

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

**STATEMENT OF HAVANT BOROUGH
COUNCIL**

**8 Selmore Avenue, Hayling Island,
PO11 9PB**

**Local Planning Authority Reference:
APP/22/00746**

**Planning Inspectorate Reference:
APP/X1735/W/23/3316047**

TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)

APPEAL BY Ian Murray AGAINST REFUSAL to grant permission for:

Division of site into two to allow the construction of a three bedroomed detached bungalow to the rear. Single storey front and side wrap around extension of existing dwellinghouse

Planning Inspectorate Reference: APP/X1735/W/23/3316047

Local Planning Authority Reference: APP/22/00746

1 Site Description

- 1.1 The application site relates to a semi detached two storey property located to the west side of Selsmore Avenue. The property comprises of brickwork with concrete roof tiles. Vehicular access is from Selsmore Avenue with parking to the front and side. The existing property has a relatively long garden, similar to the other properties along this side of Selsmore Avenue.
- 1.2 The area is predominantly made up with a mixture of semi detached two storey properties and detached chalet style bungalows.
- 1.3 The application site is rectangular in shape with a width of approximately 13.5 metres and a depth of approximately 54 metres.
- 1.4 The site is not within any current Flood Zone but taking into account climate change the site would fall within Flood Zone 2 and 3 in the future.

2 Planning History

99/58056/002 - First floor side extension (south elevation) and dormers to front and rear, PERM,24/09/1999

93/58056/000 - First floor rear extension and ground floor side extension, WD,25/02/1993

93/58056/001 - Demolish garage, erect two storey side extension and new detached garage, PERM,

03/68271/000 - Outline application for 2 semi detached bungalows, 3 garages (one attached) and access to Selsmore Avenue., REF,27/05/2003

03/68271/001 - Outline application for detached bungalow with access from Selsmore Avenue., REF,04/03/2004

3 The Appeal

- 3.1 The appeal involves the division of the site into two to allow for the construction of 1No. 3 bedroom detached bungalow to the rear. The proposed bungalow would be 'L' shaped with a pitched/hipped roof. There would also be a garage located to the rear.
- 3.2 In addition the proposal relates to works to the existing property (8 Selsmore Avenue) in the form of a single storey front and side wrap around extension

4 Planning Policies

Havant Borough Local Plan (Core Strategy) March 2011

CS11	(Protecting and Enhancing the Special Environment and Heritage of Havant Borough)
CS15	(Flood and Coastal Erosion)
CS16	(High Quality Design)
CS21	(Developer Requirements)
CS9	(Housing)
DM13	(Car and Cycle Parking on Residential Development)

Havant Borough Local Plan (Allocations) July 2014

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

- 5.1 To avoid repetition, the attached Officer's report (Appendix A) sets out in detail the planning position of the Local Planning Authority (LPA) in respect of the appeal. The Inspector's attention is drawn in particular to paragraphs 7.16 – 7.23 in the report, where the key issues are set out. As the Inspector is aware the only reason for refusal by the LPA is due to site being located within a Future Flood Zone according to the Strategic Flood Risk Assessment as shown in Appendix C. That said, it is acknowledged that the whole proposal is up for consideration by the Inspector.
- 5.2 As the Inspector will note from the Officer's report a Habitat Regulations Assessment & Appropriate Assessment, was undertaken in respect of the impact of the development on the Solent Special Protection Area from increased recreation pressure and on water quality caused by the discharge of nitrates on the designated sites within the Solent. The Habitats Regulations Assessment concluded that the avoidance and mitigation packages proposed in the Appropriate Assessment were sufficient to remove the significant effects on the Solent's European Sites which would otherwise have been likely to occur. The applicant entered into a legal agreement to secure the mitigation packages and paid the appropriate mitigation, details of which are attached at Appendix D.
- 5.3 As the decision-making body, the Inspector will go through the same assessments when determining the appeal.
- 5.4 Since the refusal there has been an update on the Council's Five Year Housing Land Supply number. This has now dropped to 1.81 years as per the Five Year Housing Land Supply Update March 2023 (Appendix E). However, paragraph 11d footnote 7 of the National Planning Policy Framework shows that the presumption in favour of sustainable development does not include areas at risk of flooding or coastal change.
- 5.5 The need for the sequential test for a single unit scheme was clearly accepted by the appeal inspector at 16 Selbourne Avenue. The Appeal decision can be found in Appendix F.

6 Overall Conclusions

- 6.1 The proposal is considered to be contrary to National Planning Policy Framework and Policy CS15 of the Havant Borough Core Strategy (2011) and the Inspector is requested to dismiss the appeal.

7 Appellant's Statement

- 7.1 With regards to the Appellant's appeal statement, the points raised will be covered below. The LPA reserves the right to comment further if new material planning considerations are raised by the Appellant.
- 7.2 The Appellant's appeal statement contest whether a Flood Risk Assessment was ever a statutory requirement as part of the application. This is a requirement for sites at risk to flooding now and in the future as covered in Policy CS15 of the Havant Borough Core Strategy (2011) and footnote 55 of the National Planning Policy Framework. Further, there is a requirement for a sequential test, in line with paragraph 162 of the NPPF and Paragraph 027, bullet 2 of the Planning Practice Guidance (Reference ID: 7-027-20220825).
- 7.3 In terms of the Local List of validation requirements it is important to understand it is not a policy document but represents guidance to applicants as to what is required before a planning application can be registered. The decision to be taken on any individual application must be made in relation to local and national planning policies – principally the adopted development plan and the NPPF – and all other material considerations.
- 7.4 The Appellant's appeal statement claims the site has not been identified as at risk in a Strategic Flood Risk Assessment, indeed that Havant Borough Council does not have a Strategic Flood Risk Assessment (SFRA). This is incorrect, Havant's SFRA is part of a wider sub-regional SFRA prepared on behalf of the Partnership for South Hampshire study, the SFRA mapping has for many years been hosted on behalf of all PfSH authorities [on the Portsmouth City Council website](#). This was added to the climate change layer to the Council's public facing interactive mapping in February 2022: The live HBC policy map found here: [Where I Live | Havant Borough Council](#) has a layer called 'Strategic Flood Risk Assessment – expected flood risk area – 2115'. Please see Appendix C. While the mapping may not have been available on Havant's own website at the time of the application, and it is acknowledged that this is not ideal, the SFRA did and does exist and mapping was publicly available. Therefore, it is incorrect to say the LPA has introduced additional criteria post the point of the application, which was formally publicly available.
- 7.5 In terms of the Environment Agency Mapping we recognise the process of identifying areas at risk of future flooding is complicated by the fact that the Environment Agency current day flood maps hosted on the Gov.uk website does not show this information. This is a matter that the Council have raised with the Environment Agency in recent liaison meetings, as it does not promote transparency of information that is relevant to the determination of planning applications. It is also not helpful that the EA's guidance on FRAs (<https://www.gov.uk/guidance/flood-risk-assessment-for-planning-applications#when-you-need-an-assessment>) does not explicitly reference future flood risk. The LPA acknowledges that flood risk is a complex topic and that policy, guidance and sources of information are dispersed on many websites both nationally and locally. However, this information is now available on the Council's website see (<https://www.havant.gov.uk/flood-risk-development>). In any case,

whatever the ease of access to the information, it is fact that the future risk of future flooding is a material consideration which is required by the NPPF to be taken into account; that there is a clear SFRA evidence base which identifies 8 Selsmore Avenue as being at such risk; that a site specific FRA is required and that the application of the Sequential Test is necessary in order to direct new development away from such areas of flood risk.

- 7.6 It is acknowledged that the case at 11 West Haye Road (planning reference APP/20/01219) was approved, notwithstanding that the site can be seen to lie within a future flood risk area. Having reviewed the case officer's report, it is clear that the future flood risk issue was not identified during the course of that officer's review of the case, which is regrettable as it has resulted in permission for a new dwelling being approved in an area at risk of future flooding, which otherwise would not have been the case. Since that decision was taken in early 2021, LPA officers have received further training, knowledge and access to the mapping system, and we are confident that such an oversight is unlikely to occur in future. Local guidance for applicants on flood risk has also been published (<https://www.havant.gov.uk/flood-risk-development>). In the case of the appeal site, the future flood risk issue was identified during the course of assessing the application and is a material consideration which must be taken into account in the determination of the application. This assessment has been applied to other applications such as Pepperpot Cottage – APP/22/00339. This was communicated to the Applicant and Agent via emails - see Appendix F.

8 Suggested Conditions

- 8.1 Notwithstanding the LPA's continuing objection to the proposal, if the Inspector is minded to grant the appeal a list of suggested conditions is attached as Appendix B.

