

HAVANT BOROUGH COUNCIL

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



APPEAL BY MRS J FARMER AGAINST THE DECISION OF HAVANT BOROUGH COUNCIL TO REFUSE TO GRANT PLANNING PERMISSION FOR CONSTRUCTION OF 1NO. 4 BED DETACHED HOUSE AT 53 SOUTHWOOD ROAD, HAYLING ISLAND, HAMPSHIRE PO11 9PT

Planning Inspectorate Reference: APP/X1735/W/15/3025963

LPA REF: APP/15/00008

1.0 THE APPEAL SITE AND ITS SURROUNDINGS

- 1.1 The site is located on the northern side of Southwood Road in an area designated by the Environment Agency as falling within flood zone 2. To the rear of the site, (north), is an inlet of Chichester Harbour that is designated as a SAC, SPA, Ramsar site and SSSI.
- 1.2 The existing dwelling within the site is located within the rear half of the plot and has views out over the harbour. The dwelling has been extended over the years and has a single storey section to the front with a two storey section set back from the front elevation. The dwelling is of brick construction with some elements of render with a brown tiled roof.
- 1.3 The existing plot is 62.5m (approx.) in depth and is at its widest at 23m (approx.) two thirds of the way from the southern boundary. The plot is at its most narrow directly adjacent to the southern boundary at 9m (approx.). Beyond the southern boundary is the highway of Southwood Road, from which vehicular access is currently taken.
- 1.4 The site also contains a detached single garage and hardstanding for the parking of additional vehicles.

- 1.5 There are significant TPO trees within the plots surrounding the site. The closest to the proposed development being a Corsican Pine located adjacent to the eastern site boundary.
- 1.6 The adjacent plots to the east and west of the site have been subdivided some years previously. The dwellings within these plots are two storey, Spanish chalet style with white render and red/brown tile roofs and some red tile hanging.

2.0 PLANNING HISTORY

There is no relevant planning history for this site.

3.0 THE APPLICATION

- 3.1 The application the subject of this appeal seeks the erection of 1No.4 bed detached house. The plot is intended to be divided such that the front section, 27.5m (approx.), of the site is allocated to the proposed new dwelling and the remaining 35m (approx.) to be allocated for the existing dwelling. This will provide 10m rear garden depths for both dwellings.
- 3.2 The existing dwelling has a maximum roof height of 5m (approx.). The proposed dwelling would be 7.5m (approx.) to ridge, 11.5m (approx.) in width and 7.3m (approx.) in depth. It would follow a chalet style design with rendered elevations and brown tiles.
- 3.3 The application the subject of this appeal was made valid on 29 January 2015 and the application was refused under delegated powers on 9 April 2015 for the following reasons:

1. The site is a windfall site situated within a Flood Zone 2 and the development proposed is classified by the Environment Agency as a More Vulnerable Use. The National Planning Policy Framework requires that the Local Planning Authority undertake a Sequential Test to steer development to areas with the lowest probability of flooding. It is considered that there are sequentially preferable sites within the Borough and that the Local Planning Authority can demonstrate a 5 year housing supply. Therefore, there is no overriding justification for the development of an additional dwelling within a Flood Zone 2 which would result in an unacceptable risk to life and property from tidal inundation. In particular it has not been demonstrated that:

- (1) the proposed development has a safe means of access and/or egress in the event of flooding. Consequently, there would be an unacceptable risk to the health and safety of the occupants in a flood event; and*
- (2) the site is currently not defended to the appropriate standard, taking into account climate change over the lifetime of the development, and no provision is made in the application to improve the existing defences to the required standard.*

As such, the proposal would be contrary to the provisions of the National Planning Policy Framework and Policy CS15 of the Havant Borough Local Plan (Core Strategy) 2011.

