

REPORT FOR SOUTHERN AREA PLANNING COMMITTEE**Report No.**

Date of Meeting	29 th September 2020
Application Number	19/11206/OUT
Site Address	Land to the East of Wagtails Southampton Road Alderbury SP5 3AF
Proposal	Outline Application for up to 32 dwellings with all matters reserved (except access)
Applicant	1215 Heritage Homes
Town/Parish Council	ALDERBURY
Electoral Division	Councillor Richard Britton ALDERBURY AND WHITEPARISH
Grid Ref	419031 126982
Type of application	Outline Planning
Case Officer	Lynda King

Reason for the application being considered by Committee

Following a protracted period of discussions and negotiations, the applicant has chosen to exercise their right to appeal against non-determination of the application. This means that the Council no longer has the powers to formally determine the application, as this power now rests with the Planning Inspectorate. The matter is scheduled to be considered via a Written Representations Appeal later this year. The views of the Committee on the application are now sought to enable the Council to make its case to the Inspector.

1. Purpose of Report

As the applicants have appealed against the non-determination of the application, this report is intended to outline to Members the issues and outstanding matters surrounding the application, and to seek Members views on how they would have determined the application if they had retained the powers to do so. The report below outlines the issues and reasons for refusal officers consider form the basis for a defence of the appeal. Following Members consideration of this report, and depending on the outcome, officers will then defend the Council's position at the appeal.

2. Report Summary

1. Principle and Policy issues
2. Impact on residential amenity
3. Impact on highway systems
4. Impact on ecology
5. Drainage and flooding issues
6. S106 and viability matters

Alderbury Parish Council resolved to "object" to this planning application for the following reasons: -

1. The site is outside of the housing settlement boundary.
2. The whole of the proposed area was previously covered with a large number of very mature trees (approximately 150) and these have all been removed (ringbarked and cut down) prior to the planning application being submitted.
3. Concern about the drainage of the site as it was previously populated by 150 mature trees. There are severe problems currently affecting several roads and houses surrounding the site which were not evident at the time of the previous application.
4. The proposed development is not in keeping with neighbouring properties (Junction road and Southampton Road). The view of this area previously was of mature trees, a wooded area.
5. Some of the new dwellings will overlook neighbouring properties.
6. All traffic will enter/exit in one place, including the houses from the neighbouring site behind Wagtails and Wagtails itself, which means that potentially more than 40 houses and the associated traffic will come in and out of this site. Volumes of traffic are likely to be high.
7. There are several other roads that exit onto Southampton Road in this area, which concerns residents about Highway safety, the entrance to the Heathers, Lights Lane and Junction Road as well as bus stops nearby, there are many children using the pavements to walk to and from school.
8. Residents' day to day experience on this stretch of road is at odds with the view of the Highways department.

There was a recent accident in the vicinity involving a parked car which we would like to draw their attention to. We would therefore ask if Highways continue to take the view that there is no issue, we would welcome their assurance that an extended traffic survey has been done to justify that position.
9. The application is contrary to Core Policy CP57 in respect of compatibility of adjoining buildings and uses and the impact on the amenities of existing occupants and CP51 as the character of the landscape of the proposed area has been destroyed by cutting down a large number of mature trees which has had a detrimental impact on the environment and associated wildlife.
10. The parish already has two other new housing developments which have been approved, increasing the number of houses locally by over 80 houses. As these have not yet

been completed the cumulative effect of traffic from these sites is as yet unknown, on top of current concerns regarding the volumes and speed of traffic using Southampton Road through the village. Recent metro counts have shown that volumes of traffic travelling through the village at peak times is already high. Volumes also increase to avoid traffic problems on the A36 as motorists use the village as a shortcut.

Third Parties

3. Site Description



Excerpt from the WHSAP (above top) in which the settlement boundary (WCS 2015) is defined in blue and the revised boundary (WHSAP 2020) is defined in black/red. Site location plan (above) also showing land edged in blue owned by the applicant with extant consent for 5 new dwellings (currently under construction following grant at appeal for 2 additional dwellings).



Aerial photo of application site with land to the west cleared prior to the construction of 5 dwellings now nearing completion.

The site lies outside but directly adjacent to the existing settlement boundary for Alderbury, as defined by the former Salisbury District Local Plan (adopted 2003) and carried forward and retained into the Wiltshire Core Strategy, which was adopted in January 2015. The Wiltshire Housing Site Allocations Plan 2020 (WHSAP) extended the settlement boundary for Alderbury up to the north western boundary of the site. This has the effect of the site being directly adjacent to the settlement boundary on three sides, rather than two when the previous application (19/03480/OUT) was determined.

A site to the north of the application site, known as Land off Firs Road, Alderbury, was recently granted planning permission on appeal (*see below for further discussion*)

The site is currently open in character, as the substantial number of trees that were originally on the land were effectively clear felled in 2018. A few boundary trees remain.

The site is bounded by residential development on three sides, and has a public footpath running along its northern boundary. The land to the north of this footpath also has planning permission for residential development, which has yet to be implemented.

4. Planning History

15/11933/FUL – Residential development of 3 dwellings and associated works (Refused 04.02.2016)

16/04775/FUL – Demolition of Wagtails and erection of 3 dwellings and associated works (refused 04.02.2016)

17/03136/FUL – Removal of condition 11 of planning permission 16/04775/FUL to allow retention of Wagtails alongside erection of 3 dwellings to the rear (Approved 24.05.2017)

18/07786/FUL – Revised layout to planning permission 16/04775/FUL to allow for two additional dwellings (Refused 12.10.2018, Appeal dismissed 08.08.2019)

18/10448/FUL – Revised layout application with two additional dwellings following refusal of 18/07786/FUL (refused 20.12.2018 Appeal Allowed 08.08.2019)

19/03480/OUT - Outline application for up to 36 dwellings with all matters reserved, except for access (Refused 02.07.2019)

(17/04001/OUT - Residential Development of up to 50 dwellings, associated parking and access (off Firs Road), open space and infrastructure, relocated guide hut, new pre-school building, and land to extend primary school playing field. Appeal allowed 7.12.2018. Land adjacent to application site)

5. The Proposal

The application, which is in outline with all matters except access reserved, is for the construction of up to 32 dwellings on land to the east of Wagtails, Southampton Road, Alderbury.

Access to the site is proposed off the newly created access from Southampton Road to serve to the site for 5 dwellings recently granted consent at appeal (see history above). These dwellings are nearing completion and the access proposed was in excess of that required to serve this limited number of units, and can accommodate the level of development proposed by the scheme, the subject of this application.



Indicative layout showing dwellings under construction to the west and the indicative layout of the scheme granted on appeal to the north.

6. Planning Policy

For the purposes of this application, the following policies are considered most relevant:

6.1 National Planning Guidance

NPPF, NPPG

6.2 Wiltshire Core strategy policies

The Wiltshire Core Strategy was adopted in January 2015.