Appendices

- (A) Officer's delegated report
- (B) List of possible conditions
- (C) Future Flood Risk Map and Havant Borough Council's Interactive Map
- (D) Signed Habitat Regulations Assessment and Appropriate Assessment
- (E) Five Year Housing Land Supply Update March 2023
- (F) 16 Selbourne Avenue – Appeal Decision
- (G) Email Communication with Applicant and Agent

APPENDIX A

Site Address: 8 Selsmore Avenue, Hayling Island, PO11 9PB
Proposal: Division of site into two to allow the construction of a three bedroomed detached bungalow to the rear. Single storey front and side wrap around extension of existing dwellinghouse
Application Type: Full Planning Permission
Application No: APP/22/00746 Expiry Date: 25/09/2022
Applicant: Mr & Mrs Griffiths
Agent: Mr Murray Case Officer: Joseph Toole
I J Murray Associates Ltd
Ward: Hayling East

Recommendation: **REFUSE PERMISSION**

1 Site Description

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3 Proposal

- 3.1 The proposal would involve the division of the site into two to allow for the construction of 1No. 3 bedroom detached bungalow to the rear. The proposed bungalow would be 'L' shaped with a pitched/hipped roof. There would also be a garage located to the rear.
- 3.2 In addition the proposal relates to works to the existing property (8 Selsmore Avenue) in the form of a single storey front and side wrap around extension.

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)
- CS15 (Flood and Coastal Erosion)
- CS16 (High Quality Design)
- CS21 (Developer Requirements)
- CS9 (Housing)
- DM13 (Car and Cycle Parking on Residential Development)

Havant Borough Local Plan (Allocations) July 2014

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

Emsworth Neighbourhood Plan Post Examination Version 2020

Listed Building Grade: Not applicable.

Conservation Area: Not applicable.

5 Statutory and Non Statutory Consultations

Building Control

No Comment.

Councillor Leah Turner - Hayling East

No Comment.

Councillor M Wilson - Hayling East

No Comment.

Councillor R Raines - Hayling East

No Comment.

County Archaeologist

Thank you for your consultation. I am happy to confirm that I would not raise any archaeological issues.

County Minerals

No Comment.

Environment Agency

No Comment.

Hampshire Highways

The Highway Authority require clarification as to whether a new dropped kerb vehicle access is to be proposed or an existing one is to be extended. If a new access is to be provided visibility splays and pedestrian intervisibility splays should be submitted in

accordance with Hampshire County Council Technical Guidance TG3. Further information can be found at this following link: TG3 - Stopping Sight Distances and Visibility Splays (hants.gov.uk). If one is to be extended, the full length of the dropped kerb should be provided including the extended length and the existing length. Tracking should also be provided to show the ability of a standard size vehicle manoeuvring and egressing in forward gear for the proposed dwelling.

Additionally, it is recommended to the applicant that they should be made aware that subject to any planning permission being granted by the Local Planning Authority, a subsequent agreement will need to be granted by HCC as Highway Authority to undertake the drop kerb works on the Highway. Details of this procedure can be found via the following link: [Apply for a vehicular access | Hampshire County Council](#) (hants.gov.uk). It is important to note that if there are any minor utility diversions that are required to facilitate the dropped kerb then additional costs may arise in addition to the initial application fee. The applicant should also be aware that if an existing access is to be closed, a full height kerb should be reinstalled.

Having regard to the above, the Highway Authority require the further information requested before a formal recommendation can be made.

Hampshire Highways (2)

Thank you for your reconsultation on the above planning application. The Highway Authority wish to make the following comments.

The applicant has now confirmed that the dropped kerb is to be existing. As such no further information is required on this point.

The Highway Authority are satisfied that there is appropriate space for vehicles to manoeuvre to egress in forward gear.

Having regard to the above, the Highway Authority provide no objection to this planning application.

Nutrient Team

At the time of writing, I can confirm that there is sufficient capacity in the Council's strategic mitigation scheme to mitigate the development proposals. The applicant is however advised that there is limited capacity remaining in the Council's mitigation scheme at Warblington Farm.

There is alternative mitigation available from third party providers in order to avoid and mitigate the water quality impact arising out of the proposed development. The details of other schemes have been published on the Partnership for South Hampshire's website at: <https://www.push.gov.uk/work/mitigation-schemes-available-to-developer>

Natural England Government Team

DESIGNATED HABITATS SITES – NO OBJECTION SUBJECT TO SECURING APPROPRIATE MITIGATION

This advice should be taken as Natural England's formal representation on appropriate assessment given under regulation 63(3) of the Conservation of Habitats and Species Regulations 2017 (as amended). You are entitled to have regard to this representation. With regard to European Sites, Natural England does not object to the granting of this permission subject to the advice given below.

Your appropriate assessment dated 27 September 2022, 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 all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we concur with the assessment conclusions.

Your authority has measures in place to manage potential impacts through contributions to an agreed strategic solution which we consider to be ecologically sound. Natural England is of the view that if these measures, including contributions to them, are implemented, they will be effective and reliable in preventing harmful effects on the Habitats Site(s) for the duration of the proposed development.

This advice is provided on the basis that all mitigation measures will be secured as planning conditions or obligations by your authority to ensure their strict and timely implementation for the full duration of the development. Your authority should be assured that proposed financial contribution rates are proportionate to the identified effects of the proposed development, suitably precautionary, and in line with the Retail Price Index, where relevant.

Further Advice

Nutrient Budget – Bespoke Occupancy Figure

We note that an alternative occupancy figure has been used in the nutrient budget calculation. It is Natural England's view that competent authorities may choose to adopt bespoke calculations for detailed planning applications, if sound evidence is available. These are matters for each competent authority. Natural England's advice is to take a precautionary approach that recognises the uncertainty.

For any queries regarding this letter, for new consultations, or to provide further information on this consultation please send your correspondences to consultations@naturalengland.org.uk.

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: 9

Number of site notices: 1

Statutory advertisement: Not applicable.

Number of representations received: 9

Comment	Officer Comment
Loss of ecology	The proposal is not considered to have an adverse impact on the ecology of the area
Refusals for backland development in	Noted

the past	
Current road infrastructure cannot support a further building	This is not a material planning consideration
Loss of car parking	There would be sufficient car parking on site to meet our Parking Standards
Out of place with character of the area	Please see Section 7.
Existing property would overlook new bungalow	Please see Section 7.
Difficult to reverse out of the site	Hampshire Highways commented on the application raising no objection
Traffic noise increase	This would be dealt with under Environmental Health legislation
Light pollution	Please see Section 7.
Noise pollution from new access	Please see Section 7.
Noise from building works affecting a number of properties	If noise and disturbance are found to be a nuisance it would be dealt with under Environment Health legislation
Dangerous access	Hampshire Highways have commented on the application raising no objection

Habitat Regulations Assessment & Appropriate Assessment

The Council, as competent authority under Regulation 63(1)(a) of the Conservation of Habitats and Species Regulations 2017 (The Habitats Regulations), has conducted a Habitats Regulations Assessment (HA) of the proposed development.

Recreational Pressure

The project being assessed would result in a net increase of dwellings within 5.6km of the Solent SPAs. In line with Policy DM24 of adopted Havant Borough Local Plan (Allocations) and the Solent Recreation Mitigation Strategy, a permanent significant effect on the Solent SPAs due to increase in recreational disturbance as a result of the new development, is likely. As such, in order to lawfully be permitted, the development will need to include a package of avoidance and mitigation measures.

The applicant has proposed a mitigation package based on the methodology in the Developer Contributions Guide. The scale of the proposed mitigation package would remove the likelihood of a significant effect. The applicant has entered into a legal agreement to secure the mitigation package in line with the requirements of the Habitats Regulations and Policy DM24.

Water quality

There is existing evidence of high levels of nitrogen and phosphorus in the water environment with evidence of eutrophication at some designated sites. 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. Therefore, a significant effect on the Chichester and Langstone Harbours SPA, Solent Maritime SAC and Solent and Dorset Coast pSPA cannot be ruled out.

Natural England have produced 'Advice on achieving nutrient neutrality for new development in the Solent region'. This sets out a methodology to calculate the nutrient emissions from a development site. The applicant has used this methodology to calculate the nutrient emissions from the site. This calculation has confirmed that the site will emit a net nutrient load into European Sites. The Position Statement and Mitigation Plan for Nutrient Neutral Development sets out a mitigation package which will mitigate the impact that this development would have on the designated European Site. The applicant has entered into a legal agreement to secure the mitigation package.

Appropriate Assessment conclusion

The Habitats Regulations Assessment concluded that the avoidance and mitigation packages proposed in the Appropriate Assessment are sufficient to remove the significant effects on the Solent's European Sites 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. The applicant has entered into a legal agreement to secure the mitigation packages.

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
- (iv) Flood Risk
- (v) Access and Parking matters
- (vi) Community Infrastructure Levy

(i) Principle of development

7.2 The application site is situated within an urban area where further development is considered acceptable in principle, subject to the usual development control criteria. The NPPF supports sustainable development with three aims: the economic; social; and environmental objectives. Havant Borough Council development plan comprises the Hampshire Minerals and Waste Plan; the Local Plan (Core Strategy) 2011 and the Local Plan (Allocations) 2014 and in accordance with paragraph 11 of the NPPF decisions should be made in accordance with the development plan.

