

OFFICER REPORT FOR COMMITTEE

DATE: 06/07/2022

**P/22/0338/FP
MR A LAWRENCE**

**PORTCHESTER EAST
AGENT: NOVA PLANNING LIMITED**

NEW DETACHED DWELLING (SELF BUILD)

TURRET HOUSE, HOSPITAL LANE, PORTCHESTER

Report By

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1.0 Introduction

- 1.1 The application site comprises land owned by Councillors Mr and Mrs Walker. As a result this application is reported to the Planning Committee for a decision rather than being determined under Officers' delegated powers.
- 1.2 The application has received a total of five letters of representation (including one from multiple parties), comprising a mixture of objection and support for the proposals.
- 1.3 A report relating to this application was previously published on the agenda for the Planning Committee meeting held on 15th June this year but was later withdrawn as a result of a material change to the Council's Five Year Housing Land Supply position and in order to ensure fairness to planning applicants, agents and interested third parties.

2.0 Site Description

- 2.1 The application site comprises a paddock located just north of the private access track leading to Turret House. That track, which also forms part of the red-edged application site, leads westwards from the end of Hospital Lane with a timber post and rail fence along much of its southern edge. The track measures approximately 300 metres in length. Where the track abuts the paddock, the fence turns into a block and brick wall and a set of metal entrance gates and brick piers are positioned at this point.
- 2.2 Southwards, beyond the fence and wall which lines the track, is a footpath used by the public, which runs along the length of the harbour shoreline. Portsmouth Harbour is a designated site under international law - a Special Protection Area (SPA) and Ramsar site. The harbour is also part of the Solent and Dorset Coast Special Protection Area (SPA) and a Site of Special Scientific Interest (SSSI).

- 2.3 The paddock, the site of the new dwelling and its garden, is approximately 0.35 ha in size and is bound by trees and vegetation on its northern, southern and eastern boundaries. The most notable mature trees are along the northern boundary between the application site and the Council owned Roman Grove allotments. In the north-western corner of the paddock stands a stable building positioned along the boundary wall to Turret House.
- 2.4 The site is located within a stretch of largely undeveloped coastline which, for planning purposes having regard to the adopted local plan, lies within the countryside and outside of the urban settlement boundaries.
- 2.5 To the west of the application site lies Turret House surrounded by a boundary wall, to the west of which is Kenwood Road play area. To the immediate east of the site is another paddock beyond which lies the western edge of the Portchester Castle Street Conservation Area. Between there and the urban area around Castle Street lies an area of open land important to the character and setting of the Conservation Area and Portchester Castle itself which lies a short distance further eastward.
- 2.6 The Environment Agency (EA) flood maps show the majority of the site is located in Flood Zone 3. A small area of the northern part of the site is in Flood Zone 2 and the northernmost part in Flood Zone 1.

3.0 *Description of Proposal*

- 3.1 Full planning permission is sought for a detached dwelling with parking, access from Hospital Lane and associated landscaping and drainage works.
- 3.2 The application proposes a three-bedroom single storey dwelling on raised ground towards the northern site boundary. The submitted site plan indicates that the dwelling would be raised out of the ground with the finished floor level (4.9m AOD) standing around 1.6 - 1.8 metres higher than existing ground levels. The applicant's submission explains that the raising of the land on which the dwelling is proposed to be built is due to the potential risk of flooding.
- 3.3 The dwelling is described by the applicant as having a low contemporary form. The submitted drawings show the dwelling as having a flat sedum roof between 4.6 and 5.0 metres above existing ground level with the tallest parapet feature standing approximately 5.45 metres above existing ground level. The proposed materials consist of a mixture of stonework, grey metal fascias and soffits and timber effect cladding.
- 3.4 The existing stable building is intended to be converted for storage purposes incidental to the new dwelling. The site plan also shows three parking

spaces, a raised path for emergency escape in the event of flooding and a ground frame solar Photovoltaic system.

4.0 Policies

4.1 The following policies apply to this application:

Approved Fareham Borough Core Strategy

CS2 - Housing Provision

CS4 - Green Infrastructure, Biodiversity and Geological Conservation

CS5 - Transport Strategy and Infrastructure

CS6 - The Development Strategy

CS14 - Development Outside Settlements

CS15 - Sustainable Development and Climate Change

CS16 - Natural Resources and Renewable Energy

CS17 - High Quality Design

CS18 - Provision of Affordable Housing

CS20 - Infrastructure and Development Contributions

Adopted Development Sites and Policies

DSP1 - Sustainable Development

DSP2 - Environmental Impact

DSP3 - Impact on living conditions

DSP5 – Protecting and Enhancing the Historic Environment

DSP6 - New residential development outside of the defined urban settlement boundaries

DSP13 - Nature Conservation

DSP15 - Recreational Disturbance on the Solent Special Protection Areas

DSP40 – Housing Allocations

Other Documents

Residential Car and Cycle Parking Standards Supplementary Planning Document (November 2009)

Design Guidance Supplementary Planning Document excluding Welborne (Dec 2015)

5.0 Relevant Planning History

5.1 P/19/0925/FP

DETACHED DWELLING WITH PARKING & ACCESS FROM HOSPITAL LANE AND ASSOCIATED LANDSCAPING & DRAINAGE WORKS

REFUSED 13/02/2020

APPEAL DISMISSED 02/11/2020

6.0 Representations

6.1 Three representations of objection have been received, including one from the Portchester Society and one written on behalf of the residents of four houses on Hospital Lane. The letters raise the following material planning considerations:

- Contrary to local and national planning policy
- Previously dismissed appeal
- 2020 application rejected for very sound reasons
- Would urbanise an otherwise undeveloped site
- Contrary to policies designed to protect countryside
- Non-compliance with Policy DSP40
- Impact on heritage assets
- Infilling within a historically sensitive area
- Contemporary design out of keeping with prevailing character of the area which is of more traditional forms of dwellings
- Open land between the castle and Kenwood Road is important to the character and setting of the conservation area
- Flood zone
- Will set a precedent if allowed
- Surrounding sensitive land classed as SSSI and Ramsar site

6.2 Two letters of support have been received commenting as follows:

- Well designed
- Located away from shore for minimal impact

7.0 Consultations

EXTERNAL

Historic England

7.1 No comment. Historic England suggest that the Council seeks the views of their own specialist conservation and archaeological advisers.

Highways

7.2 No objection. The site is accessed via Hospital Lane, an adopted unclassified road subject to a 30mph speed limit. As Hospital Lane runs parallel to the coastline it becomes an adopted footpath that leads directly to the development site. As there is no proposed change of vehicular access onto the public highway, the Highways Authority's standing advice should be referred to.

Environment Agency

- 7.3 No objection. We are now satisfied that the information submitted demonstrates that the development and proposed mitigation measures will be sufficient in reducing the risk of flooding to future occupants for the lifetime of the property, subject to a condition securing finished floor levels shall be set no lower than 4.9m AOD and mitigation measures fully implemented, retained and maintained thereafter throughout the lifetime of the development.

NB The advice provided by the Environment Agency is solely in relation to the technical aspects of the applicant's proposal, to design the dwelling against the effects of flooding which includes raising the site levels and the internal finished floor level. The Environment Agency does not comment on any sequential test matters, this being a matter to be determined by Fareham Borough Council.

