/10/00293 the proposed building was L-shaped and part of the building was further forward and closer to the boundaries than the current scheme.

4 Policy Considerations

National Planning Policy Framework
Havant Borough Council Borough Design Guide SPD December 2011
Havant Borough Council Parking SPD July 2016

Havant Borough Local Plan (Core Strategy) March 2011

CS11	(Protecting and Enhancing the Special Environment and Heritage of Havant Borough)
CS16	(High Quality Design)
CS17	(Concentration and Distribution of Development within the Urban Areas)
CS21	(Developer Requirements)
CS9	(Housing)
DM13	(Car and Cycle Parking on Residential Development)

Havant Borough Local Plan (Allocations) July 2014

AL1	(Presumption in Favour of Sustainable Development)
DM24	(Recreational Disturbance to Special Protected Areas (SPAs) from Residential Development)
AL2	(Urban Area Boundaries and Undeveloped Gaps between Settlements)

Havant Borough Pre Submission Local Plan 2036

E22	(Amenity and pollution)
E20	(Drainage infrastructure in new development)
IN1	(Effective provision of infrastructure)
E1*	(High quality design)
H1*	(High quality new homes)
E16	(Solent Special Protection Areas)
E14	(The Local Ecological Network)
IN3	(Transport and parking in new development)
EX1	(EX1 Water Quality impact on the Solent European Sites)

5 Statutory and Non Statutory Consultations

Building Control, Havant Borough Council

No adverse comments

Community Infrastructure, Planning Policy & Urban Design

The proposals is CIL Liable:

<http://www.havant.gov.uk/community-infrastructure-levy-charging-schedule>.

Pending a response from Natural England on the 'HRA', instructions should be passed by the Case Officer to the CI Team to:

(a) Issue the Solent Recreation Mitigation Strategy Unilateral Undertaking, based on the number of net additional dwellings and their respective number of bedrooms. See <http://www.havant.gov.uk/unilateralundertaking-solent-recreation-mitigation-strategy>.

(b) Issue the Nutrient Neutrality Unilateral Undertaking. See

<https://www.havant.gov.uk/nitrogen-developers>

Councillor A Briggs - Cowplain

No comments were received.

Councillor D Keast - Cowplain

Requested that the application be referred to committee if the officer recommendation is approve.

Objection:

This application is not dissimilar from that submitted and refused in 2011. At that time the application went to appeal which was dismissed.

This new application is similar in size to the previous one, if not a little bigger. In addition to the two previous reasons for refusal, I find that the lack of amenity space about the house is unacceptable and I believe that the application is an over development of the site.

Councillor Narinder Bains - Cowplain

No comments were received.

Crime Prevention -Minor Apps

No comments were received.

Environment Agency

No comments were received.

Hampshire Highways

No objection

The existing access onto Padnell Road will not be amended as part of the proposals. The access is considered suitable for catering for the additional traffic movements associated with the bungalow.

Having reviewed the documentation submitted in support of the above planning application Highways Development Planning is satisfied that the proposal would have no detrimental impact on highway safety or operation.

Natural England Government Team

Natural England notes that your authority, as competent authority, has undertaken an appropriate assessment of the proposal in accordance with Regulation 63 of the Conservation of Species and Habitats Regulations 2017 (as amended). Natural England is a statutory consultee on the appropriate assessment stage of the Habitats

Regulations Assessment process, and a competent authority should have regard to Natural England's advice.

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 any adverse effects, it is the advice of Natural England that we concur with the conclusion of the HRA, provided all mitigation measures are adequately secured with any permission.

Solent Recreation Mitigation Strategy – no objection subject to mitigation

Since this application will result in a net increase in residential accommodation, impacts to the coastal Special Protection Area(s) and Ramsar site(s) may result from increased recreational pressure. Havant Borough Council has measures in place to manage these potential impacts through the agreed strategic solution which we consider to be ecologically sound.

Subject to the appropriate financial contribution being secured, Natural England is satisfied that the proposal will mitigate against the potential recreational impacts of the development on the site(s). It is Natural England's view that the Solent Mitigation Recreation Strategy Contribution adequately mitigates the effects of the development on potential recreational impacts on the designated sites.

Nutrient Neutrality – no objection subject to mitigation

The nutrient budget has been calculated in line with Natural England's Advice on Achieving Nutrient Neutrality in the Solent (version 5 June 2020). Provided the competent authority is assured and satisfied that the site areas used in the calculation are correct and that the existing land uses are appropriately precautionary, then Natural England raises no concerns with regard to the nutrient budget. Please note the calculation is based on all wastewater from the development being treated at Budds Farm. If this situation changes, a reassessment of the nutrient calculation will be required and a revised Habitats Regulations Assessment will be necessary.

In line with Natural England's advice, it is noted that a planning condition will be imposed on any permission to secure that the dwellings shall not be occupied until the Building Regulations Optional requirement of a maximum water use of 110 litres per person per day has been complied with.

It is noted that the approach to address the positive nitrogen budget for this development is via Havant Borough Council's mitigation scheme. We welcome and support this initiative which has scope for nutrient offsetting and biodiversity gain.

Natural England has reviewed the Position Statement and Mitigation Plan for Nutrient Neutrality Development (August 2020) and Warblington Farm Study Evidence Base (Ricardo, June 2020). Natural England concurs with the conclusion of this work that this scheme will deliver effective mitigation for developments draining to Budd's Farm WwTW and Thornham WwTW.

The nitrogen capacity of the land and proposed management of the offsetting land has been discussed and agreed. It is understood that this has been secured through legal agreements to ensure that effective mitigation is delivered for the lifetime of the development. It is also understood that a system has been set up to monitor the developments using the mitigation scheme to ensure there is capacity available for each scheme. Provided this is the case and the long term management of the

mitigation scheme is monitored by the local planning authority, as competent authority, to ensure effective mitigation for the lifetime of the development, Natural England raises no further concerns.

