

## **OFFICER REPORT FOR COMMITTEE**

**DATE: 15/03/2023**

**P/22/0567/FP  
MR AND MRS JONES**

**LOCKS HEATH  
AGENT: MR PAUL COLE**

**DIVERT A FOOTPATH AND CHANGE THE USE OF LAND TO GARDEN BEHIND  
NEW BOUNDARY WALL**

**LAND TO THE REAR OF 12-14 SOUTHWOOD GARDENS, LOCKS HEATH, SO31  
6WL**

### ***Report By***

Katherine Alger – direct dial 01329 824666

#### ***1.0 Introduction***

- 1.1 This application is being reported to the Planning Committee for determination due to the number of third-party representations received

#### ***2.0 Site Description***

- 2.1 This application relates to an area of land to the east of the rear gardens of 12 and 14 Southwood Gardens. The site is located within the urban area and comprises scattered trees and vegetation and is bordered to the east and west by rear gardens. The area also contains an unmade informal pathway leading from an area of open space within Southwood Gardens to Lockwood Road.
- 2.2 The application site has since partially been enclosed by timber fencing and included within the rear garden area of 12 Southwood Gardens. The existing fencing projects approximately 4m into the existing area of open space. The land proposed to be included within the garden of number 14 has not yet been enclosed.

#### ***3.0 Description of Proposal***

- 3.1 The application seeks planning permission for the change of use the land into residential garden to form an extended garden for both numbers 12 and 14 Southwood Gardens.
- 3.2 The part of the application relating to the extension to the curtilage for number 12 is made partly in retrospect, with the garden for this property already having been extended and enclosed with a 1.8 metre high fence. The application proposes that this fence is to be replaced with a boundary wall; a wall will similarly enclose the extended garden for number 14 Southwood Gardens.

- 3.3 The application also proposes a 2 metre wide metalled pathway with a 1.5 metre wide landscaped verge with hedging at the rear of the extended gardens of 12 and 14 Southwood Gardens. This would formalise the existing unmade footpath/ desire line, between the open space to the south of the site and Lockswood Road. This path is to be constructed of a metalled surface (such as tarmac) and a condition will be imposed to ensure that it is lit with a low level lighting bollard on the rear boundary wall.
- 3.4 Following the completion of works, the ownership and maintenance of the footpath will be transferred to Fareham Borough Council through a legal agreement between the owners of No 12 and No 14 Southwood Gardens.

#### **4.0 Policies**

- 4.1 The following policies apply to this application:

##### **Adopted Fareham Borough Core Strategy (Local Plan Part 1)**

CS4: Green Infrastructure, Biodiversity and Geological Conservation

CS5: Transport Strategy and Infrastructure

CS9: Development in the Western Wards and Whiteley

CS17: High Quality Design

CS21: Protection and Provision of Open Space

##### **4.2 Adopted Development Sites and Policies Plan (Local Plan Part 2)**

DSP3: Impact on Living Conditions

DSP13: Nature Conservation

##### **Fareham Local Plan 2037 (emerging)**

- 4.3 The Fareham Local Plan 2037 was submitted to the Planning Inspectorate on 30th September 2021 and an examination conducted in March and April 2022. Following the conclusion of the examination hearings the Inspector requested a number of modifications to the Plan. The proposed modifications were the subject of public consultation from 31st October until 12th December 2022. The Council's Local Development Scheme schedules that the new plan will be adopted in Winter 2022/2023. On adoption the Local Plan will have full weight and in its current advanced stage is a material consideration for the determination of planning applications. The following draft policies of the emerging plan are of relevance.

