

**Application Number:** 19/11439 Full Planning Permission

**Site:** LAND AT MERLIN, LYMINGTON ROAD, MILFORD-ON-SEA  
SO41 0QR (PROPOSED LEGAL AGREEMENT)

**Development:** Demolition of existing residential property; redevelopment of land  
to provide 4 residential units; associated parking; landscaping

**Applicant:** Trustees of Brooke, DSWT and HFT

**Agent:** Arcadis

**Target Date:** 22/01/2020

**Case Officer:** Richard Natt

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## 1 UPDATE REPORT

### Introduction

Members will recall that this application was previously considered at the February 2020 Committee. The application relates to a development of 4 dwellings on land known as 'Merlin'. The Committee resolution was to grant permission subject to the completion of a Section 106 agreement to secure habitat mitigation and the imposition of conditions.

It is important to note that the minutes from the February Committee meeting state the following:

*'Members noted the public safety concerns raised by the objectors of the application in relation to the access arrangements to and from the site. Hampshire County Council had raised no objection to the application on highway grounds. The Committee agreed that a planning condition should be added to require both points of access and the passing point to be provided, in accordance with the submitted plans, prior to occupation of the residential units.'*

The Section 106 Agreement is progressing to secure the habitat mitigation, but has not been completed. However, following the Committee resolution, the applicant has stated that whilst they are content with regard to the additional condition requested by Members to provide both points of access as shown on the plans prior to occupation, the applicant does not want the reference in the condition to 'passing places'.

As such, the applicant has submitted an amended plan removing the 'passing place' from the proposed site layout. The applicant has stated that whilst they have a legal right over this land, it is third party ownership and therefore, they are not in a position to mark out a specific passing bay. The applicant considers that the condition would prohibit the deliverability and implementation of the development.

Accordingly, this application is being brought back to Committee to specifically remove the 'passing places' from the plans and to approve the re- wording of the condition by removing the reference to 'passing places'. Moreover, it should be noted that following the submission of an amended plan removing the 'passing place', the application was re-advertised and the following comments have been received.

## **Comments received following re-advertised**

Highway Authority: No objection subject to condition

We noted that the revised site layout plan shows that passing places have been removed. As stated in our previous highway response "*Notwithstanding this, the agreement in principle of the less than 10% increase was without the provision of a passing place, and therefore the Highway Authority would not look to object to the application without this feature.*"

Having regards to the above, the Highway Authority would recommend no objection, subject a condition.

Milford On Sea Parish Council:

We recommend refusal.

The Parish Council maintains its previous objections to this application on the grounds of inadequate and therefore dangerous access routes. This has now been exacerbated by one of the proposed access routes from the site onto Barnes Lanes being blocked off. In addition, the removal of the passing place on the Lymington Road access will mean that the pedestrians will have an even more dangerous route to traverse down this single track and there will also be increased congestion given the increased number of expected vehicle movements the proposed development will bring.

The Parish Council still has concerns about the lack of access for emergency vehicles and refuse lorries.

The Parish Council maintains that the visibility when turning onto the Lymington Road is very poor, being on a blind bend and therefore hazardous to all road users. Visibility splays as indicated on the plans are inadequate and to make them safe would require purchasing more land from neighbouring properties which is likely to be costly and impractical.

The Parish Council requests that HCC Highways reconsiders its original comment and investigates these issues more closely given the altered circumstances of the location.

The Parish Council strongly requests this application be refused.

Representees:

7 letters of objection concerned with the following:

- Access is totally unsuitable for the proposed development and there are serious concerns in relation to public highway safety.
- The removal of the passing places will only worsen the situation
- Increase in pollution
- Boundary dispute issues

## **Assessment/ consideration of the amendment**

The key issue for Members to consider is whether the removal of the 'passing place' from the plans, would result in an unsatisfactory access into the site to serve the development that would result in significant harm to public highway safety.

For the avoidance of doubt, the proposal seeks to utilise two existing accesses into the site, one from the west of the site from Barnes Lane which would serve the detached dwelling (unit 4) and the eastern access from the High Street to serve the terraced dwellings (units 1-3). The issue being referred back to Committee only relates to the eastern access, which would serve three proposed houses (net increase in two dwellings) the decision to resolve to grant planning consent for 4 dwellings on the site having been made.

The plans considered at the February Committee illustrated a passing place to be created along the eastern access, used by the Dentist. Whilst the 'passing place' has never been a requirement of the Highway Authority, the applicant had shown this on the plans to help create a betterment of the existing situation. The applicant had stated that the access to the site is not owned, but they do have a right of way legally documented in their Title, that predates the existence of the surgery or indeed any property in that location, from the public highway.

It is widely accepted that the eastern access that currently serves the application property, Nos 1-6 South Court Flats and the dentist is not ideal. Indeed, this access is only single vehicle width, unmade and narrow, however, it is important to note that it is already used by existing dwellings and the dentist and the proposal only seeks to increase the use of the existing access by two additional houses.

In assessing the removal of the 'passing place' from the plans, there are two important points to raise. The first point is that the applicant does not have full control over this area and as such, the 'passing places' should not have been shown on the plans, and imposing a condition requiring this space to be available at all times as a 'passing place' is not achievable or deliverable. As such, imposing a condition would fail to meet the test under Paragraph 55 of the NPPF in that the condition would not be enforceable and reasonable in all other aspects.

The second point is that Hampshire County Council Highways confirmed in its consultee response, *"The passing point suggested is considered a betterment of existing. However it is noted that local comments have indicated that this is not under the ownership of the applicant. Notwithstanding this, the agreement in principle of the less than 10% increase was without the provision of a passing place, and therefore the Highway Authority would not look to object to the application without this feature".* Moreover, the Inspector in the appeal decision made no reference that the eastern access requires a 'passing place' stating *"I have also considered representations regarding the suitability of the means of access. Neither access is perfect in terms of visibility, gradient and pedestrian segregation. However, both accesses already serve existing developments, so the increase in usage as a result of the proposals would not be significant"*.

