

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

**STATEMENT OF
HAVANT BOROUGH COUNCIL**

**44 Warfield Crescent
Waterlooville
PO7 7JP**

**Local Planning Authority Reference:-15/00646/
Planning Inspectorate Reference:-
APP/X1735/W/16/3144066**



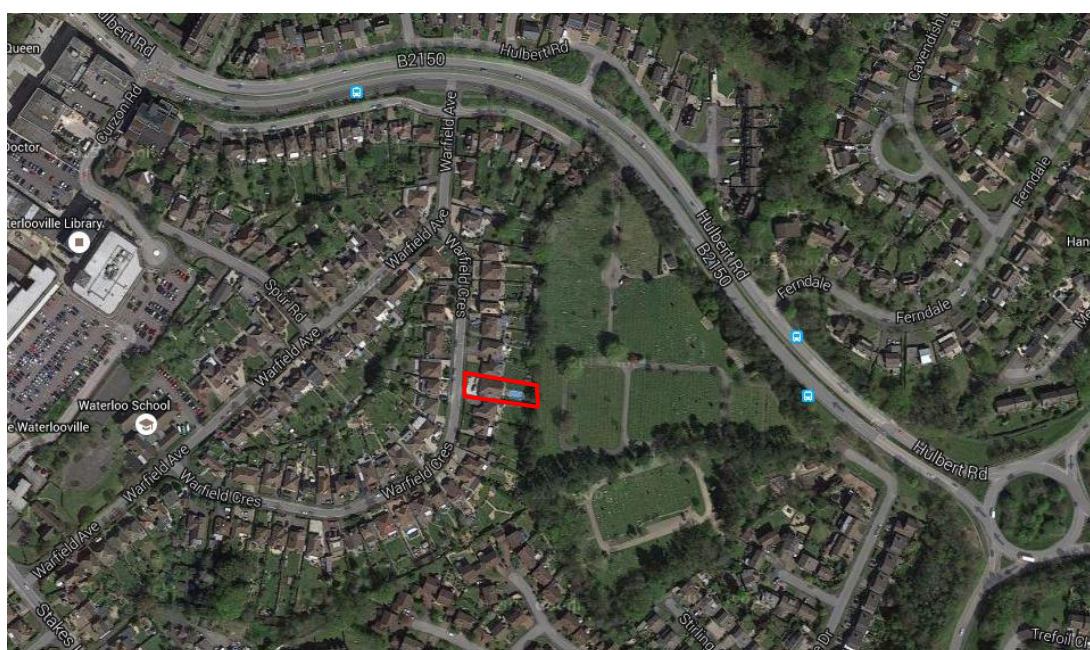
APPEAL BY Mr J Jarnet AGAINST REF Change of use from residential to mixed residential and Landscaping business supplying soil and turf. (Retrospective application). AT 44 Warfield Crescent, Waterloo, PO7 7JP

Planning Inspectorate Reference: APP/X1735/W/16/3144066

LPA Ref:15/00646/

1.0 THE APPEAL SITE AND ITS SURROUNDINGS

- 1.1 The appeal site is located to the east of Waterloo town centre, in a residential street, characterised by tight-knit detached dwellings. The main approach to the site is from Hulbert Road, the B2150, to the north, which links to the A3(M) to the east. There is a left filter turn from this main dual carriageway into Warfield Avenue which leads to Warfield Crescent. The Inspector's attention is particularly drawn to the road sign on the Hulbert Road approaching Warfield Avenue, which is an Information Sign alerting lorry drivers to the fact that the left turn is unsuitable for Heavy Goods Vehicles. A photograph of this sign is included at Appendix A for reference.
- 1.2 Warfield Crescent is narrow and has double yellow lines along the majority of the east side of the road. The appeal site, No 44, is located on the east side of the road. The site consists of a detached bungalow, with rooms in the roof, of brick and tile construction with an attached garage to the side elevation. There is an area of hard-standing in the front plot which allows on site parking for at least 3 vehicles. This is screened by a substantial hedge along the front boundary and northern side boundary with No. 46. The southern side boundary to No. 42 is a low brick wall. The rear plot is laid to lawn and enclosed by a 1.5m high wire mesh fence. The rear plot backs onto open land, which is used as a cemetery.