7.3 It is noted that the Council's Five Year Housing Land Supply Update (November 2021) shows that the Borough has 3.9 years housing land supply with a 20% buffer applied. This is below the five year supply threshold, and as such there is a presumption in favour of sustainable development (para 11d of the NPPF). Significantly, however, it does not follow there is a tilted balance in favour of permission being granted – permission should only be refused where there are relevant policies of particular importance that are a clear reason for refusing the application or the adverse impacts

of doing so would significantly and demonstrably outweigh the benefits.

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

7.4 The proposed dwelling would have white render with grey slate roof tiles. This is considered to match other properties within the area, therefore the proposed materials are deemed inkeeping with the character of the area.

7.5 The proposed dwellinghouse would be modest in size and height (approximately 4.2m to the ridge). Due to its position to the rear it would not be visible from the street scene. There is a relatively standard building line along Selsmore Avenue with properties along the west side having large rear gardens. There are some examples of backland development within the surrounding area including properties to the back of Nos. 24, 28 and 30. Therefore, the design and appearance and layout of the proposed dwellinghouse is considered to be acceptable in the locality.

7.6 There would be a separation distance of approximately 13.5m between the side wall of the proposed bungalow and rear wall of No.8, which is less than the recommended back to back distance in outlined within the Havant Borough Design Guide SPD. However, the development is single storey rather than two storey, therefore the distance is considered to be acceptable. The Havant Borough Design Guide SPD sets out the requirement for new residential developments to have rear gardens of 10 metres. The proposed bungalow would have a rear garden with a depth of approximately 10 metres, the same as the No.8. Thus, the subdivision of the site is considered to be inkeeping with the character of the area, providing sufficient space for the proposed dwelling and the existing property.

7.7 The proposal also includes works to the existing property, involving a single storey front and side wrap around extension. Due to the size and design of the proposed works it is not considered to have an unacceptable impact on the character of the area.

7.8 The proposal is on balance considered to have an acceptable impact on the character of the area, having regard to Policy CS16 of the Havant Borough Council Core Strategy (2011).

(iii) Impact upon residential amenity

7.9 The proposed dwelling would be located adjacent to the rear gardens of Nos. 6 & 10 Selsmore Avenue and would certainly be perceptible to the occupants of these dwellings. However, having regard to the limited height, position of windows and separation distances it is not considered that the proposed dwelling itself would have an adverse impact on the surrounding neighbouring properties in terms of overlooking, overbearing impact or harmful loss of light. Planning conditions could be used to ensure any future permitted development rights are restricted at the property. Although, the proposed dwelling would give rise to light pollution it is not considered to be adversely harmful due to its modest height and position of windows. Due to the size and position of the proposed garage it is not considered to have a negative impact upon any neighbouring property.

7.10 The proposed access to the dwelling would go along the side of No.8 and No.10 Selsmore Avenue. Within the Havant Borough Design Guide SPD, it sets access routes should be located an appropriate distance away from the existing dwelling so not to have a detrimental effect through noise, visual disruption or loss of privacy.

"Routes should usually have a minimum separation distance of 3 metres from the edge of the access road to the edge of the nearest affected house, together with the appropriate boundary treatment to screen the access road from dwellings"

7.11 The proposed access road would go down the side of No.10 and have a separation distance of approximately 3 metres from the side of No.10 with existing 1.8 metre high fencing, thus satisfying the target set out within the Design Guide.

7.12 There would be an impact from the use of the proposed access in terms of vehicular movements/disturbance to the existing dwelling (No.8). However, given the limited use of the proposed access associated with one dwelling to the rear it is considered on balance to be acceptable. The proposal would impact on outlook from the existing property (No.8), however given its design and single storey height, it is not considered to have an unacceptable impact on outlook, nor would be overbearing, nor result in a level of overlooking.

7.13 The proposed works to No.8 Selsmore Avenue are not considered to have an adverse impact on any of the surrounding properties.

7.14 In terms of the living conditions for future occupiers of the proposed dwelling, the proposed Gross Internal Area is considered to be acceptable for a 3 bed, 5 person dwelling and an adequate rear garden is provided. No. 8 has the potential to overlook the new dwellinghouse to a modest level taking into account the separation and screening indicated between the dwellings; however whilst the new property would be subject to a degree of overlooking, this is to be expected in a built up area and it would nevertheless benefit from a reasonable level of private amenity space.

7.15 Overall, it is considered that the proposed dwellinghouse would be acceptable for its future occupiers and would not have an adversely negative impact on the neighbouring properties, having regard to Policy CS9 and CS16 of the Havant Borough Council Core Strategy (2011).

(iv) Flood Risk

7.16 Since the site would fall within flood zone 2 and 3 in the future, when taking climate change into account there is a fundamental objection to the development of this site to provide new residential accommodation. New residential units need to be directed to areas at least risk of flooding. A Flood Risk Assessment has not been provided with this application. This was not requested to be provided as a sequential and exception test would not be passed.

7.17 In terms of development in areas at risk of flooding now and in the future Policy CS15 requires, amongst other matters, that:

"1. It meets the sequential and exception test (where required) in relation to PPS25

2. The site is located in a low hazard area as defined in the Strategic Flood Risk Assessment.

3. A site-specific flood risk assessment demonstrates that the development will be safe, including the access, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

4. The scheme incorporates flood protection, flood resilience and resistance measures appropriate to the character and biodiversity of the area and the specific

requirements of the site.

5. Appropriate flood warning and evacuation plans are in place."

- 7.18 Paragraph 159 of the NPPF states ""Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future)." With Paragraph 162 of the NPPF going on to say "The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding."
- 7.19 Paragraph 163 of the NPPF requires that Local Planning Authorities steer new development to areas with the lowest probability of flooding (ie Flood Zone 1) 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.
- 7.20 The aim of the Sequential Test is to steer new development to the areas with the lowest probability of flooding. The Planning Practice Guidance advises that, in applying the Sequential Test, the aim is to steer new development to Flood Zone 1, these being areas with a low probability of flooding. Only where there are no reasonably available sites in Flood Zone 1, should reasonably available sites in Flood Zones 2 and 3 and future Flood Zones be considered.
- 7.21 The Planning Practice Guidance states that in the first place it is the Local Planning Authorities responsibility to consider if the sequential test has been satisfied, informed by evidence provided by the developer. No evidence has been submitted that an appropriate search, with regard to the availability of other suitable sites across the Borough, has been undertaken. As such it is considered that a robust search for reasonably available sites in Flood Zones 1 has not been undertaken, the proposed development therefore immediately fails to accord with the Sequential Test required by the Framework and the Planning Practice Guidance. The LPA has published further guidance on the Sequential and Exception Tests setting out national guidance and advice on the areas of search for alternative sites.
- 7.22 In terms of the Exception Test due to the minor scale of development it is not considered to provide wider sustainability benefits to the community that outweigh the flood risk. The Exception Test is designed to allow appropriate and safe development to proceed in scenarios where the Sequential Test has been passed. In this instance, the Sequential Test has not been passed and therefore, weight cannot be offered to the wider community benefits of the proposal.
- 7.23 Overall it is considered that the applicant has failed to demonstrate that there would be no alternative sites for a single dwelling within the Borough at a lower risk of flood, that the site would be safe from flooding across its lifetime or that the proposal would not increase the risk of flooding elsewhere and would therefore be contrary to the aims and objectives of the NPPF and adopted Policy CS15 of the Havant Borough Council Core Strategy (2011).

(v) Access and Parking matters

7.24 Vehicular and pedestrian access would be via the existing driveway currently providing access for No.8 Selsmore Avenue. The drive would be extended to the rear to provide three car spaces and a garage, with a turning area to allow vehicles to enter and leave in forward gears.

7.25 Hampshire Highways commented on the application requesting clarification of whether a new dropped kerb would be created, or they would use the existing. Also, for a plan to be provided showing tracking of a standard size vehicle manoeuvring and egressing in forward gear for the proposed dwelling. This information was provided, and they are satisfied there is sufficient space for a vehicle to manoeuvre and egress the drive in forward gear, thus raising no objection.

7.26 Both the proposed new dwelling and No.8 Selsmore Avenue would retain the required parking allowance in order to comply with the Havant Borough Parking Standards SPD. Overall, the proposal is considered to accord with policy DM13 of the Havant Borough Council Core Strategy (2011).

(vi) Community Infrastructure Levy

7.27 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 20 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 £80 per square metre (plus indexing) on new floorspace (measured as gross internal area) in Hayling Island.

7.28 The proposal would result in new residential development which is Community Infrastructure Levy (CIL) liable, and the appropriate forms have been submitted. The proposed total gross floor area would be 99 sqm. which would generate a total CIL liability of £14,673.21. The applicant has not claimed relief, assuming liability.