Officers have carefully considered the concerns raised by Members at the February Committee and whilst a 'passing place' would improve the access arrangements, it is not a requirement that 'tips' the balance of the proposed development being acceptable or unacceptable in planning terms. The Committee must therefore give significant weight to the professional advice received from the relevant highway consultee, and the appeal decision, together with the test under Paragraph 55 of the NPPF.

In summary, Officers consider that the 'passing place' should not have been shown on the submitted plans and importantly, the requirement for the 'passing place' is not necessary or justified to make the proposed development acceptable in planning terms. Officers continue to maintain that the proposed access is acceptable and consider that by removing the 'passing place' from the plans would not result in an increase in danger to public highway safety.

As such, the original recommendation at the February Committee still stands, with the removal of the 'passing place' from both the plans and condition.

## **ORIGINAL REPORT TO FEBRUARY 2020 COMMITTEE**

### **2 THE SITE**

The site lies within the built-up area of Milford-on-Sea, to the north of the buildings that front the High Street. The site currently accommodates a large flat-roofed 2-storey house, which is located towards the higher, northern part of the site. The large garden of the dwelling has become overgrown and there are a number of trees along the southern part of the site, which conceal the house from most viewpoints. As a result, the site provides a verdant backdrop on the rising land behind the frontage development in the High Street. Further up the slope, beyond the northern boundary of the site, there are large houses in spacious gardens.

The property sits on a spacious plot which is heavily overgrown with shrubs and trees. The property has limited space to the rear, but has its main garden and amenity area to the front of the building. The main vehicular access is gained from the High Street, and comprises a narrow track which also serves 6 flats at South Court and a dentist. There is a second access from Barnes Lane.

The site is irregular in shape. The southern boundary spans across the rear boundaries of properties fronting into the High Street. There is also a noticeable change in site levels, in which the gradient of the site increases as it extends to the north.

The site lies in a sustainable location close to the village centre where there are a mixture of amenities and facilities. The site lies within a predominantly residential area, although the High Street provides a mixture of facilities which are typical in a village centre. The site lies just outside the conservation area which joins the southern boundary of the site, to the rear of the existing buildings fronting onto the High Street.

### **3 THE PROPOSED DEVELOPMENT**

This application is identical to a proposal recently determined for 1 terrace of 3 houses, detached house, demolition of existing, parking and landscaping (under reference 18/11022). That application was refused and dismissed on appeal.

The proposal seeks to demolish the existing dwelling and replace it with 4 dwellings, comprising a terrace of three and a detached dwelling. The proposed terrace of three dwellings would be sited to the north of the site, broadly in the same position as the existing dwelling utilising the existing access currently shared with the properties at South Court and the dentist. Car parking would be provided in front of the dwellings. The proposed terrace of three dwellings would have short rear garden areas, with the two end units having side gardens. It is also proposed to retain an open area within the site to the south west which would be used by residents.

The proposed detached dwelling would be to the south of the site utilising the existing access to the west from Barnes Lane. The proposed dwelling would front onto the access road to the west and would have its garden area to the north. The proposed dwelling would be sited on a lower ground level compared to the neighbouring bungalow at Ilex Cottage and the proposed terrace of three.

## **4 PLANNING HISTORY**

Development comprised 1 terrace of 3 houses, detached house, demolition of existing, parking and landscaping (18/11022) Refused on the 14th November 2018. An appeal was lodged and subsequently dismissed.

## **5 THE DEVELOPMENT PLAN AND OTHER CONSTRAINTS**

### **The Core Strategy**

CS2: Design quality

CS3: Protecting and enhancing our special environment (Heritage and Nature Conservation)

CS5: Safe and healthy communities

CS10: The spatial strategy

CS15: Affordable housing contribution requirements from developments

CS24: Transport considerations

CS25: Developers contributions

### **Local Plan Part 2 Sites and Development Management Development Plan Document**

DM1: Heritage and Conservation

DM3: Mitigation of impacts on European nature conservation sites

### **The Emerging Local Plan**

The Local Plan Review 2016-2036 is in what can be considered an 'advanced stage' in its preparation, in that it has been submitted to the Secretary of State and the Examination has been concluded. The Local Plan Review sets a housing target of 525 dwellings per annum and will allocate sufficient land to meet this new housing target. The Local Plan Inspectors have indicated that, subject to modifications, the plan be made sound. Public consultation on modifications will be completed at the end of January 2020. It is therefore a material consideration which can be given weight in decision-making.

Policy 1 Achieving Sustainable Development

Policy 10 Mitigating the impacts of development on International Nature Conservation site

Policy 11 (Saved DM1) Heritage and Conservation

Policy 13 Design quality and local distinctiveness

### **Supplementary Planning Guidance and other Documents**

SPD - Housing Design, Density and Character

SPG - Milford-on-Sea - A Conservation Area Appraisal

SPD - Mitigation Strategy for European Sites

SPG - Milford-on-Sea Village Design Statement

SPD - Parking Standards

## **6 RELEVANT LEGISLATION AND GOVERNMENT ADVICE**

### **Relevant Legislation**

Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA) requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.

## Habitat Regulations 2017

63 – assessment of implications for European sites etc.

64 – considerations of overriding public interest

## Planning and Compulsory Purchase Act 2004

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that “where in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material consideration indicates otherwise.

## **Relevant Advice**

### National Planning Policy Framework 2019

Para 7 - Sustainable development

Paras 102 to 109 - Promoting sustainable transport

Paras 117-119 - Making effective use of land

Para 120 - Achieving appropriate densities

Paras 124-131 - Achieving well designed places

Paras 184-192 - Conserving and enhancing the historic environment

## **7 PARISH / TOWN COUNCIL COMMENTS**

**Milford On Sea Parish Council:** AR 4: We recommend refusal

The Parish Council considers all access routes to this property as inadequate. The driveway to the Lymington Road is a narrow single track with no provision for pedestrians to safely walk, especially given the increased number of expected vehicle movements the proposed development will bring.

