

Town and Country Planning Act 1990 (as Amended) Section 174

Appeal against an Enforcement Notice issued by Winchester City Council
relating to land and premises at

Barclays, Main Road, Littleton, Winchester, SO22 6QS

Appellant's Rebuttal Statement of LPA Statement of Case
& 3rd Party comments

Date: March 2020

Our Ref: 50320

LPA Ref: 17/00271/USE

BARCLAYS, MAIN ROAD, LITTLETON, WINCHESTER, SO22 6QS
APPELLANT'S REBUTTAL
PROJECT NO. 50320

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DATE: MARCH 2020

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- A. Appellant's Highways Statement
- B. Plan showing site in relation to PfSH area

1.0 INTRODUCTION

1.1 This rebuttal statement ('the rebuttal') relates to an Enforcement Notice that was issued by Winchester City Council ('the Council') on 18th September 2018 ('the Notice'). The Notice relates to land and premises at 'Barclays', Littleton near Winchester, SO22 6QS ('the Site') shown edged red on the plan attached to the Notice. The rebuttal has been prepared on behalf of the Appellant to respond only to matters raised by the Council in their Statement of Case (dated February 2020), the Parish Council and the owner of the adjoining property.

2.0 THE COUNCIL'S WRITTEN STATEMENT OF CASE

2.1 The Council's written statement of case ('SoC') reiterates the requirement of the Notice to cease "*the use of the flats as independent dwellings*". However, the building is not used as independent dwellings. This is explained further at Section 4.0 of the Appellant's SoC.

2.2 The Council's SoC notes that the property is not the Appellant's main permanent residence or family and is currently occupied by unrelated people. This observation is entirely irrelevant to the consideration of this appeal.

2.3 The Council's SoC goes on to state "*more recently the flats were made available as holiday accommodation*". This clearly shows that the Council acknowledges the building is used as holiday accommodation rather than independent dwellings (as the Notice states). However, the use of 'more recently' rather disingenuously suggests that this has not been happening for very long, and in the absence of any clarifying timescales suggests that the holiday accommodation has only been in use for a relatively short period prior to the Council's SoC (February 2020). This is not correct. Footnote 12 of the Appellant's SoC links to the particulars on the Airbnb website which include guest feedback from May 2018 – 4 months before the Notice was issued.

2.4 It is not clear what point the Council's SoC is making regarding the plans submitted at Appendix G of the Appellant's SoC. These plans were prepared as part of the appeal in order to establish what is currently there. They were not prepared to support previous applications as the Council implies.

2.5 The Council's SoC is misleading in stating that "*at no point has the appellant allowed the Council to access the building for the planning applications*". The

appellant submitted an application for a non-material amendment¹ to the approved scheme on the advice of the Council. The Council confirmed receipt of the application in a letter to the appellant's architect dated 4/7/2018. The Council subsequently concluded that the changes were material and the application was refused in a decision dated 18/7/2018 before a site visit was arranged.

- 2.6 The Council then confirmed receipt of a householder application to regularise the changes to the existing garage² in a letter dated 7/9/2018 (validation was back-dated to 30/7/2018 when the application was received). The application form makes it clear that access can be arranged by appointment. The architect and the case officer undertook a site visit on 13/9/2018 – 1 week after the Council acknowledged receipt of the application. Due to the short notice of the visit, access to the building was not possible as the visitor accommodation was booked. Nevertheless, the architect confirms that the ground floor arrangement was observed through the ground floor windows. The architect also confirmed at the time that the first-floor accommodation was laid out as approved.
- 2.7 Marketing photographs on the Airbnb website (and submitted with this appeal) also show the internal arrangement of the accommodation.
- 2.8 The Enforcement Notice was issued 5 days later, on 18/9/2018 – 5 days after the preliminary site visit and prior to the expiry of the 21 days consultation period of the application. The Council was either satisfied with the site visit that took place on 13/9/2018 and the evidence provided, or the Council was not prepared to request access to the building to be arranged at a convenient time during officers consideration of the application.