The main policies relevant to the consideration of this application include:

- CP1 Settlement strategy
- CP2 Delivery Strategy
- CP3 Infrastructure Requirements
- CP23 Southern Wiltshire Community Area Strategy
- CP43 Providing Affordable Homes
- CP45 Meeting Wiltshire's Housing Needs
- CP50 Biodiversity and geodiversity

Other policies may also need to be taken into account in relation to the proposed development, including the following:

- CP41 Sustainable Construction and Low Carbon Energy
- CP44 Rural Exception Sites
- CP51 Landscape
- CP52 Green Infrastructure
- CP56 Contaminated Land
- CP57 Ensuring high quality design and place shaping
- CP58 Ensuring the conservation of the historic environment
- CP60 Sustainable Transport
- CP61 Transport and New Development
- CP62 Development Impacts on the Transport Network
- CP64 Demand Management
- CP67 Flood Risk
- CP68 Water Resources
- Saved SDLP Policy R2
- Saved SDLP Policy C9
- Adopted SPG design guide 'Creating Places'

Wiltshire Council Planning Obligations DPD

Wiltshire Housing Sites Allocation Plan 2020

7. Summary of consultation responses

Wiltshire Council Archaeologist – No objection subject to conditions

Lead Local Flood Authority – No objection, subject to conditions, to amended details

Wiltshire Council Open space - Object, until additional financial contributions required for impacts of dwellings on play space and equipment provision are provided via a S106. The area of play space within the site is policy compliant.

Wiltshire Council Housing – Object, until 40 percent affordable housing provided in line with Policy CP43, unless viability assessment indicates that a lesser provision is required. The number of units and housing mix proposed by the developer is policy compliant, subject to securing the provision via a S106 agreement.

Wiltshire Council Education – Objection until financial contributions for secondary provision, and early years provision have been secured via a S106

Wiltshire Crime Prevention – Overall the development has addressed most crime prevention considerations, subject to suggestions for the final layout.

Wiltshire Environmental Health – no objection subject to conditions

Highways England – No objection to previous scheme for 36 dwellings

Wiltshire Waste Management – Object, until financial contributions for the provision of waste and recycling containers has been secured via a S106 agreement

Wiltshire Spatial Planning - The site is on greenfield land, to the north of several detached properties that front onto Southampton Road, Alderbury. It is outside the existing settlement boundary but directly adjacent to it on two sides.

The site lies outside but directly adjacent on two sides to the existing settlement boundary for Alderbury. The emerging Wiltshire Housing Site Allocations Plan proposes to extend the settlement boundary for Alderbury up to the north western boundary of the site as well.

It is now likely that adoption of the Plan will take place in early 2020. Examination hearing sessions took place in April and, in June, the Council received a letter from the Inspector's outlining the next steps, to include a consultation on Main Modifications, which closed in October 2019. In this letter, the Inspector commented that the Council's approach and methodology are robust and that changes previously submitted with the Plan are necessary. However, it should be noted that this was the Inspector's initial advice, prior to the consultation on Further Main Modifications, and not his final conclusions. These will be contained within his report in due course.

Settlement boundaries can also be reviewed by the community through a neighbourhood plan. However, the neighbourhood plan for Alderbury and Whaddon has not progressed beyond the initial stage of area designation, which was granted in April 2014.

The proposed development would need to demonstrate that it is in accordance with the spatial strategy for the Southern Wiltshire Community Area, as set out in Core Policy 23, and other relevant policies as listed above.

The latest evidence published by Wiltshire Council (the Housing Land Supply Statement (HLSS) Update, base date April 2018, published August 2019) indicates that there is currently a deficit in the 5-year supply in the South Wiltshire HMA. Therefore, Paragraph 11 (d) of the NPPF is engaged and there is a presumption in favour of sustainable development.

In the short-term, the Wiltshire Housing Site Allocations Plan and, over the longer-term, the emerging Local Plan Review, will also identify additional sites to ensure the delivery of housing land across the plan period in order to maintain a five year land supply in each Housing Market Area.

Wiltshire Ecology - Conclusion in Summary

It is deemed that the proposed enhancement measures will not, contrary to the conclusion put forward in the Ecology Statement (see last extract), suitably compensate for the loss of ecological resource which has already taken place at the application site and will not achieve a net gain in biodiversity. Whilst the inclusion of bat and bird boxes within the built design is welcomed, the proposed compensation in terms of proposed planting is inadequate and it is considered will not suitably offset the existing losses. Furthermore, the scheme layout has no buffer zones along site boundaries and instead proposes that all residential gardens extend right up to the site boundaries thereby providing no assurance that the boundary vegetative features will be protected and retained long term or kept as dark corridors for bats. Most of the species being proposed for planting are non-native and ornamental rather than being of local provenance and selected for their value to wildlife. The provision of a 1m border within residential gardens is inadequate as compensation for the pre-existing ecological losses, and the retention and management of these areas cannot be enforced once properties are occupied. In addition, most of the trees shown on the Site Layout drawing (Drawing Number 1215_01, Revision 01, 21.11.2019) are existing boundary trees

or trees on adjacent land; there is very little proposed in terms of new tree planting according to the submitted plan and certainly insufficient to compensate for the losses.

Given the conclusion put forward by the applicant that the development will achieve a biodiversity net gain, it is requested that this is quantitatively demonstrated by means of completion of the Biodiversity Metric 2.0. The results should be issued to the Council for review.

Furthermore, it should be noted, as was identified in relation to the previous planning application, that the application site is located within the New Forest 8km buffer which triggers the requirement for HRA to be undertaken by the competent authority i.e. Wiltshire Council. This will be undertaken once resolutions to the issues set out within this email have been progressed.

Until the matters set out within this response have been suitably addressed I cannot withdraw my objection

8. Third Parties/ Publicity

Aldbury Parish Council resolved to "object" to this planning application for the following reasons: -

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2. The whole of the proposed area was previously covered with a large number of very mature trees (approximately 150) and these have all been removed (ringbarked and cut down) prior to the planning application being submitted.
3. Concern about the drainage of the site as it was previously populated by 150 mature trees. There are severe problems currently affecting several roads and houses surrounding the site which were not evident at the time of the previous application.
4. The proposed development is not in keeping with neighbouring properties (Junction road and Southampton Road). The view of this area previously was of mature trees, a wooded area.
5. Some of the new dwellings will overlook neighbouring properties.
6. All traffic will enter/exit in one place, including the houses from the neighbouring site behind Wagtails and Wagtails itself, which means that potentially more than 40 houses and the associated traffic will come in and out of this site. Volumes of traffic are likely to be high.
7. There are several other roads that exit onto Southampton Road in this area, which concerns residents about Highway safety, the entrance to the Heathers, Lights Lane and Junction Road as well as bus stops nearby, there are many children using the pavements to walk to and from school.
8. Residents' day to day experience on this stretch of road is at odds with the view of the Highways department.

There was a recent accident in the vicinity involving a parked car which we would like to draw their attention to. We would therefore ask if Highways continue to take the view that there is no issue, we would welcome their assurance that an extended traffic survey has been done to justify that position.

9. The application is contrary to Core Policy CP57 in respect of compatibility of adjoining buildings and uses and the impact on the amenities of existing occupants and CP51 as the character of the landscape of the proposed area has been destroyed by cutting down a large number of mature trees which has had a detrimental impact on the environment and associated wildlife.

10. The parish already has two other new housing developments which have been approved, increasing the number of houses locally by over 80 houses. As these have not yet been completed the cumulative effect of traffic from these sites is as yet unknown, on top of current concerns regarding the volumes and speed of traffic using Southampton Road through the village. Recent metro counts have shown that volumes of traffic travelling through the village at peak times is already high. Volumes also increase to avoid traffic problems on the A36 as motorists use the village as a shortcut.

11. There should be a consideration on the rate of growth of Alderbury as a village. It is not sustainable and the risks associated with it should be addressed.

Third Parties - The Council's record system indicates that 34 letters of objection have been received in respect of this application, along with 5 letters of support and 4 further comments, many raising concerns about the impact of the development on the surrounding area and the loss of the trees on the site. The issues raised include:

Object.