The passing place indicated on the plans is not part of the development site and is used by the neighbouring busy dental practice. The Parish Council also has concerns about the lack of access for emergency vehicles and refuse lorries.

The Parish Council maintains that the visibility when turning onto the Lymington Road is very poor, being on a blind bend and therefore hazardous to all road users.

The access onto Barnes land is the subject of a legal dispute over rights of access and cannot be relied upon to provide safe access to the development site.

Visibility splays as indicated on the plans are inadequate and to make them safe would require purchasing more land from neighbouring properties which is likely to be costly and impractical.

Should the application be granted, the Parish Council requests without prejudice, that the following conditions be imposed before development can commence:

1. One-way system from the dental practice access, exiting onto Barnes Lane.
2. Through access with alternative entrance/exit from Barnes Lane or Lymington Road. Although not shown on the application drawings there is sufficient space to achieve this and for Highway safety reasons, in case of accident or blockage in either direction, an alternative should be available.

## 8 COUNCILLOR COMMENTS

No comments received

## 9 CONSULTEE COMMENTS

The following is a summary of the representations received:

Hampshire County Council Highway Engineer: no objection subject to condition.

Trees Officer: no objection subject to condition.

Ecologist: no objection subject to condition.

## 10 REPRESENTATIONS RECEIVED

The following is a summary of the representations received.

Against: 23

23 letters of objection concerned that this new Planning Application has not addressed any of the concerns regarding the safety of its pedestrians and drivers using a shared narrow drive. This poor access has only room for a single vehicle which restricts traffic both entering and leaving. The splays and sight lines across land not owned by the applicant create poor visibility to the West and are in direct conflict with the requirements laid down by Highways. The proposal is an overdevelopment of the site out of character with the area. Loss of wildlife, trees and greenery. The proposed dwellings are too tall. The proposal fails to comply with the Council's Housing, Design, Density and Character Supplementary Planning Document and policy which states that development should be appropriate and sympathetic in scale, appearance, materials, form, siting and layout and shall not cause unacceptable effects by reason of visual intrusion, overlooking, shading and effects on local amenities. Impact on living conditions including loss of light, outlook and privacy. Additional noise and disturbance in a tranquil area. The proposed dwelling identified as unit 4 is sited very close to Ilex Cottage and would be overbearing and would result in an unacceptable loss of light into the garden and a loss of privacy. Concern over impact on public highway safety. The visibility splay onto the roads is currently poor and any increase in the use of the access would lead to public highway safety issues. Concerns raised over the ownership/ legal rights of way of the accesses to the site, including the proposed passing places which are currently used for parking for staff and customers for the dentist. The Ecological Report is out of date. The proposal should provide a bio diversity net gain, to include a number of ecological enhancement including bat/ bird boxes and for swifts. The landscaping proposed should be native.

## 11 OFFICER COMMENTS

### Introduction

- 11.1 This planning application is identical to a application that was refused and dismissed on appeal last year under reference 18/11022. The reason for refusal was as follows:

*The proposed development would be detrimental to the character of the area by reason of its height, depth, layout and scale along with the associated loss of greenery and verdant setting which would be inappropriate and unsympathetic to*

*the surrounding pattern of development. In addition the proposed dwelling on plot 4 would have a detrimental impact on the dwelling at Ilex Cottage by reason of overlooking and its close proximity to this neighbour which would have an overbearing impact. As a result the proposals would be contrary to Policy CS2 of the Local Plan for the New Forest District outside the National Park (Core Strategy).*

- 11.2 In dismissing the appeal, the Inspector did not accept the Councils case that the proposed development would be harmful to the character and appearance of the area, or on the living condition of the adjoining neighbouring properties or on public highway safety.
- 11.3 The Inspector did however, consider that the Councils approach to mitigate against recreational impacts on the designated European Nature Conservation sites through the use of a negatively worded condition is not acceptable in that it would not accord with the CIL Regulations and the Planning Practice Guidance. Consequently, the Inspector concluded that there was no certainty, at the decision making stage, that appropriate habitat mitigation will be securely delivered and was unable to conclude that the proposal will not affect the integrity of the European sites.
- 11.4 In accordance with the Conservation of Habitats and Species Regulations 2017 ('the Habitat Regulations') an Appropriate Assessment has been carried out as to whether granting permission would adversely affect the integrity of the New Forest and Solent Coast European sites, in view of that site's conservation objectives. The Assessment concludes that the proposed development would, in combination with other developments, have an adverse effect due to the recreational impacts on the European sites, but that the adverse impacts would be avoided if the planning permission could guarantee delivery of mitigation prior to development.
- 11.5 The Mitigation Strategy for European Sites SPD adopted in June 2014 specifies projects within the district to relieve the recreational pressure from residential development. Whilst some of these are specific to the earlier part of the plan period, there are further schemes which relate to the current plan period 2019-2026. In Milford On Sea, there are schemes to enhance recreational walking routes from Lymington Road/ School Lane to the village centre using contribution money secured through S.106 Agreements. The application site is sited within the village centre.
- 11.6 Historically, the Council has dealt with securing the provision, management and monitoring of mitigation projects through the imposition of a negatively worded condition which has, for smaller sites such as this, required the completion of a S.106 Agreement prior to the commencement of any development. In view of the substantial CIL liability for this particular proposal, the provision of the offsite recreational mitigation projects can be covered through the CIL payment, leaving the monitoring and management of the projects needing to be secured through a properly executed legal agreement.
- 11.7 At the appeal for the previous scheme, the Inspector did not consider that the imposition of a negatively worded condition was an appropriate way forward in securing such provision. In response to this, the Council is recommending that the contribution is secured through the completion of a S.106 Agreement prior to issuing any permission. This is considered to address the Inspector's concern that the necessary mitigation is secured and would comply with Policy DM3 of the Local Plan Part 2 and Policy 10 of the Emerging Local Plan.