HP3: Change of Use to Residential Garden Land

NE1: Protection of Nature Conservation, Biodiversity and Local Ecological Network

NE2: Biodiversity Net Gain

NE6: Trees, Woodland and Hedgerows  
TIN1: Sustainable Transport  
D1: High Quality Design and Place Making  
D2: Ensuring Good Environmental Conditions

#### **4.4 Other Documents:**

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

### **5.0 *Relevant Planning History***

5.1 The following planning history is relevant:

<b>FBC.4927/19</b>	OUTLINE PERMISSION FOR ERECTION OF FOUR, FOUR BEDROOMED DETACHED DWELLINGS
<b>Permission</b>	23/05/91
<b>P/96/0141/FP</b>	ERECTION OF THREE DETACHED DWELLINGS WITH GARAGES
<b>Permission</b>	18/07/96

5.2 The original planning permission for the development (FBC.4927/19) included a legal agreement which required the provision of a pathway to link the existing open space in Southwood Gardens, through the application site to link with Lockwood Road.

5.3 The planning obligation required the delivery of this path by the developer and that such a path would subsequently be transferred to Fareham Borough Council. The housing developer never undertook this work and subsequently ceased trading which resulted in the land ownership being transferred to the Crown.

5.4 In the circumstances where there is non-compliance with a planning obligation, any action needs to have been taken against such a breach within a period of ten years. Once a ten year period has lapsed, as in this case, there is no longer the opportunity to secure this footpath link via the original permission via enforcement of the Section 106.

5.5 This land is now in the process of being acquired by the applicants and this application seeks to deliver the footpath link from Southwood Gardens through to Lockwood Road, essentially formalising what is an established desire line and delivering a route that was initially intended to be delivered through the planning permission FBC.4927/19.

## **6.0 Representations**

6.1 Six representations were received during the initial 21-day notification period from five different households. Four were received from households within Southwood Gardens, one from a household within Kingcup Avenue to the south and one from Southmead Road. The following concerns have been raised:

- Setting a precedent for land grabbing
- Loss of wooded area
- No guarantee that new trees will remain in the long term
- Path not in keeping with existing greenway to the south of green spaces within locks heath due to the narrow enclosure with no grass verge
- High fencing restricts sight lines for pedestrians and cyclists
- Fencing out of keeping with character of the area should be a brick boundary
- Loss of biodiversity
- Impact on trees
- Narrow width of the path may lend itself to criminal activity
- Impact upon the outlook from dwellings due to loss of trees
- Barriers should be provided to prevent motorcycles from accessing path
- Unclear how much land sold to residents
- Should be notices put up regarding dog fowling in this area
- Lack of publicity on planning application
- Low level bollard lighting could be at high level

6.2 Amended plans were submitted during the planning application being considered. The amended plans straightened out the path and proposed planting along the outside of the boundary wall adjacent to the path. Further publicity was carried out on the amended plans during which two representations were received from the residents of two properties within Southwood Gardens (who had both previously commented) and raised the following concerns:

- Lighting bollard is too low level and could easily be vandalised
- No barriers proposed to prevent motorcycles

## **7.0 Consultations**

EXTERNAL

**7.1 Hampshire Constabulary - Designing Out Crime Officer (comments relate to the original application submission)**

The proposal will create a footpath, with no natural surveillance from the overlooking dwellings, that is enclosed, not straight and unlit. A place within which a person might lie-in-wait unseen is also created. These attributes significantly increase the opportunities for crime and disorder. In our opinion the footpath and the newly created connectivity between Lockwood Road and Southwood Gardens will be unsafe.

**7.2 Countryside Access Team**

No Comments received.

INTERNAL

**Ecology**

- 7.3 No objection subject to condition ensuring the development is carried out in accordance with Preliminary Ecological Appraisal and a condition requiring planting of species-rich native hedging along the northern and eastern boundaries

**Street Scene (Open Space)**

- 7.4 No objection -The path appears to be straight and so would be less intimidating for users. Having low level planting and/or verge would help with the amenity value.

**Trees**

- 7.5 No objections.

**8.0 Planning Considerations**

- 8.1 The following matters represent the key material planning considerations which need to be assessed in determining the planning application:

- a) Principle of the development
- b) Impact upon the character and appearance of the area;
- c) Impact upon residential amenity
- d) Ecology
- e) Trees
- f) Other matters

**a) Principle of the development**

- 8.2 Policy HP3 (Change of use to Garden Land) of the emerging Fareham Local Plan states that a change of use of land to residential garden will be permitted where:

- a) It is in keeping with the character, scale and appearance of the surrounding area; and
- b) It will not detract from the existing landscape; and
- c) It respects the views into and out of the site.

