Appeal Statement

Outline: All Matters Reserved

Construction of up to 3no. Dwellings

Land at Station Road

Bursledon

Southampton

SO31 8AA

April 2015

Appeal against Eastleigh Borough Council

1041/AR

PLAINVIEW

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PLAINVIEW

1. Introduction

1.1 This appeal statement has been prepared to support a planning appeal against the decision by Eastleigh Borough Council to refuse outline planning consent (with all matters reserved) for the development of 3 dwellings in Bursledon.

1.2 There are 8 reasons for refusal listed on the decision notice. For succinctness, we have summarised these below. Each reason will form its own section within this statement:

- **Reason 1:** The site lies outside the urban edge and within the Special Policy Area (SPA) where development for such uses are limited by local policies.
- **Reason 2:** The development would not preserve or enhance the conservation area (or SPA) due to impact on local amenity and character.
- **Reason 3:** The loss of protected trees would have an unacceptable impact upon local visual amenity within the conservation area and SPA.
- **Reason 4:** Insufficient information provided to demonstrate that the proposed development would not result in an adverse or detrimental impact upon biodiversity or nature conservation interests.
- **Reason 5:** Insufficient information provided to demonstrate that the proposed development will not adversely affect flooding, and the effect of flood risk mitigation.
- **Reason 6:** Insufficient information provided to demonstrate that noise will not harm the residential amenity of future occupiers.
- **Reason 7:** Insufficient information provided to demonstrate that the land would not be adversely affected by land contamination/ground gases.
- **Reason 8:** The proposal fails to make contributions towards local services and infrastructure.

2. Reason 1

2.1 Specifically states:

> *"The application site lies outside the urban edge and within the Old Bursledon Special Policy Area where the principle of development, including new dwellings, unless for justifiable agricultural or recreational purposes, is not considered to be acceptable. As such the application is considered to be contrary to saved Policies 1.CO & 179.LB of the Eastleigh Borough Local Plan Review (2001-2011) and Policies S9 & BU7 of the Submitted Eastleigh Borough Local Plan 2011-2029, July 2014."*

2.2 In the interests of not repeating ourselves, we would direct the Inspector towards sections 4 and 5 of the Planning Statement[1] which provides a full assessment of the scheme against prevailing local planning policies, including due reference to the urban edge, and SPA. The main points are as follows:

i. The current Local Plan was adopted in May 2006 and is showing age. The relevancy of policies have to be tested against the NPPF and other contemporary and significant material considerations such as housing need.

ii. The submitted Eastleigh Borough Local Plan has since been thrown out[2] and should hold no weight. The Council have recently confirmed that "*work should commence on the preparation of a new local plan*"[3].

iii. There is a significant and now "persistent" housing shortage within the authority area (20% buffer). The latest AMR (Dec 14) confirms a 4.5 year supply[4], with a requirement of 962 dwellings per annum.

iv. The site lies outside the "urban edge". NPPF Paragraph 55 is relevant in such circumstances. We do not consider the site is isolated, and is in fact, in a highly sustainable and accessible location. We consider this to

[1] Document reference: 0850/AR
[2] Inspector's report on the examination is provided in Appendix A
[3] http://www.eastleigh.gov.uk/planning--building-control/planning-policy-implementation/local-plan/draft-local-plan/examination--public-hearing.aspx
[4] Extract of the latest AMR is provided in Appendix B.

be a significant material consideration to allow a departure from the historic local plan policy.

v. The site is located directly adjacent to Bursledon National Railway Station where the use of rail services has been increasing as the economy grows. The site has excellent access to other local public transport, facilities and services – such as schools and shops.

vi. The impact on the SPA has to be balanced against housing need, the accessible nature of the site, its actual contribution to local amenity, and the special mitigation proposed by the outline development proposal – notably landscaping.

2.3 Determination of planning applications must be made in accordance with the development plan unless material considerations indicate otherwise.

2.4 Paragraph 187 of the NPPF confirms:

> *"Local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area."*

2.5 Alongside persistent housing need, the sustainable location, and the accessibility of the site, we have presented evidence which mitigates against harm to the other elements (which broadly make up the remaining 7 refusal reasons) and which contribute towards overall sustainability.

