



Appeal Decision

Inquiry held on 3-5, and 10-12 October, and 6 and 13 November 2023

Site visit made on 3 October 2023

by I A Dyer BSc (Eng) FCIHT

an Inspector appointed by the Secretary of State

Decision date: 16th January 2024

Appeal Ref: APP/B1740/W/23/3324227

Orchard Gate, Noads Way, Dibden Purlieu, Hampshire SO45 4PD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by AJC Group against the decision of New Forest District Council.
 - The application Ref 22/10813, dated 7 July 2022, was refused by notice dated 19 December 2022.
 - The development proposed is demolition of the existing buildings and the erection of 25 dwellings with associated access, landscaping and parking.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of the existing buildings and the erection of 25 dwellings with associated access, landscaping and parking at Orchard Gate, Noads Way, Dibden Purlieu, Hampshire SO45 4PD in accordance with the terms of the application, Ref 22/10813, dated 7 July 2022, subject to the attached schedule of conditions.

Preliminary Matters

2. Prior to the Inquiry, the appellants amended their plans with the intent of resolving the issue of safety of the highway and access, and mitigating the effect of the site on the character and appearance of the site and the surrounding area. I consider the amendments are of a minor nature and they were consulted on, giving parties the opportunity to comment. I have therefore accepted the revised plans on the basis that no party would be prejudiced by my doing so and I will return to this matter later.
3. The appellants submitted a Deed of Allocation of Nitrate Offsetting dated 11 October 2023 and I have considered the implications of this in my decision.
4. I have received signed Statements of Common Ground (SoCGs) between the Council and the appellants, one relating to general matters, and others specific to viability of the proposal, habitats and drainage. The drainage SoCG was provided during the course of the Inquiry. I have taken the SoCGs into account in my decision.
5. After the Hearing, on 19 December 2023, the Government issued a new version of the National Planning Policy Framework (the Framework) and the latest Housing Delivery Test results. The parties have had the opportunity to make comments on the revisions to the Framework as part of the appeal process.

Main Issues

6. The Local Highway Authority (LHA) has stated that the revisions to the scheme address its concerns regarding the provision of safe access for all users, subject to the imposition of a suitably worded planning condition, and the Council do not disagree.
7. During the course of the Inquiry the parties, subsequent to discussion and the provision of additional information, reached agreement that the site could make suitable arrangements for the discharge of surface water runoff, subject to the imposition of suitably worded planning conditions.
8. These are matters of common ground between the parties and I see no reason, on the basis of the evidence before me, to dispute their conclusions in these regards.
9. The parties have agreed that through the provisions of the submitted Unilateral Undertaking (UU) and by participation in a scheme aiming to offset increased nutrient discharge into the Solent appropriate mitigation is, in their opinion, provided for the effect of the proposal on the European Designated Sites. However, in regard to the European Designated Sites, whilst the main parties have come to an agreement, the Court of Justice of the European Union has ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the framework of an Appropriate Assessment (AA) rather than at the screening stage. This responsibility now falls to me within this appeal and so I have considered this matter further within this decision.
10. Having come to the conclusions above, the main issues in the appeal are: -
 - The effect of the proposed development on the character and appearance of the site and the surrounding area, with particular reference to trees;
 - Whether the proposed development would make suitable provision for recreation and public open space; and: -
 - Whether the site makes suitable provision for affordable housing.

Reasons

Policy context

11. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise.
12. Policies STR3 and STR4 of the New Forest Local Plan 2016-2036 Part 1: Planning Strategy (2020) (Part 1 of the Local Plan), seek to direct development to locations appropriate to the scale of the development. Dibden Purlieu, which falls within "Hythe Village", is identified as a location capable of accommodating large scale residential development as it is within a town offering access to a wider range of employment, facilities and services.
13. Policies STR1, ENV3 and ENV4 of Part 1 of the Local Plan, and Policy D1 of the Hythe and Dibden Neighbourhood Plan 2018 - 2026 (2019) (the Neighbourhood Plan) together seek, amongst other things, to ensure that all development achieves high quality design that contributes positively to local distinctiveness,

quality of life and enhances the character and identity of the locality by creating buildings, streets, places and spaces that are sympathetic to its environment and context. It is a requirement that where development is proposed, landscape features, such as trees, and other characteristics are retained and/or enhanced through sensitive design, mitigation and enhancement measures, to successfully integrate new development into the local landscape context.

14. The New Forest District Council Housing Design, Density and Character SPD 2006 (the SPD) seeks to promote good design in new residential development and ensure that new residential development respects local character and identity.
15. The SPD makes reference to Policy DW-E2 of the New Forest District Local Plan First Alteration 2005, which set out an expectation of new development within the defined built-up areas to achieve a minimum net density of 30 dwellings per hectare. This policy has not been retained within the Development Plan. In this regard the SPD reflects the approach taken in Planning Policy Guidance 3: Housing, which introduced a national indicative minimum density of 30 dwellings per hectare and has been replaced by the guidance within the Framework. The Framework takes a more flexible approach to housing densities, and seeks to balance the aspiration to make efficient use of land with other design considerations to achieve good design. As such the guidance within the SPD relating to housing densities is out of date. The SPD, however, is more consistent with current guidance within part 12 of the Framework and the National Design Guide in its approach to design and character and so, in this regard, still carries weight.
16. The Neighbourhood Plan identifies a particular need for smaller-sized houses, such as one- and two- bedroomed properties, affordable housing, and housing suitable for first-time buyers and young families and this is reflected in Aim 2 of that document.
17. Policy CS7 of the New Forest District Council Local Development Framework Core Strategy (2009) (the Core Strategy) sets out the Council's requirements for open space provision within new development and aims to provide, as a minimum standard, the equivalent of 3.5 hectares of public open space per 1000 population to serve the towns and larger villages within the district.
18. Policy HOU2 of Part 1 of the Local Plan requires all new developments of eleven or more dwellings to provide affordable housing. The site lies within the Waterside Area and the policy sets a target for 35% of new homes to be affordable housing. The policy makes provision for the viability of development to be taken into account and sets out how that will be done in Policy IMPL1 of Part 1 of the Local Plan.
19. Policy IMPL1 requires that all developments must provide, or contribute proportionately to the provision of, amongst other things, affordable housing required to achieve a sustainable development. The policy allows that contributions that would have the least impact on the achievement of sustainable development can be varied, reduced, or removed, where it is demonstrated in a robust and independently tested viability study that there are previously unidentified cost considerations that render development unviable.

20. Policy ENV1 of Part 1 of the Local Plan and Policy DM3 of the New Forest District Local Plan Part 2: Sites and Development Management (2014) (Part 2 of the Local Plan) seek to ensure that development will only be permitted where the Council is satisfied that any necessary mitigation, management or monitoring measures are secured as part of the proposal and will be implemented in a timely manner, such that, in combination with other plans and development proposals, there will not be adverse effects on the integrity of any International Nature Conservation sites, including the Protected Sites relevant to this appeal. Policy ENV1 states that for residential development adverse effects can be adequately mitigated by implementing approved measures relevant to the site location, including as set out in the Mitigation for Recreational Impacts SPD and in the Solent Recreational Mitigation Strategy.
21. The New Forest District Council Mitigation for Recreational Impacts on the New Forest European Sites Supplementary Planning Document (2021) (The Recreational Impacts SPD), The Air Quality Assessments in New Development Supplementary Planning Document (2022) and the Bird Aware Solent Strategy (2017) together aim to enable residential development to proceed by setting out a strategy to ensure that the effects of development, either alone or in combination with other plans or projects does not have an adverse effect on the integrity of internationally designated sites.

Character and appearance

22. The appeal site (the site) lies within the built-up area of Dibden Purlieu. It contains a number of buildings, including a dwelling. The site forms an "L" shape, stretching back from Noads Way, with the main body of the site, which contains the buildings, enclosed by residential properties fronting Noads Way, Lime Walk and Lime Close. The greater part of the site consists of paddocks, one of which, at the time of the site visit, contained a caravan.
23. The boundaries of the site contain several mature trees. Some of these lie within the site, whilst others lie outside. The trees fronting Noads Way and along the north-eastern boundary of the site are the subject of Tree Preservation Orders (TPOs). There are some trees of lesser scale within the site.
24. The character of the surrounding area is residential, predominantly featuring detached dwellings, in the form of both houses and bungalows, set back behind moderately sized front gardens, often bounded to the highway by mature hedging and in generous plots. The large, mature trees, in combination with the hedging and garden planting give the area an overall verdant appearance. In Noads Way, where there are many trees close to the street, the verdancy gives the area a more enclosed feeling, with dwellings set within it. This sense of green enclosure transitions along Lime Walk towards an area with a more spacious feeling where bungalows and chalet bungalows predominate and the mature trees contribute to the character of the area as a leafy backdrop to the more evident built form.
25. Lime Close and the arm of Lime Walk to the north have a distinctively different character and appearance to Noads Way by virtue of the increased openness of the former and intimate dominance of the planting in the latter, whilst the arm of Lime Walk to the east transitions between the two, establishing distinct, but positive features of each area in terms of openness with a green backdrop and

intimate verdancy, to which, in all cases, the mature trees make a significant contribution.