Proposals that include new boundary treatments must ensure that it is appropriate and in keeping with the character of the surrounding area.

- 8.3 The site was subject to a Section 106 Legal Agreement following the grant of planning permission in outline in 1991 (application reference: FBC.4927/19) and then a subsequent full detailed application in 1996 (application reference P/96/0141/FP) for the construction of the dwellings to the west of the land.
- 8.4 The legal agreement stipulated that the land should be provided as a greenway linking the open space at Southwood Gardens to Lockwood Road. Planning Condition 7 of the outline planning permission highlights that the site should be retained as greenspace.
- 8.5 The land was never laid out as public open space and no footpath was ever provided. The builder ceased trading before the works were carried out and the land transferred to the Crown.
- 8.6 The application seeks to provide a footpath link between the existing Open Space and Lockwood Road and to extend the residential garden areas for the properties at 12 and 14 Southwood Gardens.
- 8.7 It is considered that the provision of the boundary wall and provision of hedging and a tarmacked footpath would be in-keeping with the character, scale and appearance of the surrounding area. It is not considered to detract from the existing landscape and additional hedging will be planted along the boundary. Furthermore, it is considered to respect the views into and out of the site. The proposed boundary treatment is also considered to be acceptable.
- 8.8 The proposal is therefore considered to be acceptable in principle and would be in accordance with Policy HP3.

**b) Impact upon the character and appearance of the area**

- 8.9 Policy CS17 of the Core Strategy states that all development will be designed to respond positively to and be respectful of the key characterises of the area, including heritage assets, landscape, scale, form and spaciousness and use of external materials. Draft Policy D1 of the emerging Fareham Local Plan 2037 similarly requires development proposals and space to be of high-quality design based on the principles of urban design and sustainability.

- 8.10 The plans initially submitted included the provision of a timber boundary fence. However, this has since been amended to provide a 1.8 metre high brick boundary wall. There are number of brick boundary walls within the surrounding area. Therefore, it is considered that the proposed wall would have regard to the key characteristics of the area and would provide a robust and defensible boundary.
- 8.11 It is also proposed to plant hedging along the boundary wall adjacent to the footpath. This would soften the appearance of the boundary treatment and the setting of the footpath. A condition will be imposed for the applicant to provide details on the hedge species to ensure native planting is provided.
- 8.12 The surrounding properties within Southwood Gardens have varying plot sizes. Therefore, it is not considered that the enlarged plot sizes of No 12 and 14 would have an unacceptable impact on the character of the surrounding area.
- 8.13 It is therefore considered that the proposal would be acceptable in design terms and would have regard to the key characteristics of the surrounding area and would be in accordance with Policies CS17 and Policy D1.

**c) Impact on residential amenity**

- 8.14 Policy DSP3 of the Local Plan Part 2 and Policy D2 of the emerging Fareham Local Plan state that proposals should not result in an unacceptable impact upon neighbouring properties by way of a loss of light, outlook and/ or privacy.
- 8.15 The boundary wall to the rear of numbers 12 and 14 Southwood Gardens will move closer towards the properties within Heath Road South to the east. A 3.5 metre gap will remain between the rear boundaries to provide for the path and associated landscaping. Therefore, it is considered that the relocation of the boundary wall will not result in an unacceptable adverse impact upon the neighbouring properties, nor will the extended garden areas.
- 8.16 There is already an informal pathway connecting the open space to Lockswood Road and the proposal will formalise this path. There is already considered to be an amount of public activity between the rear boundaries of the properties within Heath Road South and Southwood Gardens and furthermore this pathway was always intended to be delivered as part of the development of Southwood Gardens.
- 8.17 Concerns have been raised regarding the outlook to the neighbouring properties as a result of the removal of the trees and the increase in traffic noise. Due to the separation distance between the neighbouring residential properties, it is not considered that the removal of the trees would have a

significant impact on the outlook of the neighbouring properties. It is also not considered that the removal of the trees would amount to an increase in traffic noise from Lockswood Road.