- No development should be permitted due to the destruction of the trees on the site without permission
- Local wildlife was destroyed when the trees were felled
- More traffic will be dangerous to pedestrians and will discourage walking to school
- Too many houses proposed
- Access onto Southampton Road will be dangerous as it is close to a crossroads and there are 2 bus stops in the vicinity
- Neighbouring properties will suffer disturbance from traffic using the site
- Insufficient car parking
- No compensatory measures to replace the biodiversity lost when the trees were felled
- Drainage concerns, especially of surface water run off
- Meagre proposals to enhance local facilities
- Request retrospective TPOs to replace lost trees
- Concerned about the lack of communication or dialogue with the community by developers prior to the application being submitted
- This and other consented schemes in the village will bring no commensurate improvements in infrastructure
- Density too high
- Development out of keeping with detached nature of surrounding development
- Ecological reports do not relate to this site
- Wiltshire has a 5 Year housing land supply therefore the development is not needed
- Development will put pressure on future school places and the school has no room to expand
- Local properties will be affected by increased water run off
- No biodiversity audit was taken before the trees were felled so biodiversity gain cannot be proven
- Site will be clearly visible from the public footpath which runs from Junction Road to Firs Road
- Proposed tree planting will go nowhere near replacing those lost

- Village infrastructure is poor and cannot accommodate additional development
- The site is outside the defined settlement limits according to the Wiltshire Core Strategy
- No need for additional affordable housing in the village
- No evidence of essential need for this development outside the settlement boundary
- Consent already exists for an additional 80 dwellings in the village and it doesn't need any more

Support

- Need the development if the village facilities (pub, shop, school, post office etc) are to survive
- Affordable housing will allow young people to stay in their own village rather than having to move away
- Traffic increases with development so suggest use the bus service instead
- Football club broadly support any development that will bring young families to the village to use the club
- The trees that were removed were in an overgrown garden which fell into decline due to the occupier being involved in an accident, and they were only 61 years old
- There is still wildlife in the area
- Access onto the Southampton Road is adequate
- The site before the trees were cut down was becoming increasingly derelict and home to vermin, including rats
- The site is landlocked and should be developed
- Current school is under subscribed

Comment

- The site is subject to a restrictive covenant limiting the number of dwellings to 2 per acre.

9. Planning Considerations

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise.

The site was the subject of an earlier planning application, also in outline, for 36 dwellings (19/03480/OUT) which was refused planning permission under delegated powers in July 2019. This application was refused for 5 reasons, which are outlined below:-

- 1) Although no 5 year Housing Land Supply could be demonstrated, it is considered that the development would have an adverse impact on the character of the area, and would give rise to ecological and archaeological concerns.
- 2) Over development of the site and out of character with the area
- 3) Inadequate information to demonstrate that the site can be drained satisfactorily
- 4) Ecological issues arising from the clear felling of the trees on the site
- 5) Insufficient provision for contributions towards affordable housing, public open space and waste and recycling requirements.

The current application seeks to overcome the above reasons for refusal where possible.

a. Principle of development

The site lies outside but directly adjacent to the existing settlement boundary for Alderbury, as defined by the former Salisbury District Local Plan (adopted 2003) and carried forward and retained into the Wiltshire Core Strategy, which was adopted in January 2015. The Wiltshire Housing Site Allocations Plan (WHSAP) (adopted 2020) extended the settlement boundary for Alderbury up to the north western boundary of the site. This has the effect of the site being directly adjacent to the settlement boundary on three sides, rather than two as when the previous application (19/03480/OUT) was determined. A site to the north of Land to the east of Wagtails, Land off Firs Road, Alderbury, was recently granted planning permission on appeal (*see below for further discussion*).

Core Policy 2 (Delivery Strategy) states that

“Within the defined limits of development

Within the limits of development, as defined on the policies maps accompanying the Core Strategy, there is a presumption in favour of sustainable development at the Principal Settlements, Market Towns (including Westbury), Local Service Centres and Large Villages.

Outside the defined limits of development

Other than in circumstances as permitted by other policies within this plan, identified in paragraph 4.25 (of the adopted Wiltshire Core Strategy), development will not be permitted outside the limits of development, as defined on the policies map. The limits of development may only be altered through the identification of sites for development through subsequent Site Allocations Development Plan Documents and neighbourhood plans”.

The exceptions policies referred to in paragraph 4.25 are as follows:

- Additional employment land (Core Policy 34)
- Military establishments (Core Policy 37)
- Development related to tourism (Core Policies 39 and 40)
- Rural exception sites (Core Policy 44)
- Specialist accommodation provision (Core Policies 46 and 47)
- Supporting rural life (Core Policy 48) – *see below for further discussion*

The settlement boundaries were recently reviewed as part of the Wiltshire Housing Site Allocations Plan, as set out in the council’s Local Development Scheme, to ensure that they are up to date and can adequately reflect changes which have happened since they were first established. The Plan also sought to identify additional sites to ensure the delivery of housing land across the plan period in order to attempt to maintain a five year land supply in each Housing Market Area. It will also be the prerogative of the community to review settlement boundaries through a neighbourhood plan. The designation of Alderbury and Whaddon Neighbourhood Area was approved in April 2014; however the neighbourhood plan has not progressed beyond this initial stage at the time of writing.

Spatial strategy for the Southern Wiltshire Community Area (Core Policy 23)

The overall strategy for the Southern Wiltshire Community Area is to provide for balanced growth of both housing and employment to deliver sustainable communities and help address the shortfall in affordable housing.

Development will need to take into account the Community Area’s location within a nationally designated landscape, i.e. the Cranborne Chase and West Wiltshire Downs Area of Outstanding Natural Beauty and the New Forest National Park. It will deliver a modest and sustainable level of development with the overall objective of conserving the designated landscapes.

Specific issues to be address in planning for the Southern Wiltshire Community Area include:

- strategic growth would be inappropriate, partly due to congestion on the A36
- transport assessments required for all major applications proportionate to the scale of development, which must include an assessment of congestion on the A36
- some managed growth is necessary to support ongoing business growth and development, to ensure the existing strong employment opportunities in the area are maintained
- limited development will also help to address the shortfall in affordable housing in the area
- the New Forest National Park is an important resource and so protecting the natural environment is a priority
- ongoing protection and enhancement of the stone curlew and calcareous grassland habitat at Porton Down
- development in the vicinity of the River Avon (Hampshire) must incorporate appropriate measures to ensure that it will not adversely affect the integrity of this Special Area of Conservation

Status of the development plan

National Planning Policy Framework

The Revised National Planning Policy Framework (NPPF), published in July 2018 and updated in February 2019, presents a presumption in favour of sustainable development at paragraph 11. This forms the basis of a ‘golden thread’ running through plan making and decision taking.

Paragraph 47 of the NPPF states that *‘planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise’*.

Therefore, proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise.

Chapter 2 constitutes what sustainable development means in practice. The sections of the NPPF that are considered relevant to this application, as well as paragraph 11 and Chapter 2, include:

- Chapter 5 - Delivering a sufficient supply of homes

The Development Plan

In accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004, applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

5-year housing supply

NPPF paragraph 73 requires that, to deliver a sufficient supply of homes, “*local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing against their housing requirement*” (with appropriate buffer). NPPF paragraph 11 identifies relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites (including appropriate buffer, as set out in paragraph

73), or where the Housing Delivery Test indicates that the delivery of housing was substantially below the housing requirement over the previous three years¹.