26. In the wider area, trees remain a significant positive feature. Generally appearing as a backdrop to built form, visible above, or glimpsed through gaps in, the built form.
27. Within the Hythe Character Area Assessment (2010) the area is identified as a residential suburb composed of older residential development, having a coarse to medium grain with a rectangular block layout with a mix of houses and bungalows set on medium-sized to large plots on a grid of roads which includes cul-de-sacs. It identifies the area as having consistent building lines, with only very minor variation throughout, with dwellings set back from the road with low boundary hedges defining the road. The area within which the site lies exhibits such characteristics as identified within the broad generalised description.
28. The presence of the site, as open paddock, is inconsistent with the overall residential uses surrounding it. Whilst the nature of the site would be fundamentally altered by the proposal, the change from paddock to residential use would not be at odds with the residential character of the area.
29. There is no dispute between the Council and the appellant that the proposal is suitable for residential development, indeed, the Council's Strategic Housing Land Availability Assessment (2018) (the SHLAA) identifies the site as a potential residential site, albeit that, within that document, it is estimated that it would deliver an additional 13 units. However, that number is not a maximum for the number of units to be delivered and there is general agreement between the main parties that the proposal could accommodate a denser built form within the site than is found in the immediate area.
30. There is no overall dispute with architectural detailing of the proposal, nor with the space provision of accommodation within the dwellings or gardens. Whilst notably smaller than the majority of gardens in the area, they are proportionate in size to their proposed host dwelling and there is no dispute that they could provide adequate private amenity space for future residents.
31. The principle areas of dispute between the parties are in regard to whether the overall design of the proposed development is an appropriate response to the context of the site.
32. The proposal would introduce semi-detached and terraced two storey dwellings into the back land behind dwellings which, to the north and west are predominantly single or 1½ storeys in height. The plots would be smaller than are typical in the immediate area, and dwellings are set close to their front boundary.
33. Dwellings to the east and south are more mixed in scale, with two storey dwellings predominating to the south, facing onto Noads Way. Thus, proposed two storey dwellings at the entrance to the site would not be out of keeping with the scale or massing of dwellings fronting onto Noads Way. This notwithstanding, the main body of the site, in the back land between Noads Way and Lime Walk, would form a projection featuring buildings of greater scale and massing than those around it to the north, east and west.

34. The buildings within this projection would, however, be largely screened by existing mature trees and planting from vantage points in the public realm and would, therefore, be principally visible from the public realm within the body of the site and the windows and gardens of dwellings in the immediate vicinity. The latter views would be limited to a great degree by existing planting. The enclosure of the site by the existing planting would mean that the development would be experienced as a homogeneous design in its own right from the public realm within it.
35. Further, the number of dwellings, each with their own private space, space required for car parking and other demands from the residential use, and their arrangement around a central public open space would result in many of the dwellings being located towards the north and west boundaries, with gardens that are significantly smaller than those typically found in the immediate vicinity, and of restricted length, and minimal private space to the front.
36. Whilst plot widths are less than generally found in the adjacent area, this would, again only be appreciated from the public realm within the site, or from immediate neighbours. Again, the immediate neighbours would experience limited views from their properties. Looking out of the proposed development from the public realm within it, by placing the terraces within the core of the site and the semi-detached dwellings towards the edges, the gaps between pairs of semi-detached dwellings would provide glimpses out of the leafy backdrop provided by the trees to the north and west.
37. The positioning of the attenuation tank for the site below the central urban space would restrict areas for tree roots, with the effect of limiting the potential species that may thrive to those of a more compact stature, both in height and spread, compared to those species around the site which make a major contribution to the leafy backdrop to dwellings, or those fronting the street. Given this, the contribution that these make to the verdancy of the area would be restricted to views within the proposed development, both in the short and long term. This is equally the case for trees proposed between parking spaces, and close to dwellings, walls and other structures.
38. Overall, the built form covering the site, once other demands, such as access and parking have been added to the dwelling footprint, leaves little space for the planting of trees of any great stature. This is in marked contrast to the surrounding area, where garden sizes, both to the front and rear of dwellings has allowed substantial planting and is likely to continue to do so. The central public open space would, to a degree, provide a sense of space, but does so at the expense of plot sizes and would not offset the greater sense of enclosure by built form that the proposal would engender.
39. Because of the reduced opportunity for planting, which could soften the impact of the built forms, car parking appears in blocks, even when in the form of on-plot parking. This would emphasise the parking both on- and off-street and would give rise to a sense of car parking making a very significant contribution to the street scene. This would be in contrast with the less dominant car parking provision in the immediate area, which is generally within plots and screened by existing planting.
40. Bringing these matters together, the street scene of the proposed development would have a significantly more intensive urban character and appearance than the streets in the immediate vicinity. This would be readily apparent to persons

entering the site, coming and going, and visiting the properties or the public open space and they would note the incongruity of the layout and massing of the site and the lack of trees of significant stature within the street scene with either the treed verdancy or the more spacious feel of the immediate vicinity. The effects of the proposal would be of such a degree that they would constitute harm.

41. I note that, in the wider area, there are terraces of dwellings, smaller plot sizes and denser residential developments whose characteristics relate more closely to those of the proposed development, such as around Upper Mullins Lane, and the site lies within a settlement with an overall dense urban settlement pattern. However, these denser areas are some distance from the site and do not inform its immediate context, nor, given that distance, would they form an immediate comparison for persons passing through the area.
42. The scheme seeks to retain existing trees wherever possible, and I am satisfied that the trees to be lost do not make a significant contribution to the verdant character of the area, being relatively small and with limited presence on the public realm. Overall, there is a numerical increase in the number of trees and hedgerow length within the site and the appellants have designed the proposed scheme to place trees, including existing trees, within the public realm wherever possible. This reduces the risk to the long-term future of those trees. However, as will be seen above, I do not consider it likely that the proposed trees will ever grow to a stature that will have the same impact upon the area as many of the existing trees that make a significant contribution to the leafy character of the wider area.
43. Whilst the Council have raised concerns about the future longevity and wellbeing of the retained trees surrounding the site, I note that this concern has not been raised by their own arboricultural officer. Whilst there may be pressure to prune some mature trees within the site, or new planting on the boundary, the proposal makes provision for maintenance and retention of such trees, and I am satisfied that reasonable measures are made for their retention and continuance. Further, the Council may, in the longer term, seek to introduce TPOs to protect those trees which they consider make the most significant contribution to the character and appearance of the area, should they consider additional protection is needed.
44. As the retained trees which contribute most significantly to the character and appearance of the area already exist in their mature form, these will be apparent to purchasers before moving in and they will be able to take account of their presence.
45. I note that the area within which the site lies is not afforded any specific level of protection, as would be the case were it Green Belt, National Park, Area of Outstanding Natural Beauty, or a Conservation Area. Nonetheless the government's aspiration to achieve well-designed places, as set out in Section 12 of the Framework, should still be achieved. In seeking to do so the scheme has sought to balance the aspiration to increase densities within the site with its effect on the character and appearance of the site and its surroundings. I have considered the effect of the approach taken in achieving this balance, but found that it would not achieve a successful balance.
46. I therefore conclude that the proposed development would have a harmful effect on the character and appearance of the site and the surrounding area.

However, given the limited viewpoints within the public realm from which the harm would be noticeable, and that the development would present a consistent design internally, this harm would be moderate. The proposal would, therefore, be contrary to Policies STR1, ENV3 and ENV4 of Part 1 of the Local Plan and Policy D1 of the Neighbourhood Plan. It would also be contrary to the aims of the New Forest District Council Housing Design, Density and Character SPD 2006.