Natural England

- 7.4 Further information required to determine impacts on designated sites.

HCC Archaeology

- 7.5 No objection.

INTERNAL

Ecology

- 7.6 No objection.

The submitted Preliminary Ecological Appraisal Survey report confirms that the site is an improved grassland with hedge/tree lined boundaries. I am confident that the avoidance and precautionary measures included within this report will adequately ensure the protection of protected species such as nesting birds, reptiles, etc. should they be present.

The proposals will result in the removal of 4no. individual trees and one group of trees. However, I acknowledge that the submitted Planting Proposals (drawing no. CS-663.01) will result in the planting of a number of trees (majority of which are ornamental) and native hedgerows. This is acceptable. The site is located immediately to the north (beyond the existing road) of Portsmouth Harbour SPA, Ramsar and SSSI and Solent and Dorset Coast SPA. Furthermore, Solent Waders and Brent Goose Strategy Site P92 is located 70m to west of the site. A Construction Environmental Management Plan (CEMP) has been submitted which includes measures to ensure the prevention of pollution incidents (dust, surface water runoff, etc.) and noise disturbance to overwintering birds (i.e. sensitive timing of noisy works). These measures are satisfactory and by implementing them, any likely significant effects as a result of construction phase activities will be mitigated.

The proposals will result in an increase in the nitrate output into the Special Protection Areas. Provided that a suitable mitigation package is submitted and the necessary financial contribution is secured to address the increase in recreational disturbance on the National Site Network (formerly known as European designated sites or Natural 2000 sites), then impacts on these sites are considered to be unlikely.

If you were minded to grant permission, I suggest that the avoidance, mitigation and enhancement measures included within the Preliminary Ecological Appraisal Survey report and Construction and Ecological Management Plan by Arbtech (updated January 2022) are secured via a planning condition.

Conservation

- 7.7 The current application is for “*The erection of a single, self-build residential dwelling, including associated access, car parking and cycle storage, together with associated works*”. A previous application (P/19/0925/FP) for a dwelling of similar scale was previously refused with one of the grounds for refusal being the potential impact on the setting and context of the Conservation Area. This refusal was subsequently appealed (APP/A1720/W/20/3250150) with the refusal being upheld by the Planning Inspectorate.
- 7.8 In the appeal decision the Planning Inspector said that the public benefit of a single dwelling in this location did not outweigh the less-than-substantial harm caused to the character and setting of the adjacent Conservation Area. In the appeal decision the Planning Inspector said that the “*less than substantial harm be weighed against the public benefits of a proposed development. However, the very modest contribution made by the appeal proposal towards addressing the Council’s shortfall in housing supply does not amount to such a public benefit and there are no other benefits, for example in terms of enhancing or making a significant positive contribution towards the protection of the heritage assets in question.*”
- 7.9 Looking at the revised plans that have been submitted by the applicant, although the proposed dwelling has been moved slightly to the north and west, the potential impact to the setting and character of the Conservation Area remains largely the same and does not negate the previous reason for refusal. The cumulative effect of the dwelling house, solar array and landscaping on the character of the area and overall setting of the Conservation Area is still considered to be less-than-substantial harm and does not outweigh the previous reason for refusal.

- 7.10 The Portchester Conservation Area appraisal notes that Hospital Lane still retains its rural character with very limited built development. As outlined above the application site, along with the allotments and cemetery to the north, forms a soft verdant boundary to the western side of the Conservation Area with very little built form, Turret House and its associated boundary wall being the only examples. The Conservation Area appraisal also notes that the wider setting comprises Portsmouth Harbour and Portchester Castle in the exposed location.
- 7.11 The open space surrounding the settlement contains areas of land of great importance to the setting of the village and the castle, including the allotments and Roman Grove Cemetery to the north of the application site, and are designated as countryside in the local plan. The Conservation Area appraisal states that further development on this open land would harm the character and setting of the Conservation Area and the wider setting of the castle. Whilst the site of the proposed building is not currently within the designated Conservation Area boundary, it does have a similar open character with significant open views. There are also glimpses of Portchester Castle from the coastal path which form an important part of the wider setting of the Conservation Area.
- 7.12 Section 8.28 of the Portchester Castle Conservation Area Appraisal states that *“To the west of the castle Hospital Lane marks the start of a large area of open land that is rural in character, with hedgerows and other planting. This land is important in defining the older settlement and contributes to the wider setting of the castle”*. Any development in this location would upset the rural rhythm of the area and detract from the overall character of the Conservation Area.
- 7.13 The introduction of a residential dwelling in this sensitive rural and coastal location, close to the designated Conservation Area and the Scheduled Ancient Monument of Portchester Castle, would not provide any public heritage benefit. This could also set a precedent for further development which could adversely affect the long-term character and setting of the locality. The revised proposal would still be visually intrusive and would not accord the established character and the wider setting of the designated Conservation Area and the open verdant character of this locality. Whilst it is appreciated that each proposal is judged on its own merits the introduction of residential development in this sensitive area could also set a precedent and encourage further proposals for development in this sensitive area.
- 7.14 In relation to NPPF Paragraph 196, the current revised proposal would still be considered to cause less than substantial harm and should therefore be weighed against any public benefit. Consistent with the comments on the

previous application and the subsequent appeal, a single dwelling in this location would not be considered to provide any significant heritage or public benefit. Consequently, the current application still cannot be supported in Historic Environment policy terms.

Trees

7.12 No objection.

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) The Council's Five Year Housing Land Supply
- b) The approach to decision making
- c) Previous application and dismissed appeal
- d) Residential development in the countryside
- e) Character and appearance
- f) Heritage assets
- g) Flood risk
- h) The impact on habitat sites
- i) Policy DSP40
- j) The Planning Balance

a) The Council's Five Year Housing Land Supply

8.2 At their meeting on the 25th May, Members received a report on the Council's Five Year Housing Land Supply Position. Members were advised that the Council had a Five Year Housing Land Supply of 5.08 years as at the 31st March 2022 (with the 0.8 years equating to 52 units).

8.3 Subsequent to that meeting, the Council received the post hearing letter from the Planning Inspector who is carrying out the examination of the Fareham Local Plan 2037. The letter does not address all of the issues which arose during the Examination, but rather focuses on the areas where the Inspector has soundness or legal compliance concerns.

8.4 One of the issues raised by the Inspector within their letter, relates to the delivery rate of housing at Welborne. The Inspector considered this matter in detail as part of the Examination, receiving evidence from this Council, from planning consultants acting on behalf of the developers of Welborne, and other development interests.

