

OFFICER REPORT FOR COMMITTEE

DATE: 9th October 2024

**P/23/1329/FP
MR R PUNIA**

**PARK GATE WARD
AGENT: SOLENT PLANS LTD**

CONSTRUCTION OF FIVE DETACHED DWELLINGS WITH ACCESS FROM ST JOSEPH CLOSE

LAND AT ST JOSEPH CLOSE (FORMERLY 33 LODGE ROAD), LOCKS HEATH, SOUTHAMPTON

Report By

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1.0 Introduction

1.1 This application is being brought before the planning committee due to the number of third-party representations received.

2.0 Site Description

2.1 The application site lies within the urban area and forms part of a larger housing allocation site (H10) as indicated within the adopted Fareham Local Plan 2037.

2.2 This application relates to the western part of the housing allocation that lies to the north of the residential cul-de-sac of St Joseph Close. The remainder of the housing allocation extends to the east and has a frontage on to Lodge Road. The site abuts Hamilton Caravan Park to the north and an area of public open space to the west.

2.3 Planning permission was previously granted for the demolition of an existing derelict bungalow that occupied the larger housing allocation site and the erection of five dwellings fronting Lodge Road. The dwellings were granted subject to numerous planning applications rather than as a single development. Four of the five permitted dwellings have currently been constructed.

2.4 There are a number of trees covered by a Tree Preservation Order (TPO) on or adjacent to the site including an off-site Weeping Willow adjacent to the south-west corner of the site and a Field Maple and Silver Birch on the southern boundary.

3.0 Description of Proposal

- 3.1 Planning permission is sought for the construction of five detached 4-bed dwellings.
- 3.2 The dwellings would be of identical design, traditional in appearance, with accommodation arranged over three floors. The second floor accommodation would be located within the roofspace with the dwellings having an overall height of 9m to the roof ridge.
- 3.3 The dwellings would be positioned in a linear arrangement on the site extending from south to north with primary front and rear elevations facing west and east respectively. The rear gardens would measure approximately 12m in length.
- 3.4 An ecology buffer measuring approximately 2.5m in width would wrap around the northern and eastern boundaries of the site.
- 3.5 A vehicular access road would extend from the end of St Joseph Close past the front of the dwellings providing a shared surface for vehicles and pedestrians.
- 3.6 Each of the properties would be allocated three car parking spaces positioned to either side of the access and there would be two visitor parking spaces. A refuse bin collection point would be provided adjacent to the site entrance for collection day.
- 3.7 The internal dimensions of the proposed houses are such that the proposal would comply with the Nationally Described Space Standards.

4.0 Policies

- 4.1 The following policies apply to this application:

Adopted Fareham Local Plan 2037

| | |
|------|--|
| H1 | Housing Provision |
| HP5 | Affordable Housing |
| HP1 | New Residential Development |
| CC1 | Climate Change |
| CC2 | Managing Flood Risk and Sustainable Drainage Systems |
| NE1 | Protection of Nature Conservation, Biodiversity and the Local Ecological Network |
| NE2 | Biodiversity Net Gain |
| NE3: | Recreational Disturbance on the Solent Special Protection Area (SPA's) |

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|------|---|
| NE4: | Water Quality Effects on the SPA/SAC and Ramsar Sites of the Solent |
| NE6 | Trees, Woodland & Hedgerows |
| TIN1 | Sustainable Transport |
| TIN2 | Highway Safety & Road Network |
| D1 | High Quality Design & Placemaking |
| D2 | Ensuring Good Environmental Conditions |
| D3 | Coordination of Development & Piecemeal Proposals |
| D4 | Water Quality & Resources |
| D5 | Internal Space Standards |

Other Documents:

National Planning Policy Framework (NPPF) 2023

Fareham Borough Design Guidance: Supplementary Planning Document (excluding Welborne) December 2015