Provision for recreation and public open space

47. Within the supporting text of Policy CS7 of the Core Strategy it is identified at Paragraph 6.7.6 that the standard requirement for recreational space comprises 0.2 hectares per 1000 population of designed play spaces for children and young people, 1.25 hectares of formal recreational space per 1000 population and 2 hectares of informal open space per 1000 population. It is agreed between the main parties that applying this to the proposal would produce an expectation for provision of 0.15ha of informal open space, 0.02ha of designed play space, and 0.09ha of formal recreational open space.
48. The proposal would provide two areas of informal public open space within the site, the larger one centrally located, and the smaller a linear space along the southern boundary of the main part of the site. There is no requirement for any equipped area for play within the site.
49. This space would front the two terraces of dwellings proposed within the site and be separated from the carriageway and footways within the site by hedging. Given the open nature of the space it is likely that it would be mainly used for sitting out or informal play.
50. The canopies of mature trees that lie adjacent to the boundary would over sail the second space. This space is more linear and would likely experience shade for much of the day at all times of the year. Although overlooked by windows in the dwellings nearby, it would be more secluded than the central open space. It is likely, therefore, that this space would be more likely to be used by those seeking quiet reflection or to relax out-of-doors, but out of direct sunlight.
51. Thus, both spaces would provide a degree of utility for residents and the wider public, should they choose to visit them, as informal open space. Taken together they provide a total area of 0.075ha of informal open space. It is proposed that this would be accompanied by a contribution of £48,932 for enhancements to off-site open space, to offset the shortfall of provision regarding designed play spaces for children and young people and formal recreational space.
52. This would leave a shortfall of 0.075ha of informal open space against that anticipated to be provided by the policy. This is a relatively small area but would equate to a 50% shortfall within the site.
53. There is dispute regarding the interpretation of the policy. When reading the policy as a whole and having particular regard to sections b) and c) together I interpret the policy to require, where a site for residential development is in excess of 0.5ha, provision of the appropriately designed informal public open space on site and that this will include the provision of designed good quality play spaces.

54. Whilst the wording of the policy sets out the required provision of public open space as an “aim”, rather than a requirement, I see nothing within the policy to make such provision purely optional on the part of a developer as it is the set-out objective of the policy and, interpreted at its widest latitude, would imply that a reduced quantum of provision could be made, but this would need robust justification. The appellants have sought to demonstrate that the proposed level of provision is adequate.
55. Whilst I have found that the proposed areas would provide usable public open space, I find nothing exceptional or outstanding in the design such that the shortfall would be mitigated by its quality. It is true that an open space is provided, which could be used for sitting out or informal play for younger children. The area is subject to informal surveillance, either by persons sitting on benches provided within the area itself, which would allow parents to be close to small children while they played, or from nearby properties. The central open space, which would be that most likely to be used for informal outdoor play, is accessible to occupiers of the proposed development, bounded by a hedge, forming a soft, but effective barrier to prevent small children from running into the road, say, after a lost ball. However, these features are unexceptional and do not go beyond the basic design of the space that would be anticipated to make it usable. Whilst the detailed design of the area could be subject to a suitably worded planning condition, there is no evidence before me which demonstrates that the final design would be of such quality as to offset the shortfall in area.
56. Similarly, whilst each dwelling has private amenity space in the form of a garden, these are relatively small. It is unlikely that, given their size, they would be sufficient to fulfil the same function as public outdoor space, nor is there any policy basis before me to support the view that the provision of private amenity space could be substituted for public open space provision.
57. My attention has been drawn to Noads Way Recreation Ground, which is a substantial area of public open space featuring areas of play equipment and courts, and informal open space. This area is within easy reach of the site on foot or bicycle, across Noads Way. Accompanied younger children or older children could access this area in relative safety and convenience on foot or bicycle from the site and I consider it likely that future residents would take the opportunity to use it for walking and other recreation. This accords with the approach taken within the Fields in Trust “Guidance for Outdoor Sport and Play”.
58. Such use would, however, be in addition to existing demands on it and I have no evidence before me to demonstrate that, overall, there is a surplus of open space provision within the catchment of the recreation ground, or that any local informal open space would be enhanced to offset its use.
59. The site lies within easy reach of the New Forest National Park. It is likely that future occupiers of the site would access the New Forest for recreational use, and I will return to this below. However, use of the National Park as a principle leisure resource for the proposed site, above and beyond that envisioned and offset within the Recreational Impacts SPD, would be inappropriate. I note that the Recreational Impacts SPD explains that the mitigation land required under policy ENV1 is wholly additional to requirements for public open space provision required under Policy CS7.

60. This notwithstanding, although nearby, the New Forest is separated from the site by a busy road and I consider it unlikely that the National Park would be used as a casual resource for leisure purposes, beyond that envisioned within the scope of the Recreational Impacts SPD.
61. The site is in private ownership and does not provide for the recreational needs of the local community and thus its loss as an undeveloped area would not result in any loss of access to recreational space by the public.
62. The appellants have, within the UU made provision for a financial contribution towards public open space and play equipment. There is no dispute between the parties that the payment of the contribution would satisfy the tests for planning obligations of necessity, to make the development acceptable in planning terms; direct relationship to the development; and fair and reasonable relation in terms of scale and kind to the development (the tests), nor have I reason to dispute this.
63. It is a matter of common ground that the contribution would provide an equivalent to the spatial requirement of play/recreation for the Childrens and Formal public open space. I therefore find that the requirement for the "Public Open Space and Play Equipment" contribution is fully justified and passes the tests.
64. Bringing these matters together, the proposal would offset the requirement for formal public open space and children's play. I therefore find that whilst the proposal, by failing to provide the appropriate quantum of public open space would not make suitable provision for recreation and public open space, nor would this shortfall be mitigated by the proposed quality of the public open space. Notwithstanding the contribution to formal public open space and children's play the shortfall on public open space would result in overall harm, and this would not be offset by any benefits offsite.
65. I therefore conclude that the proposed development would not make suitable provision for recreation and public open space and would therefore be contrary to Policy CS7 of the Core Strategy. However, the harm would be partially offset by the financial contribution and so, overall, a moderate level of harm would result.

Provision for affordable housing

66. It is common ground between the parties that the appeal proposal triggers the need to make provision for affordable housing as set out in Policy HOU2 of Part 1 of the Local Plan and Paragraph 66 of the Framework, nor is there any dispute that the wording of the policies relating to the provision of affordable housing allows for the viability of development to be taken into account with regard to the quantum and form of affordable housing to be provided. The parties agree that a policy compliant provision for this part of the New Forest District is 35% or, if the site would not be viable with that amount, a lesser proportion.
67. There is general agreement between the main parties about many of the inputs relating to the viability of the site. Further, with the resolution between the parties of drainage matters, the cost of draining the site is no longer an abnormal cost. Nonetheless there remain various inputs into the calculation of

viability that remain in dispute, and these have potential to significantly affect the viability of the scheme.

68. There is dispute of both the benchmark land value (BLV) and the residual land value (RLV) of the site.

BLV

69. Earlier, associated with the proposed development of the site, the parties had agreed a BLV of £1,150,000. The later inclusion of drainage costs resulted in the Council reviewing this figure and this resulted, in their opinion, in a significantly lower BLV of £990,000.
70. There is common ground between the parties that, to calculate the BLV for the site, it is appropriate to establish the existing use value (EUV) for the dwelling, and also for the paddock and to add a premium for the paddock only.
71. The EUV for the dwelling was previously agreed between Mr Newman and Mr Castle as £510,000. However, that valuation took place some two years ago.
72. The appellant argues that the House Price Index ("HPI") suggests that the EUV for the dwelling has increased by 17% since that time and that, if applied to the dwelling value at July 2021, this would increase its EUV to around £597,000. There is no substantive evidence before me to dispute these figures, nor is there evidence to demonstrate that the needs of any refurbishment have altered to a degree such that they would affect the dwelling's value.
73. The previously agreed value of the paddock was £100,000 per acre. However, there is dispute regarding the size of the paddock, and this would affect its value and contribution to the overall EUV. There is further dispute regarding the premium to be applied to the paddock land.
74. It has been sought to identify the premium that should be applied to the paddock, and here there is further dispute. The Council has applied a premium of £300,000 per acre, equating to about £480,000 if the area of 1.6 acres is used or £570,000 if the paddock is 1.9 acres. The appellants' view based the per acre premium on the sale prices of three sites that they consider comparable¹. Neither alternative means of calculation is unacceptable in principle.
75. Each of the identified comparator sites contains a dwelling, albeit that the one within Green Acres is in the form of two static caravans and that in Orchardleigh is subject to an agricultural occupancy condition. There is no split between the values of the dwellings and the rest of the site, and it is likely that the value of each dwelling unit would disproportionately affect the area value of the overall site. Green Acres was advertised as having potential for re-development.
76. I am unconvinced that the uplift on the appeal site of 50% applied by the appellants, based on its location and the 'derelict' condition of the dwelling, is fully justified, given the attractiveness of the location in regard to accessibility to services and environment, and the description of the dwelling in the sales particulars. I am conscious, however, that Mr Castle has not visited the site, or,

¹ "Green Acres", "Racecourse Cottage" and "Orchardleigh".

indeed, any of the comparator sites, whereas Mr Newman has visited the appeal site twice, both on initial instruction and prior to the Inquiry. He would, thus, have first-hand knowledge of the state of dilapidation of the building. It is, therefore, likely that some degree of uplift is justified, and this view is also reflected in the Council's evidence.