- 8.5 Following consideration of all of this evidence the Local Plan Inspector concluded that 'Whilst I accept that efforts to bring the site forward are now gathering pace... I consider completions in 2023/24 to be overly ambitious. The site should be pushed back a year in the trajectory.'
- 8.6 The delivery of housing at Welborne provides a significant contribution towards the Council's Five Year Housing Land Supply. Moving the first completions at Welborne back to 2024/25 as advised by the Local Plan Inspector, removes 240 units from the Council's Five Year Housing Land Supply as it stood at the 31st March, 2022. In light of the Local Plan Inspector's post hearing letter, Officers advised Members on the 15th June that it would be very difficult to currently sustain the position (if challenged at appeal) that Welborne completions will take place in 2023/24.
- 8.7 Since the Five Year Housing Land Supply position was updated on the 31st March, further dwellings have been granted planning permission either by this Council or through planning appeals. These would not however offset the removal of the year's supply of dwellings at Welborne. Taking into account housing completions since the 31st March as well, Officers advised Members at the Planning Committee on the 15th June that the Council can demonstrate a Housing Land Supply of 4.95 years.
- 8.8 Officers accept at the time of preparing this report that the Council cannot currently demonstrate a 5-year supply of deliverable housing sites.

b) The approach to decision making

- 8.9 The starting point for making a decision on this planning application is section 38(6) of the Planning and Compulsory Purchase Act 2004:

"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".

- 8.10 In determining planning applications there is a presumption in favour of the policies of the extant Development Plan unless material considerations indicate otherwise. Material considerations include the planning policies set out in the National Planning Policy Framework (NPPF).
- 8.11 Paragraph 60 of the NPPF seeks to significantly boost the supply of housing.
- 8.12 Paragraph 74 of the NPPF states that local planning authorities should identify a supply of specific deliverable sites sufficient to provide a minimum of five

years' worth of housing against their housing requirement including a buffer. Where a local planning authority cannot do so, and when faced with applications involving the provision of housing, the policies of the local plan which are most important for determining the application are considered out-of-date.

- 8.13 Paragraph 11 of the NPPF then clarifies what is meant by the presumption in favour of sustainable development for decision-taking, including where relevant policies are "out-of-date". It states:

“For decision-taking this 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-date (see footnote 8 below), granting planning permission unless:

- i. The application of policies in this Framework that protect areas of assets of particular importance provides a clear reason for refusing the development proposed (see footnote 7 below); 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.”*

- 8.14 Footnote 7 to Paragraph 11 reads:

“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 181) 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 68); and areas at risk of flooding or coastal change.”

- 8.15 Footnote 8 to paragraph 11 reads:

"This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirements over the previous three years."

- 8.16 This planning application proposes new housing outside the defined urban settlement boundaries and the Council cannot demonstrate a five year housing land supply. Footnote 8 to NPPF paragraph 11 is clear that in such circumstances those policies which are most important for determining the application are to be considered out-of-date meaning that the presumption in favour of sustainable development in paragraph 11(d) is engaged. Even if it was the case that the Council could demonstrate a five year housing land supply, the Housing Delivery Test results published on 14th January 2022 confirmed that 62% of the Council's housing requirement had been delivered. This means the delivery of housing in the last three years (2018 to 2021) was substantially below (less than 75% of) the housing requirement over the previous three years. Again, footnote 8 to NPPF paragraph 11 is clear that in such circumstances those policies which are most important for determining the application are to be considered out-of-date meaning that the presumption in favour of sustainable development in paragraph 11(d) is engaged.
- 8.17 Taking the first limb of NPPF paragraph 11(d), as this report sets out, in this instance there are specific policies in the NPPF which protect areas of assets of particular importance namely habitat sites which are specifically mentioned in footnote 7. Therefore, a judgement will need to be reached as to whether policies in the Framework would have provided a clear reason for refusing the development. Where this is found to be the case, the development should be refused.
- 8.18 The second limb of NPPF 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 judged that there are no clear reasons for refusing the development having applied the test at Limb 1.
- 8.19 Members will be mindful of Paragraph 182 of the NPPF which 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."

8.20 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.

8.21 The following sections of the report assesses the application proposals 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.

c) Previous application and dismissed appeal

8.22 A very similar planning application was previously refused by the Planning Committee in February 2020 (application reference P/19/0925/FP). The reasons for refusal were as follows:

"The development is contrary to Policies CS2, CS4, CS5, CS6, CS14, CS15 & CS17 of the Adopted Fareham Borough Core Strategy 2011 and Policies DSP5, DSP6, DSP13 & DSP40 of the Adopted Local Plan Part 2: Development Site and Policies Plan and is unacceptable in that:

a) The provision of a dwelling in this location would be contrary to adopted Local Plan policies which seek to prevent additional residential development in the countryside;

b) The proposed dwelling fails to respond positively to and be respectful of the key characteristics of the area and would be harmful to the character and appearance of the countryside;

c) The application site is not sustainably located adjacent to, well related to or well integrated with the existing urban settlement boundaries;

d) The proposal fails to provide a sequential test to demonstrate that there are no other reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding;

e) The proposed dwelling would intrude into the area of open land west of Hospital Lane resulting in less than substantial harm to the

significance of the setting of the Grade I Listed Scheduled Ancient Monument Portchester Castle and the Portchester Castle Street Conservation Area.

f) In the absence of a legal agreement to secure such, the proposal fails to appropriately secure mitigation of the likely adverse effects on the integrity of European Protected Sites which, in combination with other developments, would arise due to the additional generation of nutrients entering the water environment.”

8.23 The subsequent appeal was dismissed in November 2020 (reference APP/A1720/W/20/3250150) with the Planning Inspector concluding:

“The site would be an unsuitable location for the proposed development with regard to the character and appearance of the area and flood risk, and would cause unacceptable harm to designated heritage assets. The development would conflict with the development plan as a whole, and there are no other considerations which alter or outweigh this finding. Thus, for the reasons set out above, I conclude that the appeal should be dismissed” (paragraph 44).

8.24 The detailed comments from the Inspector on each of the different planning considerations are set out below throughout the rest of this report. The Inspector’s findings are an important material planning consideration in determining this new application.

8.25 The current application retains the same overall design approach for the new dwelling as for the dismissed appeal scheme. The roof of the dwelling is slightly lower than previously and the siting of the house within the plot is further to the west than before. A landscaping scheme proposes new tree, shrub and hedgerow planting mainly focussed around the southern and eastern site boundaries. New supporting information is provided as part of the application.

d) Residential Development in the Countryside

8.26 Policy CS2 (Housing Provision) of the adopted Core Strategy states that priority should be given to the reuse of previously developed land within the urban areas. Policy CS6 (The Development Strategy) goes on to say that development will be permitted within the settlement boundaries. The application site lies within an area which is outside of the defined urban settlement boundary.

8.27 Policy CS14 of the Core Strategy states that:

'Built development on land outside the defined settlements will be strictly controlled to protect the countryside and coastline from development which would adversely affect its landscape character, appearance and function. Acceptable forms of development will include that essential for agriculture, forestry, horticulture and required infrastructure.'

8.28 Policy DSP6 of the Local Plan Part 2: Development Sites and Policies states - there will be a presumption against new residential development outside of the defined urban settlement boundary (as identified on the Policies Map). However, new residential development will be permitted in instances where either it has been demonstrated that there is an essential need for a rural worker to live there permanently, it involves a conversion of an existing non-residential building or it comprises one or two new dwellings which infill a continuous built-up residential frontage. Officers can confirm that none of these exceptions apply to the application proposal.

8.29 The site is clearly outside of the defined urban settlement boundary and the proposal is therefore contrary to Policies CS2, CS6 and CS14 of the adopted Core Strategy and Policy DSP6 of the adopted Local Plan Part 2: Development Sites and Policies Plan.

e) Character and appearance

8.30 Policy CS17 of the adopted Fareham Borough Core Strategy sets out that:

"In particular development will be designed to: respond positively to and be respectful of the key characteristics of the area, including heritage assets, landscape, scale, form, spaciousness and use of external materials".