- 8.18 The proposals are therefore, considered to comply with Policies DSP3 and D2.

**d) Ecology**

- 8.19 A Preliminary Ecological Appraisal (PEA) was submitted with the application. The Council's Ecologist is satisfied with the report and has recommended a condition requesting the works to be carried out in accordance with the recommended actions to mitigate and enhance.
- 8.20 In terms of the planting of the boundary hedging, the Ecologist has raised concerns that the proposed boundary hedging would be non-native and therefore not a suitable species. They have therefore advised that a condition should be imposed to ensure that species-rich native hedging including hawthorn, spindle, holly, dogrose haze and field maple with a minimum of 4 trees within the hedge (feathered or light standard trees) along the northern and eastern boundaries are planted.

**e) Trees**

- 8.21 Several Willow trees have been removed from the site in the new enlarged garden area to the rear of 12 Southwood Gardens. There are a number of Laurel shrubs and a Sycamore tree in the area to the rear of 14 Southwood Gardens and these are shown to remain on the submitted tree plan.
- 8.22 A number of concerns have been raised regarding the loss of the woodland area. The Council's Tree Officer has considered the application and raises no objection to the proposal. This area is not a protected woodland or an area of designated public open space and the trees within this area are not subject to Tree Preservation Orders. Therefore, it is considered that the removal of trees within this location would be acceptable in this instance.
- 8.23 Concerns have also been raised that the trees and planting would not be retained in the long term. The hedgerow and tree planting along the path would be transferred to the Borough Council and as such would be maintained, along with the rest of the Southwood Gardens area of designated public open space by the Borough Council in perpetuity. A maintenance contribution would be secured through a section 106 legal agreement.

**f) Other matters**



- 8.24 **Hampshire Constabulary's Designing Out Crime Officer** raised concerns to the initial plans. The initial plans did not include the extension to the rear garden of No 14 Southwood Gardens, the path included two 90 degree turns along its length and had a width of only 1 metre. The amended plans resulted in the creation of a straight path with a 2 metre width and a condition will be imposed for lighting to be provided. Having regard to the short length of the path and the fact it is located adjacent to a main distributor road, it is considered that the amended plans have addressed the main concerns raised.
- 8.25 **Lack of safety barrier or motorcycle prevention barrier-** The provision of a barrier at the Lockswood Road end of the path would be secured through the Section 106 legal agreement to address motorcycle use of the footpath.
- 8.26 **Setting a precent for land grabbing-** Each application is determined on its own merits. Should an application come forward in the future to purchase an area of land, it will be considered on the relevant material planning considerations.
- 8.27 **Unclear how much land sold to residents-** The extent of the purchased land will extend to the boundary with the rear garden of the properties along Heath Road South. However, 3.5 metres of the land would subsequently be transferred to the Borough Council under the s106 legal agreement once the path has been created to the satisfaction of the Council.
- 8.28 **Notices regarding dog fowling-** This is not a material planning consideration and will not be considered during the determination of this application.
- 8.29 **Low level bollard lighting should be high level-** Following discussions with the Council's Ecologist, it was considered that a low level bollard lighting would be more appropriate and of a lower impact on nocturnal species. These details will be secured via a condition.
- 8.30 **Lack of publicity on planning application-** The Local Planning Authority is satisfied that the consultation process was carried out in accordance with the legislation within the Town and Country Planning (Development Management Procedure) (England) Order 2015 giving neighbouring residents the statutory 21-day consultation process to comment initially with an additional 14-day consultation period following recipient of amended plans.

## 9.0 Summary

- 9.1** In summary, it is considered that the change of use of the land and the provision of a footpath and landscaping would be a suitable addition to the area and would provide a suitable metalled surface for the use of local residents walking from Southwood Gardens to Lockwood Road. It is noted that the Crime Prevention Officer has raised objections however, the concerns raised were addressed during the amendments to the application.