2.6 We consider these solutions more than suitable for the purposes of a valid outline application, with all matters reserved.

2.7 Given this, and the remaining representation, we consider that the first reason for refusal can be discounted.

3. Reason 2

3.1 Specifically states:

> *"The proposed construction of three dwellings on this prominent undeveloped site would not assist in preserving or enhancing the conservation area, and would result in an adverse and unacceptable impact upon the amenity and character of this part of the Old Bursledon Conservation and Old Bursledon Special Policy Areas. The application is therefore considered to be contrary to saved Policies 59.BE, 169.LB & 179.LB of the Eastleigh Borough Local Plan Review (2001-2011) and Policies DM1, DM10 & BU7 of the Submitted Eastleigh Borough Local Plan 2011-2029, July 2014, as well as the Council's 'Quality Places', 'Old Bursledon Conservation Area Appraisal and Management Proposals' and 'Character Area Appraisals - Bursledon, Hamble-le-Rice and Hound' Supplementary Planning Documents."*

3.2 The planning application is in outline, with all matters reserved. The application seeks the principle of residential development in this location, so the relative principle harm to assets should be taken into account. There is no final layout or design of dwelling/s to consider, and there is nothing to limit the potential of design to conform to the unique circumstances of the site, taking into account all constraints.

3.3 If the Council are not happy with the final design and overall response to the site as part of reserved matters, they are under no obligation to approve an application.

3.4 In absolute recognition of the land designations, we have supplied detailed parameters and mitigation with respect to the visual impact of the scheme from public vantage points[5]. Although landscaping is still a reserved matter, the submitted detail shows conclusively that development is possible without adversely harming visual or natural amenity. As a digest of the application submission:

i. Specific development areas within the site are clearly shown, and there is an in-built limitation for "up to" 3 dwellings as a direct response to site constraints.

[5] See submitted Landscape Vision Ltd report reference LV 200LA1

ii. A full assessment of local views towards the site has been taken and extrapolated to provide robust conclusions on visual amenity and development impacts.

iii. The principles of the TPO will not be harmed by the proposed development; and the development would retain areas of woodland with greatest amenity significance and contribution.

iv. Retained woodland would be re-enforced to improve the current situation, and additional landscaping is proposed to further mitigate against the visual impact of the development.

3.5 Within the Officer's report, the Council accept that the information supplied as part of the application shows that mitigation is possible; however, the Council disagree that it could be realistically achieved. The Council provide very little analysis on their point of contention.

3.6 We strongly contest that there is no flaw in the analysis and logic of the submitted work provided by the qualified landscape architect, who was briefed to ensure a suitable response to site conditions is proposed.

3.7 Furthermore, any harm that persists from development should be balanced against the other material and public benefits of the scheme (notably location and housing need), which is a process the Council appear to have failed to complete in coming to their final conclusions.

3.8 The proposed scheme is in outline with all matters reserved. Given the evidence, assessment, and mitigation proposed, and in balancing the other public benefits of the scheme, we conclude that the second reason for refusal should be discounted.

4. Reason 3

4.1 Specifically states:

> *"The resulting loss of protected trees, which are considered to be an important and prominent landscape feature, would have an adverse and unacceptable visual impact upon the visual amenity and character of Station Road and this part of the Old Bursledon Conservation and Old Bursledon Special Policy Areas. The application is therefore considered to be contrary to saved Policies 59.BE, 169.LB & 179.LB of the Eastleigh Borough Local Plan Review (2001-2011) and Policies DM1 , DM10 & BU7 Of the Submitted Eastleigh Borough Local Plan 2011 -2029, July 2014, as well as the Council's 'Quality Places', 'Old Bursledon Conservation Area Appraisal and Management Proposals' and 'Character Area Appraisals - Bursledon, Hamble-le-Rice and Hound' Supplementary Planning Documents."*

4.2 Issues relating to the TPO, landscape and conservation area impact are dealt with in the previous section of this statement, the Planning Statement, and the Landscape and Tree Assessment provided by Landscape Vision Ltd[6].