11.8 A copy of the Inspectors Decision Notice is attached as an Appendix.

### **Relevant Considerations**

11.9 There are five main issues in this case, which include the principle of development at this site, the effect on the character and appearance of the adjacent Conservation Area, the effect on the character and appearance of the area, the effect on the living conditions of the adjoining neighbouring properties, the effect on public highway safety and ecological matters.

#### **Principle of development**

11.10 This planning application is identical to the application that was refused and dismissed at appeal under reference 18/11022. In dismissing the appeal, the Inspector did not accept the Councils case that the proposed development would be harmful to the character and appearance of the area, or on the living condition of the adjoining neighbouring properties or on public highway safety.

11.11 In principle therefore new residential development can be acceptable within the built up area such as this subject to there being no adverse impact on the residential or visual amenities of the area of the area, highway safety, ecological matters and designated European sites.

#### **Effect on the character and appearance of the area**

11.12 In dismissing the appeal, the Inspector considered that *'the proposals would not be harmful to the appearance and character of the area'*. On the basis that this is an identical application, there have been no changes in circumstances at the site or material changes in policy, it is considered that the proposal is acceptable in character terms. Nevertheless, in light of the objections received and the Parish Council, an assessment has been provided below.

11.13 In assessing the effect on the character and appearance of the area, the Inspector raised no objection to the proposed terrace to the north of the site and considered that the proposed density of the development to be sympathetic to the townscape and the terrace would be in keeping with the general pattern of the development to the rear of the frontage buildings. In particular, the Inspector stated that *'the terrace would occupy a position, and would be of a scale, that would be appropriate to its surroundings'*.

11.14 Equally the Inspector raised no objection to the proposed detached dwelling and felt that *'it would be largely hidden behind the frontage development'*. The Inspector noted some *'tree removal would be necessary to accommodate this house and substantial clearance of overgrown vegetation would be required to create the parking area for the overall development'*. In summarising his comments, the Inspector stated that most of the trees along the southern boundary would be retained, which means that the site would still provide a green backdrop to the High Street and a suitable landscaping scheme could be secured by a planning condition.

11.15 The Inspector concluded on this issue that there would be no adverse impact on the character of the area and given that there has been no material changes in policy or circumstances at the site, it would not be reasonable to reach a different conclusion on this.

### Effect on the living conditions of the adjoining neighbouring properties

- 11.16 In dismissing the appeal, the Inspector considered that *'the proposals would not have a harmful effect on the living conditions of the occupants of Ilex Cottage through loss of outlook or privacy'*. On the basis that this is an identical application, there have been no changes in circumstances at the site or material changes in policy, it is considered that the proposal is acceptable in amenity terms. Nevertheless, consideration of these objections has been made below.
- 11.17 Ilex Cottage is a long narrow bungalow there is a small garden area and conservatory on the southern end of the bungalow that is enclosed by a two-metre close boarded fence. The Inspector noted that the proposed house, on the southern part of the site, would be orientated at right angles to Ilex Cottage and would be at a lower level and designed with a hipped roof. As such, the Inspector stated that *'the proposed house would not have a harmful impact on the outlook for occupants of the conservatory or would be a visually dominant feature'*.
- 11.18 In relation to overlooking of Ilex Cottage the Inspector stated that *'two of these windows serve bathrooms, so they could be obscure glazed and the nearest bedroom window would have an oriel window, with an obscure glazed west facing pane, so it is not possible to look out towards Ilex Cottage'*.
- 11.19 The Inspector concluded that there would be no adverse impact on the living conditions of Ilex Cottage and given that there has been no material changes in policy or circumstances at the site, it would not be reasonable to reach a different conclusion other than the proposed development would have no adverse impact on the other neighbouring properties, to the north of the site at Tower House or to the east at Nos 1 and 2 South Court.

### Car parking and public highway safety matters

- 11.20 In dismissing the appeal, the Inspector considered the representations regarding the suitability of the means of access and stated that *'neither access is perfect in terms of visibility, gradient and pedestrian segregation. However, both accesses already serve existing developments, so the increase in usage as a result of the proposals would not be significant'*. On the basis that this is an identical application, there have been no changes in circumstances at the site or material changes in policy, it is considered that the proposal is acceptable in transportation terms. Nevertheless, given the significant concerns raised by the representees and parish council, an assessment has been provided below.
- 11.21 The proposal seeks to utilise two existing accesses into the site, one from the west of the site from Barnes Lane which would serve the detached dwelling (unit 4) and the eastern access from the High Street to serve the terraced dwellings (units 1-3).
- 11.22 In relation to the eastern access, this is a narrow unmade private road which currently serves the application property, Nos 1-6 South Court Flats and the dentist. This access is only single vehicle width. The proposal is to utilise the existing access, but it is important to note that this access already serves the existing dwelling. Accordingly the proposal seeks to increase the use of the existing access by two additional houses

- 11.23 A Transport Statement accompanies the application in which speed surveys and traffic count surveys were carried out from the site. The traffic count survey concluded that the proposed development would have a marginal increase in traffic generation and would be no more than 10% of the base traffic flows surveyed. The right visibility when existing the access onto the High Street is in part over third party land, however, the current area includes a rockery and low lying landscaping. On this basis, the applicant states that the visibility will be maintained. Because planting encroaches on the proposed visibility, the Highway Authority accepted a relaxation of the visibility based on low traffic levels and no local accident history.
- 11.24 The Transport Statement states that although a Fire Tender vehicles can access the site, all properties will be provided with sprinkler systems. This will avoid the need for a Fire Tender vehicle to access the site. In terms of refuse collection, a bin store would be provided at the entrance to the site (in front of the flats at South Court) and the refuse vehicle would be stationed on the High Street and refuse bags collected by hand. This would avoid refuse vehicles entering the access.
- 11.25 The submitted plans illustrate a passing place to be created along the access. Whilst this is not a requirement of the Highway Authority, this is clearly a betterment of the existing situation. The applicant states that access to the site is not owned, but they do have a right of way legally documented in their Title, that predates the existence of the surgery or indeed any property in that location, from the public highway.
- 11.26 The dimensions of the right of way are not specified but the route is shown on the Title plan and is evident on the ground. The right provides for access at "*all times and for all purposes*". This access also serves the dentist and South Court flats. The car parking to the rear of the surgery is informal with no marked parking bays or similar. This informal arrangement coupled with a clearly evident access route "on the ground" already provides for vehicle use. Accordingly, it is considered that the passing place has been provided to improve highway safety along the access road and has been strategically placed to maximise forward visibility and make the current passing arrangement along much of the safer for all users.
- 11.27 In relation to the access onto Barnes Lane to serve the detached dwelling, it is noted that Barnes Lane is lightly trafficked with no accident history. In addition, the visibility splay to the wet exceeds the requirements and the trimming of the vegetation only improves the visibility.
- 11.28 The key policy test is set out under Paragraph 109 of the National Planning Policy Framework which states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 11.29 The Highway Authority is satisfied with the access into the site including the visibility splays provided and consider that the proposal would result in a marginal increase in the use of the access. As set out in the Transport Statement, refuse vehicles and a Fire Tender do not need to enter the access track. In terms of car parking, for the proposed terrace of three (Units 1-3), based upon the Councils adopted car parking standards, a total of 7.5 car parking spaces is recommended, which equates to 2.5 car parking spaces per dwelling. In this case, the proposed layout entails two

