

## Southern Area Planning Committee Report – 15<sup>th</sup> March 2022

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<b>APPLICATION NO.</b>	19/02450/VARS
<b>APPLICATION TYPE</b>	VARIATION OF CONDITIONS - SOUTH
<b>REGISTERED</b>	22.10.2019
<b>APPLICANT</b>	Mr John Drew
<b>SITE</b>	7B Lansdowne Gardens (Formerly Part Of 7A), Romsey, Hampshire, SO51 8FN, <b>ROMSEY TOWN</b>
<b>PROPOSAL</b>	Variation of condition 2 and 7 of 18/00567/FULLS (Erection of two bedroom dwelling) to substitute approved plans to amend placement of dwelling and approve landscaping. Remove condition 4 regarding tree protection
<b>AMENDMENTS</b>	20 <sup>th</sup> November 2019 - Amended site plan received 15 <sup>th</sup> January 2021 – PIA Kingspan bioefficient certificate submitted 12 <sup>th</sup> November 2021 – Additional planning statement and foul drainage management plan submitted
<b>CASE OFFICER</b>	Katie Andrew

Background paper (Local Government Act 1972 Section 100D)

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### 1.0 INTRODUCTION

- 1.1 The application has been called to Southern Area Planning Committee at the request of a member.

### 2.0 SITE LOCATION AND DESCRIPTION

- 2.1 The site is located within the settlement of Romsey, within a built up residential area on the edge of Romsey. The site is relatively flat and is set on land lower than the adjacent road access. Budd Lane Industrial Estate is to the north of the site, on the opposite side of the River Test. The northern part of the site lies within both flood zones 2 and 3, whilst the application site itself is within flood zone 1 (low risk of flooding).

### 3.0 PROPOSAL

- 3.1 The application proposes the variation of conditions 2 and 7 of 18/00567/FULLS (Erection of two bedroom dwelling) to substitute approved plans to amend the placement of dwelling and approve landscaping. Additionally this application seeks to remove condition 4 regarding tree protection.
- 3.2 At the time of the case officer's site visit the dwelling was completed and occupied. The development as built is proposed to be retained, and this application seeks to regularise the current positioning.
- 3.3 The wording of condition 2 of the original application is stated as:  
*'The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers: 7451 9A; 7451 6C.*  
*Reason: For the avoidance of doubt and in the interests of proper planning.'*

- 3.4 The wording of condition 7 of the original application is stated as:  
*'No development shall take place above DPC level of the development hereby permitted until full details of hard and soft landscape works have been submitted and approved. Details shall include-where appropriate: proposed means of enclosure; car parking layout; hard surfacing materials; where relevant.*  
*Soft landscape works shall include: planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities.*  
*The landscape works shall be carried out in accordance with the implementation programme and in accordance with the management plan.*  
*Reason: To improve the appearance of the site and enhance the character of the development in the interest of visual amenity and contribute to the character of the local area in accordance with Test Valley Borough Revised Local Plan (2016) Policy E1 and E2.'*

#### 4.0 **HISTORY**

- 4.1 18/00567/FULLS Erection of two bedroom dwelling. Permission subject to conditions and notes 07.06.2018

#### 5.0 **CONSULTATIONS**

- 5.1 Environment Agency – no objection

- 5.2 Trees – no objection

- 5.3 Ecology – no objection

- 5.4 Landscape – no objection

#### 6.0 **REPRESENTATIONS** Expired 18.12.2019

- 6.1 Parish Council - no comment has been received at the time of writing this report

- 6.2 X2 letters of objection, summarised as follows:

- The bungalow has been placed too close to the boundary of 94 and 96 Greatbridge Road
- The building does not comply with the original planning permission
- The water treatment system tanks weren't positioned low enough in the ground and stand proud with wooden bedding construction
- Concerns about noise from the sewerage treatment plant and concern that it is positioned too close to the river
- Impact of overlooking to neighbours to the north (specifically to 96 Greatbridge Road) and glare from windows
- Noise impacts

- Concern that bats are present
- The tree report does not take into account a holly bush on the adjacent boundary
- Light pollution
- The enlarged window is out of keeping with surroundings

Concern about the positioning of the dwelling and sewerage treatment works close to the river

