



Appeal Decision

Site visit made on 14 April 2026

by **Barry John Lomax MPLAN (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18th June 2026

Appeal Ref: 6004074

Hawthorn Cottage, Guildford Road, Loxwood, RH14 0SF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by BlackOnyx Hawthorne Limited against the decision of Chichester District Council.
 - The application Ref is LX/24/01316/FUL.
 - The development proposed is the demolition of 1 no. existing bungalow, garage and outbuilding and redevelopment of the site to provide 19 no. dwellings, associated access and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the banner heading above differs from the description that appears on the application form, the proposal was originally described as “Full planning application for the demolition of the existing bungalow and redevelopment of the site to provide 19 residential dwellings, associated access and landscaping”. While I do not have confirmation that the amended description was agreed, I note that the Appellant has used the amended description on the appeal form and it better describes the proposal. I will proceed to determine the appeal on the basis of that description; I am satisfied that no party would be prejudiced by this approach.
3. In response to the first reason for refusal, which relates to design and appearance, the appellant has submitted two amended drawings¹. The amendments propose the use of brown clay roof tiles across all dwellings, together with the introduction of hanging clay tiles on the eastern elevation of Plot 16. In addition, the Appellant has submitted an annotated Proposed Boundary Distance Plan showing the distances of the development from the boundaries of the site. I am satisfied that these changes do not represent a substantial or fundamental alteration to the scheme previously determined by the Council. Furthermore, interested and main parties have been afforded the opportunity to comment on the additional information. I have therefore determined the appeal on the basis of the revised plans, and I am satisfied that no prejudice arises from this approach.
4. The Council has confirmed² that the submitted amendments satisfactorily address the concerns previously raised in respect of design, appearance and architectural detailing. As such, the Council considers that the first reason for refusal has been

¹ 3231-A-1704-PL-M_Proposed Materials Plan and 3231-C-1005-PL-S_Proposed Site Layout.

² Paragraph 3.5 Council's Statement of Case

overcome. I agree with the Council on this issue, and so I have not considered it any further.

5. In respect of the third reason for refusal, concerning the effect of the proposal on bats and the integrity of The Ebernoe Common and The Mens Special Areas of Conservation (SAC), and the fourth reason for refusal, relating to the securing of infrastructure and mitigation, the Appellant has submitted, an Ecological Appeal Statement and a signed Unilateral Undertaking (UU) pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) respectively.
6. I am satisfied that this additional information does not constitute a substantial or fundamental alteration to the scheme previously determined by the Council. Furthermore, interested parties and main parties have been afforded an opportunity to comment on the submitted material. Accordingly, I have determined the appeal on the basis of the additional information, and I am satisfied that no prejudice arises from this approach.
7. The Council has advised that the Planning Committee of Chichester District Council resolved to approve an amended scheme for the site at its meeting on 10 June (the amended scheme). It comprises 18 dwellings of a different mix and includes layout revisions, notably the provision of a dark landscape buffer / corridor across the north-east of the site.
8. Both main parties were invited to comment on the implications of the amended scheme for the appeal before me. The Appellants confirmed that the amended scheme differs from that under consideration in this appeal and have requested that I proceed to determine the appeal on the basis of the submitted proposals.
9. I find that the amended scheme is materially different from the proposal before me and I have therefore afforded it limited weight in my assessment.
10. The Council has drawn my attention to a Housing Delivery Statement (HDS) prepared by Chichester District Council in response to the requirement to apply a 20% buffer to its housing land supply by 1 July 2026. I have not been provided with confirmation as to whether the HDS has been formally adopted by the Council. In any event, it would not constitute development plan policy but would be capable of being a material consideration. I consider its relevance and weight later in this decision.

Main Issues

11. The main issues are:

- whether the proposal would provide an appropriate mix of dwellings
- the effect of the proposal on bats and the integrity of The Ebernoe Common SAC and The Mens SAC, and
- whether the proposal makes adequate provision for the delivery of infrastructure and mitigation.