8 Conclusion

8.1 The proposal to have an acceptable impact on the character of the area, neighbour amenity and access/parking.

8.2 The site is located within a future flood risk zone and is considered to fail the sequential and exception tests contrary to the NPPF and adopted policy CS15 of the Havant Borough Core Strategy (2011). The proposal is therefore recommended for refusal.

8.3 It is acknowledged that the Council's Five Year Housing Supply is below the threshold and that the proposal would provide a single dwelling making a very small contribution to the Council's housing need. However, areas at risk to flooding are of particular importance, which is a clear reason for refusing the application as stated within paragraph 11d, Footnote 7 of the NPPF.

9 RECOMMENDATION:

That the Head of Planning be authorised to **REFUSE PERMISSION** for application APP/22/00746

- 1 The site lies within a future flood zone. The applicant has failed to provide a Flood Risk Assessment to demonstrate that there are no other sequentially preferable sites within the Borough for a single-dwellinghouse, that the development would be safe from flood risk across its lifetime or that the development would not increase the risk of flooding elsewhere. In the absence of adequate information, the proposal cannot pass the Sequential or Exception Tests as set out within the National Planning Policy Framework and would represent unsustainable, inappropriate form of development in an area at future risk of flooding. The proposal is therefore, contrary to Policy CS15 of the Havant Borough Core Strategy, 2011 and the aims and objectives of the National Planning Policy Framework.

APPENDIX B

Condition 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.

Condition 2

The development hereby permitted shall be carried out in accordance with the following approved plans:

Existing Site Plan - A101
Proposed Block Plan
Proposed Floor Plan - A112
Proposed Elevations A113
Proposed Site Sections - A114
Proposed Site Views - A115
Proposed 3D Site View - A116
Proposed Floor Plans - A117
Proposed Elevations - A118
Site Plan with Parking - A111 - V4

Reason: - To ensure provision of a satisfactory development

Condition 3

The external materials used shall be as indicated on the submitted forms and hereby approved plans, or shall match, in type, colour and texture, those of the existing building so far as practicable.

Reason: In the interests of the amenities of the area and having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

Condition 4

Notwithstanding the provisions of any Town and Country Planning General Permitted Development Order, no extensions to the main dwelling or outbuildings shall be constructed within the curtilage of the site or any roof alterations made (including the provision of roof light windows) without the prior approval of the Local Planning Authority.

Reason: In the interests of the amenities of the neighbouring properties and to ensure adequate parking provision having due regard to policies CS16 and DM13 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

Condition 5

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.

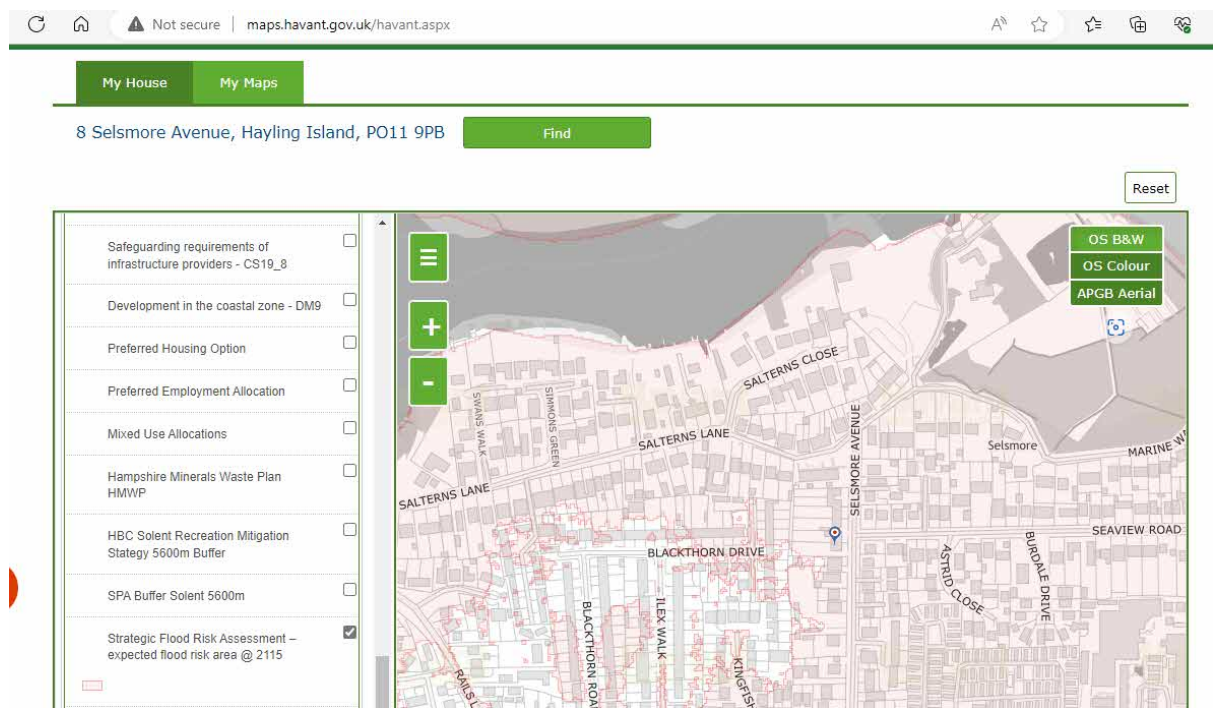
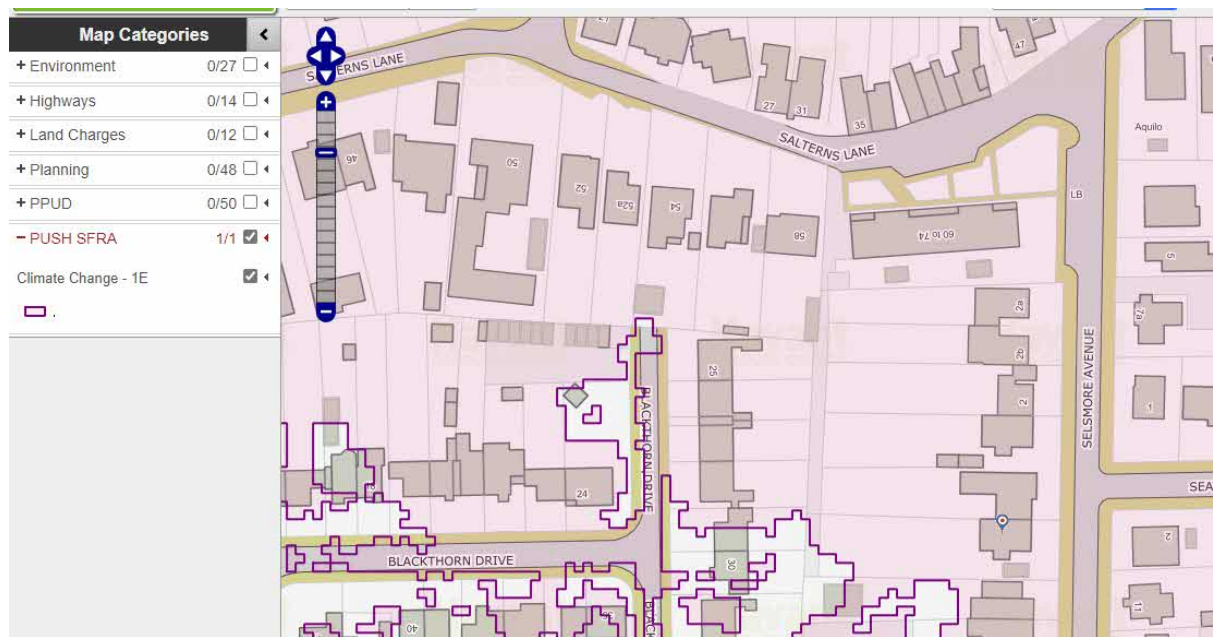
Reason: There is existing evidence of high levels of nitrogen and phosphorus in the water environment with evidence of eutrophication at some European designated nature conservation sites in the Solent catchment. The PUSH Integrated Water Management Strategy has identified that there is uncertainty as 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.

Condition 6

At all times following occupation of the development hereby approved, all measures for water usage within the submitted nutrient budget shall be maintained 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.

APPENDIX C



APPENDIX D

THIS UNILATERAL UNDERTAKING is made by DEED on the 29th of September 2022.

AND GIVEN BY

Gemma Rose Griffiths and Simon Shaun Griffiths of 8 Selsmore Avenue, Hayling Island, PO1 9PB

The Council of the Borough of Havant of Public Service Plaza Civic Centre Road
Havant PO9 2AX (Council)

BACKGROUND

(A) The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated.

(B) The Owner owns the Land and has made the Planning Application and is proposing to carry out the Development

(C) The Owner gives this undertaking to perform the obligations set out in this deed-

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this deed-

1.1 Definitions:

Act: the Town and Country Planning Act 1990
Administration Fee: the sum of E46-

Commencement of Development: the date on which any material operation (as defined in section 56(4) of the Act) forming part of the Development is begun save that (for the purposes of this deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, site survey works, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services and *Commence Development' and similar expressions shall be construed accordingly-

Nutrient Mitigation Contribution: the sum of E1 242.60 (inclusive of a 5% monitoring fee) as a contribution towards measures to mitigate the water quality impacts of the Development on the Solent European Sites.