Location

- 2.9 The Council's written statement of case ('SoC') describes the site as being within 'open countryside'. This is inaccurate and misleading.
- 2.10 There is no dispute that the site is located beyond the defined settlement boundary and is therefore in 'countryside' for planning purposes. Nevertheless, the site forms part of the existing urban grain. It would not be described as 'isolated'³ and therefore it cannot reasonably be described as 'open countryside' which implies that the site is remote from the urban area.

¹ 18/01592/NMA

² 18/01793/HOU

³ Braintree BC v SSCLG

- 2.11 The Council's SoC also states that the principle of development is 'unacceptable' because the main dwelling (Barclays) is not occupied by the appellant.
- 2.12 That the appellant does not live on site is irrelevant. It has no bearing on the reason for issuing an enforcement notice or the merits of the application under ground (a) of this appeal.

Heritage & Urban Design

- 2.13 The comments from the Council's historic environment officer and urban design officer are noted. The 'no objection' is welcomed, yet it is unclear why the Council's SoC has included a summary of the comments regarding the planning history which, if there is no objection, are not relevant and only serves to confuse and distract.
- 2.14 The Council's SoC acknowledges that there is no adverse impact on the significance of the neighbouring heritage asset. However, nowhere in the historic environment and urban design officer's comments does it state that this conclusion was reached reluctantly. This is misleading.
- 2.15 The Council's case (including the historic environment and urban design officer comments) continually alleges that the garage building is being used as independent dwellings (flats). The appellant's SoC makes it clear that this is not the case. The accommodation is being used as holiday accommodation for which there is policy support and for which there is no justification for the need to make provision for private amenity.

Highways

- 2.16 The statement prepared by the Highways Authority (HA) is noted. The appellant has instructed a highways consultant to provide a considered response. This response is attached at appendix A of this statement.
- 2.17 Notwithstanding the assessment of the technical issues set out in the appellant's highways consultant's report, it should also be noted that the HA report states⁴ that the ground (a) appeal "*seeks planning permission for the residential accommodation in the outbuilding to be used as two independent*

⁴ @ paragraph 3.1

dwelling”. This is incorrect. The ground (a) appeal seeks planning permission for alterations to the existing detached garage to provide a double garage, 2 units of holiday accommodation and associated works, including an occupancy condition to prevent permanent residential use.

2.18 This mistake is repeated in the Council’s SoC⁵.

Nutrient Neutrality

2.19 The Council’s SoC refers to standing advice issued by Natural England (NE) regarding a need for ‘new’ development to achieve nutrient neutrality (NN) in this region to minimise the effects of eutrophication on waters in the Solent.

2.20 The NE standing advice to local planning authorities was issued on 2 June 2019. It largely focusses on ‘large’ development sites (200+ dwellings) within the Partnership for South Hampshire (PFSH) area. The site subject of this appeal is not in the PFSH area and does not relate to ‘large’ housing development. A plan showing the location of the site and the extent of the PFSH area is attached at appendix B of this statement.

2.21 The visitor accommodation predates the NE guidance. It is therefore not ‘new’ development which needs to demonstrate neutrality.

2.22 Whilst the evidence base relates to the PFSH area only, the Council (a PFSH member) started applying the standing advice in July 2019 (after this enforcement appeal was submitted) and to all applications which include overnight accommodation irrespective of scale and whether they are in the PFSH area or not.

2.23 Without prejudice to the appellants case, should the Inspector conclude that the accommodation should achieve nitrate neutrality, it is respectfully requested that the appellant is given an opportunity to consider the wording of a suitable Grampian condition to secure mitigation in accordance with the Council’s position statement (appended to the Council’s SoC).

2.24 Similarly without prejudice to the appellant’s case, should the appeal under ground (a) not succeed, the triple garage can be reinstated and the 1st floor ancillary living accommodation (and associated WC facilities) approved by 16/00850/FUL should be allowed to remain under ground (f) without the need to demonstrate nitrate neutrality.

