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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 8 <sup>th</sup> June 2022 – amended nitrate neutrality information received 15 <sup>th</sup> June 2022 – site location plan received
<b>CASE OFFICER</b>	Kate Levey

Background paper (Local Government Act 1972 Section 100D)

[Click here to view application](#)

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## 1.0 INTRODUCTION

1.1 The application was most recently considered by Southern Area Planning Committee (SAPC), at the request of a local ward member, on 15<sup>th</sup> March 2022 when it was resolved to:

1.2 **DELEGATE to the Head of Planning and Building subject to the completion of a legal agreement on or before the 4th July 2022, which secures the following:**

1. **A financial contribution towards securing Solent SPA mitigation (nitrates), and**
2. **Payment of a monitoring fee, and**
3. **Review mechanism which will allow the applicant to, following ‘real-world testing’, demonstrate the ‘real-world performance’ of the Bio-Ficient 3 STP which has been installed on site and is in operation and a possible refund of financial contributions.**

Then **PERMISSION** subject to:

1. **The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers: EXW-03-C, EXW-03-E.**

**Reason: For the avoidance of doubt and in the interests of proper planning.**

- 2. The space laid out and provided for the parking and manoeuvring of vehicles to enable them to enter and leave the site in a forward gear in accordance with the approved plan shall be reserved for such purposes at all times.**

**Reason: In the interests of highway safety in accordance with Test Valley Borough Revised Local Plan (2016) Policy T1.**

- 3. The landscaping and planting shall be carried out before the end of the current or first available planting season following this grant of planning permission. The planting shall be maintained to encourage its establishment for a minimum period of five years following the date of this decision. Any trees or planting that are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective within this period, shall be replaced before the end of the current or first available planting season following the failure, removal or damage of the planting.**

**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.**

**Or,**

**DELEGATE to the Head of Planning and Building in the event that a legal agreement securing:**

- A financial contribution towards securing Solent SPA mitigation (nitrates) has not been completed by 04 July 2022 then REFUSE for the following reason:**

**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, and monitoring fee, 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).**

- 1.3 The application is presented to SAPC due to a change in material circumstance that has taken place in the interim period and which affect the consideration of the application. This change, see below, represents a new material planning consideration and it is necessary to ensure the Local Planning Authority (LPA) demonstrates that all material planning considerations are considered despite previous resolutions.**

1.4 By way of overview, since the committee resolution and whilst the legal agreement was being drafted, updated guidance was issued by Natural England in relation to achieving nitrate neutrality. The revised calculator (version 2) has been applied to the application site and a revised nitrate neutrality statement has been submitted for the Council's consideration. Using this new calculator and guidance the scheme can now demonstrate nitrate neutrality without the need for offsite mitigation and this position has been agreed by Natural England. As such, there is no longer a need for a s106 agreement and officers do not have delegated authority or a committee resolution to issue a decision. It is therefore necessary for the Committee to consider the application in light of this new consideration before a decision can be issued.

1.5 This report is an update dealing with an assessment of the revised nitrate neutrality statement. In all other respects, the report to the SAPC on 15 March 2022, and its associated update paper, apply and these can be accessed from the following link;

<https://view-applications.testvalley.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>

Copies are also attached at the end of this report.

## 2.0 CONSULTATIONS

2.1 Natural England – no objection

## 3.0 PLANNING CONSIDERATIONS

3.1 The main planning considerations are:

- Whether, in considering the guidance contained in the Natural England HRA Advice for Water Quality and Nutrient Neutrality: Solent, as a material planning consideration that has been published since the SAPC meeting on 15<sup>th</sup> March 2022 the proposed development is considered acceptable.
- The impact of development on the nature conservation interests of the Solent having regard to the effect of nitrates on those special interests i.e. “nitrate neutrality”.

3.2 The previous report to the SAPC on 15<sup>th</sup> March 2022 addressed the main issues of principle and concludes that the proposed development is considered acceptable in principle under policy COM2 of the Test Valley Borough Revised Local Plan 2016 (RLP). The updated Natural England Guidance does not include any new guidance which changes the situation as put forward in the original report. Therefore, in respect of the principle of development, the discussion which leads to the conclusion in the original report, and the resolution to grant planning permission, remains valid.

3.3 **Other considerations detailed in the 15<sup>th</sup> March 2022 SAPC agenda report**  
For members information the following list provides the paragraph references for those other material considerations in the original Officer's report to the SAPC (15<sup>th</sup> March 2022) and associated recommendation to SAPC, and that remain unchanged by the new material considerations:

- Character and appearance (paragraph 8.2 and 8.3)
- Landscaping (paragraph 8.2 and 8.3);
- Ecology and Protected Species (paragraph 8.8);
- Residential Amenities (paragraphs 8.4 – 8.7);

#### 3.4 **Solent and Southampton Water SPA – 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)

3.5 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.

