

TOWN AND COUNTRY PLANNING ACT 1990 (as amended)

Appeal by Luken Beck on behalf of CCW Services Ltd

Against the decision of Eastleigh Borough Council to refuse planning permission for the proposed construction of a warehouse for storage and distribution (Class B8) together with relocation of existing parking apron and ancillary works.

at

Broadway Farm,
Broad Oak,
Botley
SO30 2EU

LPA Reference: F/22/94108

STATEMENT OF CASE

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My name is Graham Beck. I hold a BA (Hons) degree in Town and Country Planning from the University of Newcastle upon Tyne together with a Dip TP from the Royal Town Planning Institute of which I was a Member for 41 years and Committee member before retiring from the Institute. I continue to uphold the professional values of the RTPI and I remain in practice.

I have worked in Local Government for seven different Local Planning Authorities including County Councils, a New Town Authority, Urban and Rural Councils completing my local government career as Director of Planning and Development at Southampton City Council. For the last 26 years I have worked in private practice as a Consultant supporting Central and Local Government, as well as working for many private clients and blue chip companies to include residential, commercial and industrial developments.

In respect of this appeal, I was appointed by CCW Services some three years ago during which time I have visited the site several times for meetings and walked the site on many occasions, three of which were with officers of Eastleigh Borough Council.

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Appendix 1 – Documents referred to in the Appeal Statement

- Doc 1 – Refusal certificate dated 1st February 2023 LPA Ref: F/22/94108
- Doc 2 – Council's Planning Officer's undated Delegated Report
- Doc 3 – Planning Application submitted to Eastleigh Borough Council Ref: F/22/94108
- Doc 4 – Inspector's Report into the Eastleigh Local Plan (2016-2036) dated 14th March 2022
- Doc 5 – Eastleigh BC Local Plan 2016-2036 – adopted April 2022
- Doc 6 – Statement prepared by Liz Symes, Board Director of fabrik Limited (July 2023)
- Doc 7 – NPPF July 2021
- Doc 8 – Planning Statement prepared by Luken Beck dated 14th October 2022.
- Doc 9 – Council's Landscape Architect's memo to planning officer dated 17th November 2022
- Doc 10 – Council's Ecologist's memo dated 27th January 2023
- Doc 11 – Ecological Impact Assessment prepared by Lizard Landscape, September 2022.
- Doc 12 – Arboricultural Impact Assessment and Method Statement prepared by Lizard Landscaping (September 2022)
- Doc 13 – Tree Retention and Protection Plan prepared by Lizard Landscape
- Doc 14 – Surface Water Drainage Strategy prepared by Pitman Associates (October 2022)

1 Executive Summary

1.1 This appeal relates to the decision of Eastleigh Brough Council to refuse planning permission for the proposed construction of a Warehouse for storage and distribution (Class B8) together with the relocation of existing parking apron for first response vehicles and ancillary works at Broadway Farm, Broad Oak, Botley SO30 2EU. The application was refused by the Council's Planning Officer under delegated authority on the 1st February 2023 for the following reasons: ¹

1. The proposed warehouse and its associated external areas of hardstanding, together with the proposed new external parking/storage area, is a substantial expansion of the existing industrial operations onto previously undeveloped land outside the urban edge and within a designated Settlement Gap, resulting in urbanising physical and visual harm upon the gap and the landscape character of the locality. As such, the application is considered to be contrary to Policies S5, S6, DM1 and DM18 of the adopted Eastleigh Borough Local Plan 2016-2036, and the Council's Supplementary Planning Document 'Quality Spaces'.
2. Insufficient information has been provided to demonstrate that the proposed warehouse and its associated external areas of hardstanding, together with the proposed new external parking/storage area, will not result in unacceptable harm to the adjacent Ancient Woodland and designated Site of Importance for Nature Conservation through damage to existing trees and habitat or pollution of the adjacent watercourse through discharge of surface water. As such, the application is considered to be contrary to Policy DM11 of the Eastleigh Borough Local Plan 2016-2036, and the Council's Supplementary Planning Document 'Biodiversity'.