Above: Appeal Site in a Context with the Surrounding Area

- 1.3 A photograph of the front of the property is shown below and the presence of the double yellow lines and lack of boundary screening on the south, to No 42, is noteworthy.



Above: Front of Appeal Site

2.0 PLANNING HISTORY

2.1 The following applications are considered to be relevant to the determination of this appeal:

08/72038/001

Rear extension, rooms in the roof with dormers & new flat roof to garage (revised application).
Approved 03/02/09

07/72038/000

Rear extension, rooms in the roof with dormers & new flat roof to garage and front porch. Approved
23/03/07

3.0 APPEAL PROPOSAL

- 3.1 The proposal the subject of this appeal seeks retrospective planning permission for the change of use of the site from residential to mixed residential and landscaping business supplying soil and turf. The application seeks to secure planning permission for a further three years for the business use to continue.
- 3.2 The business is generally of a landscape nature providing soil and turf to customers who make orders over the phone. The administration of the business occurs inside the dwelling and under normal circumstances the materials are delivered to an industrial unit and loaded onto the applicant's vehicle for onward deliveries. However, on some occasions turf is delivered direct to the application site and is stored temporarily on the forecourt area for a short time before being redelivered to customers. A forklift truck is sometimes used to unload and load materials for onward delivery. This is stored in the applicant's garage on site.

4.0 PLANNING POLICY

- 4.1 The relevant planning policy documents in respect of this appeal are the National Planning Policy Framework (NPPF) and the Development Plan which comprises the Havant Borough Local Plan (Core Strategy) 2011, the Havant Borough Local Plan (Allocations) 2014.
- 4.2 The NPPF was published by the Government on 27th March 2012. Paragraph 6 of the NPPF states 'The purpose of the planning system is to contribute to the achievement of sustainable development. The document goes on to state at paragraph 7 that 'There are three dimensions to sustainable development: economic, social and environmental' and these are mutually dependent. The NPPF includes within the economic role the need for 'land of the right type is available in the right place'; and the environmental role as '...contributing to protecting and enhancing our built ... environment...'
- 4.3 The document explains at paragraph 14 that '...At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking...

For decision-taking this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out of date, granting permission unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - specific policies in this Framework indicate development should be restricted...

- 4.4 Paragraph 17 of the NPPF sets out 12 Core planning policies, one of which states that planning should: 'always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings'; and another states that planning should: 'take account of the different roles and character of different areas'.
- 4.5 Furthermore paragraph 123 states that 'Planning policies and decisions should aim to: 'avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development..'

Development Plan Policies Relevant to this Appeal

- 4.6 The following policies of the Havant Borough Local Plan (Core Strategy) 2011 are considered to be particularly relevant to the determination of this appeal:

CS16 (High Quality Design)
DM10 (Pollution)

- 4.7 The following policy of the Havant Borough Local Plan (Allocations) 2014 is also considered to be of relevance to the determination of this appeal:

AL1 (Presumption in Favour of Sustainable Development)

- 4.8 Copies of these policies have been forwarded with the appeal questionnaire. More details in relation to the relevance of these policies will be provided in part 6 of this Statement.

5.0 CONSULTATIONS AND REPRESENTATIONS

- 5.1 The application which is the subject of this appeal was published in accordance with the Council's adopted publicity procedures, and neighbour notification letters were sent. In addition a site notice was posted. 21 letters of representation were received, 18 of which supported the application which included a petition; and 3 objected.

- 5.2 The representations received can be summarised as follows:

Those in support stated that the business use has not adversely affected them over the nine years of operation. The 3 No. objections to the application raised various points that can be summarised below:

- i. Delivery vehicles already park in a narrow road with the possibility of preventing emergency vehicles access.
- ii. Excess noise of vehicles to and from the business premises loading and un-loading.
- iii. The front hard standing is open to the south side of the property which means that the adjacent neighbour at No. 42 suffers the full impact of visibility, noise and fumes generated by the business.
- iv. The use of the front garden as a delivery and storage area for materials and a forklift truck is not in keeping with the quiet residential area.
- v. It has become busier in the last year and operates during evening, weekends and bank holidays.
- vi. Large delivery trucks have caused damage to the vergeways and block the pedestrian footpath.
- vii. The materials delivered require the regular use of the forklift truck.
- viii. It will set a precedent for other properties to start up similar operations from home.