SRMS Contribution: the sum of E771.75 (inclusive of a 5% monitoring fee) as a contribution towards measures to mitigate the impacts of the Development on the Solent Special Protection Areas in accordance with the Solent Recreation Mitigation Strategy dated 1 April 2018.

Development: the development of the Land described in the Planning Application.

Land: the freehold land at 8 Selsmore Avenue, Hayling Island, PO1 1 9PB

Planning Application; an application for planning permission registered by the Council on 30/07/22 under reference number APP/22/00746

Planning Permission: the planning permission granted/to be granted by the Council in respect of the Planning Application.

- 1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)-
- 1.3 Unless the context otherwise requires: words in the singular shall include the plural and in the plural shall include the singular.
- 1.4 A reference to any party shall include that party's personal representatives; successors and permitted assigns.
- 1.5 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended: extended or re-enacted from time to time.
- 1.6 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision-
- 1.7 References to clauses are to the clauses of this deed.
- 1.8 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. STATUTORY PROVISIONS

- 2.1 This deed constitutes a planning obligation for the purposes of section 106 of the Act, section 111 of the Local Government Act 1972 and any other enabling powers.
- 2.2 The obligations contained in clause 3 of this deed are planning obligations for the purposes of section 106 of the Act and are entered into by the Owner with the intention that they bind the interests held by the Owner in the Land and their respective successors and assigns-
- 2.3 This deed shall have effect from the date hereof.
- 2.4 The obligations contained in clause 3 of this deed are enforceable by the Council in accordance with section 106 of the Act.

3. OWNERS COVENANTS WITH THE COUNCIL

- 3.1 The Owner covenants to pay the Nutrient Mitigation Contribution, the SRMS Contribution and the Administration Fee to the Council on the date of this deed.
- 3.2 Subject to clause 3.4, the Owner covenants that clause 3.1 shall apply to any subsequent planning permission that is granted by the Council under section 73 or 73A of the Act which permits non-compliance with any of the conditions attached to the Planning Permission or any subsequent permission granted under such powers (Subsequent

Permission) and the Planning Permission and the Development shall be construed to include the development as granted under a Subsequent Permission.

3.3 Where clause 3.3 is engaged, the Owner agrees and acknowledges that the Council may treat the Contribution and Administration Fee as having been made under any Subsequent Permission-

3.4 For the avoidance of doubt: clause 3.3 shall not be construed as to require the Owner to fulfil the covenant provided at clause 3.1 more than once.

4. DETERMENATON OF DEED

This deed shall be determined and have no further effect if the Planning Permission:

(a) expires before the Commencement of Development;

(b) is revoked; or

(c) is quashed following a successful legal challenge.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it

[FOR INDIVIDUALS]

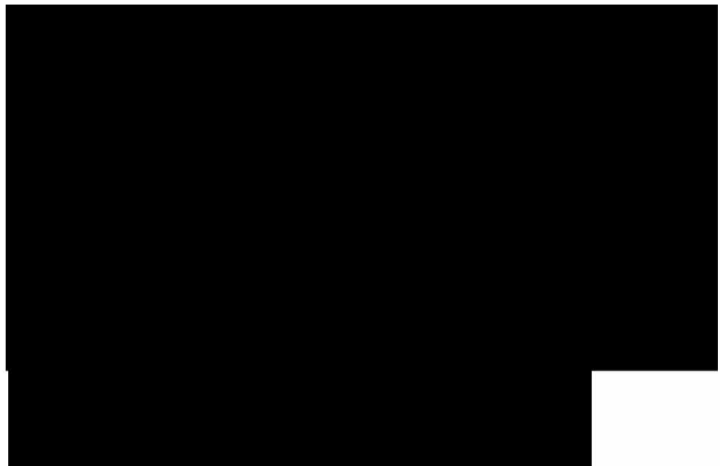
Executed and delivered as a

deed by Gemma Griffiths and
Simon Griffiths in the presence of:

Witness signature Witness name

Witness address

Witness occupatio



APPENDIX E

Five Year Housing Land Supply Update

APPENDIX F

Appeal Decision

Site visit made on 29 April 2022 by Graham

Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th May 2022

Appeal Ref: APP/X1735/W/21/3287602

16 Selborne Avenue, Havant, Hampshire, PO9 4PX

- 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 Len Sturgess against the decision of Havant Borough Council.
 - The application Ref APP/21/00353, dated 5 March 2021, was refused by notice dated 27 August 2021.
 - The development proposed is described as 'a two-storey new build dwelling to end of existing terrace'.
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Council has confirmed in its statement of case that The Havant Borough Local Plan was withdrawn from examination and work has commenced on a new local plan. As a result, the emerging policies within this document, which were referred to in the decision notice, are no longer relevant as a material consideration in my assessment.

Main Issues

3. The main issues in this appeal are:
 - Whether the appeal site is a suitable location for the proposal, having regard to policies concerned with development in areas at risk of flooding;
 - The effect of the proposed development on the character and appearance of the area; and
 - The effect of the proposed development on the living conditions of the occupants of 16 Selborne Avenue and 32 Overton Crescent, with reference to outlook, sunlight¹ and privacy, and future occupants with reference to the size and configuration of outdoor amenity space.

Reasons

The appropriateness of the appeal site for the proposed development

4. The appeal site is in Flood Zone 3a, and the appeal scheme would fall within the 'more vulnerable' classification. As a result, development would be appropriate subject to the application of the sequential test and, if necessary,

¹ The Council does not appeal to take issue with the impact on daylight. The Council has referred to overshadowing, which I take to mean an effect on direct sunlight entering No 32 and its garden.

the exceptions tests as set out in Policy CS15 of the Havant Borough Core Strategy 2011 (CS). This is consistent with the sequential approach set out in Paragraph 162 of the National Planning Policy Framework (the Framework), which explains that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding.

5. The appellant has identified the PO9 post code area as the basis for the sequential test area (STA). The rationale for defining the STA in this way is unclear. The approach was initially agreed by the Council but the reasons for doing so are also unclear. The start point should be those parts of the local authority area¹ at a lower flood risk. This should then be reduced if there are sustainable development reasons for doing so. For example, if affordable housing is required to serve a particular community or an area requires housing to support the aims of a local regeneration strategy. It may also be that a particular type of development, such as a school or doctors' surgery, needs to serve a particular catchment. In this instance, the appeal scheme would be an open market dwelling aimed at addressing the housing needs of the borough. As a result, a borough wide STA would not be unreasonable.
6. As there is no rationale before me, I see no reason to reduce the STA to the PO9 post code area. As a result, the STA could be much wider. The STA is therefore artificially small, and this has seriously undermined the assessment of potentially suitable and available alternative sites. Consequently, the appellant has not supported his sequential assessment with adequate evidence.
7. Even if I accepted the appellant's proposition that the STA should be the PO9 postcode, there are still limitations in the analysis. For example, the focus was on schemes where an end of terrace home was approved, rather than other similar semi-detached or detached properties. Moreover, sites were omitted if conditions had been discharged, but this broad-brush approach would not factor in the nature of the condition and the intentions of the site owner.
8. Furthermore, the Council identified two similar alternative sites² which appeared to be reasonably available but were not considered by the appellant. There has subsequently been a further planning permission³ and two sites with applications awaiting determination⁴. In respect of the latter, a site need not have planning permission to be considered reasonably available and appropriate for the proposed development⁵. In this regard, allocations in the development plan could be considered. Therefore, the allocated site L146 from Policy LP2 of the Havant Borough Local Plan (Allocations) 2014 is relevant.
9. Site L146 was rejected by the appellant because of possible site constraints such as the need to account for displaced parking and to safeguard the living conditions of neighbours. However,

¹ I note that the Council has produced general guidance, albeit not a formal Supplementary Planning Document, that correctly advocates this approach in the first instance.

² Council reference APP/18/01141 and APP/19/00257

³ APP/21/00401

⁴ APP/21/01242 and APP/22/00096

⁵ There may be windfall sites that are not allocated in the local plan and do not have planning permission but could be available for development. These may be identified in housing and economic land availability assessments.

the suitability of the site for housing would have been tested as part of the allocation process. In addition, it has not been demonstrated that the concerns raised are insurmountable. For example, there is no evidence that a planning application for a proposal at Site L146 has been refused, or that the owner has abandoned their development aspirations due to

technical constraints such as the findings of a parking displacement assessment or daylight sunlight report. Moreover, for reasons I go into, the appeal site is similarly constrained by impacts on living conditions. Thus, site L146's status as an allocation means it should currently be considered suitable for development and therefore its availability should have been explored.