Reasons

Housing mix

12. The proposal consists of the delivery of 19 dwellings comprising, 8 x 2-bedroom dwellings, 8 x 3-bedroom dwellings, and 3 x 4-bedroom dwellings.
13. In percentage terms this equates to approximately, 42% 2-bedroom, 42% 3-bedroom, and 16% 4-bedroom dwellings³.
14. The Chichester Local Plan 2021-2039 adopted August 2025 (the Local Plan) does not have a prescriptive policy with regard to a specific mix of housing, rather Policy H5 of the Local Plan requires development to be of an appropriate type and size consistent with the most up to date evidence in the Housing and Economic Development Needs Assessment (HEDNA) or a parish local housing need study.
15. It is common ground between the main parties that the latest HEDNA dates from April 2022, and the recommended district wide mix of housing is, 1-bedroom 5-10%, 2-bedrooms 30-40%, 3-bedrooms 35-45%, and 4+ bedrooms 15-20%.
16. The proposal departs from the HEDNA recommendations, in that it provides a slight over-representation of two-bedroom dwellings (42% compared with the indicated upper range of 40%) and makes no provision for one-bedroom units, against a recommended range of 5–10%.
17. In quantitative terms, when assessed against the mid-point of the HEDNA ranges, the proposal would result in a shortfall of one 1-bedroom dwelling and a corresponding overprovision of one 2-bedroom dwelling.
18. I have not been provided with any data that establishes a parish local housing need.
19. The Appellant submits that the departure from the HEDNA is marginal and, in any event, more closely aligns with the household sizes in the Loxwood settlement. In support of this the Appellant has provided Census data from 2021, which has not been challenged by the Council.
20. The Appellant's evidence indicates that the housing stock within the Loxwood area is predominantly comprised of larger family dwellings, with 79.2% being 3-bedroom or more, and only 4.1% consisting of 1-bedroom dwellings. There is no substantive evidence before me to dispute these figures. However, whilst this points to a limited existing supply of smaller dwellings within the settlement, it does not, in itself, demonstrate an absence of need for such accommodation.
21. I acknowledge that Policy H5 of the Local Plan and the HEDNA allow for some flexibility in the provision of housing mix. However, such flexibility is predicated on the submission of robust and up-to-date local evidence demonstrating a clear need for an alternative mix. In this case, no compelling or sufficiently robust evidence has been provided to justify a departure from the policy.
22. The Appellant submits that the HEDNA provides a district wide recommendation and should not be applied rigidly on a site-by-site basis, and further that the HEDNA identifies that the focus of new marketing housing provision would be on 2 and 3-bedroom housing. I acknowledge that the HEDNA is prepared at a district level. However, as stated above, Policy H5 of the Local Plan allows for an alternative mix only where it is supported by robust evidence of local housing need.

³ Figures rounded to nearest whole number

23. Accordingly, the proposal would fail to deliver an appropriate mix of dwellings, contrary to Policy H5 of the Local Plan which, insofar as is relevant, requires development to provide a mix of housing consistent with the most up-to-date HEDNA, a parish housing needs study, or an alternative mix supported by robust evidence, as well as the National Planning Policy Framework (the Framework) as regards mix of housing types.

Bats and European sites.