¹ Doc 1 – Refusal certificate dated 1st February 2023

- 1.2 In order to assist the Inspector and reduce the amount of unnecessary reading, it is proposed to rely on the submitted planning application and supporting technical reports, together with one non-material amendment illustrating a revised shape and design of the attenuation pond as suggested by the planning officer in his report. This approach will enable discussion to concentrate only on the areas in dispute. A new plan Ref: DR-001 Rev C, now Rev C, is attached. This will be shared with the LPA in due course and reported to the Inspector.
- 1.3 The main thrust of the Council's reasons for refusal appears to be the *"urbanising physical and visual harm upon the gap and the landscape character of the locality"* which is based upon the Officer's interpretation of planning policy, and that the proposal *"is contrary to policy and not therefore acceptable in principle."*² It is maintained by the Appellant that planning policy is permissive, particularly Gap Policy S6, and that on that basis, subject to compliance with the criteria as set out in the policy, planning permission should be granted.
- 1.4 The Council's Planning Officer prepared a Planning Report³ setting out the history, comments from third parties and Planning Policies, followed by an assessment of the application leading to a conclusion that permission should be refused.
- 1.5 This statement of case analyses the key planning policies upon which the appeal needs to be considered, drawing upon the different interpretations of policy, in the context of the application and supporting documents⁴.
- 1.6 The Development Plan comprises the Eastleigh Borough Local Plan 2006-2036, adopted April 2022. The main policies of the Local Plan in this case, and those which are to be considered most important to the determination of the application, are S1, S2, S4, S5, S6, DM1, DM11 and DM18.

² Doc 2 - Planning Officer's Report, last paragraph under the heading 'Policy and Principle'

³ Doc 2 – Ibid

⁴ Doc 3 – Planning Application and supporting documents

- 1.7 Reference is made in particular to the Planning Inspector's report (14th March 2022)⁵ when modifications were made to Policy S6 in order to make the policy compliant with national policy. On behalf of the Appellant, the changes made to Policy S6 and the interpretation of this policy are crucial to the determination of this appeal.
- 1.8 In order to assist the Inspector, this Statement comments on the Planning Officer's Report drawing out any areas of disagreement.
- 1.9 Given the location of the site within the countryside where the Gap Policy S6 applies, a further statement prepared by fabrik Limited is appended which comments upon the first reason for refusal (RfR) as well as the Council's Landscape architect's response to the application.
- 1.10 Regarding the second RfR the Council maintains there was insufficient information provided to demonstrate there would not be unacceptable harm to the Ancient Woodland⁶ and SINC through damage to trees and habitat or pollution of the adjacent watercourses through discharge of surface water.
- 1.11 In response, it is noted that an Arboricultural Impact Assessment and Method Statement together with the Tree Protection Plan⁷ and Existing Tree Schedule was submitted to support the application. Alongside, a full Ecological Impact Assessment was submitted, based upon a survey, together with a Surface Water Drainage Strategy, all of which are considered to be sufficient information to demonstrate there will be no harm resulting from the proposed development.

⁵ Doc 4 – Paragraph 193, page 47, Planning Inspector's Report into the Eastleigh Local Plan, 14th March 2022

⁶ There is an ancient woodland some 252m situated northwest of the SINC beyond Woodhouse Lane but the SINC adjacent to the appeal site does not contain any ancient woodland.

⁷ Post decision, the Council was provided with a further copy of the Tree Protection Plan as the Council say, it was not received.

- 1.12 Following further analysis of the submitted supporting technical reports the Appellant maintains there will be no demonstrable harm caused as suggested in RfR2. Nevertheless, given the Council's comments regarding the SINC, the design of the attenuation pond has been reviewed and amended and is now submitted as a non-material amendment which the Inspector is invited to consider as a non-material amendment.
- 1.13 Since the decision was made to refuse planning permission, during the Spring of 2023, much of the proposed landscape planting has now been installed as a Phase 1 scheme. It is intended to complete the remainder of the planting in the Autumn of 2023 once the plants become available from the nursery.
- 1.14 Whilst the Council's policies are clear, the appeal will rely on the Development Plan, to include the NPPF, and the interpretation, relevance and weight that might be given to the above policies. In particular, it is proposed to review how this development can achieve sustainable development in accordance with paragraph 8 of the NPPF⁸ which makes it clear that *"the planning system has three overarching objectives which are independent and need to be pursued in mutually supportive ways"* namely an economic objective, a social objective and an environment objective.
- 1.15 There remains a presumption in favour of sustainable development⁹, in accordance with paragraph 11 of the NPPF.¹⁰

2 Site Context

- 2.1 Within the Planning Officer's Report on page 4 under the sub-heading 'Site and Surroundings' the site description is agreed.