Residential Car Parking Standards 2009

5.0 Relevant Planning History

5.1 The following planning history is relevant:

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|-------------------|---|
| P/23/1206/FP | Construction of Two Detached Dwellings on Plots 3 & 4 (Alternative to P/22/1084/FP) & Construction of Additional Detached Two Storey 4-bed dwelling on Lodge Road Frontage (Plot 5) |
| Permission | 19 July 2024 |
| P/22/1084/FP | Construction of Two Detached Two Storey Dwellings with Access from Lodge Road (Plots 3 & 4). |
| Permission | 3 February 2024. |
| P/22/0650/FP | Construction of Two Pairs of Semi-Detached 2-Bed Dwellings with Access from Lodge Road |
| Refused | 23 June 2022 |
| P/21/1685/FP | Erection of Detached 3-Bed Two Storey Dwelling |
| Permission | 8 February 2022 (Plot 2) |
| P/20/0792/FP | Demolition of Existing Dwelling and Erection of Replacement Dwelling (amended scheme of P/20/0238/FP) (Plot 1) |
| Permission | 22 September 2020 |

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|-------------------|---|
| P/20/0238/FP | Demolition of Existing Dwelling and Erection of Replacement Dwelling (Plot 1) |
| Permission | 11 June 2020 |
| P/19/0707/OA | Outline Planning Application for Erection of Nine Dwellings |
| Refused | 18 November 2019 |
| P/00/0704/FP | Erection of Six Detached Dwellings with Garages |
| Refused | 15 November 2002 |

6.0 Representations

6.1 Fifteen representations have been received raising the following material planning considerations;

- Overdevelopment
- Impact on quiet character of St Joseph Close
- Increased traffic on St Joseph Close
- Impact on highway safety
- Detrimental to safety of pedestrians and children playing on the open space in St Joseph Close
- The site should be accessed from Lodge Road
- Insufficient car parking
- Insufficient space for bins
- The homes already built are not offered for purchase but are let for monthly income
- Dwellings finished to poor standard
- Visual impact of loss of Willow tree
- Impact on surface water drainage
- Inconsiderate behaviour of developer throughout construction (noise, contractor parking, bonfires)
- Likely length of construction period based on previous history
- Need for construction management plan including provision of contractor parking
- The site is an eyesore and waste is not disposed of properly

6.2 Two letters of support have also been received.

7.0 Consultations

EXTERNAL

Local Highway Authority – Hampshire County Council

- 7.1 The proposed dwellings are to be accessed via a shared private driveway taken from the end of St Joseph Close, which is an adopted residential street subject to a 30mph speed limit.
- 7.2 The formation of the access will result in the loss of a weeping willow tree, which is located outside of the planning application red line boundary. Based on the records it would appear the tree is located on land which forms part of the publicly maintained highway. A Section 278 Agreement (Highways Act 1980) will be required for the access works and tree removal. The Highway Authority will expect a CAVAT (Capital Asset Value for Amenity Trees) assessment of the tree to be agreed as part of this legal agreement.
- 7.3 The level of car parking has not been fully assessed, as it is a function of the Borough Council as the Local Parking Authority. Vans and other small delivery vehicles will be able to use the shared driveway. A turning head has been incorporated into the layout to allow these vehicles to enter and leave the site in a forward gear. Refuse collection is proposed to be taken from St Joseph Close, with a bin collection point shown on the southern boundary of the site. Future residents of Plots 5 and 6 will however have an excessive distance to drag their bins for kerbside collection.
- 7.4 The Highway Authority considers that the application proposal is unlikely to result in any material highway/transportation implications.

Ecology – Hampshire County Council

- 7.5 Despite the conclusions of the submitted ecology report, due to the presence of suitable on-site habitat and given the history of the site and adjacent developed areas it was considered that there was a reasonable likelihood of a remnant reptile population being present. Further survey work has now been carried out as and a 'good' population of slow worms has been found on site. The proposed receptor site along the northern and eastern boundaries is considered acceptable. No objection subject to works being carried out in accordance with the ecology report including enhancement measures.

INTERNAL

Principal Tree Officer

- 7.6 Of concern is the relationship between the southern most plot and the retained TPO field maple (T8). This is a large and prominent tree, which is shown for retention – this tree will be overly dominant to the rear garden of plot 1.