⁵ See “Considerations” of the Council’s SoC

Ground (b)

- 2.25 The Council alleges that the original building has been demolished and that the existing building is a new build. The Council supports this assertion by pointing to the Initial Notice prepared by the Appellant's Building Control Inspector which refers to part new/part existing. In granting planning permission⁶, the Council considered as existing and as proposed plans. As such the Council was comfortable with the extent of works in addition to the existing.
- 2.26 The Initial Notice does not declare that the works relate to 2 dwellings because the works do not relate to 2 independent dwellings. It is not for the Building Control Inspector to make a judgment on the use of the building. This in itself is evidence that the alleged breach of planning control has not taken place.
- 2.27 It is disingenuous of the Council to suggest that the Appellant accepts that the 1st floor accommodation is used as residential accommodation, with the inference being that it has been used as a dwelling. The 1st floor accommodation has been constructed in accordance with the approved plans as residential accommodation ancillary to the residential occupation of Barclays. It is currently in use as short stay visitor accommodation.
- 2.28 The Council asserts that the current building "*does not even resemble the approved 2016 scheme*". The Appellant strongly disagrees with this statement.
- 2.29 Both the approved scheme and the constructed scheme share the same external dimensions, siting and materials. The 2 x single garage doors have been replaced by a single 'up and over' double and the remaining single opening is glazed. These changes are not considered to be material to the overall appearance of the building. This is further evidenced by the original advice given by the Council⁷ in confirming that an application for a non-material minor amendment should be submitted.

Nullity

- 2.30 The Inspector does not need to be reminded of the relevant legislation which entitles the Inspector to correct or vary an enforcement notice if he or she so chooses.

⁶ 16/00850/FUL

⁷ Appendix C of the Appellant's SoC

- 2.31 The legislation does not change the fact that the enforcement notice contains fundamental errors. The legislation is designed to provide some flexibility, not to correct a local planning authority's mistake. If it was the intention of the legislation to correct any and all mistakes, surely there would be no provision to appeal under ground (b) in the first place.
- 2.32 Significantly, the Council has not provided any justification for these errors and offers no alternative wording under s176.

Ground (f)

- 2.33 The Council claims that an unauthorised building has been erected, and therefore considers that it is entirely reasonable to insist on its demolition. The Appellant strongly disagrees with the Council's position.
- 2.34 It is clear that the existing building is consistent with the approved building in scale, massing, character form and appearance. In the event that the appeals under ground (b) and (a) do not succeed, the Appellant would need to stop using the building for visitor accommodation and reinstate the triple garage in accordance with planning permission. Therefore, demolition is not necessary to remedy the alleged breach of planning control.

Ground (g)

- 2.35 The Appellant does not accept the Council's suggested amendment to the time given to comply with the Notice (2 months). The building is being used as commercial holiday accommodation the income from which the Appellant relies upon to help support his family.
- 2.36 The Appellant is approaching his busiest time of the year. It is not unreasonable to assume that it may well be a busier season than usual due to fears over COVID-19 (Coronavirus) and general advice regarding overseas travel.
- 2.37 In the event that the ground (b), (a) and (f) appeals do not succeed then the Appellant considers that 2 months to comply with the Notice is too short. As set out in paragraph 7.2 of the Appellant's SoC it would be reasonable for no more bookings to be taken from the date the Notice comes into effect and then existing bookings (taken prior to that date) be honoured for the next 6 months (possibly up to and including September/October 2020) from that date (allowing the Appellant to exercise reasonable 'notice' period for any longer term bookings that would no longer be possible to honour and need to be

cancelled/refunded). Thereafter the use of the building for holiday accommodation could cease. This would remedy the alleged breach of planning control.

3.0 3rd PARTY COMMENTS

3.1 Comments from Littleton & Harestock Parish Council broadly echo the Council's case. As such the case for the Appellant is not repeated in full here. In summary:

- Policy DM3 – small dwellings in the countryside – not relevant;
- Policy DM11 – agricultural workers dwelling – not relevant;
- MTRA4 – development in the countryside – supports new visitor accommodation;
- NPPF#79 – isolated dwellings in the countryside – not relevant;
- No independent dwellings are created;
- The site is not in open countryside; and
- The scale, massing, form and appearance has already been considered, found to be acceptable and planning permission granted.