2. The proposal, without completion of the appropriate binding arrangements to secure a contribution towards the Solent Recreation Mitigation Partnership, is contrary to the Council's Policy on contributions towards measures of mitigation

adopted by the Local Planning Authority which seeks to ensure that the provision is made from new development towards mitigating against increasing recreational pressure on the Solent SPA. It is therefore contrary to Policy CS21 of the Havant Borough Local Plan (Core Strategy) 2011 and Policy DM24 of the Havant Borough Local Plan (Allocations) 2014 and the National Planning Policy Framework 2012.

4.0 POLICY CONSIDERATIONS

- 4.1 The application has been determined against the National Planning Policy Framework and local planning policy. With regards to local planning policy, the application was determined against the relevant policies from the adopted Havant Borough Local Plan (Core Strategy) 2011, and adopted Havant Borough Local Plan (Allocations) 2014. The most relevant policies are CS15, CS16 and CS17 of the Core Strategy; and AL1, AL2 and DM24 of the Allocations Plan, which can be found via <http://www.havant.gov.uk/planning-and-environment/planning-policy-design>
- 4.2 **Policy CS15** (Flood and Erosion Risk) advises that development in areas at risk of flooding will only be permitted where it meets the relevant sequential and exception tests, and includes appropriate flood risk assessment and flood protection/resilience measures.
- 4.3 **Policy CS16** (High Quality Design), advises that development proposals will only be permitted where it can be demonstrated that they respect the local context and use characteristics of the locality to help inform the design of new development. Development proposals should avoid causing detrimental impact on the neighbouring and proposed properties.
- 4.4 **Policy CS17** (Concentration and Distribution of Development within the Urban Areas) advises that new development will be concentrated within the defined urban areas of the Borough.
- 4.5 **Policy AL1** (Presumption in Favour of Sustainable Development) reaffirms the need for the Council to balance the three core elements of sustainable development – environmental, social and economic issues – in its planning decisions, and for local authorities to seek opportunities to meet its development needs unless any adverse impacts would outweigh the benefits or where specific NPPF policies indicate development should be resisted.
- 4.6 **Policy AL2** (Urban Area Boundaries and Undeveloped Gaps between Settlements) confirms the application site to lie within the urban area boundary on Hayling Island.
- 4.7 **Policy DM24** (Recreational Disturbance to Special Protected Areas (SPAs) from Residential Development) sets out a requirement, arising from the application of the Habitat Regulations to the Plan, to mitigate the in-combination effects of additional recreational disturbance to the SPAs caused by new residential development – which can normally be met by way of a financial contribution.
- 4.8 **The Borough Design Guide** is a supplementary Planning Document to the Core Strategy and was adopted December 2011 which supports Core Strategy policy CS16. The design guide states that “*character helps to define a place and helps distinguish one place from another place. It is much more than building styles and appearance. The character of an area is a combination of the function and level of activity of the place, its existing structures and features, including open space and*

trees, the surrounding context of the site and how these all relate to one another".
The Borough Design Guide can be found at;
<http://www.havant.gov.uk/supplementary-planning-documents-and-other-material-considerations/borough-design-guide>

4.9 On 1 August 2013, the **Community Infrastructure Levy** (CIL) was brought into force by Havant Borough Council. CIL income can be used to fund additional infrastructure required to support new development including roads, schools, green spaces and community facilities.

4.10 CIL represents a fundamental change from the current system of developer contributions through Section 106 (S106) planning obligations. While S106 will still be used for site specific measures required to make a development acceptable, the introduction of CIL means that the use of S106 will be limited.

4.11 The overall aim of these changes is to make the developer contributions system fairer, faster and more transparent than the previous system. It is intended to give developers more certainty over costs and give councils and communities more choice and flexibility in how to fund infrastructure. The CIL rates to be applied to development are set out in the Havant Borough Community Infrastructure Levy Charging Schedule (see Appendix B), which was adopted by the Council on the 20 February 2013.

The Charging Schedule and supporting documentation can be found at:

<http://www.havant.gov.uk/planning-policy-design/community-infrastructure-levy>

As such this scheme, which represents new residential development, may be liable for CIL at a rate of £100 per additional square metre. The CIL amount payable for this scheme is £16,800.00.