The proposed development lies within the South Wiltshire Housing Market Area (HMA). The latest published evidence (the Housing Land Supply Statement (HLSS), base date April 2018, published August 2019) indicates that there is currently a deficit in the 5-year supply in the South Wiltshire HMA. Specifically, Table 2a of the HLSS August 2019 indicates that there is 4.45 years of deliverable supply in the South Wiltshire HMA. The supply is made up of qualifying permissions, and allocations from saved district Local Plans, Wiltshire Core Strategy, Chippenham Site Allocations Plan, and well-advanced Neighbourhood Plans. The supply from the allocations in the emerging Wiltshire Housing Site Allocations Plan are not included in this Statement but will be included in a future Statement. Appendix 6 to the HLSS August 2019 sets out the indicative remaining requirement in the Southern Wiltshire Community Area for the rest of the Core Strategy period, up to 2026, which is 0 dwellings (Downton Town) and 0 dwellings (Southern Wiltshire Community Area remainder), with an overall requirement of 0 dwellings.

Paragraph 11 (d) and footnote 7 of the NPPF state that where a Local Planning Authority cannot demonstrate a 5-year housing land supply of deliverable sites, for applications including housing provision, the policies which are most important for determining the application should be considered out-of-date. As a result, the presumption in favour of sustainable development (often referred to as the 'tilted balance') should be applied and permission should be granted unless protection policies set out in footnote 6 of the NPPF apply, or adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.

This does not mean that in these circumstances all applications for housing should be permitted. However, it does mean that the most important policies, including Core Policy 2 of in relation to settlement boundaries and housing requirements, should not have full weight applied to them in the decision-making exercise. The weight to be attributed to such policies is a matter of judgment for the officer.

Whilst the Council are unable to demonstrate a 5-year housing land supply in the South Wiltshire HMA, officers will need to consider decisions on housing proposals in this HMA. This means balancing the need to boost housing supply against any adverse impacts of the proposal, considered against the development plan as whole, and any material considerations on a case-by-case basis. There will also be a need for consideration of what weight to assign to the housing policies. Officers should note that the 5-year housing land supply position that is in effect at the point of decision-making should be used in their assessment. This position may change as and when the housing land supply improves.

It has been concluded since the last application on the site was submitted that the application site was previously a garden. On that basis the site conforms to the definition of

¹ Local Planning Authorities will fail the Housing Delivery Test and their policies will become out of date if: **From November 2018**, delivery was below 25% of housing required over previous three years; **From November 2019**, delivery was below 45% of housing required over the previous three years; **From November 2020 onwards**, delivery was below 75% of housing required over the previous three years. The Government publishes Housing Delivery Test results in November each year.

previously developed land as set out in the glossary of the NPPF as follows, as the site is not a garden within a built-up area:

Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.

Paragraph 117 of the NPPF comments that:

117. Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land⁴⁴.

The use of previously developed land for development is therefore encouraged by the NPPF.

b. Site specific considerations

The previous application on this site (19/03480/OUT) was refused for 5 reasons, as set out above.

Reason for Refusal 1

The first reason for refusal related to the adverse impact of the development on material considerations which meant that the tilted balance brought about by the lack of a 5 Year Housing Land Supply came down in favour of refusal as the harm outweighed the advantages of additional residential development. The same 'tilted balance' has to be applied in respect of this application as the Council still cannot demonstrate an adequate supply of housing land in the Housing Market Area, as set out in detail above.

The issue relating to uncertainty of the impact on features of archaeological importance have been addressed in this re-submission and the Council's Archaeologist no longer objects to the development, subject to a condition.

The Council's Ecologist maintains a strong objection to the proposal for the following reasons:

I have reviewed the details of the application including the Ecology Statement (1215 Heritage Homes Ltd, November 2019), hereafter referred to as 'the statement' submitted in support of the current application and offer the comments below. I have set out comments pertaining to the aforementioned statement in sequential order according to page number as the format of the statement is such that it does not allow for easy categorisation of the issues any other way.

- *Critically the submitted Ecology Statement has not been produced by a suitably qualified and competent ecological consultant, but instead has been put together by the applicant and does not constitute a report that aligns with industry best practice. The statement misinterprets ecological matters and does not constitute a valid report to support the planning application.*
- *With respect of the tree felling that has already taken place at the application site, it is stated on page 2: 'We were however advised to mitigate any harm or damage to unforeseen wildlife by avoiding the use of heavy machinery and confirm we undertook the felling by hand at considerable additional cost and time during the out of nesting season.'*
- *The Council has been provided with information that suggests the felling was not undertaken by hand, contrary to the stipulation in the statement. The Council has also been provided with anecdotal evidence that felling was undertaken at least in part, during the bird nesting season again contrary to the above extract. Is the applicant able to provide any further information to demonstrate that the specified avoidance and mitigation measures were implemented?*
- *It is specified on page 3 of the statement: 'As set out there is no evidence that the existing trees were removed unlawfully. Nor is there any evidence that any protected ecology on site was harmed during the removal of those trees. No prosecution has been taken against the site owners and it would therefore be unreasonable and unlawful of the council to take any alternative viewpoint to the baseline of the site when assessing the biodiversity of the site.' This is not the case as regardless of the outcome of the DEFRA investigation regarding whether a felling licence was deemed to be required, this has no absolutely bearing on the Council's assessment of the application with respect of biodiversity. The lack of prosecution most certainly does not preclude the Council's obligation to assess the application with respect of ecology and it is not unlawful for the Council to consider the ecological baseline of the application site prior to or subsequent to the felling. Indeed it is incumbent upon LPAs to assess major applications of this nature and to ensure permission is granted where no net loss of biodiversity can be demonstrated, and in fact should only permit developments that can demonstrate a biodiversity net gain would be achieved in accordance with the NPPF 2019 and Wiltshire Council's own CP50 of the Wiltshire Core Strategy (Adopted January 2015). In addition, contrary to the stipulation in the above extract, the outcome of the DEFRA investigation and the fact that no prosecution was pursued does not provide evidence that no protected species were harmed and that there was no contravention of wildlife legislation. The need or otherwise for a felling licence and effects on biodiversity are two separate matters, and the lack of action by DEFRA does not mean there are no issues in respect of biodiversity.*

- *On page 4 of the statement it is specified: '1215 Heritage Homes has sought the advice from a number of independent Ecology specialists since 2015 to inform us of the current and potential ecology enhancement measures within the land. The reports assess the 'Land off Southampton Road' as well as the site next door 'land behind Wagtails' for which planning has been consented for 5 dwellings – 18 /10448/FUL.' The statement then goes on to list four previous sets of surveys and reports and refers to these as 'Previously commissioned site inspections and reports on the area dating back to 2015;'*

Firstly, this application must be assessed on its own merit and must be informed by dedicated ecological survey and assessment specific to the application site, and as such ecology survey reports for planning applications adjacent or near to the application site cannot be relied upon to inform the determination of this application

Secondly, the first sentence of the extract doesn't make any sense and it is apparent throughout the statement that there is a lack of understanding with respect of what constitutes ecological mitigation, compensation and enhancement; these are different. The need for these matters to be wholly understood is imperative as is the involvement of a suitably qualified and competent ecological consultant I would suggest, as the site has already been completely cleared of trees and vegetation. Moreover, planning applications must demonstrate that appropriate and adequate ecological mitigation, compensation and enhancement measures will be implemented to ensure compliance with wildlife legislation, county and national planning policy. As specified above, major planning applications should only be permitted where the achievement of a net gain in biodiversity can be demonstrated, and certainly not where there will be a net loss in biodiversity.

Thirdly, if the applicant wishes to rely upon and refer to the findings of all the previous surveys and reports listed on page 4, it is necessary for all the associated reports to be included with the appendices of the statement, and at present the last survey report has been omitted. I would also highlight that ecological reporting must be up to date in order to be considered valid to support a planning application and most of the reports listed on page 4 are more than two years old. However, given that the application site has already been cleared the Council does wish to see previous ecology reports in order to provide some information about the ecological baseline of the application site prior to the site clearance as this would inform the determination of necessary compensation measures to offset the existing losses.