## 7.0 **POLICY**

### 7.1 Government Guidance

National Planning Policy Framework (NPPF)

National Planning Practice Guidance (NPPG)

### 7.2 Test Valley Borough Revised Local Plan (2016)(TVBRLP)

COM2: Settlement hierarchy

E1: High quality development in the Borough

E2: Protect, Conserve and Enhance the landscape character of the Borough

E5: Biodiversity

LHW4: Amenity

T1: Managing movement

T2: Parking provision

## 8.0 **PLANNING CONSIDERATIONS**

8.1 The original planning permission of 18/00567/FULLS assessed the principle of development, impact to the character and appearance of the area, ecology, drainage impact, amenity, and impact to highways. This Section 73 application seeks minor changes to that planning permission. The changes relate specifically to the positioning of the dwelling as built on the site, and the boundary treatments. The impact on character and appearance of the area, neighbouring amenity and ecology are the main planning considerations in the determination of this s73 application, and these are assessed and discussed below.

### 8.2 **Character and appearance of the area**

The proposed changes are not considered to result in a detriment to the character of the area. The design of the bungalow as built is still broadly the same as previously considered, and it has a hipped roof with a projection on the north (rear) elevation. However, the access point has been widened and the positioning of the dwelling has moved 1.7 metres to the east, compared to what was originally approved. As per the submitted plans, the dwelling as built measures 94 square metres, and the original dwelling as considered under 18/00567/FULLS was 95 square metres. As the footprint is almost identical it is considered that the proposed footprint remains acceptable in relation to the size of the plot and that the dwelling can therefore be accommodated without resulting in an unduly cramped layout, overdevelopment of the site, or detrimental impact to the character and appearance of the surrounding street scene. The submitted plan (reference EXW – 03) shows that a boundary hedgerow is to be planted along the rear boundary, however from a site visit it was seen that a timber close board fence has been placed along the north and east boundaries, of 1.8 metres in height. The fence is set back from the main

public vantage points and most of the fence is positioned behind the dwelling as viewed from the public vantage points. Given that the fence is viewed in context with the residential properties within a built up area, the fence is not considered to give rise to adverse impacts to the character and appearance of the area.

8.3 No objections have been raised from the arboricultural and landscape officers consulted. Given the modest alterations it is considered that the character and appearance of the area is not materially affected. The amendments are considered to be in accordance with policies E1 and E2.

8.4 **Neighbouring amenity**

The original planning permission of 18/00567/FULLS assessed the potential neighbour amenity impacts and this s73 application is not considered to give rise to additional impacts to neighbouring amenity, over and above what was previously considered under the original application. Given that the building has moved 1.7 metres to the east, any additional impact to neighbouring amenity would be experienced mainly by the occupiers of 94a and 96 Greatbridge Road. Under the original application there was 7.1 metres of separation distance between the building proposed and the east boundary. The distance between the west elevation of the dwelling at the application site as built and the corresponding east boundary fence is now 5.4 metres. The boundary treatment is a timber close board fence of 1.8 metres in height which partly screens the development. There are two ground floor windows on the west elevation of 94a Greatbridge Road. However, the development at the application site is single storey, and due to the intervening boundary treatment and the separation distance, it is considered that any neighbouring amenity impact in terms of overlooking, overshadowing or loss of light is sufficiently mitigated, and the development does not give rise to any additional impact over and above what was previously considered.

8.5 7, 8 and 9 Lansdowne Gardens are located to the south of the site on the opposite side of the road. There is considered to be a sufficient separation distance between these properties and the site (9 Lansdowne Gardens is located 8 metres to the south of the boundary of the application site). As a result of this, coupled with the low height of the proposal, it is not considered that the proposed dwelling would have any adverse impacts on the amenities of the occupiers of these properties in terms of overlooking, overshadowing or loss of light.

8.6 7A Lansdowne Gardens is located to the west and adjoins the site where the access is proposed. The boundary is open with no intervening screening. On the west elevation there is a window serving the sitting room and this is a secondary window, as a larger window on the rear elevation serves the same space. There is also a upvc window and side door which are obscure glazed. Due to these factors, and the separation distance, it is considered that the development would not have any adverse impacts on the amenities of the occupiers of that property in terms of overlooking, overshadowing and loss of light.