7.7 The loss of the willow, which will be necessary to facilitate the access road and cannot be retained due to its low weeping habit, can be mitigated with a suitable replacement tree on the open space.

8.0 Planning Considerations

8.1 The following matters represent the key material planning considerations which need to be assessed to determine the suitability of the development proposal. The key issues comprise:

- a) Implications of housing delivery in Fareham
- b) Principle of development when assessed against the policies of the adopted local plan
- c) Provision of affordable housing
- d) Impact on character & appearance of the area
- e) Impact on amenity of neighbouring properties
- f) Highway matters
- g) Trees & ecology
- h) Impact on Habitat Sites
- i) The planning balance

a) Implications of housing delivery in Fareham

8.2 The starting point for the determination of this planning application is section 38(6) of the Planning and Compulsory Purchase Act 2004 which states:

'If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.'

8.3 In determining planning applications there is a presumption in favour of the policies of the extant Development Plan (Fareham Local Plan 2037) unless material considerations indicate otherwise. Material considerations include the planning policies set out in the National Planning Policy Framework 2023.

8.4 The National Planning Policy Framework (the NPPF) highlights at paragraph 60 that the Government is seeking to significantly boost the supply of housing.

8.5 Paragraph 76 the NPPF states that: 'Local Planning Authorities are not required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' works of housing for decision making purposes if the following criteria are met:

'a) Their adopted plan is less than five years old; and,

b) That adopted plan identified at least a five year supply of specific, deliverable sites at the time that its examination concluded’.

8.6 These criteria are met and therefore the Council is not presently required to demonstrate a five-year supply of housing sites. However, the Council is also subject to further consideration from Government through the Housing Delivery Test. The Housing Delivery Test (HDT) is an annual measurement of housing delivery published by Government. The HDT measures the number of new homes built over the previous three years against the Council’s housing requirement.

8.7 The latest HDT results published by the Government relate to housing delivery between 2019 and 2022. The results were first published on 19 December 2023 and subsequently amended by the Department for Levelling Up, Housing and Communities as it was then known in April 2024. The results published in April 2024 confirm a HDT result of 55% for the Borough (568 dwellings delivered against a requirement of 1,028 dwellings).

8.8 In accordance with paragraph 79 of the NPPF:

“Where delivery falls below 75% of the requirement over the previous three years, the presumption in favour of sustainable development applies, as set out in footnote 8 of this Framework, in addition to the requirements for an action plan and 20% buffer’.

8.9 For decision-taking, the application of the presumption in favour of sustainable development means:

‘...

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁸, granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁷; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole’.*

8.10 Footnote 7 to paragraph 11 reads as follows:

'The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 187) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 72); and areas at risk of flooding or coastal change.'

8.11 Footnote 8 to paragraph 11 reads:

'This includes, for applications involving the provision of housing, situations where: (a) the local planning authority cannot demonstrate a five year supply (or a four year supply, if applicable, as set out in paragraph 226) of deliverable housing sites (with a buffer, if applicable, as set out in paragraph 77) and does not benefit from the provisions of paragraph 76; or (b) where the Housing Delivery Test indicates that the delivery of housing was below 75% of the housing requirement over the previous three years.'

8.12 NPPF paragraph 11(c) indicates that where the proposed development accords with the Council's local plan it should be approved.

8.13 If the development does not accord with the local plan, the development must be considered against NPPF paragraph 11(d). As above, the first limb of paragraph 11(d) indicates that there are specific policies in the NPPF which protect areas of assets of particular importance referred to within footnote 7, namely habitat sites and heritage assets. Therefore, a judgement will need to be reached as to whether policies in the Framework provide a clear reason for refusing the development. Where this is found to be the case, the development should be refused.

8.14 The second limb of paragraph 11(d), namely whether the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF taken as a whole (the so called 'tilted balance'), will only apply if it is first judged that there are no clear reasons for refusing the development having applied the test at Limb 1.