⁸ Doc 7 - NPPF July 2021

⁹ Doc 7 - NPPF para 10

¹⁰ Doc 7 - NPPF paragraph 11

3 Relevant Planning History

- 3.1 The Planning Officer's Report contains a schedule of relevant planning applications and decisions on page 1, which is agreed.

4 Planning Policy and Guidance

- 4.1 On page 4 of the Planning Officer's report the main strategic policies identified for consideration are S1, S2, S3, S5 and S6 with references to the more detailed development Management policies and Supplementary Planning Documents. It is noted that the Officer makes no further reference to S3 (Housing) such that it is assumed reference was made to it in error.
- 4.2 Section 4 of the Planning Statement accompanying the planning application also identifies Policies S1, S2, S4, S5 and S6 as being main policies against which the appeal needs to be considered, together with the more detailed DM policies and SPD. Policy S4 deals with the strategic employment provision for the Borough. If the appeal is allowed, employment opportunities will arise from the proposed development contributing to the Council's objective as set out in the policy.
- 4.3 There is much common ground between the parties in terms of strategic policy; the key differences emanate from the interpretation of Policy S6 which is considered the most crucial matter to consider in this appeal. The Appellant's case is based upon an interpretation of a permissive policy not to **undermine** the gap, whilst the basis of the Council's case appears to be a much more restrictive interpretation not to **diminish** the gap as laid out in the Council's landscape architect's advice memorandum dated 17th November 2022.
- 4.4 It is noted that the first RfR relies upon policies S5, S6, DM1 and DM18 together with SPD 'Quality Spaces' whilst the second RfR is based upon DM11 and SPD 'Biodiversity'.

5. Analysis of the Planning Officer's Report

- 5.1 The planning application, now subject to this appeal, is outlined in the application forms, in the Planning Statement and repeated in the Planning Officer's report. In summary, the application comprises a new warehouse and hardstanding together with a replacement parking area to be located at the northwest of the site – see Proposed Site Plan 2001-pl-A.
- 5.2 In the main, the Planning Officer correctly describes the application proposals but in the fourth paragraph (page 5), the report suggests that there is no information setting out the reasons why the site is most suitable to support the NHS. This is not correct; the Planning Statement sets out the case for the suitability of the site for both a warehouse and first response vehicle parking very clearly.¹¹ In any event, as the planning officer has pointed out, the warehouse and parking area must be considered on their own merits because the warehouse could be used to support alternative businesses, other than the NHS, whilst the parking area is required for the continued use of haulage vehicles and trailers as well as ambulances and first response vehicles.

First and main reason for refusal

- 5.3 It is agreed with the Local Planning Authority's case Officer that the main reason for refusal is the first¹². That relies on the proposition that the proposal amounts to a "*substantial expansion of the existing industrial operations*". However, as fabrik Limited have stated¹³, the 18m wide building represents just 2.4%, of the width of this part of the Gap between settlements.

¹¹ Doc 8 - Planning Statement – Executive Summary; paragraphs 1.4 – 1.9; 3.2; 3.4 – 3.5; 4.19; 4.28; 4.30; 5.5-5.6

¹² Doc 2, Officer's Report, Page 8

¹³ Paragraph 3.8 of their Statement

- 5.4 The reason for refusal further relies upon the fact that the proposal is located on land outside the urban edge and within a designated Settlement Gap. Though that is agreed as a matter of fact, the conclusion drawn by the Local Planning Authority [LPA] that the development will result in urbanising physical and visual harm upon the gap and the landscape character of the locality is not. Fabrik Limited have prepared very detailed documents in support of the planning application as well as a Statement designed to assist the Inspector on appeal which analyse the Council's response.
- 5.5 Policy S1 of the Local Plan is an overarching policy guiding development proposals towards the delivery of sustainable development, whilst Policy S2 promotes the delivery of a minimum of 103,500sqm (net) of new employment development of which 56,800sqm is to be E(g)(i)/(ii) development, leaving 46,700sqm for other similar uses including B8. The appeal site provides for 560sqm of new employment space.
- 5.6 Policy S5 enables new development in the countryside providing it is related to any matters stated in paragraph 1 a-g. In this case, the policy at 1a provides for *"the extension and replacement of existing employment uses"* providing the requirements of DM18 are complied with. The planning officer agrees¹⁴ that DM18 is essentially designed to guide development where extensions or replacement of non-residential buildings outside the urban edge are involved; but this policy does not fit neatly under Policy S5 in the context of 1a, the extension of existing employment uses. Nevertheless, consideration has been given to the criteria in DM18 and it is believed that criteria b to e inclusive could be relevant whilst criteria a and f-h do not apply in this instance. Perhaps of more relevance is Policy S6 which should carry more weight in the determination of applications because the policy covers similar relevant matters as to policy S5.
- 5.7 The correct interpretation and application of Policy S6 is considered fundamental to the determination of this appeal.