10. Accordingly, the appellant has not established that there are not sequentially preferable sites that are reasonably available and appropriate for the proposed development. As the sequential test has not been passed the exception test in Policy CS15 of the CS and Paragraph 160 of the Framework is not relevant.
11. Neither the Environment Agency nor Southern Water would have commented on the sequential test so the absence of objections from these organisations in respect of this matter does not weigh in favour of the proposal.
12. I therefore conclude that the appeal site would be at risk of flooding and this risk has not been adequately justified through an absence of sequentially preferable sites in a logical and robustly identified STA. The proposal would therefore be contrary to Policy CS15 of the CS, which aims to sequentially direct relevant development away from areas at risk of flooding in a way generally consistent with the Framework.

The effect on the character and appearance of the area

13. The appeal site largely encompasses the side garden of 16 Selborne Avenue (No 16). This is an end of terrace property located within a residential estate. Houses within the estate are arranged in terraces and semis set amongst generous areas of greenery. The terraces on the northern side of Selborne Avenue exhibit a consistent use of materials, window and door positions, heights, and general massing. This is due to a repeated use of house types. The length of the respective terraces varies depending on how many properties it incorporates. The properties have been altered over time so that the original symmetry of the terraces has been eroded. Nevertheless, they retain a sense of balance. Accordingly, there is an overall high degree of uniformity to the appearance of the estate in which the appeal site is located. This sense of harmony provides a legible and discernible character.
14. The appeal scheme would result in a new dwelling being added to an existing terrace of four properties. Its presence would unbalance the terrace, the passageway being a clear manifestation of this. Moreover, the plot occupied by the proposed dwelling would appear relatively cramped with built form positioned close to the side boundary. This would result in the corner of the dwelling having to be discordantly chamfered. The rear garden would also have a narrow and awkward 'dog-legged' boundary alignment and the parking would appear squeezed in. Overall, the dwelling would have a contrived and incongruous appearance that would harmfully jar with the broad sense of uniformity and rhythm that is evident elsewhere in the estate.

15. The proposed dwelling could be finished in matching materials and would have the same eaves and ridge height as others in the terrace. It would also have a similar width and fenestration pattern. However, these positive aspects of the proposal would not mitigate for the harm I have identified, especially as the awkward nature of the proposal would be visible from the footpath to the east, Selborne Avenue, Overton Crescent and nearby properties.
16. In conclusion, the proposal would harm the character and appearance of the area. This would be contrary to Policy CS16 of the CS, supported by the Borough Design Guide Supplementary Planning Document (SPD). This policy seeks to secure development that is of a high-quality design, achieved by responding to and respecting local context, including plot widths and depths. Policy CS16 is consistent with Paragraph 130 of the Framework.

The effect on living conditions

17. 32 Overton Crescent (No 32) has a west facing rear garden. In views out from this space it is possible to see the rear elevations of other properties. However, there is a reasonable distance between No 32 and other properties due to intervening gardens. As a result, the garden at No 32 does not currently have a harmful sense of enclosure and benefits from a reasonably open aspect commensurate with its position within a residential estate.
18. The proposed dwelling would be positioned near the boundary with No 32 and enclose much of its southern aspect. Being two storeys in height, the proposed dwelling would tower over any boundary treatment. Thus, the building would have a constant and unavoidable close-range presence to the occupants of No 32 when in their rear garden or west facing rooms. The appeal scheme would therefore dominate and enclose No 32. Consequently, the proposal would have an overbearing impact on the outlook from No 32, thereby harming the living conditions of the occupants of this property.
19. The proposed dwelling would be located to the southwest of No 32. As a result, the appeal scheme would notably interfere with levels of direct sunlight in the afternoon and evening. The evidence before me does not demonstrate the residual level of sunlight entering No 32 and its garden would exceed any recognised standard. I therefore share the view of the Council that the loss of sunlight would be unacceptably harmful.
20. The rear garden of the proposed dwelling would have an awkward and contrived arrangement with a kink that would return behind the rear elevation of No 16. This would allow future occupants of the proposed dwelling to have a direct close-range view toward the rear elevation of No 16 even if a two-metre high fence was erected. The appeal scheme would therefore unacceptably harm the living conditions of the occupants of No 16.
21. The contrived arrangement of the rear garden would also result in the future occupants of the appeal site having an awkwardly shaped outdoor amenity space that would be hard to use. There would be little space to comfortably sit out in a position that is not overlooked. The proposal would also fail to adhere to the guidance in the SPD that gardens should be a minimum of 10m in depth. As a result, the living conditions of future occupants would be inadequate.
22. In conclusion, the appeal scheme would result in a harmful loss of sun light and outlook to No 32 thereby harming the residents' living conditions. Similarly, there would be a harmful loss of privacy to the occupants of No 16 and future occupants of the appeal scheme would not have an adequate garden due to the size and layout. This would all be contrary to

Policy CS16 of the CS and the SPD, which seek to secure design of a high standard that creates places where people want to live and does not result in unacceptable harm to neighbours. This is consistent with Paragraph 130(f) of the Framework.

Other Matters

23. The Council is currently unable to demonstrate a five-year housing land supply and therefore Paragraph 11d) of the Framework is relevant. For the reasons already set out, the proposal fails the sequential test, and this is contrary to the relevant policies in the Framework. As a result, the application of policies in the Framework that protect areas at risk of flooding provide a clear reason for refusing the development proposed. In these circumstances the 'tilted balance' in Paragraph 11d)ii of the Framework is not relevant.
24. Nevertheless, the housing supply position, which is reasonably acute at around 3.9 years, still means that housing delivery would be a point in favour of the proposal. I afford this moderate weight given the small scale of the development. Moreover, the proposal would result in benefits to the construction industry and future residents may spend locally. This would support the local economy at a point in time when it is bouncing back from a global pandemic. These are public benefits of limited weight as there is little before me to suggest one new household would have a significant impact in this respect.
25. The proposal has been designed to incorporate porous and permeable areas in lieu of existing hard standing both within the appeal site and at No 16. This form of Sustainable Drainage System would assist in the management of surface water and provide a modest benefit as a result. This is a further benefit in favour of the proposal although it would not address the risk from fluvial flooding and is therefore a matter of modest weight.
26. Overall, I afford significant weight to the harm that would arise from the appeal scheme and the subsequent conflict with the development plan, in part because the offended policies are consistent with those in the Framework. The harm would therefore outweigh the moderate cumulative benefits of the appeal scheme. This is not a material consideration that indicates the proposal should be determined otherwise than in accordance with the development plan.
27. Given my overall conclusion that the appeal should fail, it would have no effect on the Solent European Site. It is therefore unnecessary to consider this matter further.

Conclusion

28. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal is dismissed.

Graham Chamberlain

INSPECTOR

APPENDIX G

Email 1

Sent from Satchwell, Clare
To Gemma Griffiths
Wed 09/11/2022 19:00

Hi Gemma,

It was good to meet you last week and discuss your concerns relating to your planning application. Sorry it has taken a week to get back to you.

We discussed several concerns, but these centered around the SFRA.

I discussed your concerns with the Planning Team, Planning Policy and our (Interim) Executive Head of Place and the result is I agree with the findings of our experienced officers.

The SFRA Evidence Base

The SFRA is a PfSH document with associated mapping, so it can be located [via the PfSH website](#). Mapping is [hosted on behalf of all PfSH authorities by Portsmouth CC](#). It seems (it is common for documents to be hosted in one of the PfSH authorities rather than all of them). The council has made available the future (climate change) flood risk mapping from the SFRA on the mapping tools at <http://maps.havant.gov.uk/>, as well as providing links to the PfSH SFRA.

The domain name used for long-term flood risk

The council has raised this matter with central government however, this website is not something under Havant's control. As someone who works in IT I recognise that it is quite common (yet not best practice) for web url's not always match the content that they contain. The explanatory text on that website could also be improved. The council has raised this also and will continue to do so.

The application

Future flood risk is a key consideration and having now spoken to officers I agree with their conclusion that this application would be contrary to local and national planning policy.

8 Selsmore Avenue, is at risk of future flooding (which is a material consideration) and is required to be taken into account by the NPPF,

Paragraph 159 states:

"Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future)."

Paragraph 162 goes on to state:

"The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding."

In that regard there is a clear SFRA evidence base which identifies 8 Selsmore Avenue as being at such risk, and the application of the Sequential Test by the local planning authority is therefore necessary in order to direct new development away from such areas of flood risk. On this basis we are intending to refuse the application.

I do appreciate how frustrated you are and I am sure I would have approached things in a very similar way to you and asked the same questions.

Please do note I do not have any decision-making powers on this application but as an elected representative I have sought to understand your concerns and the application as best I can.

Clare

Cllr Clare Satchwell
Hayling West

Email Chain 2

From: [Toole, Joseph](#)

Sent: 21 October 2022 09:23

To: [Ian Murray](#)

Cc: [Gemma Griffiths](#)

Subject: RE: APP/22/00746 - 8 Selsmore Avenue

Hi Ian,

Apologies for the delay in responding to you.

I have discussed your email with the Development Manager, Steve Weaver, and would offer the following comments by way of response.