8.31 Core Strategy Policy CS14 meanwhile seeks to protect the landscape character, appearance and function of the countryside as explained earlier in this report. It also expects that:

"In coastal locations, development should not have an adverse impact on the special character of the coast when viewed from the land or water".

8.32 The previous appeal Inspector attached great value to the character and appearance of the landscape. He made the following observations about the site and its surroundings:

“6. The site is a paddock attached to Turret House, which stands close to the edge of the peninsula on which Portchester is located. It currently stands alone, well separated from the suburban housing estates located to the north and west, and from the historic core of the settlement which is located to the east. Indeed, with the noted exception of Portchester Castle to the east, most of the edge of the peninsula, including land both immediately to the east and west of Turret House, consists of public or other open space. As allotments and a cemetery otherwise lie to the north, the immediate landward setting of Turret House consists of predominantly open space.

7. A driveway is located on the west side of the paddock, which partly serves as access to a stable building. The latter is incorporated within the site, but otherwise forms part of the cluster of development around Turret House. As such the paddock itself exists as a distinct open space.

8. Given the enclosure of both the site, and broader parcel of land within which Turret House is located, the extent to which its character is appreciable from outside it varies. Its openness, or rather the absence of any substantial development upon it, is nonetheless apparent in views over the site from the coastal (sic) path to the southeast and southwest, and from within Portsmouth Harbour. It is also clear in views from the cemetery and allotments to the north. Viewed within its broader setting, the openness of the site currently complements the prevailing openness of land along the peninsula edge.”

8.33 As before, this current application proposes a dwelling with an elevated floor level constructed within the paddock. The dwelling would be single storey and flat roofed however its raised floor level would make it more prominent than otherwise. The dwelling has been reduced in height compared to before but not significantly. The dwelling has also been moved slightly further west within the plot.

8.34 Commenting on the impact the previous proposed dwelling would have on the character and appearance of the area, the Inspector said:

“10. Given the visibility of the dwelling, the site would no longer be perceived as an open space. The openness of the peninsula edge would thus be appreciably eroded. The effect would be accentuated by the fact that the proposed dwelling would entail consolidation of a block of development distinctly separate from the built-up areas around it. In

this context the development would appear intrusive and have a suburbanising effect.”

- 8.35 The Inspector commented previously on the inability for the existing brambles along the south and east sides of the site to screen the building given its raised position. He noted as follows:

“13. Insofar as details have been provided of proposed landscaping, the intention is not to fully enclose, nor to fully screen the building. Indeed, this would run contrary to the proposed building design, which is intended to maximise the potential for views across Portsmouth Harbour. In this regard it is likely that the raised southeast corner of the building, which would house a very large window serving the main living space, would be particularly prominent in views from the southeast, including the coastal path. As such, the introduction of new landscaping would not mean that the building was hardly noticeable. Furthermore, given the high potential for light spillage through the large windows, this would be true both day and night.”

- 8.36 Officers have considered the new application and taken into account the comments by the Planning Inspector above which, as explained earlier, is an important material planning consideration. The slight reduction in height of the dwelling and its shift further westwards would not make a significant difference overall to the impact on the character and appearance of the area. As before, because the dwelling is raised above existing ground level, and despite being set back in the plot away from the southern site boundary, the upper parts of the dwelling would be visible from the public footpath which runs along the harbour shoreline and from the water itself. As the Inspector pointed out, the dwelling would also be seen from the cemetery and allotments to the north.
- 8.37 The current application proposes new planting in an attempt to screen or soften the visual impact of the new dwelling. Clearly, if a landscaping scheme could have addressed the Inspector’s previous concerns as to the impact on the character and appearance of the area, it was within their gift to suggest a planning condition be imposed. However, the comments above indicate that the Inspector was not persuaded that such a scheme to enclose the site and screen the building would be feasible given the building’s design and waterfront location. Even planting of a semi-mature nature when planted would take years to establish itself meaning at the very least, adverse short-term visual and landscape effects. It is unlikely that future occupants would wish to allow boundary planting, especially along the southern boundary, to mature to a height where it fully or substantially screened views of the dwelling.

8.38 In summary, the proposal is considered harmful to the character and appearance of the area contrary to Policies CS14 & CS17.

f) **Heritage assets**

8.39 The plot on which the proposed dwelling would stand lies approximately 30 metres from the south-western edge of Portchester Castle Street Conservation Area. The plot is around 325 metres south-west of Portchester Castle itself which is a Grade I Listed building and Scheduled Ancient Monument (SAM). The conservation area and castle are therefore important designated heritage assets.

8.40 The Inspector dealing with the previous appeal described the castle as follows:

“29. Insofar as it relates to the appeal, the special interest and significance of Portchester Castle lies in the age, and the relative intactness of its fabric, which substantially consists of Roman and Medieval material. It also resides in its prominent, and historically strategic position that the castle occupies within Portsmouth Harbour. This remains apparent, close at hand, and in long views both from and across Portsmouth Harbour, despite the growth of the settlement of Portchester itself. This is assisted by the retention of open space along the peninsula edge, which both reflects its historic openness, and provides a spatial and visual buffer from other development. As such the openness of the peninsula edge plays an important positive role in enabling the Castle’s special interest and significance to be experienced and appreciated.”

8.41 Meanwhile he made the following comments about the setting of the conservation area:

“30. The Conservation Area incorporates Portchester Castle, and the historic core of Portchester. Insofar as it relates to the appeal, the significance of the Conservation Area lies in the castle, the layout and relationship of the settlement to the castle, and the age, composition and relationship of the buildings and spaces it contains. Given the castle’s contribution to the significance of the Conservation Area, there is necessarily some overlap of the settings of each. Indeed, whilst the Conservation Area includes some open space along the peninsula edge, open space beyond it again plays an important positive role in setting both the castle and the historic settlement within their historically open contexts.”

8.42 Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out the statutory duty that local planning authorities shall, in considering whether to grant planning permission for development which affects a listed building or its setting, have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

8.43 Section 72 of the Act meanwhile sets out a similar statutory duty with respect to any buildings or other land in a conservation area that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

8.44 Paragraph 199 of the NPPF sets out that:

“When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.”

8.45 NPPF paragraph 200 continues that:

“Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting) should require clear and convincing justification.”

8.46 NPPF paragraph 202 adds that:

“Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.”

8.47 Policy DSP5 of the adopted Fareham Borough Local Plan Part 2 is the main development plan policy relating to protecting and enhancing the historic environment. Taking the pertinent points relevant to this proposal, it says that:

“...In considering the impacts of proposals that affect the Borough’s designated heritage assets, the Council will give great weight to their conservation (including those that are most at risk through neglect, decay, or other threats). Harm or loss will require clear and convincing justification in accordance with national guidance. Substantial harm or

loss to a heritage asset will only be permitted in exceptional circumstances.

Listed buildings will be conserved by...

a)...

b)...

c) ensuring that development does not harm, and if desirable, enhances their settings.