- 5.3 Consultations were also carried out and consultation replies were received and are summarised below from the following:

Development Engineer - Highways:

The Highway Authority has no adverse comment subject to the permission being made personal to the applicant

Environmental Health Manager, Community Group:

This office has no adverse comments to make on the current application, other than to state that it would be prudent to restrict any approval to the current owner and level of business only.

Economic Development -

From an economic growth perspective this would not be advisable to use the front garden for this particular type of business in a quiet residential area. The impact to the locality is more significant than the impact to the business as alternative commercial premises would be much better suited. This is particularly important should the business grow and the usage increases.

From my experience there are a significant number of businesses that do run from residential premises but none that are of this nature. I therefore could not support this change of use on the grounds it would have a negative economic impact.

6.0 PLANNING CONSIDERATIONS

- 6.1 The Council's decision notice, issued on 5th August 2015, identified the following reason for refusal:

"1. The ongoing business activity generated at the site is above and beyond a level considered to be acceptable in a residential area and results in an unacceptable level of general disturbance and noise to neighbouring properties. The proposal is therefore contrary to policies DM10 and CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012."

- 6.2 Having regard to the relevant policies of the development plan, and the reason for refusal above, it is considered that the main issue arising from this appeal is the impact of this particular business on the quiet residential amenity of the area.

- 6.3 The application was submitted retrospectively following a complaint to the Council regarding the business activity taking place at the appeal site. Evidence was submitted of a large flatbed lorry reversed into the driveway with grabbers un-loading large bags of topsoil that are then moved with a forklift. Further evidence was received of an articulated lorry and trailer outside the appeal site delivering turfs. Consequently a retrospective application was sought and submitted and the supporting statement advised that the current owners have operated a small business from the property for the last nine years. The business generally sources and delivers soil and turf to customers who make orders over the phone. The business is called Denmead Turf & Topsoil and the company website can be viewed for information at:

<http://denmeadturf.co.uk/contact/2027904>

- 6.4 The information supplied with the planning application stated that on some occasions turf is delivered to the application site and stored temporarily for a short time before being redelivered to customers. A forklift truck is sometimes used to unload and load materials for onward delivery. By looking at the invoices, a summary schedule of the number of deliveries that occurred to Warfield Crescent compared to the number of deliveries that were sent direct to site was compiled and submitted for the years 2013, 2014 and the first part of 2015. From this it was summarised that 35% of orders were delivered to the appeal site but that there was an exceptional peak in September 2014 and March 2015 and that under normal circumstances deliveries equated to 0.41 deliveries a week.
- 6.5 It is considered that it is the impact of this business and the associated frequency and nature of deliveries that is the key issue in the determination of this appeal. The applicant claims the business has been carried out at the property for nine years. In theory therefore a Certificate of Lawful Use could have been applied for. However, it appears that the business use has intensified at the property over time as the business has grown. The nature and scale of operations taking place is different now to 9 years ago.