3.2 The Parish Council acknowledges that the accommodation is being occupied as short stay visitor accommodation rather than independent dwellings.

3.3 The owners/occupiers of St Swithun's Cottage provide no explanation of how or why the development is harmful, nor is any evidence provided to support their concerns.

3.4 Significantly, the owners/occupiers of St Swithun's Cottage state "*the present building is undoubtedly an improvement on the original garage*".

4.0 CONCLUSIONS

4.1 Neither the Council's written statement of case nor 3rd Party comments raise any matters that would lead the Appellant to change the conclusions set out in the Appellant's written statement of case.

4.2 The Appellant has shown that:

- the development under ground (a) does not introduce two independent dwellings;

- the property is not located in open countryside;
- the development does accord with the Development Plan (policy MTRA4 – development in the countryside) and the NPPF;
- the highways objection can be overcome;
- there is no policy requirement to provide the visitor accommodation with private amenity;
- there is no policy requirement to demarcate parking spaces; and
- the development subject of this appeal predates the nitrate neutrality issue and should not therefore contribute to the decision-making process.

4.3 The Council issued the Notice based on an incorrect assumption that the building is being used as 2 no. independent dwellings. Despite the Appellant's SoC making the use of the building very clear, the Council does not appear to have taken this into account. To compound this error, the Council has provided no evidence to explain how the layout is:

- cramped
- contrived; and
- poorly designed.

5.0 CONDITIONS

5.1 The appellant does not accept the draft conditions suggested by the Council. These do not reflect the scope of the ground (a) appeal which seeks planning permission for a double garage and short stay visitor accommodation.

5.2 The following condition is used by the Council on similar forms of development in the District:

"The development hereby approved shall be for holiday/tourism lettings only and not for any permanent residential use. The holiday accommodation shall not be occupied for a period exceeding 4 weeks for any single letting, shall not be occupied for more than 5 times per year by the same occupier, and there shall be no return within 4 weeks by the same occupier. A register of all occupiers, detailing dates, names and usual addresses, shall be maintained by the owner and shall be kept up to date and available for inspection at all reasonable hours by the local planning authority".

- 5.3 The appellant has no objection to a similarly worded condition.
- 5.4 There is sufficient space for the parking of vehicles and hence a condition requiring the demarcation of parking spaces is not necessary.
- 5.5 There is no policy requirement for visitor accommodation to include private amenity and therefore a condition requiring details of the private amenity to be approved in writing is not reasonable or necessary.

APPENDIX A

Appellant's Highways Statement in response to HA comments



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Appeal by Michael Culhane Against Winchester City Council for the Issue of an Enforcement Notice for the Alleged Breach of Planning Control: Without Planning Permission, the Erection of a Detached Building Comprising of Two Flats and a Double Garage (The Building)

Barclays, Main Road, Littleton, Hampshire SO22 6QS

Planning Inspectorate Reference APP/L1765/C/18/3214144

This technical note has been commissioned by Michael Culhane in support of an Appeal against the issue of an Enforcement Notice for the above site.

Hampshire County Council as highway authority have produced a Statement of Case and have concluded that the Appeal site has severely restricted visibility when looking left on exit. They have assessed the proposals as being two independent dwellings and have provided TRICS data and have concluded that each flat is likely to generate in the region of 4 vehicle movements per day.

The current use of the premises is tourist accommodation and the traffic generated by such a use is substantially less than that of an independent dwelling. The table below demonstrates the number of days that the two units of tourist accommodation had been let during 2019.

Apartment	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Paddock Drive	3/31	20/28	12/31	22/30	22/31	21/30	22/31	21/31	23/30	20/31	8/30	7/31
Paddock View	6/31	13/28	17/31	26/30	28/31	25/30	27/31	27/31	26/30	22/31	10/30	8/31
Ave Days let / Month	5	17	15	24	25	23	25	24	25	21	9	8

The table above demonstrates that the tourist accommodation is occupied for an average of between 5 days per month in January and 25 days per month in September. Traffic generated by the units is therefore less than that of a dwelling as suggested by the highway authority.