- *Page 4 goes on to specify: 'The overall conclusion from all of the Ecology surveyors confirmed any proposed scheme will not adversely affect the local wildlife.'*
I would suggest the statement above is not an accurate representation of the conclusions from all of the previously commissioned ecology reports. For example, it is stated in the Ecological Appraisal produced by Malford Environmental Consulting and included in Appendix 2: 'Common garden birds could nest within trees and shrubs that are scheduled for removal as part of the proposed development. The development therefore has the potential to damage, destroy or disturb nesting birds if undertaken at the wrong time of year or without appropriate safeguards. If this were to happen this is a permanent, negative impact.'

Ecological reporting submitted to LPAs in support of planning applications should provide sound assessments rather than broad brush statements that have not been formed by a suitably qualified and competent ecological consultant.

- *On page 5 of the statement it is stipulated: 'It is worth noting that planning has already been obtained on the adjoining site under the original planning reference 16/04775/FUL (superseded by 18/10448/FUL), where it was noted by Ecology Officer;' and then an email is included on page 5 which the applicant implies I wrote.*

I must advise that I did not write the email included on page 5, nor have I been involved with any of the other applications referred to on page 5. The applicant has made a supposition that the email was written by myself and has cited my full name despite the fact that a surname is missing from the email. The email included on page 5 was in fact written by a colleague with the same forename.

- *On page 8 of the statement under the heading Biodiversity Enhancements it is stated:*

'To encourage birds and bats we shall be installing a bird box and or swift box on each dwelling as well as including a bat brick.

We have enlarged the front gardens and will be providing soft landscaping features. We will include the planting of pachysandra terminalis, cotoneaster microphyllus, helleborus orientals, Bergenia cordifolia, Alchemilla mollis and phormium tenax as well as feature planting of buxus sempervirens or similar along the pathways to each dwelling. All of this will act as major enhancements to the site and increase biodiversity encouraging numerous bugs and habitats for other animals.

Further details for the planting can be found on the landscape plan and Design & Access Statement submitted alongside the main application.

We have positioned the car parking to side of dwellings and have provided garages to a number of the properties. We propose the use of sympathetic lighting within the development to minimize light spillage into the gardens and trees.

We confirm all plants and trees - including the existing trees shown in the tree surveys supplied with this application will be kept in situ.

We have increased the size of the play and grass areas introducing a number of landscaped features within the development and have positioned an area at the north side of the development adjoining the public footpath to include a seating area so the community can enjoy the natural environment and learn more about the ecology that surrounds them.'

There are a number of issues I must raise with respect of the measures set out in the above extract. Firstly, contrary to the heading on page 8, not all the measures outlined comprise ecological enhancements and again this highlights the need for involvement of a suitably qualified and competent ecological consultant. The provision of bird boxes on houses is not a like-for-like substitute for the nesting opportunities already lost on account of the significant

number of trees already felled, and tree and hedgerow planting would be more suitable; although the provision of swift bricks within the built design is welcomed.

The species proposed for planting are primarily non-native ornamental species and not considered to be appropriate. Instead species of local provenance with a value to wildlife would be required. Moreover, the planting proposals will not comprise suitable compensation to offset the loss of a large number of native tree.

The positioning of car parking relative to the affiliated dwellings and the provision of garages is irrelevant in terms of ecological enhancements so it is unclear why this is detailed under the heading of Biodiversity Enhancements. The extract then goes on to specify that sympathetic lighting will be used, however, this is lacking in necessary design detail.

It is specified in the extract that all plants and trees shown on the tree survey will be kept in situ but this fails to acknowledge that the vast majority of trees that were on site have not been retained in situ and were already felled before the application was submitted to the Council. Additionally, many of the trees that remain and are shown on the tree survey plan are situated along the boundaries of the application site and as such also lie on the boundary of neighbouring properties and presumably these trees would need to be retained in any case. Other trees shown on the tree survey plan are actually beyond the application site boundary, and therefore cannot be subject to works in any case as they are outside the landowners control. Therefore, not only does this measure not comprise an ecological enhancement measure as it will not serve to provide any additional ecological benefit above the existing baseline, but the retention of trees on land outside the ownership boundary of the application site should not be put forward as a biodiversity measure in support of the planning application.

Lastly, the provision of a play area and a seating area does not in itself constitute biodiversity enhancement measures and so again it is not apparent why these proposals are outlined under the respective heading. Moreover, the extract goes on to state that the community can learn about the ecology that surrounds them, however it is argued throughout the statement that there is limited ecology at the application site. Is this therefore referring to the ecology which the applicant anticipates will return to the site post development? I would suggest that the current proposals would not sufficiently offset the loss of ecological resources that have already occurred to any extent whereby the community would enjoy ecology at the application site once houses have been built on the site. This is because very little is proposed in the way of meaningful compensatory planting and enhancement that could lead to an increase in ecology post construction completion. The proposed site layout does not include any areas set aside for planting and ecology, and there are no buffers/set-backs from boundary trees and vegetation shown on the plans to ensure the retention and protection of corridors for wildlife. Instead the curtilage of residential gardens is shown to extend right up to the boundaries of the application site and so the longevity of the boundary trees cannot be assured and there will be nothing to prevent residents from cutting the trees back and potentially compromising their structural integrity in the long term. Furthermore, it will not be possible to ensure that the boundaries of the application site remain dark for wildlife such

as commuting and foraging bats, because the gardens will extend to the site boundaries and as such the installation of artificial external lighting within the residential gardens may result in light spill on to the retained trees and boundary vegetation. This is also despite the earlier scant reference to the use of sympathetic lighting.

- *Under the heading of Mitigation & Enhancements on page 9 it is stated: 'As the specialists have confirmed no roosting bats are in the area, however have confirmed there is a possibility of foraging bats.'*
Firstly it must be highlighted that this is the second section of the statement titled Enhancements, and measures are outlined in this section of the statement that do not constitute mitigation.

Secondly, it is unclear whether the above extract is referring to there being no roosting bats within the boundary of the application site or the wider area; in fact there are records of established bat roosts within the area and so the statement in the extract is not accurate.

Contrary to the stipulation in the extract above that specialists have confirmed no roosting bats, it is specified in Section 3.3.1 of the most recent ecology report produced by an ecological consultant that has been provided to the Council by means of inclusion at Appendix 1 (the Daniel Ahern report from 2016): 'Trees and gardens adjacent to the site may have potential for bats to forage and roost.' Even this is insufficient in detail and lacked the results of a ground level tree assessment which should have been undertaken and the results of which provided to the Council to augment the ecological baseline information provided to the Council and needed to inform the planning decision. Furthermore, the indication by ecological consultants that there is potential for bat foraging activity also serves to augment my earlier point regarding the need to retain dark corridors along the boundaries of the site and to ensure that trees and vegetation along the boundaries are retained and protected in the long term and will not be compromised by residents of the proposed properties.

- *It is also stated under the sub heading of Gardens on page 9 that: 'We will also be providing each dwelling with its own wildlife camera, bird, bat and hedgehog box as well as an insect hotel /log pile...'*

I must highlight that the provision of a wildlife camera is irrelevant to our consideration of the planning application and does not constitute enhancement. Furthermore, the longevity of features such as a hedgehog box and insect hotel/log pile where these are proposed to be sited within residential gardens cannot be assured as it is not possible to enforce their protection or to ensure they are retained once the properties are occupied. Therefore, such features cannot be relied upon as appropriate enhancement for a major residential development.