8.15 Paragraph 182 of the NPPF states that;

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

- 8.16 The wording of this paragraph clarifies that the presumption in favour of sustainable development set out in Paragraph 11 does not apply unless an appropriate assessment has concluded that the proposal would not adversely affect the integrity of the habitats site subject to mitigation.
- 8.17 The following sections of the report assess the application proposal against this Council's adopted local planning policies and considers whether it complies with those policies or not. Following this Officers undertake the Planning Balance to weigh up the material considerations in this case.
- b) Principle of development when assessed against the policies of the adopted Local Plan
- 8.18 Having regard to the policy provision of the Development Plan, the site is located within the designated Urban Settlement Boundary, where there is a presumption in favour of appropriate development, subject to compliance with the provisions of the National Planning Policy Framework and the relevant policies of the Development Plan.
- 8.19 Policy H1 of the Fareham Local Plan 2037 sets out the housing requirement for the Borough between 2021 and 2037 and how this requirement may be achieved, and Policy HP1 states that new residential development within the Urban Area boundary will be supported in principle.
- 8.20 The application site is a housing allocation in the adopted Fareham Local Plan 2037 (HA30) so has been factored into projected housing supply figures for the plan period. The allocation has an indicative yield of 9 dwellings and the site specific requirements for the site state that the quantum of housing proposed shall be broadly consistent with the indicative yield.
- 8.21 A planning application for the construction of nine dwellings occupying the majority of the housing allocation site, excluding only a plot to be retained by the original dwellinghouse, was refused in November 2019 for the following reasons;

The development would be contrary to Policies CS4 and CS6 of the Adopted Fareham Borough Core Strategy 2011 and Policies DSP13

and DSP15 of the Adopted Local Plan Part 2: Development Site and Policies Plan and is unacceptable in that:

- i) insufficient evidence has been submitted to demonstrate that the proposed development would not have an adverse impact upon protected species;*
- ii) in the absence of a legal agreement to secure such, the proposal would fail to provide satisfactory mitigation of the 'in combination' effects that the proposed increase in residential units on the site would cause through increased recreational disturbance on the European designated Solent Special Protection Areas;*
- iii) on the basis of the information available the Local Planning Authority is not satisfied that the proposal would not have likely significant effects upon designated European Protected Sites, in combination with other developments, due to the adverse effects of increased waste water and emissions from traffic*

8.22 It is considered that these reasons for refusal could have been addressed enabling a comprehensive scheme to come forwards however the applicant subsequently decided to undertake development of the site in a more piecemeal manner. Whilst this approach has not been most conducive to delivering a comprehensive high-quality scheme, the Local Planning Authority could not require the applicant to submit a single application for the entire site and each application has been determined on its own merits, being mindful not to preclude development of the remainder of the housing allocation at any point.

8.23 The principle of developing the site is considered acceptable and is to be encouraged to assist in meeting housing provision subject to an assessment of the impacts arising.

c) Provision of Affordable Housing

8.24 The comprehensive application refused in 2019 indicated that the applicant intended to adhere closely to the indicative yield of the housing allocation site and construct nine dwellings whilst retaining the original dwellinghouse in a smaller plot. Importantly, as only nine new dwellings would have been constructed on the housing allocation site the affordable housing threshold of 10 dwellings would not have been exceeded. The proposed layout, with all dwellings accessed from Lodge Road, would not easily have accommodated more dwellings. Indeed for all applications that have been considered to date it has not been necessary to seek affordable housing provision as the threshold for the provision of affordable housing set out within the relevant local plan policy has not been exceeded.

8.25 Policy HP5 of the Fareham Local Plan 2037 concerns the provision of affordable housing and states;

“Sites that can accommodate 10 or more dwellings or sites with an area of 0.5 hectares or more shall provide:

a) In the case of greenfield sites 40% of dwellings as affordable housing; and

b) In the case of brownfield sites 35% of dwellings as affordable housing...”

8.26 It is considered that adding up the cumulative number of new dwellings permitted on the housing allocation site that the threshold for the requirement to provide for affordable housing (40%) set out within Policy HP5 has been reached. It is also considered that the requirement for 40% affordable homes should apply to the total number of homes built on the allocation site and not just those five proposed under the current application.