During handover periods, Clients renting the units check in after 3:00PM and are required to vacate by 11:00AM. The traffic generated by such units during the handover periods therefore avoids the conventional AM and PM peak traffic periods.

The tourist accommodation is to be served by the existing access onto Main Road.

Main Road is a lightly trafficked residential access road with the classification C95. The road is subject to a 30 mph speed limit, and in the vicinity of the site, does not benefit from street lighting or a pedestrian footway. The road has a width of 4.8m, but there is a high brick wall on the western side on the approach to the Barclays access. White carriageway markings are present on both sides of the road, positioned 0.8m from the western boundary and 0.3m from the eastern edge. This affectively narrows the road to 3.7m. There is also a "Slow" road marking, just south of the existing access.

Given the width of the road, it is not possible for two cars to pass one another. The road is straight and there is a good degree of forward visibility. Should two vehicles approach this narrow section of road, one vehicle normally gives way to the other.

The highway authority accept that visibility to the north is in accordance with Manual for Streets, but have raised concern with regard to visibility from the site access to the south.

Since the time of the highway authority's submission, work has been undertaken to the access to improve visibility. In accordance with advice contained within Manual for Streets (MfS), visibility splays of 2.4m by 43.0m would be required. Paragraph 7.7.7 of MfS goes onto say *"A minimum of 2.0m may be considered in some very lightly trafficked and slow speed situations, but using this value will mean that the front of some vehicles will protrude slightly into the running carriageway of the major arm. The ability of drivers and cyclists to see this overhang from a reasonable distance, and to manoeuvre around it without undue difficulty should be considered."*

MfS discusses visibility splays at junctions in Section 7.7.3, however MfS 2 expands on this. In paragraph 10.5.2 it says *"The Y distance represents the distance that a driver who is about to exit from the minor arm can see to his left and right along the main alignment. For simplicity it is measured along the nearside kerb line of the main arm, although vehicles will normally be travelling a distance from the kerb line. Therefore a more accurate assessment of visibility splay is made by measuring to the nearside edge of the vehicle track. The measurement is taken from the point where this line intersects the centreline of the minor arm."*

Drawing numbered 2221-001 is attached as Appendix 1 to this technical note. It demonstrates a visibility splay of 2.0m by 43.0m, and whilst it is not possible for a car to overtake another vehicle on this stretch of Main Road, it would be possible for a car to overtake a cyclist travelling in a northerly direction. The drawing therefore demonstrate this scenario and it is evident that by taking the 43.0m Y distance to an offset of 1.0m from the road edge (0.7m from the white lining) It is possible for drivers to see and be seen by any vehicle emerging from the Barclays access.

It is therefore considered that in this instance, the advice given by MfS 2 has been followed and that no demonstrable harm would be caused by the limited number of traffic movements generated by the proposed tourist accommodation.

Main Road, Littleton is characterised by accesses with limit visibility, particularly on the western side. Hilden Way, Fairclose Drive and Rozelle Close are three such residential culs de sac that serve a fair number of dwellings between them. A review of both Hampshire Constabulary and Crashmap accident data has shown that there has been just 1 personal injury accident on Main Road in the last 6 years.

This accident involved a pedestrian walking in the carriageway being struck by a vehicle, resulting in a slight injury. There have been no personal injury accidents relating to accesses on any part of Main Road. Details of the accident are included as Appendix 2 to this technical note.

Conclusion

It is therefore concluded that the proposed tourist accommodation will not generate any significant amounts of vehicular traffic, and will not result in any demonstrable harm.