¹⁴ Doc 2, Officer's Report, Page 5

- 5.8 The Policy wording of S6 was altered by the Eastleigh Local Plan Inspector to make the policy compliant with the Framework and to ensure that it was permissive:

*“193. Turning to consider the policy wording, this is unduly onerous in its requirement to reference the ‘openness’ of the gap. In this respect, the policy is not consistent with national policy or justified. This is addressed through MM27. The modification is also necessary to more clearly define the settlement gaps as they appear within Eastleigh. The policy itself has been reworded to set a positive criteria-based approach to development within settlement gaps throughout the Borough. Following the main modifications consultation, **I have amended the wording at part a) as well as the reasoned justification to replace ‘diminish’ with ‘undermine’ to reinforce the positive based approach of the policy.** These gaps aim to maintain the separate identity of the individual settlements concerned, by providing physical separation and providing a setting for these settlements. With these modifications, the policy approach, which focuses on the key functions of the settlement gaps, is sound.”*
(our emphasis)

- 5.9 It is clear that the amendment of the wording of Policy S6 contributed toward the Local Plan being found to be sound.

- 5.10 The proposed changes made by the Inspector (now Policy S6) can be read on pages 34 and 35 of the Eastleigh BC Local Plan 2016-2036,¹⁵ which states:

“1. Development within a Settlement Gap as set out in the Policies Map will be permitted provided that:

*a. it would not **undermine** the physical extent and/or visual separation of settlements; and*

¹⁵ Doc 5 - Eastleigh BC Local Plan 2016-2036 – April 2022

- b. it would not have an urbanising effect detrimental to:*
- i. The character of the countryside; or*
 - ii. The separate identity of the adjoining settlements.”*
- (our emphasis)

5.11 Though not policy itself, the lower-case supporting text in the Local Plan further assists as to the intended application of Policy S6. Paragraph 4.34 acknowledges the balance between allowing for the intensification or redevelopment of existing activities within gaps whilst enhancing the function of the gap. The Local Plan Policy S6 allows the intensification of existing activities giving consideration to the details as set out in terms of siting, design, colours, materials, lighting, boundary treatment, landscape improvements to ensure the proposal meets the criteria in Policy S6:

“4.34 Any new development within a settlement gap should not physically and/or visually undermine the gap between settlements. Any new development including the intensification or redevelopment of existing activities within gaps should seek opportunities to enhance the function of the gap. Consideration will be given to how the proposed siting, design, colours, materials and any storage of materials, lighting, boundary treatment, landscape features, landscape improvements and/or appropriate long term management arrangements serves to ensure the proposed development meets the criteria in policy S6.”¹⁶

5.12 The explanatory text at paragraph 4.33 of the Local Plan reinforces the point stating that *“maintaining individual identities of the Borough’s communities is an important priority for the Borough Council”* which is achieved in this case. The two separate identities of Hedge End and Botley are retained.

5.13 It is agreed that the site is outside the urban edge and within the area designated as countryside and gap where Policies S5, S6 and DM18 apply¹⁷. The Planning Statement submitted with the application explains in full the

¹⁶ Doc 5 - Paragraph 4.34 Eastleigh BC Local Plan 2016-2036

¹⁷ Doc 5 - Policies within the Eastleigh Borough Local Plan (adopted 2022)

Planning Policy position in Section 4.¹⁸ It should be noted that a common mistake has been made at paragraph 4.23 where the word, ‘diminish’ has been used incorrectly; the word should be ‘undermine’.

5.14 In the Officer’s report the same mistake has been made. Though he initially acknowledges that the test in Policy S6 is not to “*undermine the physical extent and or visual separation of settlements; and would not have an urbanising effect detrimental to the character of the countryside; or the separate identity of the adjoining settlements*”¹⁹, he goes on to state “*it’s expansion beyond the current confines will diminish the gap and be clearly contrary to Policy S6 of the adopted Local Plan*”²⁰. This is clearly wrong given the actual text of Policy S6, as set out above.