It is for the competent authority to determine the importance of timing issues for each development, depending on location and form of mitigation applied. Given the close proximity of the mitigation land to designated sites, Natural England is not expecting any significant timing issues in this case, provided the land is brought into appropriate management at the earliest opportunity. In considering the significance of timing issues within an appropriate assessment competent authorities should take account of the average time taken from the removal of agricultural activities to first occupation and rate of completions for each development. Provided the local planning authority is satisfied that timely mitigation can be delivered in this case, Natural England raises no further comments for consideration.

Portsmouth Water Company

No adverse comments, and it is deemed there is a low risk to groundwater quality. The site although located in Source Protection Zone 1c for an essential public water supply source, the underlying impermeable geology (London Clay) offers a depth of protection of the chalk aquifer. The depth to the water table in this area is estimated to be around 40-50mbgl (metres below ground level).

The small nature of this development means that there will be no depth excavation works and therefore minimal risk to groundwater quality from the construction of the development. In addition, foul water drainage for surface water will be directed to main sewers.

Requested further information in respect of whether an existing or new soakaway would be used for surface water drainage, and whether this would be shallow or deep in nature.

Officer note: Further to the above the applicant confirmed that the proposal was a new shallow soakaway.

Portsmouth Water further requested that they would like to be informed of the maximum depth of the soakaway (once known) but that the risk to water quality is very minimal. Commented that it is likely the soakaway will terminate in the soil/ clay so there will be no soakaway drainage into the chalk. Therefore require no planning condition on this application.

HBC Planning Policy (Nutrient Team)

Confirmed that there is sufficient capacity within the Council's mitigation scheme for this application.

Waste Services Manager

No comments were received.

6 Community Involvement

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 7

Number of site notices: Not applicable.

Statutory advertisement: Not applicable.

Number of representations received: 5

Summary of objections	Officer Comment
• Adverse impact on daylight, privacy, noise and outlook due to proximity the rear boundary.	See section 7.4 below
• Access, visibility and parking issues associated with an increase in vehicles and on road parking, exacerbating existing issues on Padnell Road.	See section 7.5 below
• Exacerbation of existing flooding problems into neighbouring properties due additional surface water run-off and local geology (London Clay)	See section 7.6 below
• Development out of character with the area.	See section 7.3 below
• Overlooking into adjacent properties	See section 7.4 below
• Noise and light disturbance to neighbours arising from vehicles using parking and turning area.	See section 7.4 below
• Precedent for similar back land development leading to widespread intensive development that is out of character.	Each case must be assessed on its own merits.
• Inadequate access for emergency vehicles	See section 7.10 below
• Considerable development is occurring in Waterloooville and there is no need to develop backland areas.	There is a presumption in favour of sustainable development and each case must be assessed on its own merits.

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
- (ii) Impact upon the character and appearance of the area
- (iii) Impact upon residential amenity
- (v) Highways and parking
- (vi) Drainage
- (vii) Compliance with Habitats Regulations
- (viii) CIL

(i) Principle of development

- 7.2 The site is situated within an urban area where further development is acceptable in principle subject to the usual development management criteria. The updated National Planning Policy Framework (NPPF) 2019 continues to have a presumption in favour of sustainable development, whilst noting that good design is a key aspect of sustainable development. It is noted that the Council's Five Year Housing Land Supply update as of December 2020 indicates that the Council cannot currently demonstrate a five year housing land supply and the proposal would provide one additional residential unit, to which some weight must be given. However, the scheme must also be assessed against all the policies of the development plan. Paragraph 124 of the NPPF states that the creation of high-quality buildings and places is a fundamental aim and paragraph 127 sets out that planning decisions should, amongst other requirements, ensure that developments function well and add to the overall quality of an area including in the long term, are visually attractive, are sympathetic to local character, and ensure a high standard of amenity for existing and future users.

(ii) Impact on the character and appearance of the area

- 7.3 The proposed building would be lower in height than the existing house on the site, although similar in footprint and three bedroomed - thus not particularly subordinate in these respects. There is a mix of styles of residential properties on this part of Padnell road, and the height of the development is single storey, and has a hipped roof, and due to its set back position it would not dominate the street frontage. However, most nearby properties sit within relatively large plots with quite large back gardens. This was noted in the previous Inspectors report, as well as there being no backland development of the type proposed under this application. This has not changed since the dismissed appeal, and the proposed dwelling would have a garden far shorter than is common in the area.

In their Design and Access Statement the applicant refers to a change to (or 'evolved') character since the dismissed appeal caused by large side extensions and garages changing the way that the area is viewed from Padnell Road, and it is noted that the application property itself has constructed a hipped roof garage to the side of the property since the appeal decision which extends back further into the site. However, it is not considered that the appearance of garages - usual in residential areas, has the same impact on character as sub-division of the plot, and views of a dwelling-house to the rear of the property; and the area is still considered to have a prevailing spacious character resulting from the relative large plots and long gardens. The nearby Church and retirement apartment building (Nightingale Lodge) also referred to in the submitted D&A Statement, were already constructed at the time of the 2011 decision and appeal, and are considered to have a differing context (i.e. adjacent to an existing church of larger scale and mass), and are not comparable to the proposed scheme.

The proposed building would be set on slightly higher ground compared to street level which would increase its visibility to an extent, and the proposed building would extend beyond the side elevation of the existing dwelling across much of the width of the site. Thus views of the access, fencing to the host dwelling amenity space, hardstanding and parts of the dwelling would be visible from Padnell Road between the buildings, as well as being seen from neighbouring properties and gardens. The proposal would

increase the hard landscaped and built-up appearance of the site, with limited areas of soft landscaping or opportunities for biodiversity enhancement identified.

Policy CS16 of the HBLP (CS) requires that new development draws inspiration from and respects local context, responds positively to local character, and uses the characteristics of the locality to inform the design, (including plot widths and depths) as well as promoting biodiversity wherever possible. The proposal would constitute an intensification of development that would appear incongruous and out of character with the street, resulting in harm to the character and appearance of the area and street scene. Thus, the proposal is contrary to the requirements of policy CS16 and it is recommended that planning permission is refused for this reason.