77. My attention has been drawn to the New Forest District Council Economic Viability Assessment 2018 - Whole Plan Review Viability Assessment – Three Dragons (2018) (the Three Dragons Report), produced in support of the Local Plan review.
78. Using the Three Dragons Report as a basis for calculation indicates a BLV of about £1,080,000, roughly midway between the disputed figures. However, the report advises that this figure would provide an estimate of the lowest values that landowners may accept and notes that lower values might be expected for greenfield sites than brownfield. The site would be a mix of green- and brownfield.
79. Further, the review reported in 2018, and it would be reasonable to expect that values have risen since that time.
80. At the Inquiry there was much discussion of a Financial Viability Assessment for Land North of the Hollies produced by Rapleys ("the Rapleys FVA"). However, that report was produced in support of an application for planning permission and at the time of the Inquiry that application was awaiting determination. It has not been fully tested. That site lies in open countryside. It has, therefore, not been demonstrated to me that the Hollies provides a suitable comparator. Finally, the author of the Rapleys FVA does not hold comparable qualifications to either the Council's or the appellants' professional witnesses. The Rapleys FVA sets an artificial cap of £500,000/ha on the BLV. Because of these matters I give the Rapleys FVA limited weight in my deliberations.
81. Bringing these matters together I find that neither the Council's nor the appellants' estimates of BLV are entirely convincing in all respects, being based upon differing professional opinions, and that the BLV is likely to lie somewhere between the two, but closer to the appellants' figure of £1,150,000. I have, therefore, used this as the basis when using BLV in my calculations as being, overall, more robust.

Residual land value (RLV)

Future revenue from sales

82. There is dispute, too, as to the proposal's RLV. The Council's witness identifies a figure of £1,537,038, whilst the appellants' argue that £948,614 is the correct figure. This derives mainly from the differences in values allocated to likely future revenue from market house sales. The Council's witness argues that the proposed market dwellings would fetch an average of £452/sq ft, whilst the appellants' has identified an average future value of £425/sq ft.
83. Both witnesses have undertaken comparator evaluation, based on sales in new build developments and for second hand properties.
84. New build developments were referenced, including St Jude's, Oak View, Ashlett Road, Forest Edge, Beckley Walk and Whitsbury Green.

85. Regarding St Jude's, there is debate as to whether the site is a more sought-after location than the appeal site. The two sites have both been described as 'prime locations' and, whilst St Jude's is on the edge of the settlement, with views and direct access to the National Park, the appeal site is located with easier links to services and facilities, particularly on foot and by cycle.
86. The appellants' witness provided a more recent view on the saleability of the units in light of current market conditions. Whilst one of the three-bedroom semi-detached houses sold in November 2022 at £492/sq ft, the current agents advised that by September 2023 they would not have been able to secure a sale for the three-bedroom semi-detached house within the development for a value exceeding £427/sq ft. This is supported by remaining sales that were agreed at St Jude's falling through by December 2022, although it also suggests that a straightforward increase in the value of the existing dwelling using the House Prices Index may not be totally reliable.
87. This more recent evidence, and the differences in specification of the dwellings, leads me to conclude that the lower values per square foot of the site compared to those achieved in previous sales on the St Jude's site are justified. Whilst neither of the estate agents for St Jude's were present and could not be cross-examined, I find their evidence as local estate agents, who could be anticipated to have a knowledge of local market conditions, carries some weight in my deliberations.
88. Moving on to Oak View, this is a development of only four dwellings, set in good-sized plots, notably more spacious than those proposed at Noads Way, each having a double garage. As such I find little correlation between that development with the dwellings proposed on the appeal site.
89. The comparability of the Ashlett Road development to the appeal site is disputed. The Council's witness considers the site to lie in an area that attracts lower values for properties and is a cramped site with relatively small plots. It will be seen above that I have found the proposal to share such design and plot size characteristics, and this would be likely to affect sales prices in the appeal development. Further the higher value location in Noads Way would provide support to increased square footage values on the proposal site.
90. In considering the prices achieved in the Forest Edge development, only two figures have been presented to me: one, for one three-bedroom semi-detached house identifying a value of £419/sq ft, and another which sold later and achieved £434/sq ft. Whilst I have limited information before me, these figures suggest a closer correlation to the value proffered by the appellants' witness of £425/sq ft than that of the Council's.
91. The above notwithstanding, the index-adjusted sale prices for the units at Beckley Walk in Totton translate into values of £419-440/sq ft. Beckley Walk is a development of largely two-bedroom properties. Those values are higher than the value identified by the appellant for Beckley Walk, of £334/sq ft.
92. There are considerable differences in the locations of the two sites, one is close to a railway line, with good transport links to Southampton and destinations further afield, whilst the appeal site has a leafier location with good access to the road network and the National Park. Nonetheless, it would be likely that the proposal before me could command higher values per square foot, and it would be reasonable to increase the value above £419.

93. I have limited details regarding Whitsbury Green and thus I have placed limited weight upon its per square foot values as a comparator.
94. Having regard to the values of second-hand properties, there was dispute as to whether new builds attract a premium over second-hand. It is likely that both types of property appeal to different purchasers, with some preferring one over the other strongly. No empirical evidence to demonstrate a premium on the purchase of a new property has been provided.
95. The second-hand property transactions which are cited by the Council's witness are generally dwellings on larger plots with garages and in-curtilage parking, which would enhance their value when considered against the dwellings proposed at Noads Way. Overall, the lack of comparability is of such a degree between the examples provided by the Council's witness and the proposed dwellings that I give them limited weight.
96. At the Inquiry, it was stated that there was no agreed value placed on the site through any contract to sell the land, such as that referred to in the UU. The Council were concerned that an agreed value existed and that this could have informed the viability assessment.
97. The appellants hold that no purchase price has been agreed, as yet, as the sale contract that is referred to within the UU does not contain any fixed purchase price, but rather the price will be determined through the application of various formulas.
98. Whilst the RICS guidance states that "a transaction in the property being valued can provide some of the best evidence available for a valuation, provided it is a recent transaction", where there is no recent purchase price agreed, as in the sale contract for the site, that guidance cannot apply.
99. Even where a fixed price exists, the Governments Planning Practice Guidance (the PPG)² states that "Local authorities can request data on the price paid for land (or the price expected to be paid through an option or promotion agreement)". There is no absolute requirement in the PPG for the requested data to be provided.
100. Further, in regard to the standards set by the Royal Institute of Chartered Surveyors (RICS), their Professional Standard: Assessing viability in planning under the National Planning Policy Framework 2019 for England (2021) states that the "authoritative requirement" of the PPG "takes precedence over any other RICS professional standards"³ and that "LPAs can request data on the price paid for land (or the price expected to be paid through an option or promotion agreement) if they feel it is appropriate"⁴. There is no obligation on the part of either party to request or provide data on the price paid or expected to be paid.
101. In this case, whilst an agreed price may have been helpful to me in my assessment of the merits of the arguments presented, the lack of any fixed price cannot, of itself, prejudice the case of either party.

² Paragraph: 016 Reference ID: 10-016-20190509

³ Page 10 of the document

⁴ Paragraph 4.2.33 of the document

102. Drawing these matters together, I find that both the parties have, through the application of appropriate guidance from both RICS and the PPG, sought to determine the future revenue from sales, albeit that there are differences of professional opinion. Data has been collected and both parties have compared their outcomes with appraisals of sales evidence, to provide a “sense-check”, and have carried out sensitivity testing of their findings. However, on the balance of the evidence before me I find the appellants’ evidence on the likely future revenue from sales on the sites more compelling. I have, therefore, used those inputs when determining the RLV of the proposed development.

Other costs

103. At the start of the Inquiry there was dispute regarding the method of drainage of the site and the appellants had allowed a sum of around £400,000 to address this. However, it will be seen above that the differences regarding drainage between the main parties have been resolved to their satisfaction, and mine. It is now a matter of agreement that the sum allowed to resolve future drainage issues should now be omitted from the viability calculations.

104. The scheme is relatively small and therefore unlikely to be built out in phases. It is therefore likely that costs associated with materials, sales and marketing would occur early in the program for the development, thereby ‘front-loading’ the cost profile. Interest fees accruing from this expenditure would also, therefore, be incurred from this earlier point.

105. There were also a number of other differences between the professional witnesses, regarding other cost inputs relating to bank monitoring fees, management company charges and both the appellant’s and LPA’s costs of undertaking and reviewing the viability assessment. Whilst the relatively small sums involved mean that the disputed items would be unlikely to be determinative in the viability of the site, I have nonetheless considered them further.

106. The appellants have produced evidence of both interest and an arrangement fee being charged on a development. On the basis of the evidence before me the figure for such provided by the appellants is reasonable.