- 6.6 It is considered that the deliveries to the site in heavy goods vehicles - whether flatbed lorries or articulated lorries and trailers, is inappropriate in this quiet residential road. Indeed the road sign on the Hulbert Road clearly informs that the left turn is unsuitable for Heavy Goods Vehicles. Warfield Crescent is relatively narrow with double yellow lines on the majority of the east side of the road and sections of the west side. There is a grass verge between the pavement and highway and each dwelling has a drive and dropped kerb which further limits the availability of on street parking. Vehicles are often parked on street wherever double yellows allow. This results in moving vehicles having difficulty in passing, needing to utilise driveways to squeeze past. Access for larger vehicles is therefore harder and causes additional difficulties in passing for other road users.
- 6.7 Should the appeal proposal be allowed to continue and potentially grow, then regular deliveries by heavy goods vehicles would need to make this trip along Warfield Crescent. This would cause inconvenience to other road users as these large vehicles manoeuvre and temporarily block the road and pavement. This would detrimentally affect the amenity of local residents trying to access their dwellings and pedestrians whose paths would be blocked whilst the lorries unload. The running of the grabber to lift the bags of soil off the delivery lorries into the forecourt area creates noise and fumes to the detriment of the quiet enjoyment of adjacent residents amenity.
- 6.8 The scale of the current business is stated at 0.41 deliveries per week, but the submitted details demonstrate that there are always exceptions to this with a known past peak of 11 deliveries in a month which equates to 2.75 a week. Since the business is continuing to grow, there is no guarantee that over the next 3 years the number of deliveries won't increase. It is considered that every single delivery made by a heavy goods vehicle would cause disruption and inconvenience to residents. The lorries would undoubtedly block the road whilst either pulling up and unloading, or doing multiple point turns to reverse into the appeal site drive. The noise and activity associated with these manoeuvres and the unloading of the soil or turf, would generate a level of disturbance and noise to detrimentally affect the amenity of the immediately adjacent neighbours over and above that normally expected in such a quiet residential area.
- 6.9 Furthermore, the fact that the southern boundary of the site is only bounded by a very low wall exacerbates the harm to the amenity of the occupiers of No 42 adjacent. The open and exposed front forecourt area is in plain sight of the occupiers of No 42 and therefore the activity taking place on the forecourt disturbs them greatly. The reversing of lorries onto the forecourt, lifting of materials down through the use of the lorry grabbers, movements of the fork lift truck, unsightly storage, general activity by persons engaged in these tasks shouting instructions to each other, is all considered over and above the normal for a domestic dwelling and is considered harmful to their quiet enjoyment of their dwelling.
- 6.10 Just because there have been a number of letters of support for the business from residents does not make the proposal acceptable. It is the immediate neighbours that are most directly affected – it is them that can hear and see the activities and are disturbed. It is noteworthy that the residents of No 42 have objected to the proposal.
- 6.11 As the NPPF states, to achieve sustainable development, the 'economic, social and environmental gains should be sought jointly and simultaneously through the planning system' to improve the lives of people and communities. It is important that the right type of land and uses is available in the right places. It is contended that the location of this particular business with its reliance on deliveries by heavy goods vehicles, within this quiet residential area, results in a conflict between the economic and social and environmental roles. It is the opinion of the Local Planning Authority that this is not the right location for the business which clearly does not improve the lives of the people living next door and is inappropriate to the overriding residential character of the area. As such the proposal is not considered to achieve a balanced sustainable development and is considered contrary to the aims of the NPPF.
- 6.12 Policy CS16, High Quality Design, at clause 1.e) requires development not to cause unacceptable harm to the amenity of neighbours through smell, privacy, outlook, noise and overlooking. The southern boundary of the forecourt area with No 42 is a very low wall that in effect means there is no boundary treatment whatsoever between the area where all the activity is occurring and number 42. Therefore the outlook from 42 is of the business operations with fork lift truck which is not what is normally expected in such a tight knit residential area. The use of the fork lift truck also results in noise and smell, all of which is contrary to policy CS16 1. e).

- 6.13 Policy DM10 relates to Pollution and similarly requires development that may cause pollution through noise, smell, smoke, fumes, gases, dust, vibration etc. to meet a set of 6 criteria. The first criterion requires the health and safety of nearby occupiers and residents not to be put at risk. It is contended that the reversing of flatbed lorries unloading soil and turf with grabbers and the use of the fork lift truck moving these items around the forecourt, in direct sight of No 42, cannot fail but to harm the health of the occupiers of these residents from the associated noise, smell, fumes, dust and vibration.
- 6.14 It is strongly contended that the operation of this business with its associated deliveries of soil and turf for onward delivery is the wrong type of business for this quiet residential area. It is considered an unsustainable business whereby the resultant noise and disturbance from weekly deliveries would cause demonstrable harm to the amenity of neighbours contrary to both Policy CS16 1.e) and DM10. Whilst some development proposals can be made acceptable through the use of appropriate controlling conditions, in this instance the Local Planning Authority is of the view that any conditions would be un-enforceable. The seasonal nature of the business fluctuates the need for deliveries and it would be impossible for the Local Planning Authority to monitor the number of deliveries or size and type of delivery vehicle.