on site car parking spaces per dwelling, together with three visitor car parking spaces. The proposed detached dwelling would also benefit from at least 2 on site car parking spaces. Moreover, the National Planning Policy Framework states that the car parking spaces to be provided should be considered against the sustainable nature of the site and the type of use. In this case, the application site is located in a very sustainable location, close to the village centre where there are a mixture of shops, community uses and other facilities.

- 11.30 In relation to the western access from Barnes Lane, it should be noted that the application site currently has a vehicular access off this track. The western access currently serves 6 dwellings and a restaurant. The Highway Authority are satisfied with this access into the site. The proposed detached dwelling has space for up to three cars to be parked on site, which would accord with the car parking standards. The proposed layout also shows sufficient space for cars to turn within the site.
- 11.31 A number of representations are concerned over the ownership of the accesses. In response to these concerns, the application forms state the applicant has served notice on the relevant land owners under Certificate B and the applicant has confirmed that they have a legal right of way over the access. The applicants agent has stated that the dimensions of the right of way are not specified but the route is shown on the Title plan and is evident on the ground. The right provides for access at "*all times and for all purposes*". This access also serves the dentist and South Court flats. Accordingly, if planning permission is granted it would be for the applicant to ensure that they have a right of access to the approved development.

#### Ecological matters

a) On site ecological matters

- 11.32 Concerning ecological matters, the Ecologist does not raise any objections and considers that the ecology report which accompanies the application is acceptable and makes suitable recommendations for on-site mitigation to avoid harm to wildlife and avoid wildlife offences being committed (e.g. clearance of vegetation outside of bird nesting season). Although enhancements have been outlined they are not in any detail and accordingly a planning condition can be imposed for further details to be submitted for ecological mitigation and other suitable habitat features be included in the landscape design. Such measures are necessary to demonstrate accordance with NPPF and Local Plan Policies CS3 and DM2.

b) Off-site recreational impact

- 11.33 In accordance with the Conservation of Habitats and Species Regulations 2017 ('the Habitat Regulations') an Appropriate Assessment has been carried out as to whether granting permission would adversely affect the integrity of the New Forest and Solent Coast European sites, in view of that site's conservation objectives. The Assessment conclude that the proposed development would, in combination with other developments, have an adverse effect due to the recreational impacts on the European sites, but that the adverse impacts would be avoided if the planning permission were to be conditional upon the approval of proposals for the mitigation of that impact in accordance with the Council's Mitigation Strategy or mitigation to at least an equivalent effect. An informative would be applied to any consent to this effect.

c) Nitrate neutrality and impact on the Solent SPA and SACs

In accordance with the Conservation of Habitats and Species Regulations 2017 ('the Habitat Regulations') an Appropriate Assessment has been carried out as to whether granting permission which includes an element of new residential overnight accommodation would adversely affect the integrity of the New Forest and Solent Coast European sites, in view of that site's conservation objectives having regard to nitrogen levels in the River Solent catchment. The Assessment concludes that the proposed development would, in combination with other developments, have an adverse effect due to the impacts of additional nitrate loading on the River Solent catchment unless nitrate neutrality can be achieved, or adequate and effective mitigation is in place prior to any new dwelling being occupied. In accordance with the Council Position Statement agreed on 4<sup>th</sup> September 2019, these adverse impacts would be avoided if the planning permission were to be conditional upon the approval of proposals for the mitigation of that impact, such measures to be implemented prior to occupation of the new residential accommodation. These measures to include undertaking a water efficiency calculation together with a mitigation package to addressing the additional nutrient load imposed on protected European Sites by the development. A Grampian style condition has been agreed with the applicant and is attached to this consent.

## 12 CONCLUSION AND THE PLANNING BALANCE

In summary, this application is identical to a proposal that was dismissed on appeal only on the grounds that the Inspector did not agree with the Councils approach in securing habitat mitigation. The Inspector did not agree with the Councils case that the proposal would have an unacceptable impact on the character and appearance of the area, living conditions of the neighbouring properties or public highway safety. As set out above, an appropriate condition can be secure habitat mitigation.

Moreover, whilst there are significant concerns from representations and the Parish Council in relation to the poor accesses into the site and danger to public highway safety, it is accepted that the situation is not ideal. However, no objections have been raised by the Highway Authority and the Planning Inspector, in dismissing the appeal, also raised no concerns. Accordingly, a reason for refusal on these grounds would not be sustainable on appeal.

## 13 OTHER CONSIDERATIONS

### Crime and Disorder

N/A

### Local Finance

If this development is granted permission, the Council will receive New Homes Bonus £3672 in each of the following four years, subject to the following conditions being met:

- a) The dwellings the subject of this permission are completed, and
- b) The total number of dwellings completed in the relevant year exceeds 0.4% of the total number of existing dwellings in the District.