107. In regard to the sum estimated for setting up a management company, the proposal includes a proportion of public space and this would need to be maintained in future. I find it reasonable to include a sum for this and have no substantive evidence before me to demonstrate that the figure provided by the appellants is unreasonable.

108. It has been argued that a sum for insurance regarding the provisions of a restrictive covenant associated with the site is necessary, and I have no evidence before me that persuades me to the contrary.

109. There was dispute between the parties regarding the inclusion of a sum to cover void council tax whilst properties that have been completed, ready for occupation, await their sale. It is reasonable to make contingency for such dwellings as it is unlikely that sales will be completed immediately, whilst accruing council tax, insurance and utility charges.

110. It has been demonstrated to me that in neighbouring local planning authorities it is adopted policy to allow for the inclusion of the costs of valuation when undertaking and reviewing the viability assessment of

development sites, including the fees for both the local planning authority and the applicant. These costs are separate to the professional fees that relate to pre- and post-contract fees. I see no reason for taking a different approach in this case.

111. Based on the above reasoning I have taken these sums into account in my assessment of the viability of the site.

Conclusion on affordable housing

112. It will be seen from my reasoning above that I consider the BLV of the site to be closer to the appellants' figure of £1,150,000, whilst the RLV would be in the region of £948,600. Thus, the scheme as proposed, providing a minimum of three affordable homes, would not be viable.
113. This view is borne out by the approach taken within the Three Dragons Report, which concluded that the provision of 35% affordable housing in the area within which the development lies would be challenging, taking into account other CIL requirements, for schemes with a density of 30 dwellings per hectare. The proposal would have a lesser density than that, reducing margins further.
114. Given the margins of error inherent in the valuations and the differing professional opinions expressed, the provision of three affordable homes would be of an appropriate scale or possibly slight overprovision. The appellants have, within the UU, made provision for three of the proposed dwellings to be provided as affordable dwellings. There is no dispute between the parties that the provisions of the UU would secure these or that such provision would satisfy the tests, nor have I reason to dispute this. There is a requirement that the proposal provides affordable housing in accordance with policy. I therefore find that the requirement for the provision of Affordable Housing is fully justified and passes the tests.
115. I therefore conclude that the proposal would, by the provision of three housing units, as secured within the accompanying UU, make appropriate provision for affordable housing and therefore complies with Policy HOU2 of Part 1 of the Local Plan.

Planning obligation

116. There was no dispute between the main parties that the UU would make appropriate provision for the delivery of a minimum of three affordable homes.
117. It will be seen that I have concluded that the Public Open Space and Play Equipment" contribution and Habitats Mitigation Contributions are justified and pass the tests.
118. I therefore consider that the obligations meet the necessary tests and I have taken account of them in reaching my decision.

Other Matters

Appropriate assessment

119. There is no dispute between the parties that the site is located within the zones of influence (ZoI) of the New Forest Special Area of Conservation, the New Forest Special Protection Area, the New Forest Ramsar site, the Solent

and Southampton Water Special Protection Area, the Solent and Southampton Water Ramsar site, and the Solent Maritime Special Area of Conservation of the EFSAC (the Protected Sites), which are European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitat Regulations). Policy ENV1 of Part 1 of the Local Plan seeks to protect such sites from harm and, where necessary, seek mitigation against any adverse effect of development. Within the Development Plan the Recreational Impacts SPD and in the Solent Recreational Mitigation Strategy incorporate strategic mitigation measures to be delivered to avoid adverse impacts.

120. Through the development of these policies, the Council has, with the agreement of Natural England, provided a strategic, district wide approach to mitigating recreational pressures on the Protected Sites through the securing of financial contributions for access management schemes and monitoring proposals. As this is an agreed approach with Natural England the proposed development can be assessed within the context of the Recreational Impacts SPD and the Solent Recreational Mitigation Strategy. On this basis I consider that this is an appropriate approach to mitigating identified harms.
121. It is common ground that the appeal scheme would give rise to increased recreational activity affecting protected habitats and species in the New Forest and Solent and result in increased vehicle trips through the New Forest, potentially increasing acid deposition from nitrogen oxide and ammonia in exhaust fumes, which would be harmful to New Forest habitats.
122. It is also common ground that the development will give rise to an increase in the volume of waste water sent to the waste water treatment works at Slowhill Copse. That treatment works discharges treated water to the Solent and so, Natural England wrote to the Council on 16th March 2022, requiring that the development must be nutrient neutral, to prevent any additional negative effect that nutrient loading would have on Solent habitats.
123. The UU submitted by the appellants makes provision for the payment of the appropriate financial contributions (the Habitats Mitigating Contributions)⁵ and it is a matter of agreement between the parties that the UU satisfactorily addresses the matters of recreational disturbance and air quality.
124. It is common ground between the parties that, having had regard to the Planning Practice Guidance (PPG)⁶, it is appropriate to apply a Grampian condition in relation to the matter of nutrient neutrality. Having considered the documents provided, it has been demonstrated that there is certainty that the mitigation could be provided through the Deed of Allocation of Nitrate Offsetting Scheme dated 11 October 2023 and thus 'nutrient neutrality' be achieved. It was on this basis that the Council withdrew their opposition to the proposal in regard to the impact on the Protected Sites.
125. I therefore conclude that, subject to the provisions of the UU and the imposition of a suitably worded planning condition, there would be no adverse residual effect on the European Protected Sites from the proposal, either singly or in combination with other development. As a consequence, the proposal is in

⁵ The Air Quality Monitoring Contribution, Habitats Mitigation (Access Management and Monitoring) Contribution, Habitats Mitigation (Bird Aware Solent) Contribution and Habitats Mitigation (Infrastructure) Contribution

⁶ Planning Practice Guidance - paragraph: 010 Reference ID: 21a010-20190723

accordance with the requirements of Policy ENV1 of Part 1 of the Local Plan, Policy DM3 of Part 2 of the Local Plan and the Mitigation for Recreational Impacts on New Forest European Sites SPD 2021, The Air Quality Assessments in New Development Supplementary Planning Document (2022) and the Bird Aware Solent Strategy (2017).

Highway safety

126. Noads Way is, in the vicinity of the site, a relatively straight, single carriageway road, wide enough for two cars to pass. However, a car parked at the kerbside would necessitate cars to give way to pass each other.
127. The appellants provide a Transport Statement to accompany their application, which was later supplemented by an Addendum containing a speed survey and parking survey. These concluded, amongst other things, that: -
- The 85th percentile speeds on Noads Way were in the region of 31 miles per hour;
 - Traffic generation would be in the region of 12-13 vehicle movements (2-way) during peak hours; and: -
 - There were no identifiable accident clusters or any history of accidents that should raise specific concerns.
128. There are schools, including a junior and an infant school, near to the site and, during the site visit, I observed children being collected after the end of the school day by cars. Further, the site is close to Noads Way Recreation Ground, which has an access onto Noads Way. I also observed pedestrians and cyclists, including children, on the highway in the vicinity of the site.
129. However, the parking that I observed associated with school pickup was some distance from the site. I did not observe any significant demand for parking on-street in the immediate vicinity of the site during the site visit and most of the dwellings in the vicinity had access to off-street parking.
130. The proposal would provide a mix of on- and off-street parking in accordance with the New Forest District Council Parking Standards for Residential and Non-Residential Development Supplementary Planning Document (2022). Whilst concerns were raised that future demands for additional waste bins to allow for recycling of materials would obstruct vehicles, there is no substantive evidence before me to demonstrate that this would displace car parking provision onto Noads Way itself.
131. Given the proximity of the schools it is unlikely that the proposal would generate significant additional car movements or parking demand in the area.
132. The proposal would, however, be likely to generate additional walking and cycle movements between the site and the school. I note the previous concerns of the Local Highway Authority (LHA) regarding connectivity and the need for crossing points to improve pedestrian access to the junior and infants schools. I am also mindful that, were I minded to allow this appeal, a condition is proposed to secure a crossing point to the satisfaction of the LHA.
133. Bringing these matters together, I have no substantive evidence before me to demonstrate that the proposal would generate additional parking on Noads Way, or that this would, given the good visibility along the road, the relatively

low flows existing on Noads Way and the number of additional vehicle movements generated by the proposal, result in any significant additional risk of accident.

Drainage

134. The site has been identified as having a historic problem of holding surface water after periods of heavy rain, seemingly due to lack of permeability of the soils under the site. This is borne out by the findings of the appellants' own site investigation, which included infiltration tests and their conclusion that a Sustainable Drainage Scheme (SuDS) based solely on infiltration would not be viable.
135. Subsequently, the main parties have come to agreement, set out within their SoCG on drainage matters, on a drainage strategy for the site which provides a controlled outfall from the subterranean storage tank to the ditch on the eastern boundary of the site and thence to a drain under the public highway. I have no substantive evidence before me to dispute the conclusions of the main parties that this is a viable solution.