- *Under the sub heading of Gardens/Planting on page 9 it is specified: 'We are going to plant 1 meter boarder to the rear of each garden of mixed bare root plants to encourage and enhance the existing biodiversity of the site along with a further half meter of wild flower seeds to further encourage birds, bees and insects.'*

Again this cannot be relied upon as suitable or adequate compensation for the loss of ecological resource that has already occurred, and as the proposed areas of planting will be within the curtilage of residential gardens, such measures cannot be relied upon to support the planning application as the Council has no assurance of the long term retention and management of such areas of planting as these areas will be within the control of residents once the properties are occupied and no enforceable planning conditions could be applied.

- *On page 10 it stated: 'Rather than force homeowners to protect wildlife and biodiversity we propose to educate them by way of encouragement we will be giving every household a free membership to the Wildlife Trust and installing a Wildlife camera enabling the household / family to observe the wildlife activity through movement sensors which will encourage all residents to continue and further enhance the biodiversity on the site for many years to come.'*

Giving householders a membership to the Wildlife Trust and a wildlife camera is of no relevance to the determination of the planning application and does not serve to positively support the planning application. The Council is concerned with ensuring the application would incorporate suitable and sufficient ecological compensation and enhancement within the scheme layout to offset the pre-existing losses and to ensure a biodiversity net gain in accordance with the NPPF and CP50. It also needs the implementation and management of such measures in the long term to be an enforceable part of any planning permission granted, and as such small scale planting within residential gardens and minimal measures such as insect hotels cannot be relied upon.

- *Also on page 10 it is stipulated under the heading Net biodiversity gains: 'We believe that all the enhancements mentioned above will dramatically increase the net biodiversity gains to what is currently on site. We confirm we have read all of the reports mentioned within this statement and will adhere to any of the mitigations and enhancement measures within the reports with specific detail being taken from Malford Environmental Consulting and Ecology Solutions as we agree with their points and want to create a re-invigorated diverse animal friendly habitat within the development and encourage the new home owners to continue this exploration.'*
- *The first sentence in the above extract does not wholly make sense and again this highlights that a suitably qualified and competent ecological consultant should have been commissioned. Furthermore, it is will not be possible to adhere to all the mitigation measures proposed within the ecology reports included within the Appendices to the statement as the site has already been cleared. As aforementioned, it is specified in the Ecological Appraisal by Malford Environmental Consulting included in Appendix 2: 'The development therefore has the potential to damage, destroy or disturb nesting birds if undertaken at the wrong time of year or without appropriate safeguards. If this were to happen this is a permanent, negative impact.' As it stands, the Council has no assurance that suitable avoidance and mitigation measures were adopted to ensure nesting birds were protected.*

Conclusion in Summary

It is deemed that the proposed enhancement measures will not, contrary to the conclusion put forward in the Ecology Statement (see last extract), suitably compensate for the loss of ecological resource which has already taken place at the application site and will not achieve a net gain in biodiversity. Whilst the inclusion of bat and bird boxes within the built design is welcomed, the proposed compensation in terms of proposed planting is inadequate and it is considered will not suitably offset the existing losses. Furthermore, the scheme layout has no buffer zones along site boundaries and instead proposes that all residential gardens extend right up to the site boundaries thereby providing no assurance that the boundary vegetative features will be protected and retained long term or kept as dark corridors for bats. Most of the species being proposed for planting are non-native and ornamental rather than being of local provenance and selected for their value to wildlife. The provision of a 1m border within residential gardens is inadequate as compensation for the pre-existing ecological losses, and the retention and management of these areas cannot be enforced once properties are occupied. In addition, most of the trees shown on the Site Layout drawing (Drawing Number 1215_01, Revision 01, 21.11.2019) are existing boundary trees or trees on adjacent land; there is very little proposed in terms of new tree planting according to the submitted plan and certainly insufficient to compensate for the losses.

Given the conclusion put forward by the applicant that the development will achieve a biodiversity net gain, it is requested that this is quantitatively demonstrated by means of completion of the Biodiversity Metric 2.0. The results should be issued to the Council for review.

Furthermore, it should be noted, as was identified in relation to the previous planning application, that the application site is located within the New Forest 8km buffer which triggers the requirement for HRA to be undertaken by the competent authority i.e. Wiltshire Council. This will be undertaken once resolutions to the issues set out in this email have been progressed.

Until the matters set out within this response have been suitably addressed I cannot withdraw my objection.

The Council's Ecologist has updated the position with regards to the impacts on the New Forest since compiling the initial response, which is as follows:

As stipulated in the response dated 15th April 2020, the application site also lies within 8km of the New Forest SPA. Applications for new residential development and visitor accommodation within this parameter have potential to lead to a significant adverse effect on the SPA on account of additional recreational/visitor pressure upon the SPA which is likely to detrimentally impact qualifying features of the SPA, namely ground nesting birds. It can be expected that even a single unit could give rise to impacts in combination with other plans and developments. Applications within 8km are therefore screened into an appropriate assessment and adequate mitigation will be required before the assessment can be concluded favourably - this being a necessary pre-requisite for a lawful approval.

The Council doesn't yet have a generic/strategic mitigation strategy in place for this SPA. Recently the New Forest National Park Authority (NFNPA) updated its own mitigation strategy and this provides a framework for considering the scale of contributions due from development within the

national park boundary. At the EiP for the Wiltshire Housing Site Allocations Plan, there was an interim agreement made between Wiltshire Council and the NFNPA that development permitted in the 8km buffer in Wiltshire could contribute to the New Forest NPA's mitigation scheme.

The Council has now started to review its own approach to the New Forest SPA. The HRA for the core strategy identified that the quantum of development in the period 2015-2026 (i.e. year of CS adoption to end of CS period) could, in principle, be offset through a Recreation Mitigation Strategy. This now needs to be examined through appropriate assessment to determine what a proportionate contribution would be towards the NFNPA strategy. Until the generic/strategic appropriate assessment has been completed and Natural England has been consulted, I recommend that applications are delayed or refused.

Since the above consultation response was received, there has been a further material change in circumstance that needs to be addressed as part of the determination of this application.

The application site lies within the catchment of the River Test, which flows into the Solent Special Area of Conservation (SAC).

WCS policy CP50 (Biodiversity and Geodiversity) and the NPPF requires the Local Planning Authority to ensure protection of important habitats and species in relation to development and seeks enhancement for the benefit of biodiversity through the planning system. Whilst the application site is not adjacent to any rivers or in any respective flood zones, it is situated within the River Test catchment which drains into the Solent. This region is protected by a number of international designations including the Solent Maritime Special Area of Conservation (SAC), Chichester and Langstone Harbours Special Protection Area (SPA), Portsmouth Harbour SPA, Solent and Southampton Water SPA; as well as the nationally designated Sites of Special Scientific Interest (SSSIs) that underpin these international designations.

The Solent water environment is one of the most important for wildlife in the United Kingdom. It is protected under the Water Environment Regulations and the Habitats Regulations 2017 as well as through national legislation for many parts of the coastline and adjacent maritime areas. Natural England has confirmed high levels of nitrogen and phosphorus are entering this water environment and that there is sound evidence that this eutrophication is causing excessive growth of plants and algae which reduces oxygen and light levels and is leading to negative effects on the special features for which the European sites are designated. These nutrient inputs mostly come either from agricultural sources or from waste water from existing housing and other development.