Based on the information provided at the time of this report this development has a CIL liability of £33,519.23

Tables setting out all contributions are at the end of this report.

## 5 year land supply

The Council has now progressed the Local Plan Review 2016-2036 Part 1: Planning Strategy to a very advanced stage. The Inspectors examining the Local Plan 2016-2036 Part 1 have confirmed that they consider that the Local Plan can be found 'sound' subject to main modifications being made. Public consultation on the Main Modifications will take place between 13 December 2019 and 31 January 2020. The Local Plan 2016-2036 Part 1 is anticipated to be adopted in Spring 2020. The Local Plan 2016-2036 Part 1 is thus at a very advanced stage and as proposed to be modified is a significant material consideration in the determination of planning applications. The Council has published a Housing Land Supply Statement which sets out that the Council is able to demonstrate a five year housing land supply based on the Local Plan 2016-2036 Part 1 (as modified) for the period 2020/21-2024/25 and so will be able to demonstrate a five year housing land supply upon adoption of the Local Plan.

## Human Rights

In coming to this recommendation, consideration has been given to the rights set out in Article 8 (Right to respect for private and family life) and Article 1 of the First Protocol (Right to peaceful enjoyment of possessions) of the European Convention on Human Rights. Whilst it is recognised that there may be an interference with these rights and the rights of other third parties, such interference has to be balanced with the like rights of the applicant to develop the land in the way proposed. In this case it is considered that the protection of the rights and freedoms of the applicant outweigh any possible interference that may result to any third party.

## Equality

The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics, namely: age, disability, gender reassignment, pregnancy and maternity, race, religion or beliefs and sex and sexual orientation. It places the Council under a legal duty to have due regard to the advancement of equality in the exercise of its powers including planning powers. The Committee must be mindful of this duty *inter alia* when determining all planning applications. In particular the Committee must pay due regard to the need to:

- (1) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- (2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

## **CIL Summary Table**

| Type            | Proposed Floorspace (sq/m) | Existing Floorspace (sq/m) | Net Floorspace (sq/m) | Chargeable Floorspace (sq/m) | Rate    | Total        |
|-----------------|----------------------------|----------------------------|-----------------------|------------------------------|---------|--------------|
| Dwelling houses | 564.17                     | 238.01                     | 326.16                | 326.16                       | £80/sqm | £33,519.23 * |

|                |            |
|----------------|------------|
| Subtotal:      | £33,519.23 |
| Relief:        | £0.00      |
| Total Payable: | £33,519.23 |

\* The formula used to calculate the amount of CIL payable allows for changes in building costs over time and is Index Linked using the All-in Tender Index Price published by the Build Cost Information Service (BICS) and is:

*Net additional new build floor space (A) x CIL Rate (R) x Inflation Index (I)*

Where:

*A = the net area of floor space chargeable in square metres after deducting any existing floor space and any demolitions, where appropriate.*

*R = the levy rate as set in the Charging Schedule*

*I = All-in tender price index of construction costs in the year planning permission was granted, divided by the All-in tender price index for the year the Charging Schedule took effect. For 2020 this value is 1.28 (rounded)*

## 14 RECOMMENDATION

Chief Planning Officer authorised to Grant Consent subject to:

- i) the completion of a Section 106 Agreement to secure habitat mitigation in a timely manner
- ii) the imposition of the conditions set out below.

### Proposed Conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development permitted shall be carried out in accordance with the following approved plans: 7165 (08) 01 Rev C, 7165 (08) 02 Rev A, 7165 (08) 03 Rev A, 7165 (08) 04 Rev A, 1807/34/AIA

Reason: To ensure satisfactory provision of the development.

3. Before development commences, samples or exact details of the facing and roofing materials to be used shall be submitted to and approved in writing by the Local Planning Authority. The development shall only be implemented in accordance with the approved details.

Reason: To ensure an acceptable appearance of the buildings in accordance with Policy ENV3 of the Local Plan Review 2016-2036 Part One: Planning Strategy for the New Forest District outside of the National Park.

4. Before development commences, the proposed slab levels in relationship to the existing ground levels set to an agreed datum shall be submitted to and approved in writing by the Local Planning Authority. Development shall only take place in accordance with those details which have been approved.

Reason: To ensure that the development takes place in an appropriate way and to comply with Policies ENV3 and ENV4 of the Local Plan Review 2016-2036 Part One: Planning Strategy for the New Forest District outside of the National Park.

5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any re-enactment of that Order) no extension (or alterations) otherwise approved by Classes A, B or C of Part 1 of Schedule 2 to the Order, garage or other outbuilding otherwise approved by Class E of Part 1 of Schedule 2 to the Order carried out without express planning permission first having been granted.

Reason: In view of the physical characteristics of the plot, the Local Planning Authority would wish to ensure that any future development proposals do not adversely affect the visual amenities of the area and the amenities of neighbouring properties, contrary to Policy ENV3 of the Local Plan Review 2016-2036 Part One: Planning Strategy for the New Forest District outside of the National Park.

6. Before development commences a scheme of landscaping of the site shall be submitted for approval in writing by the Local Planning Authority. This scheme shall include :

- a) the existing trees and shrubs which have been agreed to be retained;
- b) a specification for new planting (species, size, spacing and location);
- c) areas for hard surfacing and the materials to be used;
- d) other means of enclosure;
- e) a method and programme for its implementation and the means to provide for its future maintenance.

No development shall take place unless these details have been approved and then only in accordance with those details.

Reason: To ensure that the development takes place in an appropriate way and to comply with Policy CS2 of the Local Plan for the New Forest District outside the National Park (Core Strategy) and Policy 13 of the Emerging Local Plan Part 1 Review.

7. All planting, seeding or turfing comprised in the approved details of landscaping (as approved within condition 6) shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size or species, unless the Local Planning Authority gives written consent to any variation.



Reason: To ensure the appearance and setting of the development is satisfactory and to comply with Policies ENV3 and ENV4 of the Local Plan Review 2016-2036 Part One: Planning Strategy for the New Forest District outside of the National Park.