5.15 The mistake is repeated by the Council’s Landscape architect on five occasions in the memo dated 17th November 2022²¹. On page 1, when referring to the fabrik Landscape Design and Access Statement, the landscape comments state, “*this does not provide sufficient justification for a proposal which will further diminish the Gap.*” On page 2 under the subheading ‘Executive summary’ the comment is made that “*The fact is, the proposal will see part of an open field replaced with a large warehouse, thus diminishing the Gap.*” Later on page 3, when commenting on the fabrik LVIAS, the landscape officer says, “*there is nothing presented to alter my view that in landscape terms the proposed addition of a further sizeable warehouse on an open grass field, will diminish the Gap physically and have an urbanising effect.*” On page 3 the words diminished, and diminishing are also used to either describe the Gap or make a judgement by saying, “*resisting any further diminishing of the Gap is important.*” It is not surprising therefore, that based on the Council’s erroneous landscape analysis, the planning officer has adopted a similar approach and refused the application under delegated authority.

¹⁸ Doc 8 - Planning Statement prepared by Luken Beck 14th October 2022.

¹⁹ Doc 2, Officer’s Report, Page 5

²⁰ Doc 2, Officer’s Report, Page 7, last paragraph

²¹ Doc 9 – Council’s Landscape Architect’s memo to planning officer dated 17th November 2022

5.16 It is clear that, in coming to reason for refusal one, the Council has erred in the application of Policy S6. The use of the word “*diminish*” is quite incorrect. Not only does Policy S6 not include the word ‘*diminish*’, such that reference to it is a misapplication of the policy, but, as explained by the Local Plan Inspector, it is a word which does not enable a positive approach to be taken to the interpretation of policy and planning applications whereas the word ‘*undermine*’ in Policy S6 does. The word ‘*diminish*’ is defined in the Oxford dictionary as “*make or become smaller or less (in fact or in appearance)*” leaving no opportunity for any development. To undermine, as explained by the Local Plan Inspector, allows development to take place as it, “*focuses on the key functions of the settlement gaps*”²²

5.17 Indeed, the tests to be applied are:

- i) whether or not the proposed development would undermine the physical extent and/or visual separation of settlements. In other words, what impact or otherwise is caused to the function of the gap between Hedge End to the west and Botley to the east? And
- ii) whether or not there would be an urbanising effect detrimental to the character of this part of the countryside or the separate identity of the adjoining settlements?

5.18 It is of note that the planning officer’s report agrees that “*whilst measures could potentially be undertaken to try and screen the building and hardstanding area from view, as proposed*”, he then concludes, erroneously, that “*this does not overcome the fact that the existing industrial use would expand beyond the originally defined boundaries and into previously undeveloped countryside and Settlement Gap.*” The report continues, “*As such the development is contrary to Policy S6*”²³. However, this must be viewed in the context of the Council having plainly misinterpreted policy. By incorrectly focusing on whether or not the proposals would diminish the physical extent or visual separation of the

²² Doc 4 – Paragraph 193

²³ Doc 2 – page 6

settlement as opposed to whether or not either would in principle undermine the same, the Council has in effect interpreted Policy S6 as preventing any reduction in the physical or visual separation of settlements, which is incorrect, rather than assessing the impact on the function of the gap.

- 5.19 There has been a successful haulage, warehousing and storage business on the appeal site for some 30 years. With careful consideration of how the business can continue to prosper and thrive at this location, the planning application, now at appeal, has been subject to a number of rigorous supporting reports, including a detailed Landscape Visual Impact Assessment. The extensive work was undertaken by the Consultant at fabrik Limited to address the above issues in full, concluding that whilst change will occur as a result of the proposed development, it would not undermine the gap policy. Furthermore, that there would be no detrimental urbanising effect. Attention is drawn to the conclusion of the LVIA which states

“...it is considered that the Site is readily influenced by the adjacent built form. A sensitive approach to the location, orientation and use of façade materials for the warehouse and the proposed treebelt planting to the northern and southern edges of the Site, will create a positive response to the Gap and assist to conceal both the existing and proposed developments and provide landscape and visual betterment from the baseline situation overall. Furthermore, the proposed vegetation will not alter the visual, perceptual and physical coalescence of the two settlements”.