## **10.0 Recommendation**

Subject to:

- 10.1** The applicant/owner first entering into a planning obligation pursuant to Section 106 of the Town and Country Planning Act 1990 on terms drafted by the Solicitor to the Council in respect of the following:
- a) Timescale for delivery of the footpath and landscaping
  - b) Once the footpath and landscaping has been completed to the reasonable satisfaction of Fareham Borough Council, transfer of the footpath and landscaping belt to Fareham Borough Council
  - c) Payment of the necessary commuted maintenance sum for the path and landscaping adjacent to the path

Then;

## **10.2 GRANT PLANNING PERMISSION** Subject to the following conditions:

1. The development hereby permitted shall be begun before three years from the date of this permission.  
REASON: To allow a reasonable time period for work to start, to comply with Section 91 of the Town and Country Planning Act 1990, and to enable the Council to review the position if a fresh application is made after that time.
2. The development hereby permitted shall be constructed in accordance with the following approved documents:
  - a) Site Location Plan AIM.CPM.PLN.022 Sheet 1
  - b) Plan View of Plot AIM.CPM.PLN.022 Sheet 2
  - c) Isometric View of Plot AIM.CPM.PLN.022 Sheet 3
  - d) Tree Plan AIM.CPM.PLN.022 Sheet 4
3. No development shall proceed until details of the boundary wall surrounding the extended gardens of 12 and 14 Southwood Gardens including design and materials have been submitted to and approved in writing by the Local Planning Authority. The approved boundary treatment shall be fully

implemented within 6 months from the date of this decision and shall thereafter be retained at all times unless otherwise agreed in writing with the Local Planning Authority.

REASON: To ensure that the development harmonises well with its surroundings.

4. The works shall be carried out in accordance with Section 6.0 'RECOMMENDED ACTIONS TO MITIGATE AND ENHANCE' of the Preliminary Ecological Appraisal by Ecosupport (November 2022).  
REASON: To ensure that biodiversity is enhanced as a result of the proposed development.
5. No development hereby permitted shall proceed until details of the finished footpath treatment have been submitted to and approved by the Local Planning Authority in writing. The surfacing materials shall comprise a suitable metaled surface. The development shall thereafter be carried out in accordance with the approved details and the hard surfaced areas subsequently retained as constructed.  
REASON: In the interests of public amenity and safety.
6. No development shall proceed until a landscaping scheme identifying all trees, shrubs and hedges to be planted have been submitted. These should include planting of a species-rich native hedge including hawthorn, spindle, jolly, dogrose hazel and field maple with a minimum of 4 trees within the hedge (feathered or light standard trees) along the northern and eastern boundaries. These details shall include the species, planting sizes, planting distances, density, numbers, has been submitted to and approved by the Local Planning Authority in writing.  
REASON: In order to secure the satisfactory appearance of the development; in the interests of the visual amenities of the locality and to ensure that biodiversity is enhanced as a result of the proposed development.
7. No development shall proceed until details of the proposed bollard lighting or other means of external illumination have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and any lighting thereafter retained in the approved form.  
REASON: In order to prevent light disturbance to occupiers of nearby residential properties and control light pollution.
8. No work on site relating to the construction of any of the development hereby permitted (Including works of demolition or preparation prior to operations) shall take place before the hours of 0800 or after 1800 Monday to Friday, before the hours of 0800 or after 1300 Saturdays or at all on Sundays or

recognised bank and public holidays, unless otherwise first agreed in writing with the Local Planning Authority.

REASON: To protect the occupiers of nearby residential properties against noise and disturbance during the construction period.