7.0 COMMENTS ON THE GROUNDS OF APPEAL

- 7.1 The supporting statement submitted with the appeal documents acknowledge that deliveries are made by heavy goods vehicles and that the vehicle and trailer operated by the business are present during the evenings and weekends. The Appellant notes that deliveries by builder's merchants, retail outlets and supermarkets are a normal occurrence in residential areas and alleges that these have a greater effect than the appeal business.
- 7.2 However the Local Planning Authority would contend that supermarket deliveries are made in much smaller vehicles and the unloading is a quiet activity done by the driver, not a grabber and fork lift truck. When residences do have deliveries from builder's merchants then it is usually one-offs for a particular project and is not a regular occurrence. Therefore this is not considered comparable to the regular and ongoing disturbance caused by a permanent business operating from the appeal site that relies on heavy goods deliveries.
- 7.3 The other similar businesses supplied are not considered relevant to the determination of this appeal. Every application has to be considered on its merits and the activity and comings and goings associated with these other business will all vary enormously, as will the context of those particular sites.

8.0 CONCLUSIONS

- 8.1 Section 38(6) of the Planning and Compulsory Purchase Act, 2004 states "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise." It is considered that the Local Planning Authority has clearly demonstrated where the development proposal has failed to comply with the up to date and relevant policies of the Development Plan and that there are no material considerations that would outweigh that decision.
- 8.2 It is considered that Warfield Crescent is unsuitable for regular deliveries by Heavy Goods Vehicles, a fact verified by the signage at the Hulbert Road junction, as it is narrow, has double yellow lines and on-street parking. The continuation of this landscape based business and its associated activity involving lorries making regular deliveries, the unloading with grabbers, and movement of stock with a forklift is considered to cause significant harm to the amenities of adjacent residents. The proposal is not considered to create a balanced form of sustainable development and as such is considered contrary to the NPPF and policies CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011.
- 8.3 For the reasons set out above the Inspector is respectfully requested to uphold the Local Planning Authority's decision and dismiss this appeal.

9.0 SUGGESTED CONDITIONS

9.1 Notwithstanding the Local Planning Authority's view about conditions as expressed at para 6.14 above, in the event that the Inspector is minded to allow this appeal, the Local Planning Authority respectfully request that the conditions listed below be imposed:

- 1) This permission shall enure for the benefit of Mr J Jarnet only and shall not enure for the benefit of the land and the use hereby permitted shall be discontinued on the date when Mr J Jarnet ceases to run Denmead Turf & Topsoil from the site.

Reason: To safeguard the amenities of this residential area from other business operations that may have greater impact, having due regard to policies CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.

- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 1:1250 Site Location Plan
 - 1:500 Block Plan
 - Existing Ground Floor Plan Drawing No 06/15/WC-01

Reason: - To ensure provision of a satisfactory development.

- 3) Within one month of the date of this permission, details of some boundary screening for the southern boundary shall be submitted to and approved in writing by the Local Planning Authority. Such details shall include the type, height, construction materials and design of the proposed means of enclosure. The agreed screening shall be constructed and implemented in full within 3 months of the date of this permission and shall thereafter be retained in a wholly sound and effective condition.

Reason: To safeguard the amenities of the occupiers of neighbouring property having due regard to policies CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.

- 4) Deliveries shall only be taken and/or dispatched from the site between the hours of 9.30am and 4.30pm Monday to Friday and not at all on Saturdays, Sundays and recognised Bank Holidays.

Reason: In the interests of the amenities of occupiers of nearby residential properties and having due regard to policies CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.