4.12 **The National Planning Policy Framework** (NPPF) was published on 27 March 2012 and the NPPF sets out the three dimensions to sustainable development: economic, social and environmental. It is considered that the dimension most pertinent to this planning refusal is environmental.

In respect of design **paragraph 56** of the NPPF advises:

The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.

In respect of flood risk issues **paragraph 103** of the NPPF advises:

When determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere and only consider development appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment following the Sequential Test, and if required the Exception Test, it can be demonstrated that:

- *within the site, the most vulnerable development is located in areas of lowest flood risk unless there are overriding reasons to prefer a different location; and*
- *development is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed, including by emergency planning; and it gives priority to the use of sustainable drainage systems*

- 4.13 The application of the Sequential Test to individual planning applications is explained further in the Flood Risk and Coastal Change section of **Planning Practice Guidance. Paragraph 11** of the guidance sets out:

Ultimately the local planning authority needs to be satisfied in all cases that the proposed development would be safe and not lead to increased flood risk elsewhere.

5.0 REPRESENTATIONS

- 5.1 The application which is the subject of this appeal was published in accordance with the Council's adopted publicity procedures, and 11 neighbour notification letters were sent. In addition a site notice was posted. 3 letters of representation were received by the Planning Authority. Copies of the representation letters have previously been forwarded to the Planning Inspectorate. The contents of the letters were summarised in the officer report.

6.0 PLANNING CONSIDERATIONS

- 6.1 Having regard to the relevant policies of the Havant Borough Local Plan (Core Strategy) 2011, the Havant Borough Local Plan (Allocations) 2014, the NPPF and PPG and the reasons for refusal given in the Decision Notice dated 9 April 2015, it is considered that the main issues for consideration with regard to the refusal of this application are set out below:

- (i) Principle of development
- (ii) Flooding issues
- (iii) Appropriateness of design and effect on the streetscene;
- (iv) Effect on neighbouring properties and amenities of future occupants
- (v) Highway Implications
- (vi) Impact on trees and protected sites
- (vii) Developer Contributions - CIL and SRMP considerations

- 6.2 (i) Principle of development

The appeal site lies within an urban area as identified by the Havant Borough Local Plan, where new development is normally encouraged. That said, the site also lies within Flood Zone 2, and there is a need for the development to demonstrate compliance with relevant policies and guidance relating to flood risk before the development can be regarded as wholly acceptable in principle, as well as the other detailed development control criteria as considered below.

- 6.3 (ii) Flooding issues

The site is located within a Flood Zone 2 as identified on the Environment Agency flood zone map and the proposed development of an additional dwelling house is classified as a More Vulnerable Use by the EA. Paragraphs 101-103 of the NPPF require that Local Planning Authorities steer new development to areas with the lowest probability of flooding and that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. A sequential approach should be undertaken by the LPA in this regard to decision making. The advice contained within the EA's 'Demonstrating the Flood Risk Sequential Test for Planning applications', as well as relevant Planning Practice Guidance, has been followed to this regard to test the planning application subject of this report.