Under the Habitats Regulations, where a land use authorisation, has the potential to adversely affect a European site, it is necessary for the "competent authority" to consider whether the activity being authorised would impact on any of the designated features and if so to undertake an appropriate assessment to determine whether there is a risk it could lead to a loss of the integrity of the site either alone or in combination with other plans and

projects. The 'competent authority', for planning applications is 'the Local Planning Authority'.

Regulation 63 of the Habitats Regulations 2017 states the responsibilities for competent authorities thus:

- (1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—*
 - (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and*
 - (b) is not directly connected with or necessary to the management of that site, must make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives.*
- (2) A person applying for any such consent, permission or other authorisation must provide such information as the competent authority may reasonably require for the purposes of the assessment or to enable them to determine whether an appropriate assessment is required.*

The Local Planning Authority must therefore give greater scrutiny to the effects of development on such sites.

Natural England currently advises that every permission for new dwellings in the River Test Catchment Area could result in increased nutrients entering the Solent area ([Guidance dated June 2020](#)). Whilst this application site is some distance from the European Sites, Natural England's advice applies to all new planning permissions for new residential development within the catchment, no matter how small. Accordingly, the Local Planning Authority considers this proposal is likely to lead to significant effects on the European Sites and an Appropriate Assessment (AA) is required under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).

Natural England has advised that the principal nutrient that drives excessive enrichment in the marine environment is nitrogen. In order to avoid impacts on the European sites, it advises that all development with the potential to give rise to additional nitrogen should achieve nitrogen neutrality before the development is occupied. The above explains how to prepare nutrient budgets before and after a new development is occupied.

A scheme for nitrogen neutrality has not been submitted with this application and until strategic solutions are developed, to which individual proposals such as this one could contribute, it may in any case be difficult for smaller developments to demonstrate nutrient neutrality. It is therefore unlikely that an AA for this development could conclude with sufficient certainty that there will be no adverse effects on the Solent SACs and SPAs, alone and in-combination with other plans and projects.

In summary, this application involves the provision of 32 additional dwellings within the River Test catchment. As it has potential to increase nitrogen loading into the River Test, and thus

the Solent SACs and SPAs, the development must be appraised in line with the Habitat Regulations 2017 through an appropriate assessment (AA). In view of the uncertainty regarding the development's ability to achieve nitrogen neutrality, the Council's Ecologist has confirmed that an AA could not be concluded favourably at this time and thus the proposal fails to meet the requirements of the Habitat Regulations. A further reason for refusal is therefore added to this decision on this basis.

The applicant has suggested that this reason for refusal could be overcome by the use of a Grampian style condition which would have the effect of preventing the development of the site until suitable mitigation measures had been agreed by the LPA and Natural England, and that therefore the application should not be refused consent on this ground.

However, in a recent appeal decision for a proposal in Winterslow where a similar condition was proposed, the Inspector, in dismissing the appeal, commented that:-

... However, the appellant is suggesting the use of a 'Grampian' condition requiring a mitigation package addressing the additional nutrient input arising from the development. However, there is no certainty at this stage over the course of mitigation that would be taken.

27. Without detail of the mitigation package at this stage, there is a considerable amount of uncertainty as to the potential effectiveness of the mitigation available for this proposed development. There is no clear mitigation that is being proposed at this time by the appellant, though it is accepted that mitigation is required. Furthermore, whilst a Grampian condition could potentially prevent development occurring until suitable mitigation was confirmed, an appropriate assessment must consider detailed mitigation proposals at the decision stage. (appeal ref APP/Y3940/W/19/3242715, LPA ref 19/03930/OUT)

In light of the above comment, which supports a similar stance taken by other Inspectors when dealing with schemes affected by the Nitrates embargo, it is recommended that the reason for refusal relating to the impact of nitrates from the development on the River Test stands.

Reason for Refusal 2

The second reason for refusal related to the form of the development and argued that it was out of character with the surrounding area by reason of the mass and overall concentration of the indicative layout, and was therefore contrary to Policy CP 57 of the Core Strategy.

The current application has reduced the number of proposed dwellings from up to 36 to up to 32, and has improved the amount of proposed landscaping around the site.

This site would not be readily visible from the public domain as it is effectively to the rear of properties in Southampton Road, Junction Road, Woodlea Grange and Firs Road. It would be visible from the footpath along its northern boundary, however this view is partly obscured by existing and proposed vegetation, and runs along the southern boundary of the extant consent for up to 50 dwellings on land to the north.

The character of the dwellings to the south and west of the site are characterised by large detached properties set in spacious grounds, although the dwellings in Woodlea Grange are generally smaller and with less generous gardens. The approved development to the north

indicates a development at a higher density than is proposed in the scheme, the subject of this application. Alderbury has a wide range of housing developments, with different densities and styles and the application site is not within a Conservation Area or any other area of specific townscape designation. It is not felt that the previous reason for refusal would be sustainable at appeal, indeed the Inspector who determined the appeal on land to the north of the current application site commented that:-

I consider that the proposed development broadly accords with the provisions of CS policies 1 and 23. However, even if I am wrong on this matter there is nothing of substance to demonstrate that the proposal would undermine the aims of the spatial strategy or amount to unsustainable development. This site, which is located towards the centre of the village and where there is no cogent evidence of any harmful impact, is suitable for the proposed development. (para 47 of the decision notice)

Reason for Refusal 3

The third reason for refusal stated that the application failed to demonstrate that the proposed development could be suitably and effectively drained in respect of foul and surface water.

The current application has been accompanied by revised drainage proposals and after significant further discussion and the submission of further information the Council's Drainage team and Wessex Water have confirmed that the site can be adequately drained and that no objection is raised, subject to suitable conditions.

Therefore the third reason for refusal of the earlier application cannot be sustained.

Reason for Refusal 4

The fourth reason related to the impact of the clear felling of the trees on the site on the ecology and biodiversity of the area and the fact that the proposal could not demonstrate an enhancement of the biodiversity of the site, and that the lack of compensatory measures would do little to mitigate the impact of the ecological damage caused by the clear felling of the trees prior to the submission of the application.

As has been set out above in some detail, in respect of Reason for Refusal 1, the Council's Ecologist still maintains an objection to the proposal on similar grounds.

The current application contained information to demonstrate that the applicants/landowners has not committed an offence by clear felling all the trees from this 3 acre site prior to the submission of the application in terms of the Forestry Act which deals with such matters. Apparently the applicant demonstrated that the site was previously a garden and under the terms of the Act, a Felling Licence is not required to fell trees that are not the subject of a Tree Preservation Order within a garden. However that fact that the felling of the trees was permitted under one piece of legislation does not mean that the destruction of the biodiversity of the area was also sanctioned. The clear felling of the site means that it is considered that there has been a total net loss of biodiversity and that due to the nature of the development proposed there is no opportunity to enhance the biodiversity of the area to either compensate for this loss or to augment what little remains. Policy CP50 of the Core Strategy, the NPPF and Section 40 of the NERC Act 2006 places a duty on LPAs to only permit developments that will result in a net biodiversity gain and this cannot be achieved on this site. The application is therefore recommended for refusal on the grounds of its adverse impact on the biodiversity of the area.

Reason for Refusal 5

The final reason for refusal related to the fact that the application did not secure sufficient provision for the delivery of the required affordable housing, public open space and waste and re-cycling generated by the development. It was stated that this reason for refusal could be overcome if the applicants were to enter into a suitable Section 106 agreement to secure the necessary financial contributions towards the provision of these facilities.

The current application proposes a policy compliant offering of up to 13 affordable housing units of a type and tenure which meet the requirements of the Council's Housing department, and Policy CP45 of the Core Strategy. The applicants have offered to enter into a S106 agreement to provide 2 x one-bedroom units, 6 x two-bedroom dwellings and 5 x three-bedroomed dwellings. These dwellings will be provided as a mix of shared equity and affordable rented properties.