8.7 In summary, by virtue of the size (bulk and mass) and design of the proposal, it's position relative to neighbouring property, and the nature of the intervening boundary treatment the proposal would not give rise to an adverse impact on the living conditions of neighbouring properties by virtue of loss of daylight, sun light, or privacy. The proposal is in accordance with Policy LHW4 of the TVBRLP.

8.8 **Ecology**

The original planning permission of 18/00567/FULLS assessed the potential ecology impacts and this s73 application is not considered to give rise to additional impacts to on site ecology over and above what was previously considered. The Ecologist consulted under this application has raised no objection to the current scheme, and has commented that there are no concerns that the development would adversely affect any statutory or locally – designated sites of wildlife importance, or any legally protected or notable species.

8.9 Off site biodiversity: New Forest SPA

In line with Policy E5 and Section 11 of the NPPF, consideration should be given to potential implications on international designations. The development would result in a net increase in residential dwellings within 15km of the New Forest SPA. This distance defines the zone identified by recent research where new residents would be considered likely to visit the New Forest. The New Forest SPA supports a range of bird species that are vulnerable to impacts arising from increases in recreational use of the Forest that result from new housing development. While clearly one new house on its own would not result in any significant effects, it has been demonstrated through research, and agreed by Natural England (the governments statutory nature conservation advisors) that any net increase (even single dwellings) would have a likely significant effect on the SPA when considered in combination with other plans and projects.

8.10 To address this issue, Test Valley Borough Council has adopted an interim mitigation strategy whereby a scale of developer contributions of £1,300 per new dwelling has been agreed that would fund the delivery of a new strategic area of alternative recreational open space that would offer the same sort of recreational opportunities as those offered by the New Forest. This payment has been received and the application has secured the required mitigation measures, in accordance with the Council's adopted 'New Forest SPA Mitigation - Interim Framework'. As such, the development would not have an in-combination likely significant effect on the interest features of these designated sites, as a result of increased recreational pressure. The proposed development is therefore in accordance with the Councils adopted 'New Forest SPA Mitigation - Interim Framework', Policy E5 of the adopted Test Valley Borough Revised Local Plan (2016) and the Conservation of Habitats and Species Regulations 2010 (as amended).

8.11 Off site biodiversity: Nitrate Neutrality

The River Test and its major tributaries flow into the Solent. The Solent region is one of the most important for wildlife in the United Kingdom. There are currently high levels of nitrogen and phosphorus input into this water environment and there is evidence to suggest that this is having a detrimental impact on the biodiversity of this area. Housing and other certain types of development are currently contributing negatively towards this issue and there is evidence that further development, without mitigation, would exacerbate this impact.

The Solent region consists of the following Special Areas of Conservation (SAC) and Special Protection Areas (SPA):

- Chichester and Langstone Harbours SPA
- Portsmouth Harbour SPA
- Solent and Southampton Water SPA
- Isle of Wight Lagoons SPA
- Solent Maritime SAC
- Solent and Dorset Coast SPA (Proposed)
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8.12 These sites are protected by National and European Law which requires the Council to undertake a formal assessment of the implications of any new plans or projects that may be capable of affecting the designated interest features of European Sites before deciding whether to grant planning permission for new residential development. This formal assessment is known as an Appropriate Assessment and considers the potential adverse effects of a plan or project (in combination with other plans or projects) on Special Areas of Conservation and Special Protection Areas. The European Court of Justice recently determined a case related to considering water quality in Appropriate Assessments. The impact of the case law is that any development which could result in a decrease in water quality would cause a likely significant effect on the Solent's European sites.

8.13 In the context of planning, the impact comes from population increase and the resultant increase in effluent. Proposed developments for new housing, hotels and care homes (as well as other forms of overnight accommodation) are being affected by the issue as a result. A dwelling was originally permitted under 18/00567/FULLS but was not built in accordance with the approved plans and as such the development is unlawful. Neither is it possible to comply with the terms of that planning permission. The issue of Nitrate Neutrality within the Solent region has arisen since that planning permission was granted. It therefore represents a new material consideration that, in respect of the potential for an impact on the European site from the proposal, requires the LPA to place significant weight in the decision making process. Natural England advise that a precautionary approach should be undertaken and as the original permission was not lawfully implemented. Therefore, this current (VARS) application is expected to deliver a net increase in the number of dwellings on the site.