- 6.4 It is acknowledged that the Sequential Test does not need to be applied for individual developments on sites which have been allocated in development plans, or for applications for minor development, (for example extension to existing dwellings), or change of use (except for a change of use to a caravan, camping or chalet site, or to a mobile home or park home site). However, the proposal under consideration is not such a minor development, and the site the subject of this report is categorised as a windfall site and the EA advise that, in the absence of a flood risk windfall policy it may be possible (where the data is sufficiently robust) for the LPA to apply the Sequential Test taking into account reasonably available sites, historic windfall rates and their distribution across the district relative to Flood Zones. Where historic and future trends evidence indicate that housing need in the district through windfall can be met largely/entirely by development outside high flood risk areas, this may provide grounds for factoring this into the consideration of 'reasonably available alternative sites' at the planning application stage.
- 6.5 To this regard the LPA can demonstrate a 5 year housing supply within the current Strategic Housing Land Availability Assessment (SHLAA), and it has an Adopted Allocations Plan that identifies provision for 143 new dwellings, on Hayling Island alone, within two sites identified as policy HY1. The largest of which, for 129 dwellings, (Land at Goldring Close) has planning approval, lies in a flood zone 1 and is currently under construction. It is therefore considered that the provision of a further new dwelling within Flood Zone 2 cannot be justified in this case as there are sequentially better sites available, which are deliverable and provide the Borough's 5 year housing supply requirement.
- 6.6 In line with the Environment Agency's consultation response on the application, the Council's Emergency Planner was also consulted; the consultation response highlighting that the submitted Flood Risk Assessment did not satisfactorily address matters of emergency access/evacuation routes to the site – which whilst lying within Flood Zone 2 had not been demonstrated to be defended by any defences that might overcome the Sequential Test conclusion.
- 6.7 It is therefore concluded that, as a matter of principle, the proposal to add a further dwelling in this location cannot be justified when having regard to the application of the Sequential Test, notwithstanding that the site lies within an existing urban area.
- 6.8 It is considered that this in-principle objection is of sufficient and compelling weight to justify the refusal of the application. For the sake of completeness, however, the other matters considered as part of the application are set out below.

6.9 (iii) Appropriateness of design and effect on streetscene

The proposed dwelling is two storey in height and is of a chalet style with front and rear dormers. The materials proposed are white render and brown tiles. To this regard the design of the dwelling would accord with the height and style of the surrounding dwellings within the two plots directly adjacent to the site. As such it is not considered that the development would be detrimental to the amenities of the area or contrary to the Borough Design Guide and Policy CS16 (parts c and e) of the Havant Borough Local Plan (Core Strategy) 2011.

6.8 (iv) Effect on neighbouring properties and the amenities of future occupants

The proposal would result in the loss of less than half of the plot that currently serves the existing dwelling. A separation distance of 23m approx between the two storey

elements of the existing and proposed dwelling will be achieved and a separation distance of 18m (approx) between the rear of the proposed dwelling and a single storey front projection of the existing dwelling. It is considered, given the merits of the site, that these distances of separation are acceptable. This consideration is due in part to the view from the northern elevation of the existing dwelling; the main living accommodation is located to the north of the dwelling, away from the proposed dwelling. As such, the specific distances of separation as set out in the Borough Design Guide that should be applied to this development are back to back distances of a minimum of 20m. To this regard the main separation distance being 23m would exceed this.

6.9 With regard to the outdoor amenity provision for the new dwelling, a 10m deep section of rear garden is provided with sufficient space to the front of the dwelling for parking of cars and some degree of landscaping. It is considered that the proposal would provide acceptable living conditions comparable with the surrounding sites.

6.10 To the west of the site are two chalet style dwellings that are separated from the application site by means of a shared driveway. It is considered that the separation distances from the proposed dwelling subject of this report, being at a minimum of 9.7m gable to gable are acceptable. The western gable of the application dwelling being blank at first floor level will not give rise to any unacceptable issues of overlooking.

6.11 To the east of the site the adjacent plot has been divided into three, serving three chalet style dwellings. These dwellings are set even further away from the proposal than the closest dwelling to the west and, again, the proposed blank gable elevation will reduce any issues of direct overlooking. Any overlooking from the rear windows to any of the adjacent existing dwellings is considered to be acceptable due to distance of separation being 20m and greater.

6.12 (v) Highway Implications

The Council's Development Engineer has raised no objection to the proposal on the grounds of the information provided within the application form and the revised access and parking layout as demonstrated on Block Plan rev.D as submitted on the 2 April 2015.

6.13 (vi) Impact on trees and protected sites

The TPO trees that surround the site are generally located away from the development proposal. The closest tree located to the eastern boundary of the site, being a Corsican Pine has a very high canopy which would not impact the amenities of any future occupants of the proposed dwelling. So long as the findings of the AIA and Tree Protection Plan submitted with the application are conditioned to be adhered to as part of any planning consent, it is not considered that TPO trees should be any constraint on the development of this site in the manner proposed.