Amenity of neighbours

136. The change in use of the land, and presence of windows on upper storeys may give rise to an increased sense of overlooking, when compared to the current open space. However, the distances separating the existing and proposed properties, together with the intervening screening provided by existing planting on the boundaries of the site, would ensure that the privacy of adjacent residential properties is not adversely affected to an unacceptable degree.
137. Whilst the introduction of residential activity into the gardens of the proposal would increase noise in those areas, this would be the case in any residential development incorporating a number of dwellings due to the change in use of the land. Further, the nature of the noise, associated with residential occupancy, would be in keeping with the overall residential character of the area.
138. Additional noise from manoeuvring vehicles within the site would not be in such close proximity to a neighbouring dwelling, nor likely to be of such volume or duration that it would be harmful to neighbouring amenity.
139. There would be a likely increase in lighting on site and, again, this would be noticeable to neighbours when compared to the existing use. Again, however, this would be residential in nature and in keeping with that to be found in the surrounding neighbourhood.
140. It is likely that there would be an increase in terms of noise, dust and other disturbance associated with construction activities. Disturbance during construction is likely, however it would be short in duration and based on the scheme proposing houses, is unlikely to involve intensive or intrusive foundation design as might be required for taller buildings. Given the above I am satisfied that this could be controlled by a suitably worded planning condition securing a construction management plan.

Bats

141. Whilst the building within the site is identified as having negligible potential for roosting bats, two sycamores, on which it is proposed that works would be carried out, were identified as providing potential roosting features. The appellants' Preliminary Ecological Appraisal, submitted with the proposal, identified this potential, and a strategy for tree works to safeguard nesting bats. Further suggestions are made for protection and mitigation measures for protected species with potential to be using the site and potential enhancements to provide biodiversity net gain. I am satisfied that, were I minded to grant permission to the proposal, these could be secured through appropriately worded planning conditions.

Utilities

142. Whilst concerns have been raised by local residents that the proposal would place unacceptable pressures on local utilities, such concerns lie outside the scope of this appeal and are addressed through the Community Infrastructure Levy.

Consultation process

143. I note the dissatisfaction of local residents with the consultation process carried out by the appellants. However, there is no obligation on the part of a developer to accommodate or agree with feedback from public consultation and failure to do so would not, of itself, count against the scheme. I have, in any case, determined this appeal on its planning merits.
144. I note the concerns that the proposal would, in providing smaller dwellings, including a proportion of affordable units, be likely to introduce residents with a different demographic profile to those currently living in the immediate area. However, I find no basis in policy, either locally or nationally for resisting or preventing development on that basis.
145. I am aware that, locally, there is considerable opposition to the proposal. However, I have considered this case on its planning merits, as required by national and local policy.

The benefits of the scheme

146. There was no dispute between the main parties that the site lies close to services and facilities and would provide housing to meet both national and local housing need.
147. At a national level, the government is seeking to significantly increase the supply of housing, including that of affordable homes. The proposed additional 24 homes, including a minimum of three affordable homes would provide 6% of the Council's overall annual housing requirement. For some time, the Council has experienced an inability to demonstrate adequate provision for housing. Whilst the Council were, immediately after adoption of Part 1 of the Local Plan, able to demonstrate a five year supply of housing land, this ability was short lived and there is no substantive evidence that this shortfall will be addressed in the near future. Further, the Neighbourhood Plan identifies a significant need for smaller and affordable homes.

148. The Framework, in Paragraph 70, identifies that small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. The recently published Housing Delivery Test results have identified that the rate at which the Council is delivering housing has slowed. The proposal therefore gains support from Paragraph 70 and, overall, this persuades me to afford significant weight to the contribution of the site to meeting both national and local housing need.
149. With regard to the proposed affordable housing, the proposal would, through the accompanying planning obligation, provide a minimum of three affordable homes. There is no disagreement between the main parties that the homes are needed.
150. The proposal would provide the housing on a part-greenfield, part-brownfield site. It would not, however, encroach into any of the areas nearby granted special protection, such as the National Park or Cranborne Chase Area of Outstanding Natural Beauty. I therefore consider that the proposal gains a degree of support from Part 11 of the Framework. However, as will be seen above, to achieve the density of dwellings proposed, the design of the site has an adverse effect on the character and appearance of the area. The Framework, at Paragraph 130, advises that significant uplifts in the average density of residential development may be inappropriate if the resulting built form would be wholly out of character with the existing area, and this tempers the weight that I put upon its use for housing. I therefore afford the beneficial effect of the land for use as housing moderate weight.
151. The appellants have identified themselves as an affordable housing provider and, in evidence, have stated their intention to provide the development as entirely composed of affordable homes. This notwithstanding, the proposal before me only secures a minimum of three homes through the UU. In the absence of certainty in delivering more than the minimum secured by the UU, I have considered only the benefits of the three affordable homes. That quantum of affordable homes would be likely to slightly exceed the minimum that which would be policy compliant, and this incrementally adds weight to this benefit.
152. The proposal would provide economic benefits, both short-term, during the construction phase, by increasing employment opportunities and through increased activity in the supply chain, and longer-term, through the increased local population's support of shops and businesses.
153. Whilst Paragraph 85 of the Framework indicates that significant weight should be placed on the need to support economic growth and productivity, the proposed development is, primarily, a housing development. Increased economic activity and benefits accruing therefrom, while weighing in favour of the proposal, are limited by its scale and the benefits to the construction industry relatively short-lived. I therefore afford it moderate weight.
154. The Framework, in Part 14, identifies the importance of achieving development whilst minimising adverse impact on climate change and flooding. Both the main parties agree that moderate weight should be given to the environmental benefits associated with the provision of houses built to modern standards of insulation and energy efficiency. I have no reason to disagree with this view.

155. The development would have access to shops and other services within walking and cycling distance, particularly in regard to local schools, and so there would be opportunities to use more sustainable modes for trips to these. The proposal will also provide infrastructure works that would improve pedestrian access to the local schools. Whilst this is necessary to offset the effects of the development, the improved facilities would be usable by the wider public and provide a benefit. These factors are in harmony with the aims set out in Part 9 of the Framework and these together attract significant weight in favour of the proposal.
156. The proposed development would retain the significant trees surrounding the site and make steps to manage them. There would be an additional eighteen trees planted. Notwithstanding the relatively small stature of the proposed trees, they, and the additional lengths of hedges proposed, together with the introduction of a future management scheme persuade me that the proposal would, overall, provide a significant environmental benefit within the site from the additional planting.
157. The proposal would provide a 10% net gain in biodiversity, albeit that this would not be delivered onsite. It is also important to protect local biodiversity and secure any possible local improvement as a first option, and this can be achieved through the imposition of suitably worded planning conditions. Nevertheless, offsite provision is also a benefit to overall biodiversity, and accords with aims set out in national policy, including the Framework. The site is currently laid out as a paddock and, outside of the significant planting around the edges, provides limited support to biodiversity. The overall increase in net biodiversity resultant from the proposal is, therefore, a significant benefit.
158. There would be a social benefit from the proposal, resulting from its location within an existing community, as the future residents would be able to participate in and support existing community groups and facilities. However, the settlement is a sizeable one and there is no substantive evidence before me to demonstrate that local community facilities are in need of additional members to continue.
159. This notwithstanding, the mix of house sizes and provision of affordable units would contribute towards a mixed and balanced community. These are aims supported by the Framework and the Neighbourhood Plan and taken together these benefits attract significant weight in support of the proposal.

Conditions

160. The conditions suggested by the parties as set out in their main SoCG have been considered in light of the advice contained within the National Planning Practice Guidance and the Framework. Where necessary I have amended some of the conditions for clarity.
161. Condition 1, limiting the time within which the development must commence, is necessary to comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning Compulsory Purchase Act 2004, and to prevent the accumulation of unimplemented planning permissions.