Then;

**10.3** DELEGATE authority to the Head of Development Management to:

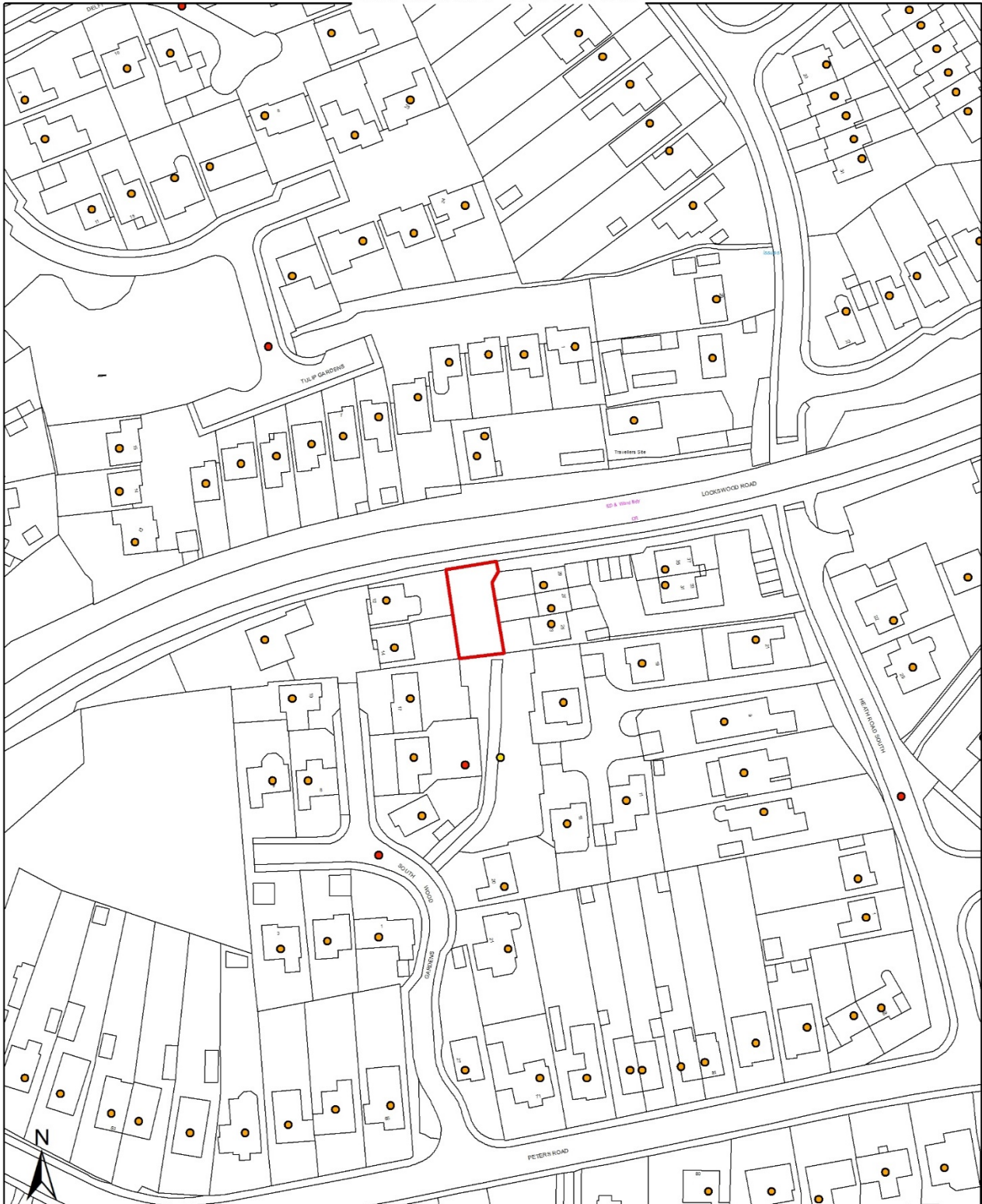
- (a) make any necessary modification, deletion or addition to the proposed conditions or heads of terms for the Section 106 legal agreement; and
- (b) make any necessary changes arising out of detailed negotiations with the applicant which may necessitate the variation, addition or deletion of the conditions and heads of terms as drafted to ensure consistency between the two sets of provisions.

**10. *Background Papers***

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.

# FAREHAM

## BOROUGH COUNCIL



12-14 Southwood Gardens

Scale 1:1,250

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