6.14 Natural England have raised no objection with regard to the designated sites that lie adjacent to the northern boundary of the site so long as their suggested conditions are applied to any subsequent planning consent.

- 6.15 (vi) Developer Contributions - CIL and Solent Recreation Mitigation Partnership considerations
- 6.16 The CIL rates to be applied to development are set out in the Havant Borough Community Infrastructure Levy Charging Schedule, which was adopted by the Council on the 20th February 2013. This followed two public consultation exercises and an Examination into the Charging Schedule by an independent Examiner. The Examiners Report concluded that the Havant Borough Council Community Infrastructure Levy (CIL) Charging Schedule provided an appropriate basis for the collection of the levy in the borough. The levy is charged at £100 per square metre on new floorspace (measured as gross internal area).
- 6.17 It is considered that there is a CIL liability for this site. The agent has completed the CIL planning form and confirmed that the net additional gross internal floor space will be 168 sqm and as such this will require a CIL payment of £16,800. The applicant has been advised of this sum accordingly. It is noted that a self build exemption form has been submitted with the application.
- 6.18 With regard to other developer contributions, this development would increase the number of dwellings within the 5.6km zone identified as significant in potentially increasing recreational pressure on the Solent SPA. Natural England's advice with regard to all new housing development within this zone is that it is likely to have a significant effect on the SPA. The measures of mitigation adopted by the LPA at the end of June 2014 requires a payment of £172 per dwelling to the Solent Recreation Mitigation Partnership – this is to secure accordance with Policy DM24 of the Allocations Plan. At the time of determining the application that payment had not been received and consequently a second reason for refusal was added.
- 6.19 On 10 March 2015, however, the applicant entered into a Deed which has secured the necessary contribution. On this basis the requirements of Policy DM24 have been met, and **the second reason for refusal has been overcome.**

7.0 COMMENT ON THE GROUNDS OF APPEAL

- 7.1 The issues raised within the appellants grounds of appeal have largely been covered within section 6 of this report.
- 7.2 The application has been considered against both Local and National Planning Policy and it has been found in section 6 that such a form of development would not be environmentally sustainable in terms of its flood risk and thus would not meet the requirements of the Havant Borough Local Plan (Core Strategy) 2011 Policy CS15 or the NPPF/PPG.
- 7.3 It is not considered that the examples of other development within the locality listed in the appellants grounds of appeal are relevant to the consideration of the application site; this site has been considered on its individual planning merits and constraints and examples within different streets and contexts are not considered directly relevant to this case which turns on the application of the sequential test to this particular site.