(iii) Impact upon residential amenity

- 7.4 Policy CS16 states that development should not cause unacceptable harm to the amenity of neighbours and the Council's SPD (para 5.27) highlights that 'tandem' backland developments will only be permitted provided that the amenities of the surrounding dwellings, together with the 'host' dwelling can be safeguarded.

The site access would run between the boundary with no.21 Padnell Road and the existing (host) property, the turning area would be adjacent to no.21 Padnell Road, and the parking area would be approximately 2.5m from the boundary with no.25 Padnell Road to the east. The proposed dwelling itself would be positioned between approximately 9m and 5.4m from the rear boundary of the site adjacent to no.21 Crestland Close and no.19 Crestland Close, and would be approximately 1.9m from each side boundary.

Given the set down into the site at the rear (shown on the site section drawing), the single storey height of the proposal, and gap to the boundary it is not considered that the proposal would result in unacceptable overshadowing, loss of privacy or overbearing into no.21 Crestland Close or no.19 Crestland Close to the rear, although there would be an impact on outlook. In addition, it is considered that the layout would be likely to intensify use near to the rear boundary compared to the existing situation. The front of the proposed dwelling would be approximately 14m from the rear of no.25 (given that no.25 is set back further in the plot than no.23) and approximately 1.9m from the side boundary. The proposed building would be on an higher ground level, and hence would have some increased impact/presence. However, whilst there would be an impact, - given the relationship between the buildings and single storey height of the proposed dwelling, it is not considered that the proposal would result in unacceptable overshadowing, loss of privacy, or overbearing to no.25 Padnell Road; or no.21 Padnell Road to an extent that would warrant the refusal of the application on these grounds. Further consideration of boundary treatment and appropriate height landscaping adjacent to the proposed car parking area and the boundary of no.25 Padnell Road would be given were the application being recommended for approval.

The layout would allow a sufficient separation between the rear of the host property and the front of the proposed dwelling at approximately 22m. The access parking/turning area would however be immediately adjacent to the house and amenity space of the host property with no buffer strip. In addition, the access road and turning area would be immediately adjacent to no.21 Padnell Road with no buffer strip, and the parking area within 2.5m of the boundary no.25 Padnell Road, the dwelling of which is set further back in the plot than the host property. Whilst the existing driveway and garage brings vehicles further into the site than may have been the case in 2011, this is currently a secondary parking area for the host dwelling

accessed by timber gates. The use as a primary access and parking area along with turning area for the proposed dwelling would intensify the use of this area, resulting in noise and disturbance to the host and neighbouring dwellings into areas that are currently relatively quiet back gardens. As such, the layout is still considered to result in harm to the living conditions of the host property and adjacent neighbouring properties contrary to policy CS16 and the guidance contained in the Council's SPD. As such it is recommended that planning permission is refused for this reason.

In terms of the living conditions for the proposed dwelling, the building would have a floorspace of approximately 120m² which meets the minimum space standards set out in the DCLG Nationally Described Space Standards for the size of property, and there is shown to be adequate light sources to habitable rooms. However, the outside amenity space is considered to be constrained for a three bedroomed dwelling which could be a family dwelling, - constrained by the set back in the site, the size of the footprint of the dwelling, impacting on depth, and changes to levels allowing only a relatively shallow rear lawned area. In addition the amenity space would have a north facing aspect resulting in shadowing to the areas close to the house. Overall, it is not considered that the proposal would ensure a sufficiently high quality amenity space for a family sized dwelling. The size of amenity space is not characteristic of properties in this area. As such the proposal is considered to be contrary to policy CS16 the advice contained in the NPPF, and it is recommended that planning permission is refused for this reason.

(iv) Highways and Parking

- 7.5 Several objections relate to problems of on-street parking and access onto Padnell road which is quite a busy road with a nearby school and on a bus route. However no objection was raised about the use of the existing access or additional traffic movements by HCC highways, and the proposed layout allows for 2 parking spaces per dwelling which accords with the Council's parking standards for the size of dwelling. A cycle store is also indicated. As such the proposal is considered to be acceptable having regard to policy DM13.

(v) Drainage and Flooding

- 7.6 Several objections refer to concerns about the exacerbation of existing flooding into gardens and drainage problems in the area. Whilst drainage is subject to regulation under building control, having discussed further with colleagues in HCC Civil Engineering and Landscape team, there are known drainage issues in this area. As such, a soakaway as currently proposed would not be acceptable in this location. If the application were to be for approval it would be recommended that a drainage condition would be attached, and potentially more information submitted prior to any positive determination. However as the application is recommended for refusal on other grounds further information is not pursued at this stage. The applicant has stated that permeable surfaces would be proposed around the development.

(vi) Compliance with Habitats Regulations

- 7.7 The Council has conducted a Habitats Regulations Assessment (HRA), including Appropriate Assessment (AA), of the proposed development under Regulation 63 of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019. The Council's assessment as competent Authority under those regulations is included in the case file. The screening under Regulation 63(1)(a) found that there was likely to be a significant effect on several Solent European Sites due to both the increase in

recreation and the decrease in water quality that would result from the proposed development of one new residential unit.

The planning application was then subject to Appropriate Assessment under Regulation 63. This included two packages of avoidance and mitigation packages. The first is a package of measures based on the suggested scale of mitigation in the Solent Recreation Mitigation Strategy. The second is a package of measures based on the Position Statement on Nutrient Neutral Development. The applicant has indicated a willingness to enter into legal agreements to secure the appropriate mitigation packages.