Development affecting a conservation area will be permitted where it preserves or enhances its character, setting and appearance, and

a) takes account of the relevant Conservation Area Character Appraisal and Management Strategy;

b) does not involve the loss of important features of an individual building that contribute to character and appearance of the conservation area and/or its setting;

c) its form, bulk, scale, height, massing, alignment, proportion, material, building form and use are appropriate, including having regard to the surrounding buildings, spaces and views;...

The Council will conserve Scheduled Monuments, and archaeological sites that are demonstrably of national significance, by supporting proposals that sustain and where appropriate enhance their heritage significance. Proposals that unacceptably harm their heritage significance, including their setting, will not be permitted..."

8.48 The Portchester Castle Street Conservation Area Appraisal and Management Strategy (January 2014) is an important material planning consideration. Whilst the site of the proposed dwelling does not lie within the conservation area, the effect of the development on the setting of the conservation area and Portchester Castle as designated heritage assets is material. The conservation area appraisal refers to the land between the proposed plot and Hospital Lane as "*open land surrounding the settlement*" (plan on page 26).

8.49 At page 16 the appraisal and management strategy says:

"The conservation area contains large areas of land that are of great importance to the setting of the village and the castle. These areas are designated as countryside in the Fareham Borough Local Plan and are outside the urban area. Further development on this open land would harm the character of the conservation area and the setting of the castle."

8.50 It continues that:

“To the west of the castle Hospital Lane marks the start of a large area of open land that is rural in character, with hedgerows and other planting. This land is important in defining the older settlement and contributes to the wider setting of the castle.”

8.51 *“The open land, gardens and allotments which provide a setting for the castle and the historic settlement”* are identified as key features to conserve and enhance (page 23).

8.52 When considering the effect on heritage assets in relation to the previous dismissed appeal scheme the Inspector found that the appeal development would erode and further suburbanise the broader open setting of Portchester Castle. Its setting, he noted, would be neither preserved nor conserved contrary to the expectations of the Act and NPPF as set out above. The Inspector went on to find that the development would also harm the setting of the Conservation Area which would not be preserved, again contrary to the NPPF. The harm would be less than substantial in scale but he attached considerable importance and weight to the harm caused to the significance of Portchester Castle as a listed building, great weight to the harm to the significance of the castle as a SAM and great weight to the harm caused to the significance of the Conservation Area.

8.53 In response to a consultation request relating to the current application, the Council’s Conservation Planner has raised concerns over the effect the proposed dwelling would have on the character and setting of the Conservation Area and castle. The Conservation Planner’s view is that the introduction of a new dwelling in this sensitive coastal location, close to the designated Conservation Area and SAM would still be visually intrusive and would not accord with the established character and the wider setting of these heritage assets. Whilst the proposed dwelling has been moved slightly, the impact on the setting of the heritage assets remains largely the same as the previous scheme dismissed by the Inspector at appeal. The current proposal would still be considered to cause less than substantial harm to the significance of those heritage assets and in accordance with NPPF paragraph 199 great weight should be given to the asset’s conservation.

8.54 NPPF paragraph 202 requires that less than substantial harm be weighed against the public benefits of a proposed development. Officers do not consider the very modest contribution towards addressing the Council’s shortfall in housing supply to amount to such a public benefit and there are no other benefits, for example in terms of enhancing or making a significant positive contribution towards the protection of the heritage assets in question.

8.55 For the above reasons the proposal is found to be contrary to local plan policy DSP5.

g) Flood risk

8.56 Paragraph 161 of the NPPF sets out a sequential, risk-based approach to the location of development – taking into account the current and future impacts of climate changes – so as to avoid, where possible, flood risk to people and property.

8.57 Paragraph 162 of the NPPF reads:

“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.”

8.58 The government’s Planning Practice Guidance (PPG) sets out how the sequential, risk-based approach to the location of development should work in practice. This application of the sequential approach is known as the sequential test. It states that this general 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. The aim should be to keep development out of medium and high flood risk areas (Flood Zones 2 and 3) and other areas affected by other sources of flooding where possible.

8.59 Reason for refusal (d) on the previous refused scheme read as follows:

d) The proposal fails to provide a sequential test to demonstrate that there are no other reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding;

8.60 As the reason for refusal suggests, no sequential test was provided with the previous application. The government’s Planning Practice Guidance (PPG) explains that it is for local planning authorities to consider the extent to which sequential test considerations have been satisfied, taking into account the particular circumstances in any given case.

8.61 As with the current application, the Environment Agency (EA) raised no objection to the previous application. However, the advice provided by the

Environment Agency is solely in relation to the technical aspects of the applicant's proposal, to design the dwelling against the effects of flooding which includes raising the site levels and the internal finished floor level. The Environment Agency does not comment on any sequential test matters, this being a matter to be determined by Fareham Borough Council.

- 8.62 Proposals such as raising floor levels to manage and mitigate the potential impact of flooding should only be considered when it has been successfully demonstrated that it is not possible to locate development in better locations elsewhere, away from sites at risk of flooding.
- 8.63 At the planning appeal the Council argued that the proposed development was contrary to the NPPF which clearly states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The applicant had failed to provide a sequential test to satisfy this matter.
- 8.64 The Inspector agreed with the Council and found as follows:

“25. The appellants sought advice from the Environment Agency with regard to design, and has also sought to address criteria set out in paragraph 163 [now 167] of the Framework which relate to management/mitigation of risk in areas at risk of flooding. The sequential test nonetheless forms the starting point for consideration of site suitability as a means of avoiding risk in the first instance. A development where risk is avoided is inherently safer than a development where risk requires mitigation or management.

26. In view of the above, and in the absence of any evidence, I cannot conclude that there are no reasonably available sites within the Council area which are both at lower risk of flooding, and capable of accommodating a single dwelling. Consequently, the development fails the sequential test, and thus paragraph 158 [now 162] of the Framework indicates that the development should not be permitted.

- 8.65 The applicant has submitted a sequential test with the new application. The document suggests that the development proposals would provide additional residential accommodation in order to meet the anticipated housing shortfall within the Council's five-year housing land supply. As already set out in this report, the Council is currently able to demonstrate a housing land supply of 5.08 years which will deliver 3,298 homes over the five year period 1st April 2022 – 31st March 2027. The Fareham Local Plan 2037, which further sets out how the Council will meet its housing requirement to identify a sufficient supply of land for housing, is due to be adopted in Autumn/Winter 2022.