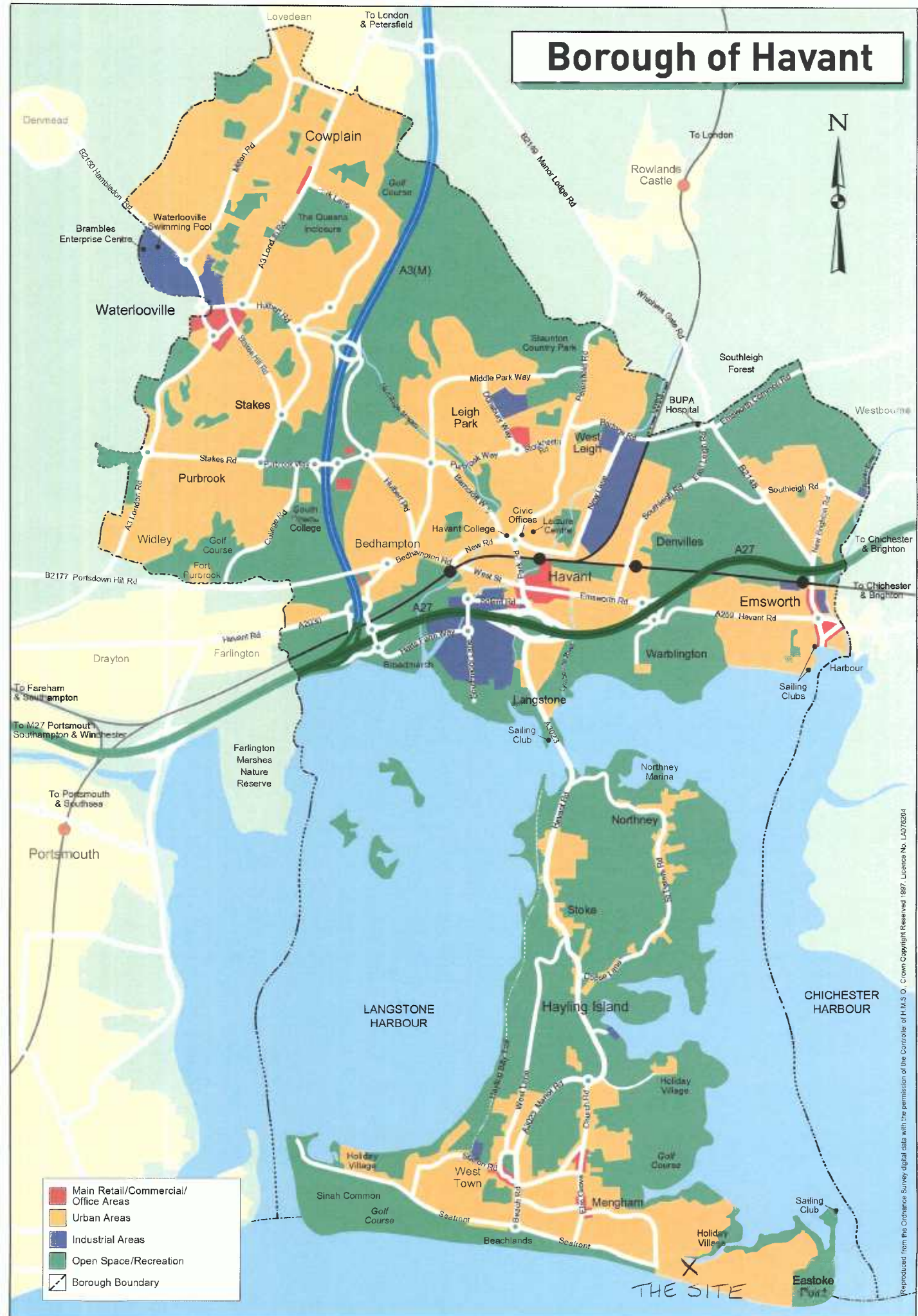
8.0 CONCLUSION

- 8.1 The site lies within the urban area, and, whilst the principle of residential development may often be acceptable in such a location, there are significant and compelling concerns regarding the impact of the site's flood vulnerability on the appropriateness of further residential development in this location which are considered to outweigh the benefits of an additional dwelling in this case. The site is a windfall site situated within Flood Zone 2 and the development proposed is classified by the Environment Agency as a More Vulnerable Use. The National Planning Policy Framework requires that the Local Planning Authority undertake a Sequential Test to steer development to areas with the lowest probability of flooding. It is considered that there are sequentially better sites within the Borough and that the LPA can demonstrate a 5 year housing supply. Therefore, there is no overriding justification for the development of an additional dwelling within the site which is defined as having a probability of flooding and would result in an unacceptable risk to life and property from tidal inundation. As such, the proposal would be contrary to the provisions of the National Planning Policy Framework and Planning Practice Guidance, and Policy CS15 of the Havant Borough Local Plan (Core Strategy) 2011.
- 8.2 It is therefore considered that the proposal is not environmentally sustainable for the reasons given in 8.1 and expanded upon in Section 6 and that this outweighs the economic and social need for new dwellings in the Borough as more suitable sites are available.
- 8.3 The Inspector is therefore respectfully requested to dismiss this appeal. Should, however, the Inspector be minded to allow the appeal and grant permission for the proposal, the Council would request that the planning conditions set out in the separate submitted document are attached to any permission.