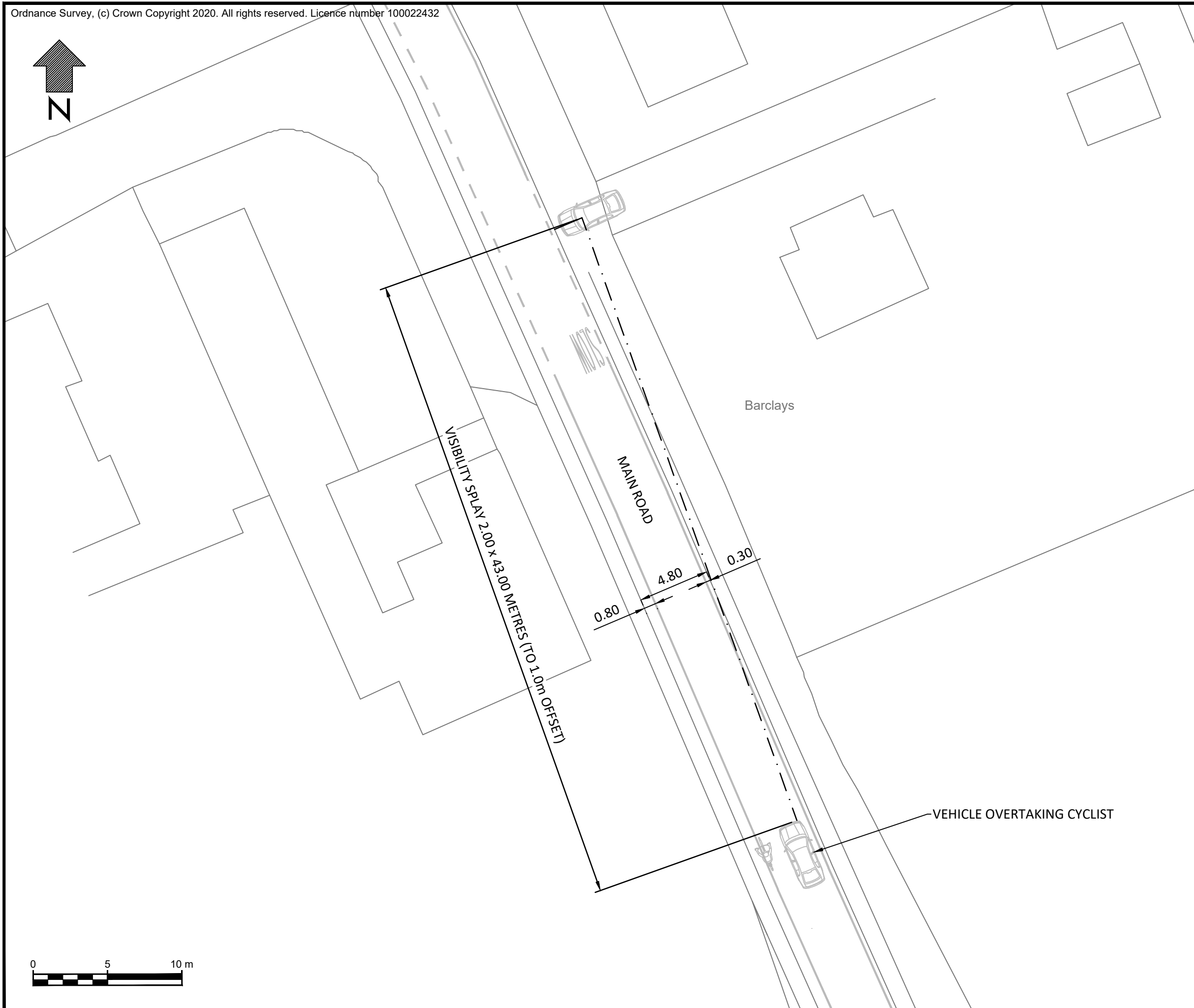
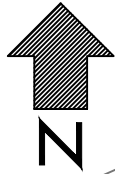
The existing access has been improved to provide a visibility splay in the southerly direction which accords with the advice contained within Manual for Streets. A condition can be applied to ensure that the visibility splay can be safeguarded in perpetuity.

A review of personal injury accidents for the last 6 years has shown that there have been no accidents involving existing accesses onto Main Road.