24. The appeal site falls within the 6.5-kilometre (km) buffer of The Ebernoe Common SAC, the 12km buffer, and 6.5km buffer of The Mens SAC.
25. The Ebernoe Common SAC comprises a complex of woodland habitats supporting maternity roosts for both Barbastelle and Bechstein's bats. Maternity roosts are of particular importance as they are used by female bats during late spring and summer for birthing and rearing their young and are therefore critical to the conservation of these species. The Mens SAC is similarly a woodland site and also supports Barbastelle maternity roosts.
26. In addition to the SACs which contain their roosting sites, the bats also rely on habitats beyond the designated boundaries. Such areas are integral to sustaining the populations associated with the SACs and are commonly referred to as functionally linked habitat.
27. The appellant undertook bat activity surveys using both static monitoring and walked transect methodologies in October 2024, May 2025 and June 2025. These surveys recorded bat activity across the appeal site. The evidence indicates that the site is predominantly utilised by common bat species. However, Barbastelle bat activity was recorded along the northern, western and southern boundaries of the site⁴ albeit low levels of activity were recorded. Given the recognised status of the Barbastelle as a relatively rare species, the low level of activity recorded is not, in itself, unexpected. No evidence of Bechstein bat activity was identified.
28. The Appellant has advanced a suite of mitigation measures intended to address potential effects on the SACs. These comprise the retention of existing vegetation along the southern, northern and western boundaries; the safeguarding of the northern tree line within an area designated as public open space, together with its ongoing management to secure its long-term retention; and the removal of only a limited section of hedgerow at the site frontage.
29. In addition, the proposed lighting strategy is designed to limit illumination to the frontage of individual dwellings, with no light spill onto boundary vegetation, and the proposed scheme also incorporates a dark landscape buffer / corridor along the southern and western edges of the site. Taken together, these measures are put forward as a means of avoiding or reducing potential adverse effects on the integrity of the SAC.
30. The Council considers that it is necessary for a dark landscape buffer / corridor to be provided along the whole of the northern boundary given that Barbastelle activity had been recorded in that location.
31. The proposed layout includes for the rear gardens of plots 1, 2, 4, 5, 6, and 7 to project into the northeast corner of the site, and as such part of the northern dark

⁴ Figure 03 and Figure 04 Bat Activity Survey Report 18/07/2025

- landscape buffer / corridor would be under the private ownership of a number of properties.
32. The Appellant submits that the provision of a dark landscape buffer / corridor at this location is unnecessary, citing the presence of a substantial gap in existing tree and hedgerow cover along the northern boundary. However, I am not persuaded by this submission. Whilst I acknowledge the discontinuity in vegetation in this area, survey evidence confirms that barbastelle activity has nevertheless been recorded in this location. In the absence of a dedicated dark buffer / corridor, there remains a realistic potential for disturbance to bats.
33. I note the Appellant's reference to the UK Bat Mitigation Guidelines, which advise that mitigation and compensation measures should be proportionate to the impacts, and that any bat strategy should clearly distinguish between mitigation / compensation and enhancement. However, in this instance, I find that the requirement to retain the north-east section of the site as a dark landscape buffer or corridor would be proportionate to the identified impact, particularly having regard to the level of recorded bat activity within that part of the site.
34. I have had regard to whether a planning condition could be imposed to restrict lighting on rear elevations and within rear gardens of the affected plots. However, I find that such a restriction would be neither reasonable nor readily enforceable in the longer term. As such, any requirement to implement and maintain this form of control would fail to meet the established tests for planning conditions and cannot be relied upon to mitigate the identified harm.
35. I am aware that Natural England has not objected to the development. However, I am the competent authority for the purposes of the assessment under the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations).
36. In this instance, I am not satisfied that the proposed design and layout would adequately safeguard the ability of bats, including barbastelle, to forage and commute through the site, having particular regard to its position within the buffer zones of the SACs.
37. Accordingly, I conclude, on the basis of the evidence before me, that the development, either alone or in combination with other plans or projects, would give rise to a likely significant adverse effect on integrity of The Ebernoe Common SAC and The Mens SAC.
38. Consequently, I conclude that the proposal would have a harmful effect on bats and the integrity of The Ebernoe Common SAC and The Mens SAC, and as such would not accord with the legislative requirements of the Habitats Regulations, and would be in conflict with Policy NE6 of the Local Plan, which in so far as is relevant requires that development will only be permitted where it would not lead to an adverse effect on European protected habitat sites, and would conflict with the Framework wherein it advises that planning permission should be refused where significant biodiversity harm cannot be avoided, adequately mitigated, or, as a last resort, compensated for.