- 8.66 Regardless of the Council's housing supply position, the requirement to follow the sequential approach set out above remains. In short, NPPF paragraph 162 requires that *"...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..."*.
- 8.67 The sequential test submitted with the application explains that the majority of the application site (71%) is located within Flood Zone 3 (High probability), 14% of the northern part of the site is within Flood Zone 2 (Medium probability) and the remainder (15%) in the northern areas is within Flood Zone 1 (Low probability). The area of the site where the dwelling is proposed is situated within Flood Zones 2 and 3 with the potential to affect the site and access to and from the site.
- 8.68 The Council's published Local Sites Strategic Flood Risk Assessment 2021 states that, at present, 9% of the Borough's land area is designated as within Flood Zones 2 & 3. The vast majority of the Borough therefore (91%) falls within Flood Zone 1, the lowest classification of flood risk. There is clearly therefore a large amount of land within the Borough in a lower classification of flood risk than the application site.
- 8.69 Despite this, the sequential test produced by the applicant concludes that *"no sites could be identified which offered a comparable scale of development at a lower overall flood risk"*. Having studied the document carefully, Officers believe the approach taken in carrying out the test to be flawed for a number of reasons meaning its findings cannot be relied upon to demonstrate compliance with NPPF paragraph 162.
- 8.70 The applicant's sequential test includes an assessment of a number of potential alternative sites which have been found following a search. Guidance on finding potential alternative sites is given in the Environment Agency guidance titled "Flood risk assessment: the sequential test for applicants" which represents the most up to date advice of its kind (updated 2017). It suggests starting with adopted or draft local plan sites that have already been allocated for development. It then suggests looking at sites that haven't been allocated in the local plan but that have been granted planning permission for a development that's the same or similar to the development being proposed. Finally, it suggests checking for any 'windfall sites'.
- 8.71 The applicant's search provides an assessment of the Council's Strategic Housing and Employment Land Availability Assessment (SHELAA) (December 2019), Brownfield Land Register and a commercial land search.

As an aside it should be noted that the most recent SHELAA produced by the Council is dated April 2021.

- 8.72 With the Environment Agency guidance above in mind, the applicant's searches do not make it clear that existing and draft housing allocations have been considered. There is no list of permissions that have been granted for similar development sites to show how they have been considered as part of the assessment to determine whether they are reasonably available. There is also no explanation as to why larger sites have not been included where there is potential for disaggregation or where such sites are specifically promoted as self-build housing plots.
- 8.73 Overall, the applicant's search adopts very narrow interpretation of what is meant in NPPF paragraph 162 by "reasonably available" which Officers do not agree is appropriate. This approach has led to numerous alternative sites which have been identified within the search being dismissed without appropriate justification and any alternative sites with a purported higher yield also being discounted, despite the size of those sites being within the appropriate search parameter.
- 8.74 The applicant's sequential test dismisses alternative sites that are shown to be at a greater risk from pluvial or groundwater flooding than the application site. This is despite the fact that the vast majority of the alternative sites being assessed are located within Flood Risk Zone 1. The applicant's suggestion is that the application site, which lies within Flood Risk Zone 3 (High probability of flooding), is preferable to a number of sites in Flood Risk Zone 1 (Low probability of flooding). Following this approach, the applicant has dismissed some sites lying within Flood Risk Zone 1 which have been granted planning permission for new housing.
- 8.75 Whilst Officers appreciate that all potential sources of potential flooding need to be considered, Officers consider the applicant has incorrectly interpreted the NPPF guidance on considering all forms of flooding and has unreasonably dismissed other potential alternative sites at a lower risk of flooding.
- 8.76 In summary, whilst the applicant now recognises the need for a sequential test to be submitted with this new application, the approach to carrying out the test is flawed. The application fails to demonstrate that there are no other reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding contrary to NPPF paragraph 162. For this same reason the proposal conflicts with Core Strategy Policy CS15 which states that sustainable development will be promoted and secured by avoiding unacceptable levels of flood risk.

h) Impact on habitat sites

- 8.77 Core Strategy Policy CS4 sets out the strategic approach to Biodiversity in respect of sensitive habitat sites and mitigation impacts on air quality. Policy DSP13: Nature Conservation of the Local Plan Part 2 confirms the requirement to ensure that designated sites, sites of nature conservation value, protected and priority species populations and associated habitats are protected and where appropriate enhanced.
- 8.78 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.
- 8.79 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) (previously 'European Protected Site').
- 8.80 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 habitat 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 habitat 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 either the local planning authority or the Planning Inspectorate, depending on who is determining the application.
- 8.81 When considering the proposed development on this site there are two main likely significant effects on HS.

Nutrient neutrality

- 8.82 The first likely significant effect on HS relates to deterioration in the water environment through increased nitrogen. Natural England has highlighted that there is 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 dwellings) will have a likely significant effect upon the HS.

- 8.83 Achieving nutrient neutrality is one way to address the existing uncertainty surrounding the impact of new development on designated sites. Natural England have provided a methodology for calculating nutrient budgets and options for mitigation should this be necessary. The nutrient neutrality calculation includes key inputs and assumptions that are based on the best-available scientific evidence and research, however for each input there is a degree of uncertainty. Natural England advise local planning authorities to take a precautionary approach when addressing uncertainty and calculating nutrient budgets.
- 8.84 In the case of this application, the Planning Statement submitted by the applicant explains that the foul drainage proposals are the same as the previous application. In that case it was proposed to create a new sewer connection for both the proposed dwelling and Turret House, which currently drains to a septic tank, to achieve nitrate neutrality. In their assessment the applicant has demonstrated that by removing the septic tank at Turret House there would be a reduction in the amount of nitrogen being discharged to the water environment, even when allowing for the connection of the existing dwelling and the proposed new house to the public sewer. Natural England have been consulted on the proposals and have responded to request further information despite previously having no objection to this approach provided the removal of the septic tank and connection of both properties to the mains sewer can be secured with the necessary parties, for example by way of a legal agreement. Had the application been found to be acceptable in all other regards, the applicant would have been invited to enter into such a legal agreement under Section 106 of the Town & Country Planning Act 1990.
- 8.85 In summary, Officers are satisfied on the basis of the submitted information, that Habitat Sites would not be adversely affected by increased wastewater resulting from the development. This is on the basis of the existing septic tank at Turret House being removed and both the existing house and proposed new house being connected to the public sewer. Had Officers been minded to recommend planning permission be granted, it would have been necessary to undertake an Appropriate Assessment and formally consult Natural England upon it. Mitigation such as that proposed by the applicant would ultimately be secured by way of a legal agreement with the relevant parties. In the absence of a legal agreement in place to secure this mitigation, the proposal would be contrary to Policy CS4 Core Strategy and Policy DSP13 of the Local Plan Part 2: Development Sites & Policies.

Recreational disturbance

8.86 The second of these likely significant effects on HS concerns disturbance on The Solent coastline through increased recreational use by visitors to the sites.

8.87 Policy DSP15 of the adopted Fareham Borough Local Plan Part 2: Development Sites and Policies 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). The applicant previously paid a financial contribution in October 2019 however since then the required contribution for a 3-bed dwelling has increased from £653, as it was at the time, to £735. Again, had Officers been minded to recommend planning permission be granted, the applicant would have been invited to make a financial contribution through the SRMS to address the difference between the two sums and the consequent slight shortfall in mitigation. In the absence however of a legal agreement to secure such a contribution, 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 DSP15.

i) Policy DSP40

8.88 Policy DSP40: Housing Allocations, of Local Plan Part 2, states that:

"Where it can be demonstrated that the Council does not have a five year supply of land for housing against the requirements of the Core Strategy (excluding Welborne) additional housing sites, outside the urban area boundary, may be permitted where they meet all of the following criteria:

- i. The proposal is relative in scale to the demonstrated 5 year housing land supply shortfall;*
- ii. The proposal is sustainably located adjacent to, and well related to, the existing urban settlement boundaries, and can be well integrated with the neighbouring settlement;*
- iii. The proposal is sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the Countryside and, if relevant, the Strategic Gaps;*
- iv. It can be demonstrated that the proposal is deliverable in the short term; and*

v. *The proposal would not have any unacceptable environmental, amenity or traffic implications.”*

8.89 Firstly, in relation to the first of these criteria at Policy DSP40(i), the proposal is for a single dwellinghouse which is relative in scale to the current shortfall.