With respect to these mitigation packages the applicant was asked if they wished the Council to draw up the appropriate agreement and Deeds given that recommendation was to be the refusal of the application for other reasons. The applicant was made aware that if the relevant agreements and payment were not made that the lack of mitigation would form additional reasons for the refusal of the application. The applicant has not requested that the agreements are drawn up, and the LPA has been asked to proceed to decision. As such therefore the impacts of the development have not been adequately mitigated against. This lack of mitigation is contrary to policy DM24 of the HBLP (Allocations Plan) and CS11 and CS21 of the HBLP (CS).

The Appropriate Assessment concluded that, subject to the securing of these packages through a legal agreements, this is sufficient to remove the significant effect on the SPAs which would otherwise have been likely to occur. The HRA was subject to consultation with Natural England as the appropriate nature conservation body under Regulation 63(3) who have confirmed that they agree with the findings of the assessment and raise no objection on this basis. Whilst the applicant has indicated a willingness to enter into a legal agreement to secure the mitigation packages, these have not been secured to date. Therefore, on the basis of a refusal of planning permission for other matters, then it is necessary to include the non-provision of the avoidance and mitigation packages as reasons for refusal.

(viii) CIL

The development is CIL liable for the net additional internal floor space. In light of the recommendation for refusal on other matters, the Draft Liability Notice has not been prepared, but could be done at the appeal stage if necessary.

Other considerations:

Portsmouth Water Source Protection Zone:

7.9 Portsmouth Water may need to be reconsulted if there could be any impact on the Source Protection Zone resulting to changes to drainage requirements were a positive determination to be considered.

Emergency vehicle access: _

7.10 One representation raised concerns about adequate access for emergency vehicles to the site. This is a building control matter, however in discussing further with HBC building control the shown site access width would be sufficient, or as an alternative a sprinkler system could be fitted as a compensatory feature.

8 Planning Balance and Conclusion

- 7.11 The proposal would result in the provision of one additional residential unit, however the benefits this very modest contribution makes to the borough housing supply is not considered to outweigh the significant harm caused to the character of the area, the amenity of neighbours and the host dwelling, and insufficient quality amenity space for the proposed 3 bedroomed dwelling. In addition, in the absence of the appropriate binding agreements to secure a contribution toward the Solent Recreation Mitigation Project, or mitigation measures in respect of Water Quality, the development would have a significant effect on the Solent European Sites as specified in the Habitats Regulations Assessment that has been undertaken in respect of this planning application. The proposal is thus contrary to policy CS16, CS11 and CS21, DM24 of the HBLP (CS), guidance contained in the Council's SPD, and the guidance contained in the NPPF. Consequently, it is recommended that planning permission is refused for these reasons.

9 RECOMMENDATION:

That the Head of Planning be authorised to **REFUSE PERMISSION** for application APP/20/01026 for the following reasons

- 1 The proposal would substantially increase the built-up appearance of the site and would constitute an intensification of development that would appear incongruous and out of character with the street scene of Padnell Road. The proposal would not respect the local context or respond positively to local character, and would result in harm to the character and appearance of the area. The proposal is therefore contrary to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011, and guidance contained in the National Planning Policy Framework.
- 2 Due to the position of the access drive, turning and parking areas to serve the new dwelling, the proposal would have a detrimental impact on the living conditions of the host dwelling (no.23 Padnell Road), and adjacent neighbouring properties (no.21 and no.25 Padnell Road) by reason of noise and disturbance. The proposal is therefore contrary to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011, guidance contained in paragraph 5.27 of the Havant Borough Design Guide SPD, and guidance contained in the National Planning Policy Framework.
- 3 Given the constrained size, depth, and north facing aspect of the amenity space of the proposed dwelling, and given the size of dwelling proposed, the proposal would not result in a sufficient high quality amenity space for the future users of the development. The proposal is therefore contrary to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011, and guidance contained in the National Planning Policy Framework.
- 4 The proposal, without completion of the appropriate binding arrangements to secure a contribution towards the Solent Recreation Mitigation Project, is contrary to the Council's Policy on contributions towards measures of mitigation adopted by the Local Planning Authority. These seek to ensure that the provision is made from new development towards mitigating against

increasing recreational pressure on the Solent SPA. The development is therefore contrary to policies CS11 and CS21 of the Havant Borough Local Plan (Core Strategy) 2011 Policy DM24 of the Havant Borough Local Plan (Allocations) 2014, emerging Policy E16 of the Pre-Submission version with changes Havant Borough Local Plan 2036 and the National Planning Policy Framework.

- 5 In the absence of a suitable agreement to secure appropriate mitigation measures in respect to water quality, the development would be likely to have a significant effect on the Solent European Sites as specified in the Habitats Regulations Assessment that has been undertaken in relation to this planning application. The development would be likely to result in detriment to water quality and as such, it is contrary to policies CS11 and CS21 of the Havant Borough Local Plan (Core Strategy) 2011, emerging Policies E16 and EX1 of the Pre-Submission version with changes Havant Borough Local Plan 2036, The Conservation of Habitats and Species Regulations 2017 (as amended) and the National Planning Policy Framework.

APPENDIX D

The potential effects of new residential development on the Chichester and Langstone Harbour SPA can be summarised as follows:

Potential Effect	Site Conservation Objective(s)	Qualifying features	Potential for Impact?	Relevant Mitigation Measures
Decrease in survival rates and populations of over-wintering birds due to increase in disturbance, caused by increasing human population (in combination with other plans and projects)	Maintain or restore the population of each of the qualifying features. Maintain or restore the distribution of the qualifying feature within the site.	All for Chichester and Langstone Harbours SPA.	Yes. Indirect impact. Without mitigation, bird populations would be reduced and/or re-distributed by increased numbers of visitors leading to increased disturbance	Bird Aware Solent Strategy The Strategy proposes:- • a team of 5-7 coastal rangers to advise people on how to avoid bird disturbance, liaise with landowners, host school visits, etc.; • communications, marketing and education initiatives; • initiatives to encourage responsible dog walking; • preparation of codes of conduct for a variety of coastal activities; • site-specific projects to better manage visitors and provide secure habitats for the birds; • providing new/enhanced greenspaces as an alternative to visiting the coast;