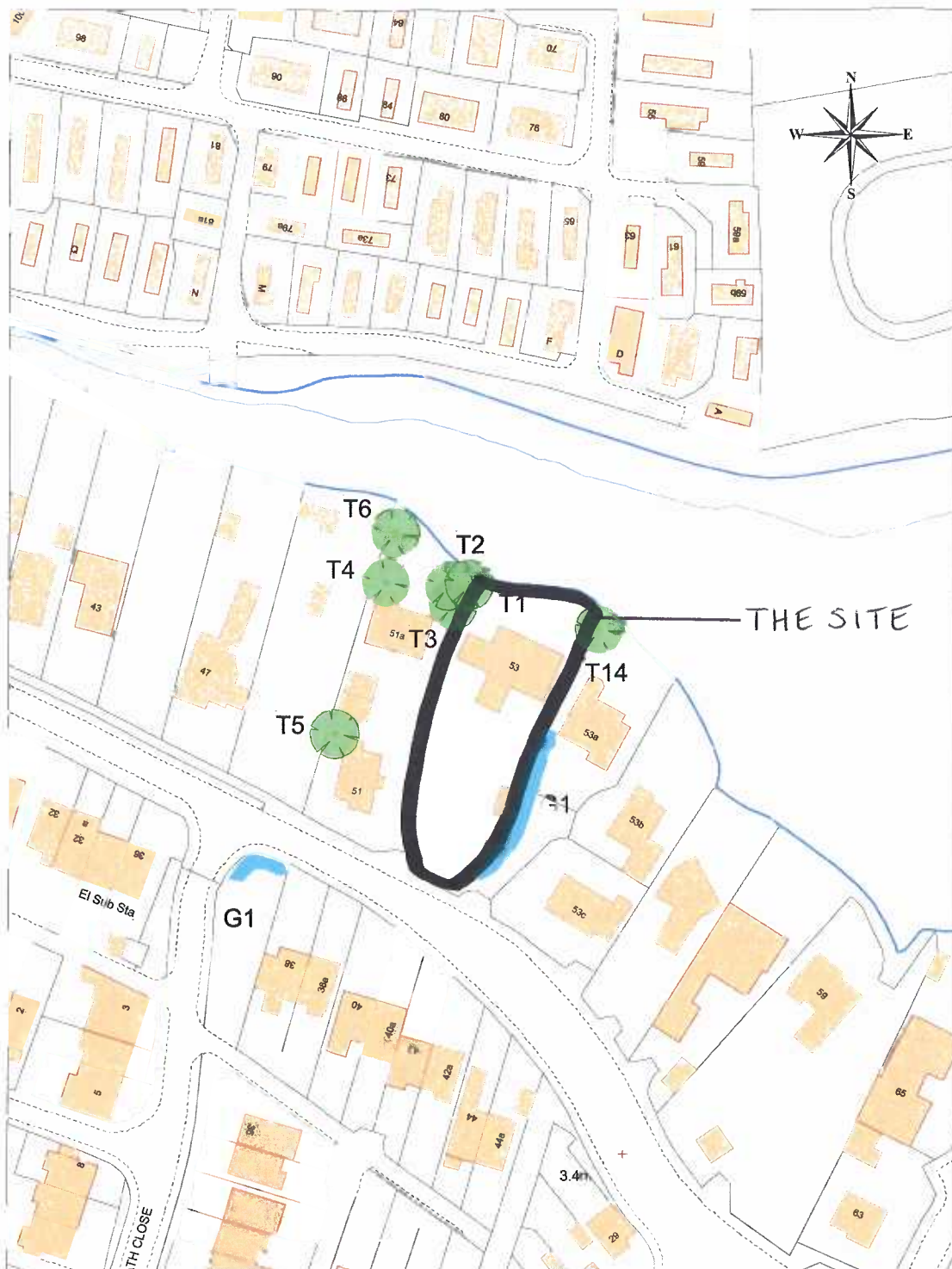
APPENDICES

- (A) Site location plan.

Borough of Havant



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Cleaner, Safer, More Prosperous

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