The Council's Open Space team have confirmed that the area of play space within the application site is now of a sufficient size and in a suitable location to be policy compliant. They also seek a financial contribution towards the provision of casual public open space and youth and adult leisure space within the village totalling £43,230.70 to be secured via a S106 agreement.

The Council's Waste Management team recommend that the applicants agree to contribute £2,912 towards the provision of waste and recycling containers necessary to serve the development, and that this sum is secured via a S106 agreement.

The Council's Education department have assessed that the development needs to make the following contribution towards an educational provision. An Early Years provision of £52,366, and £137,640 towards the provision of Secondary School provision. There is no requirement for a contribution towards Primary school provision as the local school currently has space for additional pupils.

There may also be the need to contribute towards the mitigation of development on the New Forest Special Area of Protection as the site lies within the 8km buffer zone which triggers the need for a Habitats Regulations Assessment to consider the impact of development on this European protected site. However, applications for new residential development within this parameter are currently being refused or are 'on hold' in lieu of adoption of a strategic mitigation strategy on account of the potential for a significant adverse effect on the SPA due to the additional recreational/visitor pressure that new housing could cause.

However the application has not been accompanied by a Draft Heads of Terms to secure the necessary contributions, and on that basis the previous reason for refusal still stands, with the Informative Note that these matters can be addressed if the applicants were to enter into a suitable Section 106 agreement with the Council.

10. Conclusion (The Planning Balance)

This application is an attempt by the applicants to overcome the previous reasons for refusal on this site on the edge of the village of Alderbury, which lies outside of the settlement boundary, but which is surrounded on three sides by existing development and is boarded to the north by an extant consent for 50 dwellings granted at appeal. It is technically previously

developed land under the definition in the NPPF, where development is preferred to green field sites.

The Council cannot demonstrate a 5 Year Housing Land Supply and therefore, under the current terms of the NPPF, the Council has to carefully assess whether there are factors that will weigh against the grant of planning permission in this location, applying the 'tilted balance'.

It is acknowledged that the site lies immediately adjacent to the village boundary, and is sited close to local amenities such as the school, shop, playing fields, and that there is a bus stop very close to the site entrance. It is therefore suggested that it is in a sustainable location. It will also provide affordable housing to the village.

However there remain strong material considerations in respect of the adverse impact on the European protected sites of the River Test and The Solent, and the New Forest, and the biodiversity of the area, that weigh against the development.

Consequently it is considered in this case that the effect of the tilted balance in respect of the interpretation of settlement boundaries, together with the benefits provided by the affordable housing are clearly and significantly outweighed by the adverse impacts on the biodiversity of the area and that the development should be refused. The fact that the site would adversely impact on Habitats sites also means that the presumption in favour of sustainable development set out in paragraph 11 of the NPPF does not apply (see footnote 6 to this paragraph) in this case.

RECOMMENDATION

If the Committee were in a position to determine the application, that it be Refused, for the following reasons:-

- 1) Notwithstanding that the Council is currently unable to demonstrate a five year supply of housing land within the South Wiltshire Housing Market Area (and consequently the tilted balance towards the interpretation of the settlement boundary is engaged), and taking into account the benefits the proposal would bring in the provision of affordable housing units, there remain strong material considerations in respect of the adverse impact the development would have on the integrity of European protected wildlife sites, as well as ecological concerns within the site itself.

Consequently it is considered in this case the effect of the tilted balance in respect of the interpretation of the settlement boundaries, together with the benefits provided by the provision of affordable housing units, are clearly and significantly outweighed by the adverse impacts of the proposal on the integrity of the European Protected sites on the River Test and The Solent, and the New Forest, and the lack of any meaningful ecological and biodiversity mitigation and enhancement that the scheme would bring.

In these respects the proposed development is considered to be discordant with Core Policies CP1, CP2, CP23, and CP50 of the Wiltshire Core Strategy and the aims and objectives of the NPPF.

- 2) The site is situated within the River Test catchment which drains into the Solent, a maritime area protected by a number of European designations. Advice from Natural England indicates that every permission that results in a net increase in foul water entering the catchment could result in increased nutrients entering the European sites causing further deterioration to them. The application does not include detailed proposals to mitigate the impact of increased nutrients and consequently, without such detailed proposals, the Council as a competent authority cannot conclude there would be no adverse effect on the integrity of the European sites as a result of the development. The proposal would therefore conflict with Wiltshire Core Strategy policy CP50 (Biodiversity and Geodiversity); and paragraphs 175 and 177 of the National Planning Policy Framework.
- 3) The application site (a former mixed woodland) had recently been almost entirely cleared of trees and habitats prior to the submission of the planning application. As such, the local planning authority considers that current baseline conditions at the site are not representative of the ecological baseline conditions as they were prior to clearance and as such the LPA's ecology team has not been permitted the opportunity to consider the application alongside the requirements of the NPPF 2019 and CP50 of the Wiltshire Core Strategy (Adopted January 2015) and to assess whether the proposed development would be acceptable in terms of ecology. Ecology would have very clearly constituted a material consideration in the determination of this planning application. The submitted *Ecological Constraints Survey Report* (Daniel Ahern Ecology, August 2018) with application 19/03480/OUT suggested that the ecological issues at the site have been identified. However, this report and the survey conducted to inform its production were undertaken subsequent to the site being cleared. The purported ecological information submitted in respect of the current application (Ecological Statement – 1215 Heritage Homes November 2019) has not been prepared by a qualified ecologist and does not meet recognised industry standards to fully assess the impact of the development on the biodiversity of the site.

The clearance of the entire site prior to determination of the planning application has meant that there has been no opportunity for the Council to comment on or influence the proposed layout of the development in terms of biodiversity and the retention and protection of ecological features that were present on site. The NPPF 2019 and Section 40 of the NERC Act 2006 places a duty on LPA's to only permit developments that will result in a net biodiversity gain and this is augmented by means of CP50 of the Wiltshire Core Strategy. Given the clearance of the entire site of woodland habitat, the limited ecological enhancements proposed in the submitted *Ecological Statement* and total lack of compensatory measures or soft landscaping proposed, the local planning authority considers this development has already resulted in a total net loss of biodiversity and should not be granted planning permission as it contravenes local and national planning policy, contrary to Core Policies CP50, CP52 & CP57 of the adopted Wiltshire Core Strategy and saved SDLP policy C9 by which all development should seek opportunities to enhance biodiversity (Major development in particular must include measures to deliver biodiversity gains through opportunities to restore, enhance and create valuable habitats, ecological networks and ecosystem services), which also seek to preserve woodland, ensure that valuable features and characteristics are protected and enhanced, that Wiltshire's green infrastructure network is retained and enhanced and

that development should protect, conserve and where possible enhance landscape character and must not have a harmful impact upon landscape character.

- 4) The application makes insufficient provision in respect of affordable housing, public open space provision, education provision, and waste and recycling contributions and is therefore contrary to the aims of policies CP45 & CP57 of the Wiltshire Core Strategy, saved SDLP policy R2 and the requirements of Wiltshire Council's Waste storage and collection: Supplementary Planning Document.

INFORMATIVE

Reason for refusal 4 could be overcome through the landowner entering into a suitable S.106 legal agreement with Wiltshire Council to make appropriate provision in respect of on-site affordable housing, an appropriate financial contribution towards public open space provision, educational provision, and towards the provision of waste and recycling containers. The amount of the contributions would be index linked from the date of the resolution to grant planning permission.