8.27 The applicant argues that the threshold has not been met as the various proposals would only result in a net gain of nine dwelling on site, due to the demolition of the original dwellinghouse. However the policy wording for HP5 makes no reference to ‘net gain’ and this requirement for affordable housing is in line with the NPPF which advises that the provision of affordable housing should not be sought for residential developments that are not major. The definition of ‘major development’ being a development where 10 or more homes will be provided or where the site has an area of 0.5ha or more. A development of nine dwellings would not be ‘major’ but a development consisting of ten dwellings is classed as ‘major’ regardless of whether there was a dwelling or dwellings previously on the site.

8.28 It is accepted that the provision of affordable housing can significantly impact on the viability of a development. The Council’s Viability Assessment (2019) identifies a viable level of affordable housing taking into account other infrastructure requirements and development costs. The Local Plan Viability Assessment (2019) suggests that 40% affordable housing is a viable requirement on greenfield development sites. The Local Plan defines greenfield land as being undeveloped land used for agriculture or amenity. The application site is considered to be a greenfield site because it previously formed part of a residential curtilage and was therefore amenity land.

8.29 The sub-text to Policy HP5 sets out that in instances where development viability is an issue, developers will need to submit sufficiently detailed viability evidence which will be reviewed by the Council and a third party. The costs associated with the assessment and third party review must be met by the

developer. Notwithstanding the applicant's assertion that no affordable housing should be required an affordable housing viability report was submitted in support of the application. It is claimed within this report that development of the site is unviable with no surplus available for the provision of affordable housing, either potentially on site or as an equivalent contribution towards off-site provision. It is suggested that the development is still able to come forward with the developer taking a lower level of profit than is typically accepted as being reasonable (15-20% GDV).

8.30 The Council has sought an independent professional review of the applicant's viability report. The viability of the development was reassessed, adjusting assumptions where considered appropriate, and was found to generate a surplus both with and without a policy compliant level of affordable housing. The conclusion being that the proposed development of the site with a total of ten dwellings would be able to provide for affordable housing. Officers have also subsequently reviewed the developer costs set out within the applicant's viability report which appear to have been exaggerated (i.e. nitrates mitigation, CIL) giving a false impression in relation to profit.

8.31 Policy D3 (Co-ordination of Development and Piecemeal Proposals) of the Local Plan states;

'Applications which seek to evade infrastructure provision (including affordable housing) by not fully maximising the use of the site or by putting forward piecemeal development will not be supported.'

8.32 To summarise this matter, the applicant has now secured planning permission for five dwellings on the eastern part of the site fronting Lodge Road. If granted, this proposal for a further five dwellings on the remaining part of the allocation site would result in the delivery of a total of ten dwellings with no provision for affordable housing. The proposal is therefore considered contrary to Policy HP5 which sets out a requirement for 40% affordable housing provision on sites that can accommodate 10 or more dwellings. The applicant's viability report has been reviewed on behalf of the Council by an independent third party and the conclusion of this review was that the development would be viable with the policy compliant level of affordable housing. Policy D3 is clear that applications which seek to evade infrastructure provision by putting forward piecemeal development will not be supported. In light of the absence of any affordable housing provision, either on-site or as an off-site contribution, the proposal is considered contrary to Policies HP5 and D3 of the Fareham Local Plan 2037.

d) Impact on Character & Appearance of the Area

- 8.33 Policy D1 (High Quality Design & Place Making) of the Fareham Local Plan 2037 states that development proposals and spaces will be of high quality, based on the principles of urban design and sustainability to ensure the creation of well designed, beautiful and safe quality places.
- 8.34 The proposed development would have limited visibility from the public realm being sited at the end of a cul-de-sac and enclosed by existing development. Notwithstanding, the proposed layout and design of the dwellings are considered acceptable. The plot sizes would be consistent with the surrounding area. There is ample space to secure an appropriate landscaping scheme for the site frontage to soften the appearance of areas of hardstanding. It is considered that the proposal would not have a materially harmful impact on the character and appearance of the surrounding area.