Further details in relation to the Bird Aware Solent Strategy can be viewed via the following web address:

<http://www.birdaware.org/CHttpHandler.ashx?id=29372&p=0>

APPENDIX E

Position Statement and Mitigation Plan for Nutrient Neutral Development

August 2020



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1. Introduction

- 1.1 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 has an ambitious regeneration agenda and development strategy set out in the Havant Borough Local Plan and Regeneration Strategy.
- 1.2 Nonetheless, the Council is 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.
- 1.3 New development necessitates the provision of connections to the foul water drainage network and can increase surface water run-off. This could increase the amount of nutrients entering Solent European Sites, even if it is a proportionately small contribution.
- 1.4 New housing schemes and other proposals which include a net gain in overnight accommodation or development which has a high volume of water use will need to prevent any increase in nutrients into the harbour in order for them to be ‘nutrient neutral’ if they would otherwise lead to a likely significant impact on a European site.

The Habitats Regulations

- 1.5 Under the Conservation of Habitats and Species Regulations (2017 as amended) (hereafter referred to as the Habitats Regulations), there are significant responsibilities conferred on the Council as a ‘competent authority’. 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.
- 1.6 A significant effect could be caused by a number of potential impacts including direct or indirect habitat loss, air pollution, water quality, increase in recreation, light pollution, tall buildings or construction activity.
- 1.7 In order to assess whether planning applications would lead to 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.
- 1.8 A potential effect would be considered ‘likely’ if it cannot be ruled out based on the information available as opposed to it merely being probable or possible. When then moving to the appropriate assessment stage, an established principle under law is that AAs must use the ‘precautionary principle’. An appropriate assessment must enable the local planning authority to apply the

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

regulation 63(5) “integrity test” on a “precautionary basis”. Authorisation may only be given if the competent authority has made certain there will be no adverse effect on the integrity of the site and where no reasonable scientific doubt remains. It must therefore be shown that there would not be no likelihood of a significant effect in order for the Council to lawfully grant planning permission.

- 1.9 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.

The Dutch Case

- 1.10 The European Court of Justice determined a case related to considering water quality in Appropriate Assessments in late 2018. This generally referred to as The Dutch Case².
- 1.11 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.
- 1.12 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’.

The purpose of this Position Statement

- 1.13 This Position Statement sets out the Council’s approach to new development which is likely to have an adverse effect on the integrity of the Solent European sites. It provides guidance on how the nutrient load of new development should be calculated, and how an increase in nutrients into the harbour should be mitigated in order for development to be ‘nutrient neutral’.
- 1.14 The statement also includes an ‘Mitigation Plan’ which sets out specific measures which will be implemented to mitigate development in Havant borough. It indicates how the scale of mitigation should be calculated. If mitigation is shown to be necessary this Position Statement will also allow applicants to calculate the level of mitigation, in the form of a financial contribution, which will be required from the proposed development.

Water Quality and the European Designated Nature Conservation Sites

- 1.15 Eutrophication is increased plant growth which reduces the oxygen content in water and occurs when an excessive amount of nutrients within a water body are present. This process makes it difficult for aquatic insects or fish to survive, in turn removing a food source from the food cycle.
- 1.16 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).

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>

- 1.17 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.
- 1.18 Nutrients from wastewater treatment works represent one source of excess nutrients in the marine environment. However, it is not the only source, nor is it generally the highest. Agriculture in particular typically represents a higher level of input of nutrients into the marine environment than wastewater treatment works.
- 1.19 There are two wastewater treatment works that serve Havant Borough: Emsworth drains to Thornham, the rest of the Borough drains to Budds Farm. Development on the boundary of the catchment areas will need to seek confirmation from Southern Water as to which wastewater treatment works it would be served by as this will depend on the network in that area.
- 1.20 Whether an effect would be significant depends on whether it would threaten the specific features and conditions of the protected sites concerned by the plan or project. In the case of water quality and the Solent's European Sites, the condition varies site by site. However none are fully favourable and many are not recovering³. As such, any further deterioration of water quality at those sites, no matter how small, can be considered likely to cause a significant effect on those sites in terms of the application of the Habitats Regulations.
- 1.21 As such, it has been confirmed that development draining to Budds Farm Wastewater Treatment Works and Thornham Waste Water Treatment Works would be likely to lead to a significant effect on the following European Sites:
- Chichester & Langstone Harbours Special Protection Area (SPA)
 - Chichester & Langstone Harbours Ramsar site
 - Solent Maritime Special Area of Conservation (SAC)
 - Solent and Dorset Coast Special Protection Area (SPA)
 - Solent and Southampton Water SPA
 - Solent and Southampton Water Ramsar
 - Portsmouth Harbour SPA
 - Portsmouth Harbour Ramsar
 - Solent and Isle of Wight Lagoons SAC

³ More information regarding this is contained in *Review of the Need for Nutrient Neutral Development in the Budds Farm Wastewater Treatment Works* catchment available at www.havant.gov.uk/localplan/evidence-base

2. Development Management Process

Development schemes that could be affected

- 2.1 A large number of schemes are likely to result in a significant effect on the European Sites. 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.
- 2.2 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.
- 2.3 It is also possible that there is another likely significant effect from the proposed development. 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. This is generally addressed through the Bird Aware Solent Mitigation Scheme and a separate mitigation package. 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.
- 2.4 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

- 2.5 Full and outline planning applications for applicable uses are affected and so an avoidance and mitigation package will be needed.
- 2.6 It is the Council's advice to the Planning Inspectorate⁴ that any planning appeals for applicable uses should include an avoidance and mitigation package to remove any likelihood of a significant effect.
- 2.7 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.

Residential (C3) dwellings

- 2.8 Any residential development would lead to an increase in nitrogen and thus would be likely to cause a significant effect.
- 2.9 In this context, 'dwelling' also includes net new dwellings created through the sub-division of existing dwellings, second homes, dwellings to be used as holiday accommodation, houses in multiple occupation, 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

⁴ 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.