4.3 We therefore conclude that the third reason for refusal should be discounted.

[6] Document reference LV 200LA1

5. Reason 4

5.1 Specifically states:

> *"Insufficient information has been submitted to demonstrate that the proposed development will not result in any adverse or detrimental impact upon local biodiversity or nature conservation interests on, adjacent and near to the site which are of local, national and international importance. As such the application is considered to be contrary to saved Policies 22.NC, 23.NC, 25.NC, 32.ES & 41.ES of the Eastleigh Borough Local Plan Review (2001-2011) and Policies OM? & DM9 of the Submitted Eastleigh Borough Local Plan 2011 -2029, July 2014."*

5.2 It is our client's commitment to promote a scheme that enhances the site's ecological potential. This commitment in the first instance is supported by the retention and enhancement of the woodland area as part of the necessary landscape and arboricultural proposals previously discussed. This includes:

- maintaining boundary habitats
- Incorporating mature trees
- Providing wildlife corridors across site
- Providing wildlife planting to increase species diversity

5.3 An Ecological Appraisal[7] of the site was provided by Phlorum Ltd and submitted as part of the planning application. This work included inspections for the potential of reptile species; on-site pond assessment (GCNs); tree assessments (bats); breeding birds; badgers; and Dormice.

5.4 The report concludes that the site has potential for one or more species; and further, provides recommendations (as part of Section 5) to ensure the proper safeguards are in place in line with the relevant national and European legislation.

[7] Document reference 5320

5.5 The appeal application is in outline with all matters reserved for "up to 3" dwellings. Although an indicative development area has been shown to guide development (in light of the landscape and conservation constraints); there is no design/layout/form/scale etc. of the buildings provided. Furthermore, no extra detail was requested from the Council within the first month of the application as required by Part 3, paragraph 5(2) of the DMPO (2015).

5.6 Therefore, responsive ecological mitigation can only be provided once full plans are drawn up in light of relevant ecological surveying. Plans would be expected to homogenise with, and mirror the standard expected of such a site, and incorporate at an intrinsic design level biodiversity and ecological enhancements. The Council would ultimately have absolute power to decide whether the integrated response and mitigation proposed as part of the final design is a suitable response at reserved matters.

5.7 The Phlorum report agrees with this conclusion, and states prior to making further recommendations that;

> *"Details regarding possible further survey, precautionary working practices and general site enhancement measures are provided below although some of these surveys may not be required once specific design proposals are known. Specific site enhancement and mitigation measures should be compiled once detailed development proposals are in place and following further protected species surveys."*

5.8 Given there is no detailed design proposed as part of this application, we submit that the recommendations made by the Phlorum report are suitable at this outline stage.

5.9 The applicant is happy to accept conditions to ensure the recommendations are upheld; namely further surveying in relation to the extent of bats; dormice; breeding birds and badgers; in addition to ensuring:

- Specific mitigation for any losses to broad-leaved semi-natural woodland should be devised once the nature and extent of the development proposals are known. *(Phlorum para 5.22, and ratified by the Landscape and Tree Assessment).*

- Ensuring site boundary habitats and mature trees are retained and incorporated, and creating wildlife corridors. *(Phlorum para 5.23 – 5.24, and ratified by the Landscape and Tree Assessment).*
- Consideration of the following enhancement measures once specific design proposals are known - Compensatory Planting and Bird and Bat Boxes. *(Phlorum para 5.25-5.29. and ratified by the Landscape and Tree Assessment).*

5.10 Given the information provided as part of the outline planning application, and the clear requirements of what is required to formulate a reserved matters application, we conclude that the fourth reason for refusal should be discounted.

6. Reason 5

6.1 Specifically states;

> *"Insufficient information has been submitted to demonstrate that the proposed development will not be adversely affected by flooding or lead to further flooding problems elsewhere, and that mitigations measures will not have any adverse impact upon local biodiversity or sites of nature conservation interest. As such the application is considered to be contrary to saved Policies 40.ES, 41.ES, 42.ES, 43.ES & 44.ES of the Eastleigh Borough Local Plan Review (2001 -2011) and Policies DM4 & DM6 of the Submitted Eastleigh Borough Local Plan 2011-2029, July 2014."*