e) Impact on Living Conditions of Neighbouring Properties

- 8.35 Policy D2 of the Fareham Local Plan 2037 seeks to ensure good environmental conditions for all new and existing users of buildings and external space. Development proposals should not have an unacceptable adverse impact in terms of loss of outlook, light or privacy nor should they have unacceptable adverse environmental impacts (such as noise, light or air pollution) on neighbouring occupants, adjoining land or the wider environment.
- 8.36 The proposed dwellings would be set in from the southern and northern boundaries. The nearest property to the south (No.7 St Joseph Close) would be positioned in excess of 10m from the flank wall of Plot 1. The proposed first floor window within the south elevation would serve a bathroom and this window could be conditioned to prevent overlooking. The caravan park to the north currently has a number of unoccupied pitches, including those immediately north of the application site. However, a separation distance of 6m could be achieved between the northern flank wall of Plot 5 and the nearest pitch which is considered to be an acceptable relationship. The properties located on the eastern side of the housing allocation would have a back-to-back relationship with the proposed dwellings with a separation distance in excess of 25m thereby exceeding the minimum requirement for a minimum of 22m set out within the Council's Design SPD. It is considered that the proposal would not have an unacceptable impact on the living conditions of neighbouring properties in terms of loss of light, outlook or privacy.
- 8.37 Whilst the concerns raised by local residents in relation to increased vehicle movements and associated noise on St Joseph Close are noted it is not considered that the impact arising would be unacceptable.

f) Highway Matters

8.38 The proposal makes adequate provision for on-site car parking in accordance with the Council's adopted Residential Car & Cycle Parking SPD. The provision of secure cycle parking as shown on the site plan could be secured by planning condition. The Highway Authority has raised no objection to the proposal in terms of its impact on highway safety on St Joseph Close or the local road network.

g) Trees & Ecology

Trees

8.39 The proposal would necessitate the loss of the protected Weeping Willow tree that stands close to the point where access would be gained from St Joseph Close. The Council's Principal Tree Officer has confirmed that the loss of this tree could be accepted subject to securing a suitable replacement on the adjacent public open space. In addition, it has been agreed that the protected Silver Birch on the southern boundary which is suppressed by the more dominant Field Maple could be felled.

8.40 Concerns were initially raised about the proximity of the dwelling on Plot 1 to the Field Maple on the southern boundary which is to be retained. Consequently the scheme was amended reducing the number of dwellings proposed from six to five and increasing the level of separation between the dwelling on Plot 1 and the Field Maple. The dwelling on Plot 1 would as a result have a generous amenity space extending to the side and rear of the dwelling. The relationship between the tree and the dwelling is now considered acceptable.

Protected Species

8.41 Policy NE1 of the Fareham Local Plan 2037 states that development will be permitted where:

'Protected and priority habitats and species, including breeding and foraging areas are protected and enhanced'

8.42 The application is supported by a preliminary ecological appraisal including a habitat survey and assessment of the likely absence/presence of protected species. Based on the habitats present on-site the Council's Ecologist was not initially satisfied that the assertion made within the report that the site was not likely to support protected species of reptile was substantiated. Phase II surveys have now been undertaken as requested and a 'good' population of slow worms has been recorded on site. A reptile mitigation strategy is provided outlining the procedure to prevent impact or harm to the population of reptiles. It is proposed that ecological buffers would be retained along the northern and eastern boundaries of the site and that reptiles would be relocated to these buffers prior to the commencement of development with

protective fencing put in place for the duration of the works. The buffers would need to be managed and enhanced as reptile habitat. It is considered that subject to securing works in accordance with the reptile mitigation strategy that the proposal would comply with Policy NE1 of the Fareham Local Plan 2037 in terms of protecting and enhancing habitat for protected species.