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

- 2.10 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.
- 2.11 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.

Commercial and other non-residential development

- 2.12 Non-residential development is unlikely to lead to a significant effect as it would not involve a net increase in population in the catchment.
- 2.13 However in some cases there would be a significant effect due to the type of operation. In particular, high water use developments would be likely to cause a significant effect. Such schemes would be considered on a case by case basis. It is recommended that any high-water use developments engage with Natural England's Discretionary Advice Service prior to preparing a nutrient budget for submission as part of a pre-application enquiry to the Council.

How applications will be considered and what information is needed to assess the 'likely significant effect'

- 2.14 It is necessary for the Council, as the competent authority under The Regulations, to undertake a Habitats Regulations Assessment, including Appropriate Assessment (AA), on any development that it is considered could lead to a likely significant effect on a European Site.
- 2.15 The Council has undertaken HRAs on applications for many years as there has been an acknowledged significant effect from recreation since 2014, with new development providing mitigation packages. For the avoidance of doubt, a mitigation package will be needed for water quality and recreation for the vast majority of residential developments.
- 2.16 It is incumbent on the applicant to provide all of the information necessary to undertake that assessment. When submitting planning applications, applicants will need to submit the following information to set out how any likely significant effects on Solent European Sites will be mitigated through the application:
- A site-specific nutrient budget, using Natural England's methodology
 - A European Sites Mitigation Checklist (see Appendix A of this Position Statement)
- 2.17 As part of the overall nutrient budget, development will be expected to achieve a maximum water use standard of 110 litres per person per day (l/p/p/d) which will be secured via two conditions. The planning conditions used are as follows:
1. 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; and

(b) All measures necessary to meet the approved water efficiency calculation have been installed.

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, Policy CS11 of the Havant Borough Local Plan (Core Strategy) 2011, and Policy E14, EX1 and E12 of the Pre-Submission Havant Borough Local Plan.

2. 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 110 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, Policy CS11 of the Havant Borough Local Plan (Core Strategy) 2011, and Policy E14, EX1 and E12 of the Pre-Submission Havant Borough Local Plan”

Calculating a nutrient budget

- 2.18 All development which results in a net-increase of overnight accommodation or a development which has a high water use will be required to submit a nutrient budget as part of their application.
- 2.19 To calculate the nutrient load of any development Natural England has created a methodology⁵ containing the following stages which can be summarised as follows and contains examples for each stage:

Stage 1

Calculates the total nitrogen in kilograms per annum which is derived from development that would exist the Wastewater Treatment Works after treatment. For any housing developments on brownfield sites, stage one and stage 4 are the only stages that will need completing in order to establish the scale of mitigation that will need to be provided.

STAGE 1 - WORKED EXAMPLE TO CALCULATE TOTAL NITROGEN (TN) LOAD FROM DEVELOPMENT WASTEWATER				
Step	Measurement	Value	Unit	Explanation
Development proposal	Development types that would increase the population served by a wastewater system	1000	Residential dwellings	
Step 1	Additional population	2400	Persons	Uses an average household size of 2.4 x 1000 dwgs (greenfield site).
Step 2	Wastewater volume generated by development	264,000	litres/day	2400 persons (step 1) x 110 litres. Where relevant, deduct wastewater volume of population displaced by the proposed development.
Step 3	Receiving WwTW environmental TN permit limit. Assume discharge to be at 90% of consent limit.	8.1	mg/l TN	90% of the consent limit = 8.1 mg/l TN.
Step 4	Deduct acceptable TN loading (@ 2 mg/l TN) (as defined in paragraph 4.40)	6.1	mg/l TN	8.1 (step 3) – 2 mg/l TN
Step 5	TN discharged after WwTW treatment	1,610,400	mg/TN/day	264000 (step 2) x 6.1 (step 4) = 1,610,400
Step 6	Convert mg/TN to kg/TN per day	1.6104	Kg/TN/day	Divide by 1,000,000
Step 7	Convert kg/TN per day to kg/TN per year	587.8	Kg/TN/yr	1.6104 x 365 days
Wastewater total nitrogen load	587.8 kg/TN/yr			

⁵ Available at <https://www.push.gov.uk/2020/03/18/natural-englands-latest-guidance-on-achieving-nutrient-neutrality-for-new-housing-development/>

Stage 2

Calculates the existing nitrogen load from the current land use of the development site.

STAGE 2 - WORKED EXAMPLE TO CALCULATE NITROGEN LOAD FROM CURRENT LAND USE				
Step	Measurement	Value	Unit	Explanation
1	Total area of existing agricultural land	40	Hectares	This is the area of agricultural land that will be lost due to development
2	Identify farm type and confirm nitrate loss.	26.9	Kg/ha/yr	The developable area covers several farm types therefore an average has been used. Reference Appendix 1 and Table 2
3	Multiply area by nitrate loss	1,076	Kg/N/yr	40 ha x 26.9 kg/N/yr
Nitrogen load from current land use		1,076 Kg/N/yr		

Stage 3

This calculates the nitrogen load from the proposed land uses for the development site.

STAGE 3 - WORKED EXAMPLE TO CALCULATE NITROGEN LOAD FROM FUTURE LAND USES				
Step	Measurement	Value	Unit	Explanation
1	New urban area	38	Hectares	Area of development that will change from agricultural land to urban land use
2	Nitrogen load from future urban area	543.4	Kg/N/yr	38 ha x 14.3 Kg/N/yr
3	New SANG / open space	2	Hectares	Area of development that will change from agricultural land to SANG / open space
4	Nitrogen load from SANG / open space	10	Kg/N/yr	2 ha x 5.0 Kg/N/yr
5	Combine nitrogen load from future land uses	553.4	Kg/N/yr	543.4 Kg/N/yr + 10 Kg/N/yr
Nitrogen load - future land uses		553.4 Kg/N/yr		

Stage 4

This takes all the above stages and calculates the net nitrogen load that would result from development.