6.2 A comprehensive Flood Risk Assessment[8] was provided by Phlorum Ltd. As a summary, the report recommends:

- To raise the developed areas of the site to facilitate FFLs of no lower than 4.4 mAOD – which would not increase the risk of tidal flooding in the local area.
- With the proposed alterations [set out in the report] to the un-named watercourse, there would be no increase in flood risk from surface water to the site or the surrounding area.
- The access over the watercourse would be in the form of a full span bridge so as not to limit the capacity of the watercourse.
- The properties would sign up to the EA Flood Warning Service so as to receive sufficient time to evacuate, if necessary.
- The proposed surface water drainage strategy would involve the use of permeable paving for the driveways, combined with geo-cellular storage, to provide the required maximum storage volume and an appropriate level of treatment in accordance with the SUDS Manual.

6.3 The Phlorum report states that the proposed drainage strategy **is feasible** and would ensure that surface water runoff rates for the proposed development would not

[8] Document ref: 5320.FRARep.dft

increase beyond the existing rates for the operational lifetime of the development, whilst also providing source control to prevent diffuse pollution from the proposed development being transported further downstream.

6.4 In addition therefore, there would be no harm to local biodiversity or sites of nature conservation interest – especially when taken in conjunction with the recommendations and conclusions forwarded as part of Reason 4, and the full drainage strategy which would be proposed as part of reserved matters once a detailed final design has been progressed.

6.5 The Phlorum report concludes that the development would be safe and would not increase flood risk elsewhere, in accordance with the NPPF and other relevant requirements.

6.6 We consider therefore that we have sufficiently demonstrated with recommendations that a scheme is possible without adversely affecting flooding, or lead to further flooding elsewhere, and that biodiversity or sites of nature conservation interest can be protected.

6.7 We therefore conclude that the fifth reason for refusal should be discounted.

7. Reason 6

7.1 Specifically states;

> *"Insufficient information has been submitted to demonstrate that the proposed development will not be adversely affected by noise, which could be detrimental to the residential amenity of future occupiers of the site. The application is therefore considered to be contrary to saved Policy 30.ES of the Eastleigh Borough Local Plan Review (2001-2011) and Policy DM7 of the Submitted Eastleigh Borough Local Plan 2011-2029, July 2014."*

7.2 The application is in outline with all matters reserved. In response to the application, the Environmental Health Officer states:

> *"No noise assessment has been submitted with this outline application and therefore I am unable to determine the noise impacts, of the railway line, on the internal layout and orientation of residential dwellings and the gardens."*

7.3 The application by its very nature does not contain detail of orientation, layout or internal layout. The Council did not request any further detail on this point within the first month of validation.

7.4 Notwithstanding, in making an assessment on the amenity impact, it is important to consider the sound source. Being a railway line, disturbances would be relatively infrequent, and much reduced at non-peak hours. The line is also electrified, resulting in lower engine noise.

7.5 It is common practice to incorporate sound mitigation features in the construction of new dwellings (e.g. glazing, ventilation – mechanical and passive, and screening), and houses are frequently built near roads and railway lines.

7.6 If the Inspector sees fit, the applicant would be willing to accept the following condition (or similar) to ensure residential amenity is assured in the development of a reserved matters scheme:

- Prior to commencement of development, a scheme of sound insulation measures shall be submitted to and approved in writing by the Local Planning Authority, to demonstrate that the 'good' internal unoccupied noise levels, as set out in table 5 of British Standard 8233:1999 are met. These levels are:
    - Living rooms during the day (0700-2300 hours) 30dBL Aeq (16hour)
    - Bedrooms at night (2300-0700 hours) 30dB LAeq (8hour)

  Individual noise events in bedrooms shall not exceed 45d BLA (max) measured with Fast Time Weighting.

  The sound insulation measures shall be incorporated prior to first occupation of the dwellings and shall be retained and maintained thereafter.