162. Condition 2, which identifies the approved plans in accordance with which the development must be built, is necessary to provide certainty in what the permission authorises.
163. It is necessary, in the interests of the future amenity of occupiers, and to ensure that the appearance of the development is satisfactory, both in the short- and long-term, that suitable materials are used and appropriate landscaping of the development is provided. Such requirements are necessary so that the proposal would comply with the aims of Policies ENV3 and ENV4 of Part 1 of the Local Plan. This is secured through the imposition of Conditions 3, 4 and 5.
164. It is necessary, to satisfy the aims of Policies ENV3 and ENV4 of Part 1 of the Local Plan, that an arboricultural method statement is secured. This would ensure that retained trees and hedges are appropriately protected during the development. This is secured through the imposition of Condition 6 setting out the details required for approval by the LPA. As it is essential to protect those trees that will be retained throughout the construction phase the protection afforded them must be in place prior to the start of any construction works on site. The necessity for this condition and its wording have been agreed with the appellants.
165. Condition 7 secures the provision of the access to the site. The provision of a suitable access into the site is necessary to ensure that the site can be accessed safely, with minimum risk to the public.
166. In order to support active travel, which is an aim set out in Part 9 of the Framework, to local schools, Condition 8 secures the off-site extension of an existing footway.
167. Condition 9 requires the provision of a Construction Management Plan (CMP) to ensure the safety of users of the public highway and the amenity of local residents during the construction phase. To control the works during the construction phase it is necessary that the CMP is in place prior to the start of any works on site. The necessity for this condition and its wording has been agreed with the appellants.
168. To safeguard the amenity of future occupiers and the safety of users of the public highway it is necessary to ensure that parking and access arrangements are made available prior to their moving in. This is achieved through the imposition of Condition 10.
169. In order to support active travel, which is an aim set out in Part 9 of the Framework, Condition 11 secures the provision and retention of bike stores and access to them for each dwelling.
170. In the interest of amenity and highway safety, and in order to secure compliance with the Council's emerging waste strategy it is necessary to ensure that adequate provision is made for the collection of waste from the site, including the means of storage and a strategy for collection. Condition 12 secures this.
171. Given the concerns regarding the effect of nutrients discharged by residential developments on Protected Sites it is necessary to impose Condition 13, requiring the submission for approval by the Council of water efficiency calculations and a mitigation package addressing the additional nutrient input

from the development. This approach, using a Grampian Condition similar to this, has been used elsewhere and I am satisfied that it would be effective and appropriate.

172. In order to secure 10% Biodiversity Net Gain (BNG) and compliance with Policies ENV3 and ENV4 of Part 1 of the Local Plan, and Policies SM2 and DW-E12 of the Part 2 of the Local Plan, Condition 13 secures an off-site BNG package. This is further necessary to ensure that the development would achieve the aims of Part 15 of the Framework to enhance the natural environment and the provisions of the Environment Act 2021.
173. For similar reasons, and given the potential for the site to provide roosting opportunities for bats, I have added a condition, Condition 14, which requires the submission and approval by the LPA of an Ecological Management Plan (EMP). This is necessary to ensure that opportunities to enhance biodiversity on site are not overlooked, and the survival and protection of any important species and those protected by legislation that could be adversely affected by the development. To control any adverse impact of works during the construction phase it is necessary that the EMP is in place prior to the start of any works on site. The necessity for this condition and its wording has been agreed with the appellants.
174. It is necessary to establish that an appropriate scheme can be provided to drain the site of surface water. This is achieved by Conditions 16 and 17. The form of the drainage system may affect the design of the scheme and so needs to be established in advance of the commencement of works on site. This is reflected in the wording of Condition 16. The appellants have agreed the necessity of this condition and its wording.
175. Condition 18 removes permitted development rights within the development for extensions or alterations otherwise approved by Classes A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development Order 2015). Given the existing and potential pressures on existing planting, and the importance of that planting to the character and appearance of the area, as I have identified above, I consider that, in this case, such a measure is justified in order to protect the existing important characteristics of the area.
176. A condition was suggested seeking to secure electric charging points for vehicles. The Building Regulations recently changed to require the provision of electric charging points for electrically powered motor vehicles. Thus, such a condition is not considered necessary.

Planning balance and conclusion

177. I have found conflict with the Development Plan, when read as a whole. However, it is common ground between the parties that the Council is only able to demonstrate a deliverable housing land supply to cover about 3.1 years, rather than five years. Therefore, paragraph 11(d) of the Framework applies and permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

178. The parties have drawn my attention to various judgements⁷ regarding the weight that may be applied to development plan policies under such circumstances. However, policies may still attract weight from the degree to which they accord with the aims of the Framework⁸.
179. Policies STR1, ENV3 and ENV4 of the New Forest Local Plan 2016-2036 Part 1: Planning Strategy (2020) (Part 1 of the Local Plan) and Policy D1 of the Hythe and Dibden Neighbourhood Plan 2018 - 2026 (2019) accord closely to the aims of Part 12 of the Framework in as much as they seek to ensure that developments are well designed and, amongst other things, will add to the overall quality of the area, and are sympathetic to local character, including the surrounding built environment and landscape setting. The government places great importance on achieving good design through the Framework and the National Design Guide. Policy CS7 of the Core Strategy seeks to achieve similar aims to those set out in Part 8 of the Framework, which seek to achieve healthy places which promote social interaction and enable and support healthy lifestyles. I therefore afford the conflict with the above policies significant weight in my deliberations.
180. It was argued at the Inquiry that the proposal would accord with many policies of the development plan. This notwithstanding, any such accordance is considered when balancing the overall benefits of the scheme: simple compliance with a policy is not a benefit, per se, in the balance, and carries neutral weight.
181. The proposal would, by virtue of the harm to the character and appearance of the site and the surrounding area be contrary to Policies STR1, ENV3 and ENV4 of Part 1 of the Local Plan and Policy D1 of the Neighbourhood Plan. It would also be contrary to Policy CS7 of the Core Strategy.
182. The government places great emphasis on good design to create high quality, beautiful and sustainable buildings and places. Paragraph 139 of the Framework states that development which is not well designed should be refused. I have found that the proposal would result in a moderate level of harm to the character and appearance of the area. Further, the development would not make suitable provision for recreation and public open space, resulting in a moderate level of harm. Thus, the proposal does not make optimal use of the site, as sought by Paragraph 129 of the Framework.
183. Paragraph 102 of the Framework requires that development has access to a network of high-quality open spaces and opportunities for sport and physical activity, which is important for the health and well-being of communities, whilst Paragraph 135 seeks to ensure the provision of places which promote health and well-being, with a high standard of amenity for existing and future users.
184. The site is located close to a large public recreation ground, conveniently accessible both on foot and cycle, and provides two small areas of public open space within the site. It could not be said that future residents would be wholly without access to open air recreation.

⁷ Wavendon Properties Limited v Secretary of State of Housing Communities and Local Government [2019] EWHC 1524 (Admin), Paul Newman Homes Ltd v Secretary of State for Housing, Communities and Local Government [2021] EWCA Civ 15, PTSR 1054

⁸ Crane v SSCLG [2015] EWHC 425 (Admin) and Suffolk Coastal DC v Hopkins Homes Ltd and Richborough Estates Partnership LLP & Cheshire East v SSCLG [2016] EWCA Civ 168

185. In this context the weight that I place on the levels of harm that I have found are tempered and so they are bear moderate weight against the proposal in my deliberations.
186. Balanced against this is the contribution to the supply of housing of 24 additional new homes with 3 of those affordable, which can be delivered within an existing urban area. There would also be economic, environmental and social benefits that would accrue from the development, which I have discussed above.
187. As the balance in Paragraph 11d) of the Framework applies, a degree of harm would be acceptable, provided that it does not clearly and demonstrably outweigh the benefits of the proposed development.
188. Taking the above into account, including all other material considerations, I conclude that the adverse impact of granting planning permission would not significantly and demonstrably outweigh the benefits of the proposed development when assessed against the policies in the Framework as a whole, and this is a material consideration of significant weight in favour of the proposal. This is a material consideration which outweighs the harm that I have found to the Development Plan.
189. Thus, there are, in this case, material considerations which justify determining the proposal otherwise than in accordance with the development plan and so, for the above reasons, I conclude that the appeal should be allowed.

I A Dyer

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Ms Heather Sargeant

Landmark Chambers

instructed by AJC Group, who called: -

Paul Harrington BA (Hons) BARCH RIBA

Design Director

Morgan Carey Architects

Gerry Bird BSc (Hons)

Civil Engineering Technical Manager

Calcinotto Civil and Structural
Engineers

John Newman BSc (Hons) PGDip MRICS MCIH CABE

Director

Sturt & Co Ltd

Giles Moir BA (Hons) MTP MRTPI

Director

Chapman Lily Planning Ltd

FOR THE COUNCIL

Mr John Hunter

Kings Chambers

instructed by Nigel Hewitson a partner at Davitt Jones Bould Solicitors, acting for
NFDC in respect of this case, who called: -

Richard Payne CMLI MA BSc

Urban Designer

New Forest District Council

Thomas Callaway BSc (Hons)

Flood and Water Management Engineer

Hampshire County Council

Fraser Castle MSc MRICS RICS

Development Partner

Bruton Knowles

James Gilfillan BA (Hons) MATCP MRTPI

Senior Development Management Officer

New Forest District Council

INTERESTED PERSONS

Councillor M Wade.