STAGE 4 - WORKED EXAMPLE TO CALCULATE THE NET CHANGE IN NITROGEN LOAD FROM THE DEVELOPMENT				
Step	Measurement	Value	Unit	Explanation
1	Identify nitrogen load from wastewater (stage 1)	587.8	Kg/TN/yr	See Table 1
2	Calculate the net change in nitrogen from land use change - subtract existing land uses nitrogen load (stage 2) from future land uses nitrogen load (stage 3)	-522.6	Kg/TN/yr	553.4 (stage 3) - 1076 (stage 2) = -522.6 Kg/TN/yr
3	Determine nitrogen budget – the Total Nitrogen wastewater load for the proposed development plus the change in nitrogen load from land use change (the latter figure may be positive i.e. the change in land use will generate more nitrogen, or negative i.e. the change in land use will generate less Nitrogen)	65.2	Kg/TN/yr	587.8 (step 1) + -522.6 (step 2) = 65.2 Kg/TN/yr
4	Where TN budget is positive add 20% precautionary buffer	78.24	Kg/TN /yr	64.8 + 20% = 78.24
Total Nitrogen that needs to be neutralised		78.24 Kg/TN /yr		

2.20 On the basis of the following calculation stages if the final figure in stage 4 is positive then mitigation is required for the development, if the final figure is negative no mitigation is required.

3. Options for mitigation

- 3.1 For the HRA accompanying the planning application to conclude that there is no likelihood of a significant effect on the Solent's European Sites, the proposed development would need to be nutrient neutral.
- 3.2 Avoidance and mitigation measures to achieve nutrient neutrality should be provided on site, in line with the Habitats Regulations, wherever possible. However, for the vast majority of developments in Havant Borough, particularly brownfield development and regeneration schemes, it is acknowledged that this is not possible.

On-site Mitigation Options

- 3.3 Some development will be able to use on-site measures in order to achieve nutrient neutrality or reduce the scale of off-site mitigation required to achieve nutrient neutrality. Wherever possible, on site measures should be used to avoid an impact before relying on off-site mitigation. Examples of the type of on-site measures that may be used can be found in Natural England's methodology⁶.
- 3.4 In some cases, on site mitigation could include taking land out of agricultural use and using the land for an alternative use, notably development and open space⁷. It should be noted that a greenfield site is not automatically in use as agriculture. The following uses are classed as agricultural within Natural England's methodology:

AVERAGE NITRATE-NITROGEN LOSS PER FARM TYPE IN THE SOLENT CATCHMENT AREA (kg/ha)	
Cereals	31.2
Dairy	36.2
General Cropping	25.4
Horticulture	29.2
Pig	70.4
Lowland Grazing	13.0
Mixed	28.3
Poultry	70.7
Average for catchment area	26.9

- 3.5 In the event a nutrient budget and a proposed onsite avoidance and mitigation package shows the proposed development will be nutrient neutral, there will need to be the necessary certainty that any mitigation measures will reduce the nutrient load of the land. In such circumstances the Council will secure the requisite mitigation via a legal agreement to ensure that it is maintained in perpetuity
- 3.6 For some developments, a bespoke on-site mitigation solution will be a viable option, particularly where watercourses can be found on site. The applicant will be expected to fund the project level Habitats Regulations Assessment that will be required on such an application.

⁶ <https://www.push.gov.uk/wp-content/uploads/2020/03/Advice-on-Achieving-Nutrient-Neutrality-for-New-Development-in-the-Solent-Region-March-2020.pdf>

⁷ To be taken into account the open space must be 0.5 ha or above.

Off-Site Mitigation Options– Warblington Farm Mitigation Scheme

- 3.7 Development on non-agricultural land will not be able to provide mitigation on site. In such cases, developments will need to contribute towards an off-site scheme. The Council has set up a cost effective and simple scheme which can be used by applicants at Warblington Farm.
- 3.8 The Council actively encourages applicants to use Warblington Farm as mitigation where the principle of the development is accepted by the Council as Local Planning Authority. In any instances where the Council does not accept the principle of development, it will not be possible for applicants to use the Council's mitigation scheme. This is because Warblington Farm is needed to mitigate the development planned for through the Havant Borough Local Plan and Regeneration Strategy. The Local Plan HRA confirms that Warblington Farm is an acceptable mitigation option. This has been confirmed by the Review of the Warblington Farm Mitigation Option for Nutrient Neutral Development in the Havant Borough report.
- 3.9 The Warblington Farm scheme will be fully funded by the development industry, with no financial support from the Council. The scheme will involve changing the use of the site in a phased manner from a dairy farm to a nature reserve. In the longer term, the Council aims to make Warblington Farm a key site in Havant's ecological network, increasing biodiversity and helping residents to enjoy and understand the intrinsic value of the natural environment.
- 3.10 In addition to providing cost effective mitigation for nutrient neutrality, land at Warblington Farm also has the potential to deliver the following benefits:
- A permanent refuge for Solent Waders and Brent Geese - a number of emerging allocations in Havant Borough Local Plan will need to provide mitigation by means of a financial contribution towards the enhancement of habitats, particularly those on secondary support areas or low use sites;
 - A replacement habitat for Curlew which currently use land at Campdown, this is one of the largest allocations in the Council's emerging Local Plan;
 - The Environment Bill means there is likely to be a requirement for all new development to achieve a net gain in biodiversity. For development unable to make the necessary improvements on site, development contributions could be made to create and enhance habitats at Warblington Farm; and
 - The potential to provide additional nutrient mitigation subject to further feasibility and analysis.
- 3.11 In terms of development achieving nutrient neutrality, the Review of the Warblington Farm Mitigation Option for Nutrient Neutral Development in the Havant Borough report⁸ confirms that there is a scientific link between the likely significant effect from the development and the mitigation at Warblington, as required by the Habitats Regulations. The mitigation is suitable for development draining to Budds Farm and Thornham Wastewater Treatment Works and is therefore suitable for mitigating the impact of any development in Havant borough.
- 3.12 A financial contribution will be sought based on the calculation of the load provided by the nutrient budget associated with the planning application in question. The following table summarises the rates which are payable on a cost per kilogram basis according to the catchment which the new dwellings connect to which will be updated on annual basis.