APPENDIX A

Signage at Hulbert Road Informing that Warfield Avenue is Unsuitable for Heavy Goods Vehicles

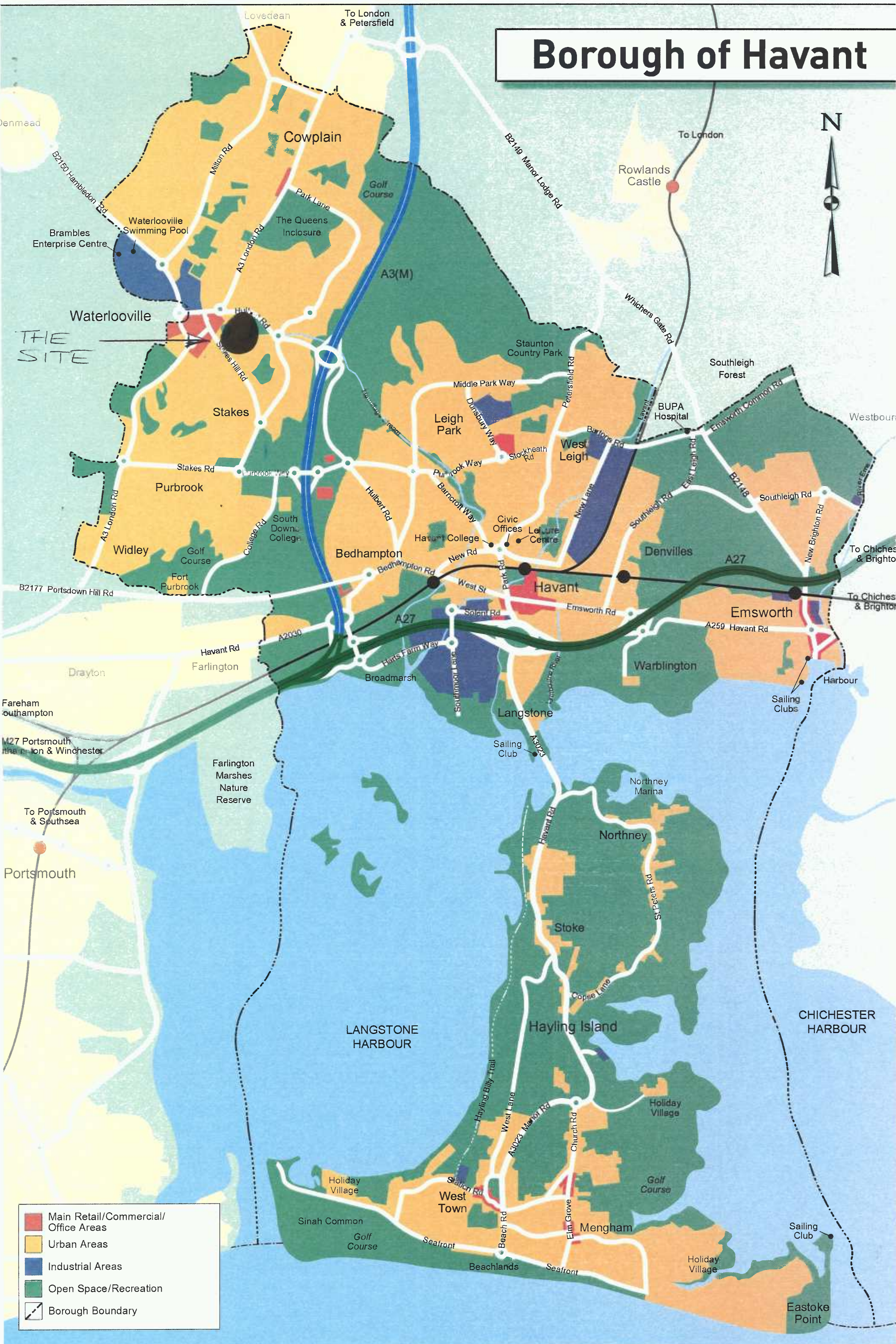


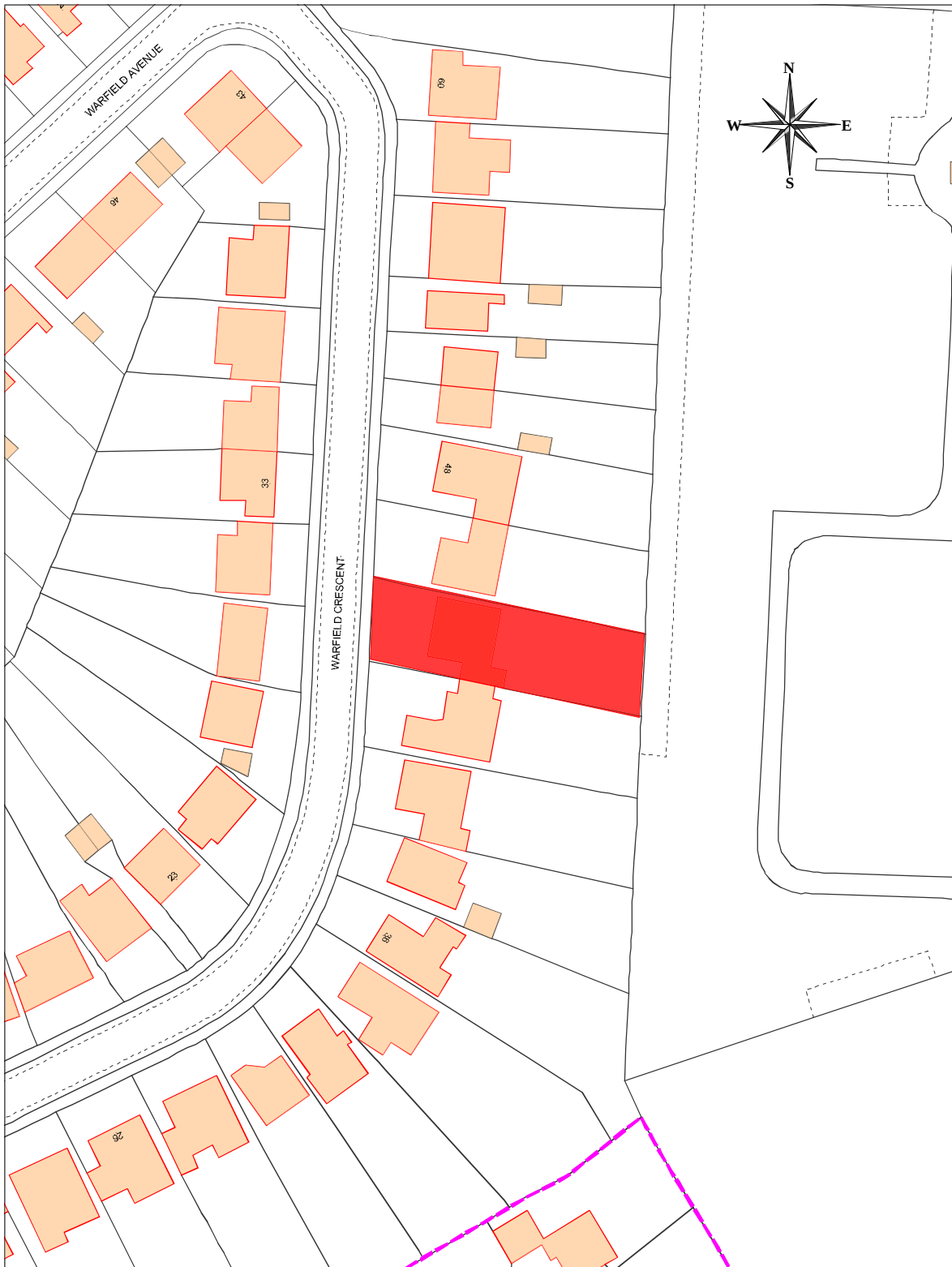
Borough of Havant



THE
SITE

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





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Civic Centre Road
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Title:

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APP/15/00646
44 Warfield Crescent,
Waterlooville

Drawn By:

Scale:

1:1000

Drawing No:

Cleaner, Safer, More Prosperous