Dibden and Hythe Ward Councillor, Hampshire County Council and Dibden & Dibden Purlieu Ward Councillor, New Forest District Council,

Councillor S Osborne.

Dibden & Dibden Purlieu Ward Councillor, New Forest District Council,

Mr M Whitehouse

On behalf of local residents.

Mr P Scott

Local resident

Mr M Toop

Local Resident

Mrs Mary McKernan

Prospective resident

DOCUMENTS SUBMITTED AT THE INQUIRY

By the appellants

Opening submissions.

Signed Statement of Common Ground in relation to Drainage Matters dated 17 October 2023.

Signed Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 dated 2 October 2023.

Addendum to Mr Newman's Proof of Evidence dated 5 October 2023.

Revised suggested conditions.

Response to drainage questions from Mrs M McKernan

Closing submissions.

By the Council

Opening submissions.

Statement by Councillor Wade.

Statement by Councillor Osborne.

Land Registry Documents for Orchard Gate, Noads Way, Dibden Purlieu, Southampton, SO45 4PD - (Freehold) - Title number: HP813836 and Land Adjoining, Orchard Gate, Noads Way, Dibden Purlieu, Southampton, SO45 4PD (Freehold) - Title number: HP854501

Closing submissions.

By Interested Parties

Statement by Mr M Whitehouse on behalf of local residents.

Representation by Mrs J Chorlton dated 9 October 2023.

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site and Block Plan drwg. no. 211140.41H scale 1:500 @ A1
 - Houses 01-03 plans & elevations ref:21110.42 rev B
 - Houses 04 -07 Plans and Elevations drwg. No. 21110.43C
 - Houses 08-13 plans & elevations ref:21110.44 rev B
 - Houses 14 -17 Plans and Elevations drwg. No. 21110.45C
 - Houses 18-21 Plans and Elevations drwg. No. 21110.46C
 - Houses 22-25 plans and Elevations drwg. No. 21110.47C
 - House 21 Carport Elevations drwg. No. 21110.51A
 - Landscape plan 293-1-R7
 - Landscape plan 293-3-R6
 - Landscape plan 293-4 – planting mood board
 - 5577-312 BR Proposed Layout (internal highway)
 - 5577-003 A
3. Prior to development above damp proof course level, details and samples of all external facing materials for the walls and roofs shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter, the development shall proceed in accordance with such materials as have been agreed.
4. All external works (hard and soft landscape) shall unless otherwise agreed in writing, be carried out in accordance with the approved plans and details within one year of first occupation of the development hereby approved, and maintained in accordance with a maintenance schedule, to include arrangements for replacement plants, to be submitted to, and approved in writing by, the Local Planning Authority prior to first occupation.
5. If within a period of 5 years from the date of the planting of any tree/plant, that tree/plant or any tree/plant planted in replacement for it, is removed or uprooted or destroyed or dies or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective another tree/plant of the same species and size as that originally planted shall be replanted in the first available planting season unless the Local Planning Authority agrees in writing to any variation under the terms of this condition.
6. Before development commences (including site clearance, demolition and any other preparatory works) an Arboricultural Method Statement shall be submitted to, and approved in writing by, the Local Planning Authority. Such a scheme shall include a method statement detailing timing of events, all

changes of existing surfaces, details of the foundations and method of construction, service routes and any underground drainage infrastructure and plans showing the protective fencing or other measures required for the avoidance of damage to retained trees all in accordance with BS5837 (2012) "Trees in Relation to Construction Recommendations". Such fencing shall be erected prior to any other operation and at least 3 working days' notice shall be given to the Local Planning Authority that it has been erected. The tree protection measures installed shall be maintained and retained for the full duration of the works or until such time as agreed in writing with the Local Planning Authority. No activities, nor material storage, nor placement of site huts or other equipment whatsoever shall take place within the fencing without the prior written agreement of the Local Planning Authority.

7. Prior to the first residential occupation of the dwellings hereby approved, the works for access into the site as shown in principle on drawing number 5577/002 Rev A, including relocation of the telegraph pole and gully, shall be completed and available for use.
8. Prior to first residential occupation of the dwellings hereby approved the off-site mitigation, being the extension of the existing footway provision on the eastern side of Peartree Road onto Water Lane and provision of an associated dropped kerb and tactile paving crossing point of Water Lane to enable access to Orchard Infant and Junior School as shown on drawing Ref:557-003, shall be completed by the applicant and available for use.
9. A Construction Management Plan shall be submitted to, and approved in writing by, the Local Planning Authority before development commences. This should include, but is not limited to, construction traffic routes, parking and turning provision to be made available on site, measures to prevent mud and dust from being deposited on the highway and suppress dust generated within the site, and a programme for construction, including hours of operation of the site. The agreed details shall be fully implemented before the development is commenced.
10. Prior to occupation of the relevant house its parking spaces, carports or garages, as appropriate, shall be completed and available for use. They shall thereafter be retained for parking associated with the scheme.
11. Prior to occupation of the relevant house, its bike store and access shall be provided and available for use. They shall thereafter be retained for parking of bikes associated with the scheme.
12. Prior to occupation of the first house details of the provision of bin storage facilities for the entire scheme shall be submitted to, and approved in writing by, the Local Planning Authority. The agreed plans shall then be implemented and available for use before occupation of the 10th house. The details shall have regard to the most up-to-date waste management design guidance published by the council.
13. The development hereby permitted shall not be occupied until: -
 - a) A water efficiency calculation in accordance with the Government's National Calculation Methodology for assessing water efficiency in new dwellings has been undertaken which demonstrates that no more than 110 litres of water per person per day shall be consumed within the

development, and this calculation has been submitted to, and approved in writing by, the Local Planning Authority; all measures necessary to meet the agreed waste water efficiency calculation must be installed before first occupation and retained thereafter;

- b) A mitigation package addressing the additional nutrient input arising from the development has been submitted to, and approved in writing by, the Local Planning Authority. Such mitigation package shall address all of the additional nutrient load imposed on protected European Sites by the development when fully occupied and shall allow the Local Planning Authority to ascertain on the basis of the best available scientific evidence that such additional nutrient loading will not have an adverse effect on the integrity of the European Sites, having regard to the conservation objectives for those sites; and
 - c) All measures forming part of that mitigation package have been provided to the Local Planning Authority.
14. Prior to first residential occupation of the development hereby approved details of a package of off-site Biodiversity Net Gain (BNG) shall be submitted to and approved in writing by the Local Planning Authority. This package should secure the identified 10% BNG arising from the development and include: -
- a) A calculation of the number of biodiversity units required to provide a 10% BNG in accordance with DEFRA Metric 4.0 Calculation Tool (Beta) (2022);
 - b) Details of the BNG project including its location;
 - c) A timetable for the provision of the BNG project;
 - d) Details of the management of the BNG project;
 - e) Details of the future monitoring of the BNG project in perpetuity.

The BNG package as approved shall be provided prior to the occupation of the penultimate dwelling on the site and thereafter retained as such.

15. Prior to the commencement of the development hereby approved, a specification (including methodology and programme of implementation) for the enhancement of biodiversity through the provision of features including bat and bird boxes and holes at ground level in boundary walls and fences for hedgehogs to pass through, shall be submitted to and approved in writing by the Local Planning Authority. The works so approved, shall be carried out in accordance with the approved programme of implementation and be retained thereafter for the lifetime of the development.
16. Before the commencement of development, a scheme for the whole site providing for the disposal of surface water run-off and incorporating sustainable urban drainage systems (SUDS) shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include the following: -
- a) A scaled plan indicating the extent, position and type of all proposed hard surfacing (e.g. drives, parking areas, paths, patios) and roofed areas;

- b) Details of the method of disposal, to include the provision of attenuation storage and a discharge location in the ditch;
- c) Hydraulic calculations for the surface water drainage network and SUDS features, to consider peak rainfall allowances and an allowance for urban creep;
- d) Means of treatment or interception of potentially polluted runoff in accordance with the simple index, of the SUDS manual, approach;
- e) Existing and proposed run-off rates for the development site for storms up to the 1 in 100 year event plus a peak rainfall allowance;
- f) A plan indicating flood exceedance flow routes and the extent of any flooded areas; and
- g) A timetable for implementation

The drainage works shall be completed in accordance with the approved details prior to occupation of the development or in accordance with the approved timetable.

17. Details of the maintenance arrangements for the surface water drainage system, over the life of the development hereby approved, shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of any dwellings. The submitted details shall include: -
- a. Maintenance schedules for each drainage feature type and ownership; and
 - b. Details of protection measures.

The agreed schedule shall then be implemented.

18. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any re-enactment of that Order) no extension or alterations otherwise approved by Class A of Part 1 of Schedule 2 to the Order, shall be erected or carried out without express planning permission first having been granted.

END OF CONDITIONS