- 8.14 The application is supported by a Kingspan certificate which states 99% nitrate efficiency. However, this efficiency rate is unusual and confirmation has been received from Natural England that they would require evidence in the form of test result documents from the lab and / or measured effluent concentrations from actual, real world applications to be provided, in addition to the covering certificate already provided. The applicant has explained that the manufacturer's test results would differ by the day, and so far it has not been possible to get real world test results. For this reason an efficiency rate of 0% has been assumed, as per the precautionary approach advised by Natural England.
- 8.15 Nitrate neutrality figures have been presented to the agent. Using the methodology provided by Natural England it was calculated that the development would result in a nitrate budget of 15 kg/N/yr. This calculation is based on the default value of 0% efficiency.
- 8.16 The applicant has submitted a nitrate neutrality statement (Ken Parke Planning Consultants, 12<sup>th</sup> November 2021) which concludes that no nitrate mitigation is required. The statement sets out that the original planning permission did not require a nitrates mitigation contribution, and the development has been implemented, albeit in a manner in breach of the plans condition, and has subsequently been brought into use. The statement further argues that as the dwelling is erected and completed, the impacts of the dwelling are no different such that there will be unacceptable harm arising from the dwelling and therefore there is no impact in terms of nitrate neutrality.
- 8.17 However, TVBC as the competent authority do not agree with the conclusions of the submitted nitrate neutrality statement, as it is considered that nitrate mitigation is required in this instance. Additionally, informal advice has been sought from Natural England and an unsupported 99% efficiency rating is unusual and should be supported by real world testing results. Natural England advise a precautionary approach, and because real world efficiency rates haven't been provided it has not been possible for the competent authority to conclude what the likely impact to designated sites would be within the Habitats Regulations Assessment.
- 8.18 As such, the proposed development could have likely significant effects upon the nearby Solent and Southampton Water European Designated Site which is designated for its conservation importance. In the absence of evidence that the development is nitrate neutral and in the absence of a completed legal agreement to secure any mitigation, the Council is not satisfied that the proposal would not adversely affect the special interest of the Solent and Southampton Water European Designated Site, therefore the application is contrary to Policies COM2 and E5 of the adopted Test Valley Borough Revised Local Plan (2016) and the Conservation of Habitats and Species Regulations 2017 (as amended).

## 9.0 CONCLUSION

- 9.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 states that “determination must be made in accordance with the plan unless material considerations indicate otherwise”.
- 9.2 The proposal would provide 1 additional residential unit towards the Council’s housing land supply. This is the principle benefit of the scheme. However, the Council can already demonstrate a 5 year supply of housing land.
- 9.3 The proposals put forward under this variation of condition application would not result in a proposal that would provide an adverse impact on the character and appearance of the area, or have a significant adverse impact to neighbouring amenity.
- 9.4 As set out above, the proposal would not accord with policy E5 or COM2. In the absence of evidence that the development is nitrate neutral and in the absence of a completed legal agreement to secure any mitigation, the Council is not satisfied that the proposal would not adversely affect the special interest of the Solent and Southampton Water European Designated Site. The Council is not persuaded that the benefit of the scheme (retention of one dwelling) would outweigh the harm identified. Furthermore the proposal would result in conflict with the Conservation of Habitats and Species Regulations 2017 (as amended).

## 10.0 RECOMMENDATION REFUSE

- 1. The proposed development by means of its nature, location and scale could have likely significant effects upon the nearby Solent and Southampton Water European Designated Site which is designated for its conservation importance. In the absence of a completed legal agreement securing the proposed off site mitigation, the applicant has failed to satisfy the Council that the proposal would not adversely affect the special interest of the Solent and Southampton Water European Designated Site, therefore the application is contrary to Policies COM2 and E5 of the adopted Test Valley Borough Revised Local Plan (2016) and the Conservation of Habitats and Species Regulations 2017 (as amended).**

### **Note to applicant:**

- 1. In reaching this decision Test Valley Borough Council (TVBC) has had regard to the National Planning Policy Framework and takes a positive and proactive approach to development proposals focused on solutions. TVBC work with applicants and their agents in a positive and proactive manner offering a pre-application advice service and updating applicants/agents of issues that may arise in dealing with the application and where possible suggesting solutions.**