1. We acknowledge that the case at 11 West Haye Road was approved, notwithstanding that the site can be seen to lie within a future flood risk area. Having reviewed the case officer's report, it is clear that the future flood risk issue was not identified during the course of that officer's review of the case, which is regrettable as it has resulted in permission for a new dwelling being approved in an area at risk of future flooding.

Since that decision was taken in early 2021, officers have received further training, knowledge and access to the mapping system, and we are confident that such an oversight is unlikely to occur in future.

In the current case at 8 Selsmore Avenue, the future flood risk issue has been identified during the course of assessing the application, and is a material consideration which must be taken into account in the determination of the application.

2. The PDF policy maps <https://www.havant.gov.uk/policies-maps> show the policies in the Core Strategy (2011) and Site Allocations Plan (2014). Clearly this relates to circumstances which were the case some time ago, and as a result more recent national or local changes in policy, guidance or evidence are relevant to current decisions. For example, the PDF maps show the present day flood outline at 2014. In reality, the Environment Agency updates this mapping on a regular basis, and it would not be correct to assume that these updates are not relevant as a basis for decisions.

The same issue applies to the future flood maps, which were not shown on the policies map at the time, but have risen in importance in policy and guidance in the intervening period - being referred to directly in the NPPF since 2018, and in its clearest form to date in the August 2022 NPPG update.

In response to your comments, we have now the policies maps web page <http://maps.havant.gov.uk/havant.aspx> with a layer titled 'Strategic Flood Risk Assessment – expected flood risk area @2115' pointing users at the live version.

3. The reason you see different colours is that this mapping is made up of three different data sets (Future Fluvial FZ3, Tidal FZ2 and Tidal FZ3). Together they show the extent of the possible future risk. Therefore, any shade of pink shows that the site is likely to be at risk in the future. We have spoken to our GIS team about the lack of clarity of the information. We agree with you that the lack of explanation of the colours is unhelpful, and therefore they will be amending the way it is shown to a single colour, for ease of use.
4. It is important to understand that the Local List of Validation Requirements is not a policy document, but represents guidance to applicants as to what is required before a planning application can be registered. The decision to be taken on any individual application must be made in relation to local and national planning policies – principally the adopted development plan and the NPPF – and all other material considerations.

What this means for 8 Selsmore Avenue is that the risk of future flooding is a material consideration which is required to be taken into account by the NPPF, in respect of which Paragraph 159 of the current version plainly states:

“Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future).” (my emphasis)

Paragraph 162 goes on to state:

“The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.” (my emphasis)

5. We are currently in the process of updating the Local List to make it more clear. As stated above, however, the List is not a definitive expression of policy, but a list of what is required to register an application. Decisions on individual cases are taken having regard to the considerations set out above.
6. I am sorry you are having difficulties accessing the mapping on the PCC website. We do not share an IT system with PCC and can access the mapping without a login. There are contact details on the PCC web page if you continue to have access issues. In any case, the information on our own live maps with regard to future flood risk should be sufficient to identify areas at future risk.

With regard to your summarised comments:

My email of 27 September 2022 set out in some detail the national requirement for a sequential approach to development proposals in order to steer them away from areas at risk of current or future flooding. Whilst the Local List of validation requirements necessary to make your application valid at the time of submission only referred to flood risk assessments being required for areas at risk of flooding based on Environment Agency current day flood mapping, this does not absolve the local planning authority from the need (as set out in the NPPF) to have regard to the risk of future flooding in reaching its decision on your application. In that regard application of the Sequential Test would clearly indicate that there will be many sites elsewhere in the Borough which are better placed to accommodate a new dwelling in flood risk terms than 8 Selsmore Avenue.

With regard to the revised NPPG guidance, the Council were not aware of the new NPPG guidance coming out until it arrived; and national policy and guidance more often than not arrives with no prior warning to Local Authorities. Notwithstanding this: (a) In any case, applications must be determined on the policy position at the time of determination, not submission of the application; and (b) the need to have regard to future flood risk is a matter of national policy as set out in the NPPF and requires a Sequential test to be undertaken by the authority in respect of your proposals, even though they do not fall within current day flood zone mapping.

You should also note that the 2021 NPPF, at paragraph 167 and associated footnote say that FRAs are required as follows:

A site-specific flood risk assessment should be provided for all development in Flood Zones 2 and 3. In Flood Zone 1, an assessment should accompany all proposals involving: sites of 1 hectare or more; land which has been identified by the Environment Agency as having critical drainage problems; land identified in a strategic flood risk assessment as being at increased flood risk in future; or land that may be subject to other sources of flooding, where its development would introduce a more vulnerable use. As such, the new guidance is a clarification of policy that already existed.

In conclusion, we do recognise that for you and your client the process of identifying areas at risk of future flooding is complicated by the fact that the Environment Agency current day flood maps hosted on the Gov.uk website does not show this information. This is a matter that the Council have raised with the Environment Agency in recent liaison meetings, as it does not promote transparency of information that is relevant to the determination of planning applications. It is the fact however that the risk of future flooding is a material consideration which is required to be taken into account by the NPPF; that there is a clear SFRA evidence base which identifies 8 Selsmore Avenue as being at such risk; and that the application of the Sequential Test by the local planning authority is therefore necessary in order to direct new development away from such areas of flood risk.

All of these matters would be placed before the Inspector should your client exercise their right to appeal any refusal of planning permission.

I trust that the above responses are of assistance to your understanding of the Council's position in this matter, but remain happy to discuss if you have any questions.

Kind regards,

Joseph

From: Ian Murray
Sent: 28 September 2022 18:42
To: Toole, Joseph <joseph.toole@havant.gov.uk>
Cc: Gemma Griffiths
Subject: Re: APP/22/00746 - 8 Selsmore Avenue

Joseph,

There are a number of floors in this argument,

1. If you have taken future flood risk into account since 2019, why was my application for back land development at 11 west haye road approved in April 21 when the site is in exactly the same future flood risk zones according to the maps you have guided me towards.
2. The map you have pointed me towards hidden in the backwaters of the HBC website is not referred to as planning policy maps unlike the ones provided at front end of the website
3. There is no key provided with the future flood risk map. The map appears to show a range of 4 different levels of pink the lightest two of which appear to be on the application site, how can this information be seen as a clear indication when we are not even given a key to what each shade means (please could you provide this information or point me to where it is as I would like to confirm what the different shades mean, it would seem logical that the darkest is high the next is medium and the lighter two are thus acceptable???)
4. The HBC website shows the local requirements introduced in October 2020 (and still advertised as current) which states the following for flood risk

Flood Risk Assessment and Flood Risk Statement

In accordance with Local Plan (Core Strategy) policy CS15, a Flood Risk Assessment (FRA) will be required for

*development proposals of 1 hectare or greater in Flood Zone 1
all proposals for new development located in Flood Zones 2 and 3 as designated by the Environment Agency
any development other than minor development in a designated critical drainage area which has been notified to HBC by the Environment Agency.*

The environment agency data referred to shows the following

Flood risk information for this location

i You may need to carry out a flood risk assessment.

Your development is in flood zone 1. This means it has a low probability of flooding from rivers and the sea.

[Find out more information about your results](#)



Therefore on the basis the HBC current requirement documentation, it is very clear that this application does not require a flood risk assessment as it is not in a flood risk area 2 or 3 on the map you clearly refer to in your own policy

5. HBC have put the future flood risk element of planning decisions into a consultation process <https://www.havant.gov.uk/local-requirements-list> It should also be noted that this consultation is ongoing till November and will then I assume be required to go through a formal process before becoming policy. Therefore I do not believe it can be applied to this application
6. It is also notable that in the consultation requirement list (and not yet policy) the following is stated

Flood Risk

Revised text to clarify and explain the requirement and includes updated considerations for climate change and future flood risk. See accompanying text on Flood Risk at the bottom of this page and a link to the Flood Risk Information for Applicants.

The information referred to by the above statement points at three sources. The government flood risk map above, a site on Portsmouth city council website that takes the user to dynamic maps and requires a login and password (so not accessible to the public at all) and finally the where I live website that does not even give a key to explain the data.

To summarise,

I think point 4 makes it completely clear that this application does not require a flood risk assessment according to current HBC guidance and as such this discussion should end at that point. Should the application be refused based on a new requirement that is in consultation and is not yet policy my client will take this to appeal and challenge the councils decision.

Finally, in terms of the national guidance you refer to bought in August 2022 you will notice that this application was submitted in July 2022. It would be natural to assume that HBC were aware of this guidance yet they didn't and still have not adjusted their policies and guidance to make applicants aware of this or given them notice in anyway whatsoever, the first we are aware via HBC comes from a consultation for future policy change.

Could I please again ask that you provide or point me towards the key to explain the data in the where I live map

Best Regards

Ian Murray

From: "Toole, Joseph" <joseph.toole@havant.gov.uk>

Date: Tuesday, 27 September 2022 at 16:09

To: Ian Murray

Subject: RE: APP/22/00746 - 8 Selsmore Avenue

Hi Ian,

I have spoken to my Manager about your most recent emails. I have also checked with our policy team with regard to your question regarding the timings of this policy.