3.6 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 represent 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 the original permission was not lawfully implemented. Therefore, this current (VARS) application is delivering a net increase in the number of dwellings on the site.

- 3.7 Since the application was first presented to Southern Area Planning Committee on 15<sup>th</sup> March 2022, updated guidance was issued by Natural England. The revised calculator (version 2) has been applied to the application site and a revised nitrate neutrality statement has been submitted. In seeking to achieve nutrient neutrality the applicant has identified that the existing dwelling was served by a septic tank, with potential for the proposed development to provide replacement foul drainage provision of greater performance. To identify the existing nitrate loading from the existing property, a nutrient budget has been calculated using the default value for septic tanks. The result of the calculation identifies that 11.9 kg/TN/yr was generated by the previous foul drainage arrangement. This figure is based on default septic tank value.
- 3.8 To offset this output, the applicant has removed the previous septic tank and installed replacement package treatment plants that will serve both the existing dwelling and the dwelling subject to this application (ie. both 7A and 7B Lansdowne Gardens). A performance certificate provided substantiates the figure of 17.6mg/l and includes the supporting test results.
- 3.9 The future installation, retention and maintenance of this particular type of package treatment plant would be secured through carefully drafted planning conditions which are added to this recommendation. Following the installation of the package treatment plants and the delivery of the improved nutrient treatment rate, it has been identified that the future nutrient loading will be 3.94 kg/TN/yr. Therefore, the proposed scheme will result in an overall reduction of 7.96kg/TN/yr onsite. These figures have been reviewed by Natural England with no objections raised.
- 3.10 The development would not have an in-combination likely significant effect on the interest features of the Solent designated site through water quality impacts arising from nitrate generation. The proposed development is therefore in accordance with advice issued by Natural England on achieving nitrate neutrality, Policy E5 of the adopted Test Valley Borough Revised Local Plan (2016) and the Conservation of Habitats and Species Regulations 2010 (as amended).

#### 4.0 **CONCLUSION**

It is clear that the publication of the revised NE Guidance represents a new material consideration compared to the position as it existed when the SAPC met on the 15<sup>th</sup> March 2022 and though the recommendation is still to grant planning permission the previous resolution of members did not allow the issuing of a decision without the s106 having been signed. However, it is not considered that the revised NE Guidance introduces a materially different approach to considering the planning considerations relevant to this application as outlined above. The proposal does not conflict with the revised NE guidance and the applicant has demonstrated that the development would be nitrate neutral. On this basis there is no reason to reach a different outcome to that of the SAPC on 15<sup>th</sup> March 2022.

4.1 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”.

4.2 The proposal would provide 1 additional residential unit towards the Council’s housing land supply. The proposals put forward under this variation of condition application would not result in a development that would provide an adverse impact on the character and appearance of the area, or have a significant adverse impact to neighbouring amenity or designated sites.

## 5.0 **RECOMMENDATION**

### **PERMISSION subject to:**

1. **The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers: Site location plan, EXW-03-C, EXW-03-E  
Reason: For the avoidance of doubt and in the interests of proper planning.**
2. **The space laid out and provided for the parking and manoeuvring of vehicles to enable them to enter and leave the site in a forward gear in accordance with the approved plan shall be reserved for such purposes at all times.  
Reason: In the interests of highway safety in accordance with Test Valley Borough Revised Local Plan (2016) Policy T1**
3. **The landscaping and planting shall be carried out before the end of the current or first available planting season following this grant of planning permission. The planting shall be maintained to encourage its establishment for a minimum period of five years following the date of this decision. Any trees or planting that are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective within this period, shall be replaced before the end of the current or first available planting season following the failure, removal or damage of the planting.  
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. **The proposed Klargestor Bioefficient package treatment plants shall be installed to serve both dwellings (both 7A and 7B Lansdowne Gardens) within three months of the date of planning permission being granted. The treatment plants shall be retained and maintained in accordance with the foul drainage management plan dated 12<sup>th</sup> November 2021, unless otherwise agreed in writing by the Local Planning Authority.  
Reason: In order to avoid adverse impact on the Solent and Southampton Water SPA by way of additional nitrates emanating from the development in accordance with the Conservation of Habitats and Species Regulations 2017 and Policy E5 of the Test Valley Borough Revised Local Plan (2016).**

5. **In the event that either of the approved Klargester Bioefficient treatment plants are replaced, the replacement package treatment plant/s shall achieve a performance output of 17.6mg/l nitrogen or less, unless otherwise agreed in writing by the Local Planning Authority.**

**Reason: In order to avoid adverse impact on the Solent and Southampton Water SPA by way of additional nitrates emanating from the development in accordance with the Conservation of Habitats and Species Regulations 2017 and Policy E5 of the Test Valley Borough Revised Local Plan (2016).**

**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.**
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