8.90 In relation to Policy DSP40(iv), Officers have no concerns that the proposed dwelling could not be delivered in the short term.

8.91 The remaining three bullet points from Policy DSP40 are worked through in turn below.

Policy DSP40(ii)

8.92 In his consideration of the previous appeal, The Planning Inspector did not find that the site was in an unsuitable location for development insofar as this relates to access to services and facilities by means other than private motor vehicle. This is despite it being found that the walk to the nearest bus stop would lie at the upper end of what most people would consider acceptable and the main shopping area and railway station lie well beyond. The Inspector's reasoning was that the distance travelled would be little different to that of occupants of dwellings located within the Portchester settlement boundary itself.

8.93 Notwithstanding the Inspector's observations with regards the appeal proposal being sustainably located, the application site does not lie adjacent to the existing urban settlement boundary which, at its nearest point, is located approximately 125 metres north-west as the crow flies. There is a clear physical and visual separation between the site and the urban area. Officers are of the view that housing development on the site would not relate well to, or be well integrated with, the existing urban area.

8.94 The proposal fails to accord with Policy DSP40(ii).

Policy DSP40(iii)

8.95 The third test of Policy DSP40(iii) is that the proposal is *“sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the Countryside and, if relevant, the Strategic Gaps”*. The application site is not located within a Strategic Gap.

8.96 Section e) of this report considers the impact of the proposed development on the character and appearance of the countryside in which the site lies. It

concludes that the proposal is considered harmful to the character and appearance of the area contrary to Policies CS14 & CS17. The policy test set out at Policy DSP40 differs in that it acknowledges that development in the countryside will nearly always harm its landscape character and appearance and so the aim of development should be to minimise that impact.

- 8.97 Notwithstanding, given the assessment made at section e) of this report with regards the applicant's proposals to construct the dwelling further westwards and the proposed landscaping of the site being ineffective in terms of reducing the impact of the development, Officers do not consider that the proposal minimises the adverse impact on the countryside.
- 8.98 This view is consistent with the Inspector's comments in the previous appeal decision which at paragraph 14 read as follows:

"...Whilst conflicting with Policies CS14 of the CS, and DSP6 of the LP as outlined above, the development would also conflict with Policy DSP40 of the LP insofar as this requires integration with the neighbouring settlement, sensitive design, and minimisation of any adverse effect on the countryside."

Policy DSP40(v)

- 8.99 The final test of Policy DSP40 is that *"The proposal would not have any unacceptable environmental, amenity or traffic implications"*.
- 8.100 The adverse impacts upon Habitats Sites set out in the preceding section of this report are clearly unacceptable environmental implications which this part of the policy seeks to prevent. Similarly, the flawed approach to the sequential test identified in this report means that the development fails to avoid the environmental implications of new residential development in areas of unacceptable levels of flood risk.
- 8.101 With regards residential amenity implications, Officers are satisfied that the development would not be harmful to the living conditions of neighbouring residents.
- 8.102 Finally, the highway authority Hampshire County Council have raised no concerns over the proposal. Officers note that several of the letters from third parties in response to this application being publicised have raised concerns over increased traffic along Hospital Lane, however the increase in traffic movements arising from a single dwelling would not be so significant to be harmful to the safety of users of the highway.

j) The planning balance

8.103 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".

8.104 As set out already in this report, 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".

8.105 The effect of NPPF paragraph 182 means that if having carried out an Appropriate Assessment it is concluded that the proposal is likely to have an adverse effect on the integrity of a habitats sites, then the application can be determined in accordance with paragraph 38(6) under the 'straight' balance.

8.106 In this instance Officers have identified two likely significant effects upon Habitat Sites as a result of a failure to secure the proposed nitrate mitigation and recreational disturbance mitigation payment through a legal agreement. If the application had been found acceptable in all other regards and had Officers been minded to recommend that permission be granted, the applicant would have been invited to address this by entering into a Section 106 legal agreement. In the absence of such an agreement, the proposal would fail to appropriately secure this mitigation and would be contrary to Policies CS4, DSP13 & DSP15.

8.107 As there are other overriding reasons for refusal, Officers have not undertaken an Appropriate Assessment. This means that, by virtue of NPPF paragraph 182, the presumption of favour does not apply. It is acknowledged that these issues could be overcome by providing the required mitigation.

8.108 If an Appropriate Assessment was undertaken and concluded that the proposal would not adversely affect the integrity of the habitat sites, then the application would need to be determined in accordance with NPPF paragraph 11(d). This is because the Council cannot demonstrate a Five Year Housing

Land Supply and that, along with the fact that it achieved a Housing Delivery Test result of 62%, means that the policies of the adopted Local Plan relevant to housing must be considered out of date.

- 8.109 Limb i) of NPPF paragraph 11 d requires that planning permission be granted unless policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. This report has set out that, in terms of the impact on the setting of heritage assets, the proposed development would result in less than substantial harm to the significance of both Portchester Castle and the conservation area contrary to NPPF paragraph 199. The proposal also fails to demonstrate that there are no other reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding contrary to NPPF paragraph 162. These policies provide clear reasons for refusing the development proposed. The presumption in favour of sustainable development is therefore not engaged.
- 8.110 Considering then the proposed development as required through the approach set out at Section 38(6) of the 2004 Act, the site is outside of the defined urban settlement boundary and the proposed development does not relate to agriculture, forestry, horticulture and required infrastructure. The principle of the proposed development of the site would be contrary to Policies CS2, CS6 and CS14 of the Core Strategy and Policy DSP6 of Local Plan Part 2: Development Sites and Policies Plan. The development would have a harmful effect on the character and appearance of the countryside and in doing so would be contrary to Policies CS14 & CS17 of the Core Strategy. The proposal has been found to result in less than substantial harm to designated heritage assets, a matter which should still be given great weight in the decision making process as set out in NPPF paragraph 199 and which is contrary to Policy DSP5 of the LPP2. In accordance with NPPF paragraph 202, there are no public benefits to outweigh the harm identified to the heritage assets. In addition, the proposal does not demonstrate that there are no other reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding contrary to Policy CS15 of the Core Strategy and contrary to NPPF paragraph 162.
- 8.111 There is a clear conflict with those development plan policies set out above, including Policy CS14 as this is development in the countryside. Ordinarily, Officers would have found this to be the principal policy such that a scheme in the countryside should be refused. However, in light of the Council's lack of a 5YHLS, development plan policy DSP40 is engaged and Officers have carefully considered the scheme against the criteria therein. The proposal does not satisfy key tests set out in points (ii), (iii) and (v) of that policy.