Within the 2018 revision of NPPF, paragraph 155 states inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Since, this time we have been required to consider future flood risk as a material planning consideration.

We have been considering future flood risk in this way since 2019, when the emerging Havant Borough Local Plan 2036 reached pre-submission stage and subsequently carried some weight in decision making. Policy E19 in that plan clearly referred to the need to consider future risk in site specific FRAs (NB I acknowledge that that plan was withdrawn in March 2022).

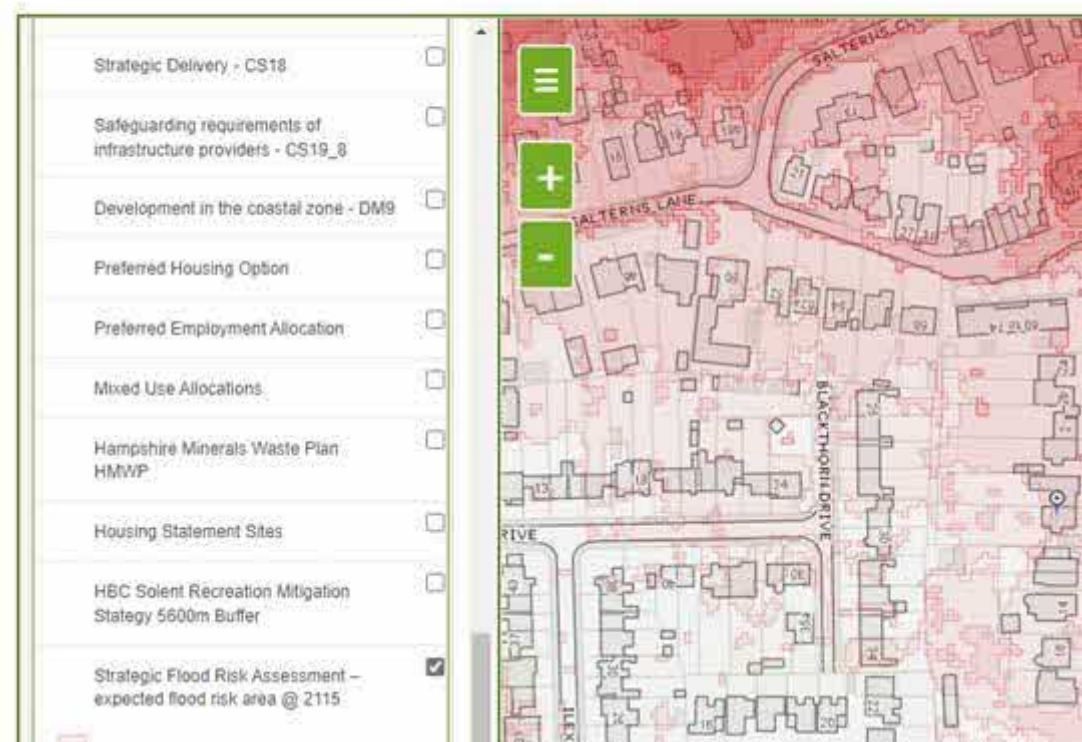
In terms of the sequential test, this has been a national requirement for a considerable time. In acknowledgement that national guidance was spread over a number of websites and not always 100% clear, the Council published a guide to the sequential test on its [SPD page](#) in October 2020, which clarifies at section 3.2 that future flood risk, as defined by the Strategic Flood Risk Assessment (SFRA) is a trigger for the sequential test.

I have applied this assessment to a previous application at Pepperpot Cottage – APP/22/00339.

As a Partnership for South Hampshire study, the SFRA mapping has for many years been hosted on behalf of all PFSH authorities [on the Portsmouth City Council website](#). In acknowledgement that this is not ideal, we added this climate change layer to our public facing interactive mapping in February 2022: The live HBC policy map found here: [Where I Live | Havant Borough Council](#) has a layer called 'Strategic Flood Risk Assessment – expected flood risk area – 2115'. Please see the screenshot below showing the application site within the future flood zone.

8 Selsmore Avenue, Hayling Island, PO11 9PB

Find



In response to your query we will arrange for text to be added to [the policy web page you have pointed to](#) clarify that the PDFs on that page relate to the Core Strategy and Allocations Plan at the time of their adoption (in 2011 and 2014 respectively).

I acknowledge that the position around flood risk, and the information available has been changing over the past few years and could have been clearer in parts, I should end by adding that [the new national guidance](#), published in August 22 is absolutely clear about future flood risk, and I am obliged to take this into account in determining the application. Please see below a few key paragraphs:

Paragraph: 001 Reference ID: 7-001-20220825: "Flood risk" is a combination of the probability and the potential consequences of flooding. Areas at risk of flooding are those at risk of flooding from any source, now or in the future. Sources include rivers and the sea, direct rainfall on the ground surface, rising groundwater, overwhelmed sewers and drainage systems, reservoirs, canals and lakes and other artificial sources. Flood risk also accounts for the interactions between these different sources. This term is key to the application of the presumption in favour of sustainable development in [paragraph 11 of the National Planning Policy Framework](#).

Paragraph: 023 Reference ID: 7-023-20220825: 'What is the aim of the sequential approach?' - The approach is designed to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. This means avoiding, so far as possible, development in current and future medium and high flood risk areas considering all sources of flooding including areas at risk of surface water flooding.

Paragraph: 027 Reference ID: 7-027-20220825: How should the Sequential Test be applied to planning applications? - The Sequential Test should be applied to 'Major' and 'Non-

major development' proposed in areas at risk of flooding, but it will not be required where....The site is in an area at low risk from all sources of flooding, unless the Strategic Flood Risk Assessment, or other information, indicates there may be a risk of flooding in the future.

Therefore, assessing future flood risk is not a new requirement. In terms of the local list consultation the aim is to signpost the maps more clearly in light of the Government's recent strengthening of policy guidance around flood risk.

With regards to an appeal and costs, this would be a matter for the Planning Inspector to decide. However, the Council does not consider a decision to refuse the application on flood risk grounds to be unreasonable as the site is within a future flood zone and no pre-application was sought which might have enabled this issue to be highlighted.

I hope this clarifies the position.

Kind regards,

Joseph

From: Ian Murray
Sent: 24 September 2022 10:10
To: Toole, Joseph <joseph.toole@havant.gov.uk>
Cc: Gemma Griffiths
Subject: FW: APP/22/00746 - 8 Selsmore Avenue

Hi Joseph,

Following my email yesterday (copied below) I await your response with regards to the provision of the flood map you have used to reach your decision and a link to its location on the internet

In the mean time I point you towards the HBC policy maps you have on your website which clearly show HBC policy in terms of flood risk areas to be considered as part of a planning application

<https://www.havant.gov.uk/policies-maps>

Map 14 (attached) currently states the policy map for South East Hayling. The information HBC are currently advertising on the HBC website as policy quite clearly states your organisations position.

As previously stated, if this is to be changed following the current consultation (which I believe finishes on 1st November) I assume this would involve giving notice of new planning criteria and changing the information, guidance and policy maps on the HBC website.

Please note I will pursue this as far as I can with HBC and then the planning inspectorate and will look to recover costs for doing so as I believe it is unfair that my client should suffer based on a decision I believe to be completely unjustifiable and unreasonable.

Best Regards

Ian Murray

Joseph,

I wish to object strongly to this and would like a dialogue with your line manager.

This criteria, as I understand it, is out for consultation at present and therefore, I assume, is not standard practice at present. So why is it been applied in this case and not in recent previous cases.

What is the point of government guidance for flood risk for planning being publicly available when you apply a different criteria. A criteria which has been introduced randomly and with no prior notice.

To be clear, I will not be withdrawing the application and will challenge the process by which you have achieved your decision with the planning inspectorate if necessary

I would be grateful if you could provide a link to the flood risk data you have mentioned together with a screen shot of the site area at risk, so I can consider my actions.

I must also say it is so frustrating, when a logical a reasoned argument is put up , to be given no reasonable and thought out response as to why that decision is made and just to be told that the 'line manager' has spoken.

Ian Murray

From: "Toole, Joseph" <joseph.toole@havant.gov.uk>

Date: Friday, 23 September 2022 at 15:02

To: Ian Murray <ianmurrayijma@outlook.com>

Subject: RE: APP/22/00746 - 8 Selsmore Avenue

Hi Ian,

I have discussed the application with my manager.

As the site falls within a future flood zone when taking climate change into account the application is considered to be in unsustainable location contrary to the NPPF. Therefore, we are minded to refuse the application as a sequential test would not be met due to the number of alternatively available sites within the borough.

I do appreciate this information is not easily visible and this will be made more accessible in the future.

Please let me know whether you wish to withdraw the application or proceed with a refusal.

Kind regards,

Joseph