It is therefore respectfully requested that the Inspector upholds this appeal from a highway safety point of view.

Appendix 1

Access Drawing



Rev	Date	Description	Drm	Chk	App
-	09/03/20	ORIGINAL ISSUE	AS	NC	NC

This drawing has been specifically prepared to meet the requirements of the named client and may contain design and innovative features which differ from conventional design standards.

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Client



Nick Culhane
Highway Consultant

Project

BARCLAYS, MAIN ROAD, LITTLETON
WINCHESTER, HAMPSHIRE

Drawing Title

VISIBILITY SPLAYS

Drawing Status

FOR PLANNING

Drawn AS	Designed NC	Date MAR 2020	Scale 1:250	Size A3
Drawing No. 2221-001				Rev -

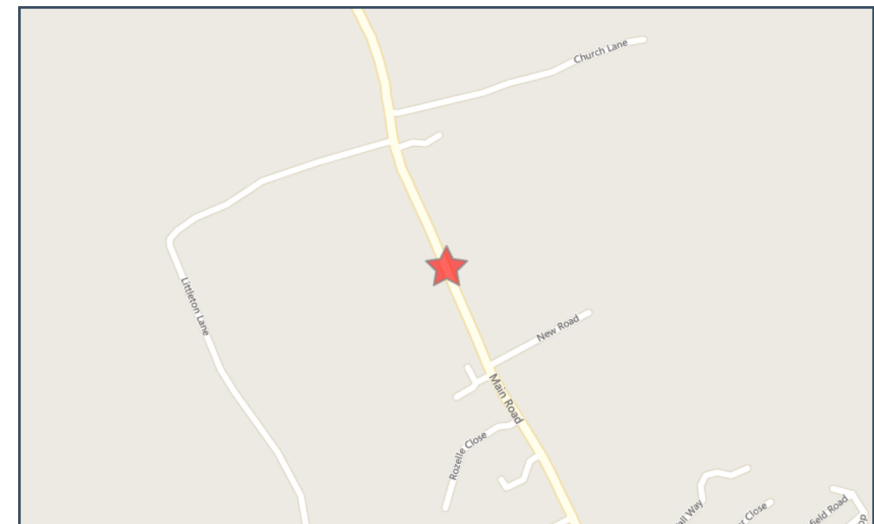
Appendix 2

Accident Data



Crash Date: Friday, May 26, 2017 **Time of Crash:** 8:30:00 AM **Crash Reference:** 2017440225506

Highest Injury Severity:	Slight	Road Number:	U0	Number of Casualties:	1
Highway Authority:	Hampshire			Number of Vehicles:	1
Local Authority:	Winchester City			OS Grid Reference:	445417 132684
Weather Description:	Fine without high winds				
Road Surface Description:	Dry				
Speed Limit:	30				
Light Conditions:	Daylight: regardless of presence of streetlights				
Carriageway Hazards:	None				
Junction Detail:	Not at or within 20 metres of junction				
Junction Pedestrian Crossing:	No physical crossing facility within 50 metres				
Road Type:	Single carriageway				
Junction Control:	Not Applicable				



For more information about the data please visit: www.crashmap.co.uk/home/Faq
To subscribe to unlimited reports using CrashMap Pro visit www.crashmap.co.uk/Home/Premium_Services



Vehicles involved

Vehicle Ref	Vehicle Type	Vehicle Age	Driver Gender	Driver Age Band	Vehicle Maneouvre	First Point of Impact	Journey Purpose	Hit Object - On Carriageway	Hit Object - Off Carriageway
1	Car (excluding private hire)	22	Unknown	Unknown	Vehicle proceeding normally along the carriageway, not on a bend	Nearside	Other	None	None