8.112 Officers have given due regard to the benefits of the proposal. In balancing the objectives of adopted policy which seeks to restrict development within the countryside alongside the shortage in housing supply, Officers acknowledge that the proposal could deliver a new dwelling. However, whilst still a material consideration in light of the Council's 5YHLS shortfall, granting planning permission for a single house would make only a very modest contribution towards boosting the Borough's housing supply and this would not outweigh the harm identified above. The site is not in an undesirable use at present to mean that there would be any benefit in that use ceasing to make way for the new dwelling. There is also no suggestion that the development is required as 'enabling development' of any kind. The applicant's assertion that the application site is previously developed land by virtue of being part of a curtilage is noted. Even accepting that the application site is previously developed land, it is essentially devoid of permanent structures. Officers do not consider that either national or local planning policies encourage the development of such sites especially where other harm is caused to national or local planning policies. The previous appeal Inspector commented as follows on this matter:

"36...Even if I was to agree that the site is PDL, the site is not within a settlement for development plan purposes, and nor would it fulfil any more than the general need for housing. Moreover, its definition as PDL has no fundamental bearing on its character, appearance or susceptibility to flooding, or the harm that would be caused in these regards. Consequently, the site is not otherwise 'suitable' for the development proposed. Use of PDL does not therefore attract weight as a consideration in favour of the development."

8.113 In light of this assessment, and taking into account all other material planning considerations, Officers recommend that planning permission should not be granted for this application. A recommendation is set out below at paragraph 9.1.

8.114 Officers acknowledge that the Council's 5YHLS position may change again in the near future. With this in mind consideration has been given to whether, if the Council had been able to demonstrate a 5YHLS, the Officer recommendation would have been the same. In such a scenario Policy DSP40 would not be engaged however this report has already set out that the proposed development conflicts with other adopted local plan policies meaning that the proposals would not accord with the development plan. Whilst the presumption in favour of sustainable development would still be engaged, this report sets out why the proposal fails to satisfy limb i) of NPPF paragraph 11 d. This is due to there being clear reasons for refusing the development proposed having applied the policies of the NPPF that protect

areas or assets of particular importance. In summary, and taking into account all other material planning considerations, these reasons would lead Officers to recommend the application be refused.

9.0 Recommendation

9.1 REFUSE PERMISSION for the following reasons:

The development is contrary to Policies CS2, CS4, CS6, CS14, CS15 & CS17 of the Adopted Fareham Borough Core Strategy 2011, Policies DSP5, DSP6, DSP13, DSP15 & DSP40 of the Adopted Local Plan Part 2: Development Site and Policies Plan and paragraphs 162 & 199 of the National Planning Policy Framework and is unacceptable in that:

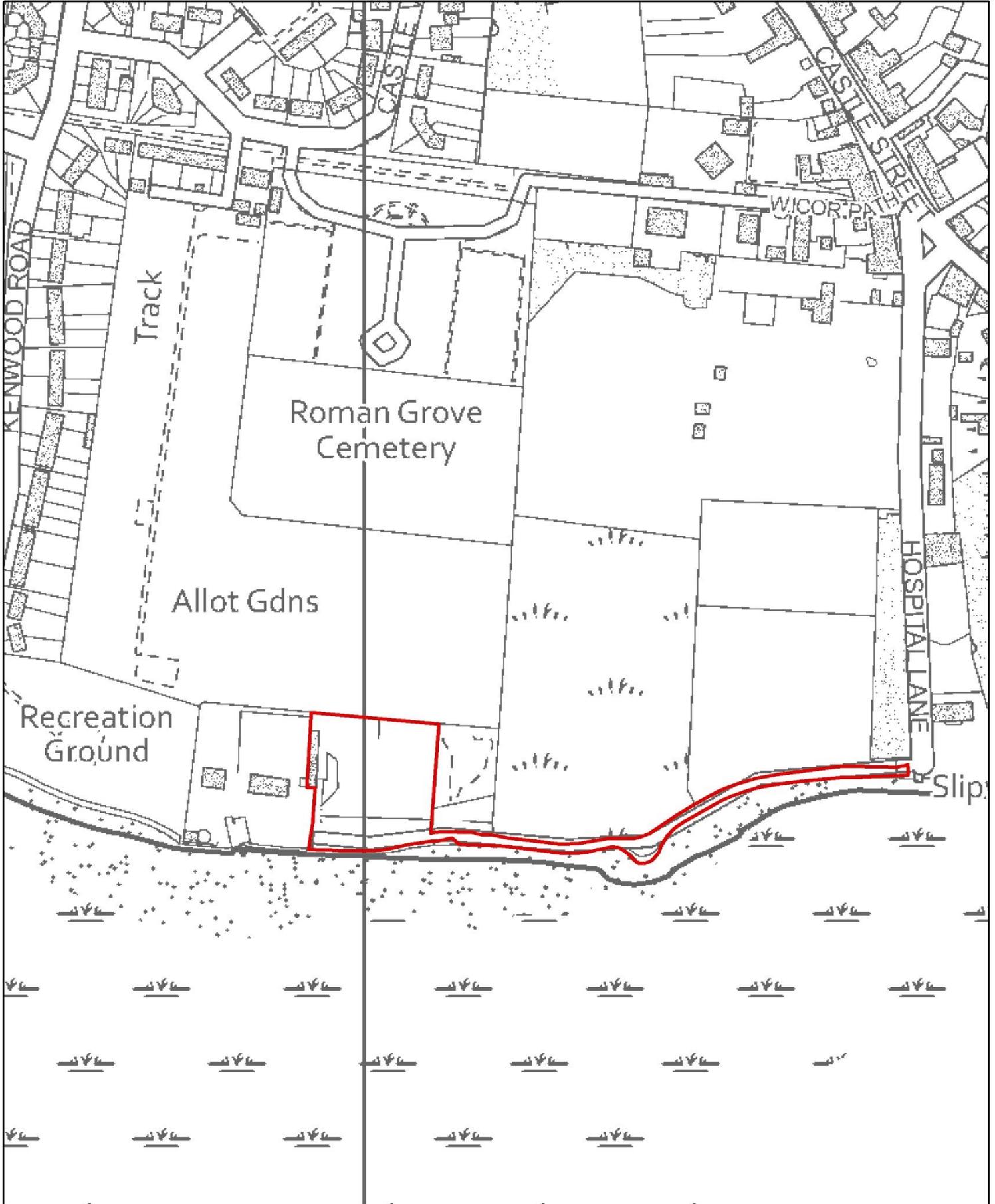
- i. The provision of a dwelling in this location would be contrary to adopted Local Plan policies which seek to prevent additional residential development in the countryside;
- ii. The proposed dwelling fails to respond positively to and be respectful of the key characteristics of the area and would be harmful to the landscape character, appearance and function of the countryside;
- iii. The proposal fails to demonstrate that there are no other reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding;
- iv. The proposed dwelling would intrude into the area of open land west of Hospital Lane resulting in less than substantial harm to the significance of the setting of the Grade I Listed Scheduled Ancient Monument Portchester Castle and the Portchester Castle Street Conservation Area.
- v. In the absence of a legal agreement to secure such, the proposal fails to appropriately secure mitigation of the likely adverse effects on the integrity of European Protected Sites which, in combination with other developments, would arise due to the additional generation of nutrients entering the water environment and recreational disturbance.

10.0 Background Papers

P/22/0338/FP; P/19/0925/FP

FAREHAM

BOROUGH COUNCIL



Turret House, Hospital Lane
Portchester
Scale 1:2,500



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