Biodiversity Net Gain

- 8.43 If granted the planning permission would be subject to the biodiversity gain condition and a mandatory requirement to deliver 10% Biodiversity Net Gain (BNG). A biodiversity gain plan would be required to be submitted and approved by the Local Planning Authority setting out how the biodiversity gain objective of at least a 10% gain would be met and secured for at least 30 years. A draft gain plan has been submitted to demonstrate how a 10% BNG may be delivered on-site but there are currently a number of issues identified in relation to the post-development value of the site which would need to be resolved before the condition could be discharged.

h) The impact upon Habitat Sites

- 8.44 Strategic Policy NE1 of the Fareham Local Plan 2037 sets out the strategic approach to biodiversity in respect of sensitive European sites and mitigation impacts on air quality. Policies NE3 and NE4 specifically relate to recreational disturbance and water quality effects on Habitat Sites respectively.
- 8.45 The Solent is internationally important for its wildlife. Each winter, it hosts over 90,000 waders and wildfowl including 10 per cent of the global population of Brent geese. These birds come from as far as Siberia to feed and roost before returning to their summer habitats to breed. There are also plants, habitats and other animals within the Solent which are of both national and international importance.
- 8.46 In light of their importance, areas within The Solent have been specially designated under UK/ European law. Amongst the most significant designations are Special Protection Areas (SPA) and Special Areas of Conservation (SAC). These are often referred to as 'Habitat Sites' (HS).
- 8.47 Regulation 63 of the Habitats and Species Regulations 2017 provides that planning permission can only be granted by a 'Competent Authority' if it can be shown that the proposed development will either not have a likely significant effect on designated sites or, if it will have a likely significant effect, that effect can be mitigated so that it will not result in an adverse effect on the integrity of the designated sites. This is done following a process known as an Appropriate Assessment. The Competent Authority is responsible for carrying out this process, although they must consult with Natural England and have

regard to their representations. The Competent Authority is the Local Planning Authority

- 8.48 When considering the proposed development Officers consider there to be three main likely significant effects on HS.

Water Quality (nitrates)

- 8.49 The first likely significant effect on HS relates to deterioration in the water environment through increased nitrogen. Natural England has highlighted that there is an existing evidence of high levels of nitrogen and phosphorus in parts of The Solent with evidence of eutrophication. Natural England has further highlighted that increased levels of nitrates entering The Solent (because of increased amounts of wastewater from new dwelling) will have a likely significant effect upon the HS.

- 8.50 A nitrogen budget has been calculated in accordance with Natural England's latest guidance and revised calculator (February 2024) which confirms that the development would generate 6.24kg TN/year. In the absence of sufficient evidence to support a bespoke occupancy rate, Officers have accepted the use of an average occupancy of the proposed dwellings of 2.4 persons in line with the NE Advice. The existing use of the land for the purposes of the nitrogen budget is considered to be scrub.

- 8.51 Had the proposal been found acceptable then a planning condition would have been imposed to secure evidence of the purchase of the required minimum amount of nitrates mitigation prior to the commencement of development from a Council approved nitrate mitigation scheme with a pre-existing Section 33/Section 106 agreement already in place.

Air Quality

- 8.52 The second aspect is impact on air quality, where the designated sites can be adversely affected through airborne pollution from development sites generated either during construction or operation / occupation. The Council's Air Quality Habitat Regulations Assessment (HRA) for Short-Term Development in Fareham Borough by Ricardo Energy and Environment (2020) has undertaken an assessment which avoids the need for relying on the assumption of a 200-metre zone of influence by including dispersion modelling of emissions from all roads with modelled traffic flows within the Fareham study area, whether or not they are located within 200m of a designated site. The Study concluded no likely significant effect alone or in combination with other plans and projects for all qualifying features of the protected HS.

Recreational Disturbance

- 8.53 The final likely significant effects on HS concerns disturbance on The Solent coastline through increased recreational use by visitors to the sites. The development is within 5.6km of The Solent SPAs and is therefore considered to contribute towards an impact on the integrity of The Solent SPAs as a result of increased recreational disturbance in combination with other development in The Solent area.
- 8.54 Policy NE3 of the Fareham Local Plan 2037 explains that planning permission for proposals resulting in a net increase in residential units may be permitted where the 'in combination' effects of recreation on the Special Protection Areas are satisfactorily mitigated through the provision of a financial contribution to the Solent Recreation Mitigation Strategy (SRMS).
- 8.55 In addition, research undertaken by Footprint Ecology has identified that planned increases in housing around the New Forest designated sites will result in an increase in use of the sites and exacerbate recreational impacts. It was found that the majority of visitors to the New Forest designated sites on short visits/day trips from home originated from within a 13.8km radius of the sites referred to as the 'Zone of Influence' (ZOI). The Councils Interim Mitigation Solution to address this likely significant effect was approved by the Council's Executive Committee on 7th December 2021 and was prepared in consultation with Natural England. The mitigation comprises a financial contribution from the developer to mitigate against this impact through improvements to open spaces within Fareham Borough and a small contribution to the New Forest National Park Authority.
- 8.56 Had the proposal been found acceptable in all other regards the applicant would have been invited to make the appropriate financial contributions to address the likely significant effect of recreational disturbance. In the absence however of a legal agreement to secure these contributions, or the submission of evidence to demonstrate that the 'in combination' effects of the development can be avoided or mitigated in another way, the proposal is held to be contrary to Policy NE3 of the Fareham Local Plan 2037.