7.7 We therefore conclude that the sixth reason for refusal should be discounted.

8. Reason 7

8.1 Specifically states;

> *"The application site has been identified as having the potential to be affected by land contamination/ground gases and insufficient information has been submitted to demonstrate that the proposed development will not be adversely affected. The proposal is therefore considered to be contrary to saved Policy 35.ES of the Eastleigh Borough Local Plan Review (2001-2011) and Policy DM7 of the Submitted Eastleigh Borough Local Plan 2011-2029, July 2014."*

8.2 The saved Annexe A of Circular 11/95 provides adequately enforceable conditions to ensure that land contamination is addressed in the interests of public amenity:

- **56.** Development shall not begin until a scheme to deal with contamination of the site has been submitted to and approved in writing by the local planning authority.
- **57.** The above scheme shall include an investigation and assessment to identify the extent of contamination and the measures to be taken to avoid risk to the [public/buildings/environment] when the site is developed.
- **58.** Development shall not commence until the measures approved in the scheme have been implemented.

8.3 The applicant is willing to accept the above conditions. We therefore consider that the seventh reason for refusal should be discounted.

9. Reason 8

9.1 Specifically states;

> *"The proposal fails to make contributions towards the provision of community infrastructure, off-site public open space, sustainable integrated transport works or towards the Solent Disturbance Mitigation Project, the need for which will increase as a direct result of the development proposed. The proposal is therefore contrary to Supplementary Planning Document 'Planning Obligations', saved Policies 101.T, 147.0S & 191.IN of the Eastleigh Borough Local Plan Review (2001-2011), Policies DM23, DM32, DM35 & DM37 of the resubmission Eastleigh Borough Local Plan 2011-2029, and the provisions of the National Planning Policy Framework."*

9.2 The NPPG[9] confirms that contributions and tariff style planning obligations should not be sought from small scale and self-build development, as set out in the Written Ministerial Statement on small-scale developers[10].

9.3 Every new home contributes to the housing supply of a district. Central government have acknowledged the importance of small development sites and are proactively encouraging them. On 28 November 2014, Brandon Lewis made a ministerial statement noting:

> *I would like to update hon. Members on the action that the Coalition Government have taken to free up the planning system and the further new measures we are now implementing to support small-scale developers and help hard-working people get the home they want by reducing disproportionate burdens on developer contributions....for sites of 10-units or less affordable housing and tariff style contributions should not be sought....By lowering the construction cost of small-scale new build housing and home improvements, these reforms will help increase housing supply*

9.4 We therefore consider that the eighth reason for refusal should be discounted.

[9] Paragraph: 012 Reference ID: 23b-012-20150326
[10] http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm141128/wmstext/141128m0001.htm#14112842000008

10. Conclusion

10.1 As stated in Reason 1, the NPPF in paragraph 187 promotes applicants and decision makers to find solutions to challenging sites, in the interests of sustainable development.

10.2 There can be no question that if the specific constraints of the site can be overcome, that the location is highly desirable for housing in terms of accessibility and access to transport, services and facilities.

10.3 The "persistent" and evidenced housing shortage, in addition to the highly unstable local plan preparation process to date, compounds the desirability to develop such sites for housing. Given the housing shortage, the Council should perhaps approach more challenging sites with less resignation.

10.4 The appeal application is in outline, with all matters reserved. Notwithstanding, we have provided detailed evidence and analysis on each constraint of the site; and have recorded on file accepted mitigation measures which show that development is feasible without harm to amenity – with particular reference to

- Arboriculture;
- Landscape and visual impact within the Conservation Area;
- Ecology, biodiversity and nature conservation;
- Flood Risk; and
- Flood risk mitigation and ancillary impacts.

10.5 The reserved matters application will need to ensure all these recommendations are upheld, and it would be up to the Council to decide whether the final design provides a suitable holistic response.

10.6 In terms of securing solutions promoted by paragraph 187, paragraph 203 of the NPPF states that "*local planning authorities should consider whether otherwise unacceptable*

development could be made acceptable through the use of conditions or planning obligations".

10.7 Evidence has been presented which shows that development of this site is possible without material harm. We see no reason why the recommendations set out in the respective reports, which would overcome the current constraints of the site, cannot be conditioned.

10.8 We therefore respectfully ask that the appeal is allowed.

PLAINVIEW

PINS report on examination

(submitted separately)

Appendix A

PLAINVIEW

5 year housing land supply

(submitted separately)

Appendix B

PLAINVIEW
Planning. Strategy. Design.

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