⁸ Available at <https://www.havant.gov.uk/nitrogen>

Per kilo contribution/ Catchment	Total nitrogen discharged (kg N per year)	Cost per kilo contribution
Per kilo contribution	1	£1,241.00

- 3.13 In addition to the above an administrative fee of £23 per legal agreement is payable. The financial cost of per kilogram of nitrogen will be increased annually in accordance with the Cost Price Index at the start of each financial year. Further information for applicants, together with live costs, can be found in the Council's Developer Contributions Guide⁹. The following examples set out how costs would be calculated in the Thornham and Budds Farm catchments respectively:

Thornham catchment (Emsworth)

- 3.14 For development which drains to Thornham Wastewater Treatment Works it will be calculated as follows:

Development of 4 dwellings on a brownfield site draining to Thornham Wastewater Treatment Works	
Amount of mitigation required kg/N	3.2 kg/N
Cost of mitigation	£3971.20
Administration Fee	£23.00
Total avoidance and mitigation package for nutrient neutrality	£3994.20

Budds Farm catchment (Rest of Havant Borough)

- 3.15 For development which drains to Budds Farm Wastewater Treatment Works it will be calculated as follows:

Development of 4 dwellings on a brownfield site draining to Budds Farm Wastewater Treatment Works	
Amount of mitigation required kg/N	3.1 kg/N
Cost of mitigation	£3847.10
Administration Fee	£23
Total avoidance and mitigation package for nutrient neutrality	£3870.10

- 3.16 The mitigation charge has been calculated on the basis of costs and fees associated with the management of the site, the value of the asset as well as the details of costs, fees and taxes.

⁹ Available at www.havant.gov.uk/community-infrastructure-levy

Further phases of the scheme will become available in due course to enable development to continue in compliance with the Habitats Regulations.

- 3.17 As the land at Warblington will be phased out of agricultural use, mitigation will be made available on a phased basis. The Council will carefully monitor the capacity of the land at Warblington to ensure that there continues to be sufficient mitigation available for development coming forward.
- 3.18 Warblington Farm will be managed in such a way that restricts the future use to operations that prohibit the use and application of any nutrient load on the land, and only carry out management activities which would lead to a net decrease of nitrogen compared to current use.
- 3.19 The first phase of Warblington Farm provides 25ha of mitigation land which will be available for development coming forward. The first phase would be turned into grassland which will then be cut as necessary by the tenant farmer ensuring less than 5kg per hectare per year of nutrients will be produced. If the activity on the land were to change this would have to be agreed by Natural England and Havant Borough Council.
- 3.20 Due to the additional environmental benefits which are available on Warblington Farm a management plan will be produced when all phases of Warblington are available.
- 3.21 The Council has established the costs of the management of the site over an 80-year time period, the value of the asset and returning the control of the leasehold. These outgoings have been factored into a cash flow analysis to provide a per kilogram cost of nitrogen.
- 3.22 In addition to the above, the water efficiency standard of 110 l/p/p/d will be secured and enforced by planning condition for all new residential developments.

Off-Site Mitigation Options - Alternative mitigation schemes

- 3.23 Third parties are also progressing potential mitigation plans which could provide effective mitigation for development in Havant Borough or applicants may have their own suitable mitigation scheme. In such cases, applicants are encouraged to enter into early discussions with Natural England through the Discretionary Advice Service¹⁰. It will also be necessary to discuss the proposals with the Council as the competent authority.
- 3.24 In such cases, it will need to be established that there is a clear scientific link between the proposed development and the mitigation and that the mitigation package ensures that the development in question is nutrient neutral. The legal agreement put in place will likely need to be bespoke to that development and the mitigation scheme in question. It will need to be signed by the landowner of the mitigation site.
- 3.25 Given the geographical nature of Havant Borough, it is likely that some third party mitigation schemes could be progressed outside of the Borough. In such cases, the planning authority of the mitigation land together with the landowner of the mitigation site would both need to be signatories to the legal agreement. In such scenarios, the planning authority for the mitigation land would either need to be willing to undertake any necessary enforcement action or be willing to delegate that authority to Havant Borough Council. Applicants should be aware that this may well extend the period of time needed to complete legal agreements. If applicants wish to use a third party scheme,

¹⁰ <https://www.gov.uk/guidance/developers-get-environmental-advice-on-your-planning-proposals>

it will be necessary for the project level HRA associated with that planning application to be undertaken by a contractor. The cost of this will need to be met by the applicant.

4. Review of this Position Statement

- 4.1 The Council is committed to both complying with the Habitats Regulations and also enabling sustainable new housing development. This Position Statement includes a mitigation plan which will enable development management decisions to be taken on planning applications in compliance with the Habitats Regulations. 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.
- 4.2 The Council's emerging Havant Borough Local Plan must also comply with the Habitats Regulations and an HRA has been undertaken at each point in the plan's preparation.
- 4.3 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. This research is already underway in collaboration with partner authorities in the Partnership for South Hampshire (PfSH).
- 4.4 The Council will continue to call for Government to take action to address this issue through a review of the consents of wastewater treatment works at the Solent. However it is acknowledged that many operate at the currently best available technology and such a review would take time in any case.
- 4.5 The Council wishes to work towards a more definitive mitigation strategy. This should ideally be on a PfSH or wider basis. The Council will continue to positively and proactively work with its partner authorities, through PfSH, together with Government, Natural England, the Environment Agency, Southern Water and any other stakeholder in order to address this issue appropriately.