8. Before first occupation of the development hereby approved, a surface water sustainable drainage system (SuDS) shall be designed and installed to accommodate the run-off from all impermeable surfaces including roofs, driveways and patio areas on the approved development such that no additional or increased rate of flow of surface water will drain to any water body or adjacent land and that there is capacity in the installed drainage system to contain below ground level the run-off from a 1 in 100 year rainfall event plus 30% on stored volumes as an allowance for climate change as set out in the Technical Guidance on Flood Risk to the National Planning Policy Framework.

Infiltration rates for soakaways are to be based on percolation tests in accordance with BRE 365, CIRIA SuDS manual C753, or a similar approved method.

In the event that a SuDS compliant design is not reasonably practical, then the design of the drainage system shall follow the hierarchy of preference for different types of surface water drainage system as set out at paragraph 3(3) of Approved Document H of the Building Regulations.

The drainage system shall be designed to remain safe and accessible for the lifetime of the development, taking into account future amenity and maintenance requirements.

Reason: In order to ensure that the drainage arrangements are appropriate and in accordance with Policy ENV3 of the Local Plan Review 2016-2036 Part One: Planning Strategy for the New Forest District outside of the National Park and the New Forest District Council and New Forest National Park Authority Strategic Flood Risk Assessment for Local Development Frameworks.

9. The development hereby permitted shall not be occupied until the spaces shown on plan (08)01 Rev C for the parking of motor vehicles have been provided. The spaces shown on plan(08)01 Rev C for the parking or motor vehicles shall be retained and kept available for the parking of motor vehicles for the dwellings hereby approved at all times.

Reason: To ensure adequate parking provision is made in the interest of highway safety and in accordance with Policies ENV3 and CCC2 of the Local Plan Review 2016-2036 Part One: Planning Strategy for the New Forest District outside of the National Park.

10. The development hereby permitted shall not be occupied until:
  - a) A water efficiency calculation in accordance with the Government's National Calculation Methodology for assessing water efficiency in new dwellings has been undertaken which demonstrates that no more than 110 litres of water per person per day shall be consumed

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

- b) A mitigation package addressing the additional nutrient input arising from the development has been submitted to, and approved in writing by, the Local Planning Authority. Such mitigation package shall address all of the additional nutrient load imposed on protected European Sites by the development when fully occupied and shall allow the Local Planning Authority to ascertain on the basis of the best available scientific evidence that such additional nutrient loading will not have an adverse effect on the integrity of the protected European Sites, having regard to the conservation objectives for those sites; and
- c) All measures forming part of that mitigation package have been provided to the Local Planning Authority.

Reason: There is existing evidence of high levels of nitrogen and phosphorus in the water environment with evidence of eutrophication at some European designated nature conservation sites in the Solent catchment. The PUSH Integrated Water Management Strategy has identified that there is uncertainty as to whether new housing development can be accommodated without having a detrimental impact on the designated sites within the Solent. Further detail regarding this can be found in the appropriate assessment that was carried out regarding this planning application. To ensure that the proposal may proceed as sustainable development, there is a duty upon the local planning authority to ensure that sufficient mitigation for is provided against any impacts which might arise upon the designated sites. In coming to this decision, the Council have had regard to Regulation 63 of the Conservation of Habitats and Species Regulations 2017.

- 11. The trees on the site which are shown to be retained on the approved plans shall be protected during all site clearance, demolition and building works in accordance with the measures set out in the submitted Oakwood Arboricultural Method Statement (1807/34/AMS) dated 12 July 2018 and Tree Protection Plan (1807/34/TPP) dated July 2018 while in accordance with the recommendations as set out in BS5837:2012.

Reason: To ensure the retention of existing trees and natural features and avoidance of damage during the construction phase in accordance with Policies ENV3 and ENV4 of the Local Plan Review 2016-2036 Part One: Planning Strategy for the New Forest District outside of the National Park.

- 12. Prior to the commencement of development, and notwithstanding the measures outlined in the Peakecology Limited Ecology Report dated 11th August 2016 further details of biodiversity mitigation and Bio-diversity Enhancement Plan, compensation, enhancement including site vegetation management shall be submitted to, and approved in writing by the Local Planning Authority. The Bio diversity Enhancement plan should include as a minimum provision of 4 in built swift bricks ('Action For Swifts' Model 1a or

equivalent as agreed) and a 'Habi-bat' or equivalent bat roost feature. In addition, measures for native planting and maintenance of hedgehog gaps in boundary treatment. All works shall then proceed in accordance with the details and recommendations as approved in the strategy with any amendments agreed in writing. Thereafter, unless otherwise agreed in writing by the Local Planning Authority, the mitigation measures shall be permanently maintained and retained in accordance with the approved details.

Reason: To safeguard protected species in accordance with Policies ENV3 and ENV4 of the Local Plan Review 2016-2036 Part One: Planning Strategy and Policies DM1, DM2 and DW-E12 of the Local Plan for the New Forest District outside the National Park (Part 2: Sites and Development Management).

13. The first floor bathroom window on the front [ west ] elevation and the west side of the first floor oriel window serving the bedroom as shown on the approved plans on unit 4 shall at all times be glazed with obscure glass.

Reason: To safeguard the privacy of the adjoining neighbouring properties in accordance with Policy ENV3 of the Local Plan Review 2016-2036 Part One: Planning Strategy for the New Forest District outside of the National Park.

14. The first floor windows on the side elevations of the approved units 1 and 3 shall be obscurely glazed and fixed shut at all times unless the parts that can be opened are more than 1.7m above the floor.

Reason: To safeguard the privacy of the adjoining neighbouring properties in accordance with Policy ENV3 of the Local Plan Review 2016-2036 Part One: Planning Strategy for the New Forest District outside of the National Park.

15. Notwithstanding the provisions of the Town & Country Planning General Development Order 2015 nothing over 600mm in height shall be placed or permitted to remain on the land shaded green on the approved plan.