Casualties

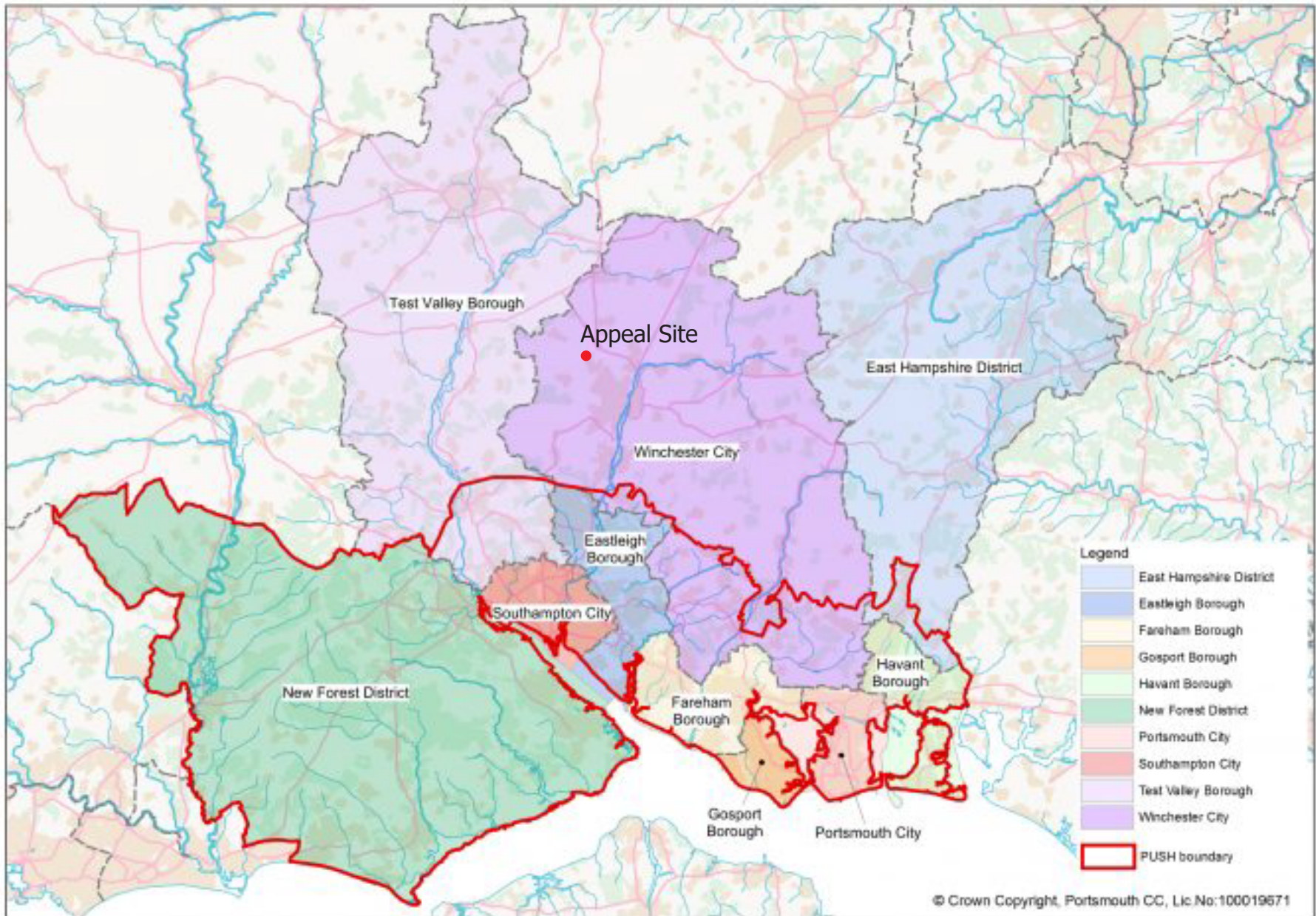
Vehicle Ref	Casualty Ref	Injury Severity	Casualty Class	Gender	Age Band	Pedestrian Location	Pedestrian Movement
1	1	Slight	Pedestrian	Male	56 - 65	Unknown or other	Walking along in carriageway - back to traffic

For more information about the data please visit: www.crashmap.co.uk/home/Faq

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APPENDIX B

Plan showing site in relation to PfSH area



source: www.push.gov.uk/partnership/