i) The Planning Balance

- 8.57 Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out the starting point for the determination of planning applications:

"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise".

- 8.58 As set out above the effect of Paragraph 182 of the NPPF is that:

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

- 8.59 In this instance Officers have identified likely significant effects upon HS through increased recreational disturbance. As mitigation has not been secured to address these likely significant effects an Appropriate Assessment has not been undertaken by Officers at this time. Accordingly, the presumption in favour of sustainable development set out at Paragraph 11 of the NPPF does not apply.
- 8.60 In light of the likely significant effects of the proposed development on HS the application must be determined in accordance with the development plan unless material considerations indicate otherwise as set out in the Section 38(6) test (a ‘straight balance’).
- 8.61 The application site is part of an allocated housing site located within the defined urban settlement boundary and the proposal is considered acceptable in principle, in compliance with Policy H1 and HP1 of the Fareham Local Plan. Officers acknowledge that the proposal would deliver five dwellings which would be a small contribution towards boosting the Borough's housing supply. The proposal however fails to make appropriate provision for affordable housing contrary to Policy HP5 of the Fareham Local Plan 2037. Furthermore it has not been demonstrated that the proposal would not have an adverse impact on the integrity of Habitat Sites contrary to policies NE1 and NE3 of the Fareham Local Plan.
- 8.62 Officers have carefully weighed the benefits which would be delivered by the proposal, having regard to the latest Housing Delivery Test results, against the conflict with adopted local plan policies and the policies of the NPPF. However, in Officers’ views, the harm identified in the preceding paragraphs and conflict with the development plan outweigh the benefits arising from the scheme.
- 8.63 In light of this assessment, and taking into account all other material planning considerations, Officers recommend that planning permission should be refused for this application.
- 8.64 Officers have also considered whether, if the applicant had been invited to and made the necessary financial contributions towards recreational disturbance mitigation, how the planning balance would be altered. In such a scenario, an Appropriate Assessment could be carried out to conclude that

the proposal would not have any adverse effects on the integrity of Habitat sites. The 'tilted balance' in NPPF paragraph 11(d) would be engaged and required to be applied to the Officer assessment. In this eventuality Officers consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF taken as a whole, meaning planning permission should be refused.

9.0 Recommendation

9.1 REFUSE PERMISSION for the following reasons:

The development is contrary to Policies HP5, NE1, and NE3, of the Fareham Local Plan 2037 and is unacceptable in that:

- a) The proposed development fails to make adequate provision for affordable housing at a level in accordance with the requirements of the Local Plan;
- b) In the absence of a legal agreement to secure such, the proposal would fail to provide satisfactory mitigation of the 'in combination' effects that the proposed increase in residential units on the site would cause through increased recreational disturbance on the Solent Coastal Special Protection Areas;
- c) In the absence of a legal agreement to secure such, the proposal would fail to provide satisfactory mitigation of the 'in combination' effects that the proposed increase in residential units on the site would cause through increased recreational disturbance on the New Forest SPA/SAC/Ramsar.

10.0 Background Papers

10.1 Application documents and all consultation responses and representations received as listed on the Council's website under the application reference number, together with all relevant national and local policies, guidance and standards and relevant legislation.

Land at St Joseph Close (Formerly 33 Lodge Road) Locks Heath