Reason: In the interest of highway safety and in accordance Policies ENV3 and CCC2 of the Local Plan Review 2016-2036 Part One: Planning Strategy for the New Forest District outside of the National Park.

16. No development shall start on site until plans and particulars showing details of the provisions of cycle storage within the site have been submitted to and approved in writing by the Planning Authority. The development shall be carried out in accordance with the approved details before the use of the development is commenced and shall be retained thereafter.

Reason: To ensure adequate provision within the site in accordance with Policies ENV3 and CCC2 of the Local Plan Review 2016-2036 Part One: Planning Strategy for the New Forest District outside of the National Park.

17. No development hereby permitted shall commence until a Construction Traffic Management Plan, to include details of provision to be made on site for contractor's parking, construction traffic access, the turning of delivery vehicles and lorry routeing as well as provisions for removing mud from vehicles and a programme of works has been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented before the development hereby permitted is commenced and retained throughout the duration of construction.

Reason: In the interest of Highway Safety in accordance Policies ENV3 and CCC2 of the Local Plan Review 2016-2036 Part One: Planning Strategy for the New Forest District outside of the National Park.

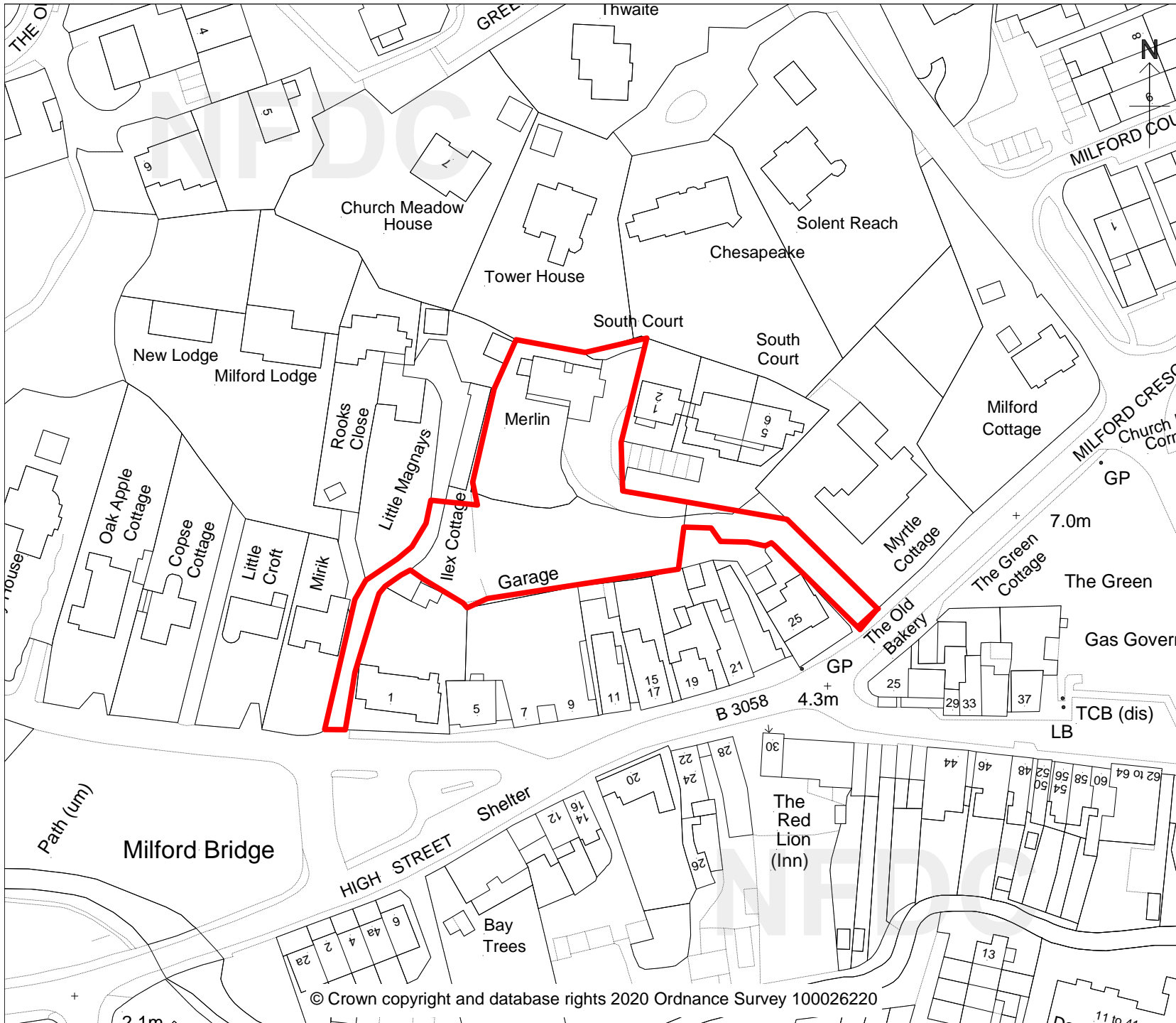
18. The development hereby permitted shall not be occupied until the points of access shown on plan Reference Number (08) 01 Rev C are provided for access arrangements. The points of access shown on plan Reference Number (08) 01 Rev C shall be retained and kept available for the access arrangements for the dwellings hereby approved at all times.

Reason: To ensure adequate parking provision is made in the interest of highway safety and in accordance with Policies ENV3 and CCC2 of the Local Plan Review 2016-2036 Part One: Planning Strategy for the New Forest District outside of the National Park.

**Further Information:**

Richard Natt

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# New Forest

DISTRICT COUNCIL

Tel: 023 8028 5000  
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Claire Upton-Brown  
 Chief Planning Officer  
 Planning  
 New Forest District Council  
 Appletree Court  
 Lyndhurst  
 SO43 7PA

## PLANNING COMMITTEE

November 2020

Land at Merlin, Lymington Road  
 Milford On Sea  
**SO41 0QR**  
 19/11439

Scale 1:1250

N.B. If printing this plan from the internet, it will not be to scale.