Infrastructure and mitigation

39. The Appellant has submitted a completed UU which seeks to secure a range of planning obligations. These include the provision and long-term management of

public open space, together with the delivery and maintenance of dark landscape buffers/corridors. The undertaking also makes provision for the establishment of a management company to oversee these areas and to secure the delivery of the proposed biodiversity net gains. In addition, it provides for a financial contribution towards affordable housing and the carrying out of off-site footway works.

40. In accordance with the Community Infrastructure Levy Regulations 2010 (as amended), the Framework and Planning Practice Guidance, I am satisfied that the requirements for the planning obligations would be fair, reasonable, and directly related to the development before me.
41. While I do not find housing mix and Policy H5 to be directly related to the need for a planning obligation, the Council has raised a number of other concerns regarding the drafting of the UU. I share the Council's concerns with the drafting. In addition, and while not taking my deliberations any further, I note that the UU is undated and, moreover, places a requirement on the Council in terms of how the affordable housing contribution should be spent, despite the Council not being a party to the agreement.
42. Accordingly, I find that the proposal would fail to make adequate provision for the delivery and management of infrastructure and mitigation. The proposal would therefore be contrary to Policy NE6, Policy H4, Policy P15, and Policy T2 of the Local Plan, which in so far as is relevant, requires the delivery of infrastructure and mitigation to address policy requirements and to make the development acceptable in planning terms.

Other Matters

43. It is common ground between the main parties that the Council is currently able to demonstrate a five-year housing land supply (5YHLS). However, the Appellant highlights that, from 1 July 2026, the Council will be required to apply a 20% buffer to its housing requirement and submits that, as a result, it will no longer be able to demonstrate a 5YHLS as of the 1 July 2026.
44. The Council has acknowledged the implications of the 20% buffer and has produced the HDS. However, I have not been provided with up-to-date housing supply calculations to confirm the likely position as of 1 July 2026. In any event, at the present time the Council can demonstrate the required supply. Notwithstanding, I note the policy position in the Framework to significantly boost the supply of housing, I therefore afford this consideration substantial weight.
45. I have had regard to the representations made in relation to matters including foul and surface water drainage, highway impacts, the effect on infrastructure provision, biodiversity, and design. However, as I am dismissing the appeal on other grounds, it is not necessary for me to reach findings on these matters.

Planning Balance

46. The proposal would deliver 19 market dwellings to boost the supply of housing in a suitable location, adjacent to a service village, to which I afford both significant weight. It would also give rise to economic benefits during both the construction and occupation phases, which attract moderate weight. I further recognise the contribution that small sites can make towards meeting housing requirements, as

well as the associated economic benefits, including support for small and medium-sized enterprises; this is a benefit to which I attach moderate weight.

47. The proposal would be of a suitable design in terms of both its built form and the proposed landscaping, which I afford moderate weight.
48. I have identified no concerns in respect of flooding or highway safety, and these matters carry neutral weight in the planning balance.
49. The development would not provide an appropriate housing mix. However, given the limited extent of the departure from the HEDNA recommended mix, this conflict attracts only moderate weight.
50. In the absence of an acceptable approach to planning obligations, the proposal would fail to deliver biodiversity net gain and would not secure an appropriate contribution towards affordable housing, public open space, a dark landscape buffer/corridor across the site, or footway connection improvements. Taken together, these considerations attract substantial weight in the planning balance.
51. The absence of a dark landscape buffer/corridor along the north-east boundary would result in harm to bats, including barbastelle, and would adversely affect the integrity of The Ebernoe Common SAC and The Mens SAC. These adverse effects are matters to which I attach substantial weight.
52. I have considered all matters that have been raised, but in the planning balance the benefits that would arise would not outweigh the harm caused by the proposal.

Conclusion

53. The proposal would conflict with the development plan when read as a whole, and no material considerations, including the Framework, indicate that a decision should be taken other than in accordance with it.

Barry John Lomax

INSPECTOR