- 5.20 Please also refer to the Statement prepared by Liz Symes, Board Director of fabrik Limited, appended to this statement²⁴.
- 5.21 Beneath the sub-heading ‘Street scene & Area Character’ the officer agrees *“The main industrial site benefits from a reasonable level of screening to the east and west by the original boundary hedges, the adjoining woodland to the north and the chalet bungalow fronting Broad Oak to the south. Whilst the*

²⁴ Doc 6 – Statement prepared by Liz Symes of fabrik Landscape architects.

warehouse buildings can be seen above the boundary hedge, the day-to-day operations of lorry movements, etc. are generally shielded from public view, meaning that the site could be seen as a large agricultural business, i.e. something that would be considered acceptable outside the urban edge."

- 5.22 In the next paragraph it is suggested the warehouse expansion to the east would necessitate the removal of "*much of the existing mature boundary hedge*" but the laurel hedge is an internal hedge to the site, not being entirely removed and not located on the boundary. The internal landscaping is proposed to be replaced together with an additional swathe of new landscaping along the eastern boundary of the site to be added thus enhancing the gap, complying with Policies S5 and DM18, as illustrated on architect drawing 2001-pl-A (Proposed Site Plan) and fabrik landscape Layout on page 9 of the Landscape and Access Statement.
- 5.23 It is agreed with the Officer that there are limited public views into the site, the full analysis being included with the fabrik landscape architects' LVIA.
- 5.24 Further comments are made by the Officer²⁵ in respect of the replacement parking area proposed in the northwest corner of the site but the LPA's analysis is at variance with the detailed analysis undertaken by fabrik in the LVIA. In our opinion, the LVIA together with proposed planting by way of mitigation, speaks for itself insofar as we contend the proposals are compliant with policies S5, S6 and DM18.
- 5.25 Once again, the basis upon which the Planning Officer appears to form a conclusion on policy seems flawed because the report says, "*Were the development to remain confined within the existing industrial site boundaries, then it may be deemed to be acceptable with appropriate mitigation. However, its expansion beyond the current confines will **diminish** the gap and be clearly contrary to Policy S6 of the adopted Local Plan.*"²⁶ (Our emphasis)

²⁵ Doc 2, Officer's Report, Page 7

²⁶ Doc 2, Officer's Report, Page 7

- 5.26 There is no reference to the detailed landscape impact assessment in the Planning Officer's report, although it is assumed on our part, that the comments made by the Council's Landscape architect carried some weight in the decision-making process. Regrettably the landscape comments were based upon an incorrect interpretation of Policy S6 basing the analysis on 'diminish' rather than 'undermine'; no mention is made by the Council's landscape architect of any assessment based on 'undermining'.
- 5.27 It is noted 1) there are no Highway objections from the highway authority and 2) the planning officer has accepted that it would be reasonable to apply a condition regarding the direction and specification of any external lighting required should the application be approved. It has been stated within the application that any external lighting would be suitably cowled to optimise ground level lighting and to avoid glare beyond the curtilage of the warehouse.
- 5.28 The comments of the Planning Officer are also noted in connection with climate change and whilst there is no suggestion the application has been refused on these grounds, it is the intention of the applicant to instal solar PV panels on the roof of the new warehouse building thus reducing the carbon footprint.
- 5.29 In summary, it is agreed that in respect of the first RfR the key policies for consideration are S5, S6 and DM18. There is agreement that the planning application complies with S5 and those parts of DM18 which are relevant. The disagreement is based on the interpretation of S6 wherein we say that the proposed development will not undermine the gap, safeguarding the separate identities of the two settlements of Hedge End and Botley. The proposal will result in appropriate mitigation and enhancements which can only be acceptable in policy terms.

Second reason for refusal

- 5.30 The Officer's report, under the heading 'Ecology, Trees & Drainage'²⁷, provides the basis for the second reason for refusal which states that there was insufficient information demonstrating that the proposals would not result in unacceptable harm to the adjacent Ancient Woodland and designated Site of Importance for Nature Conservation [SINC] through damage to existing trees and habitat or pollution of the adjacent watercourse through discharge of surface water.
- 5.31 The location and designation of the SINC is agreed; but the 'ancient woodland' does not form part of the SINC located immediately north of the appeal site. Accordingly, it is considered that the proposed development would not have any negative impact upon the 'ancient woodland'. The extract from Natural England's Magic Maps below, illustrates the location of the ancient woodland some 252m away, as the crow flies, located to the northwest of the appeal site, beyond the main road of Woodhouse Lane.

²⁷ Doc 2, Officer's Report, Page 7

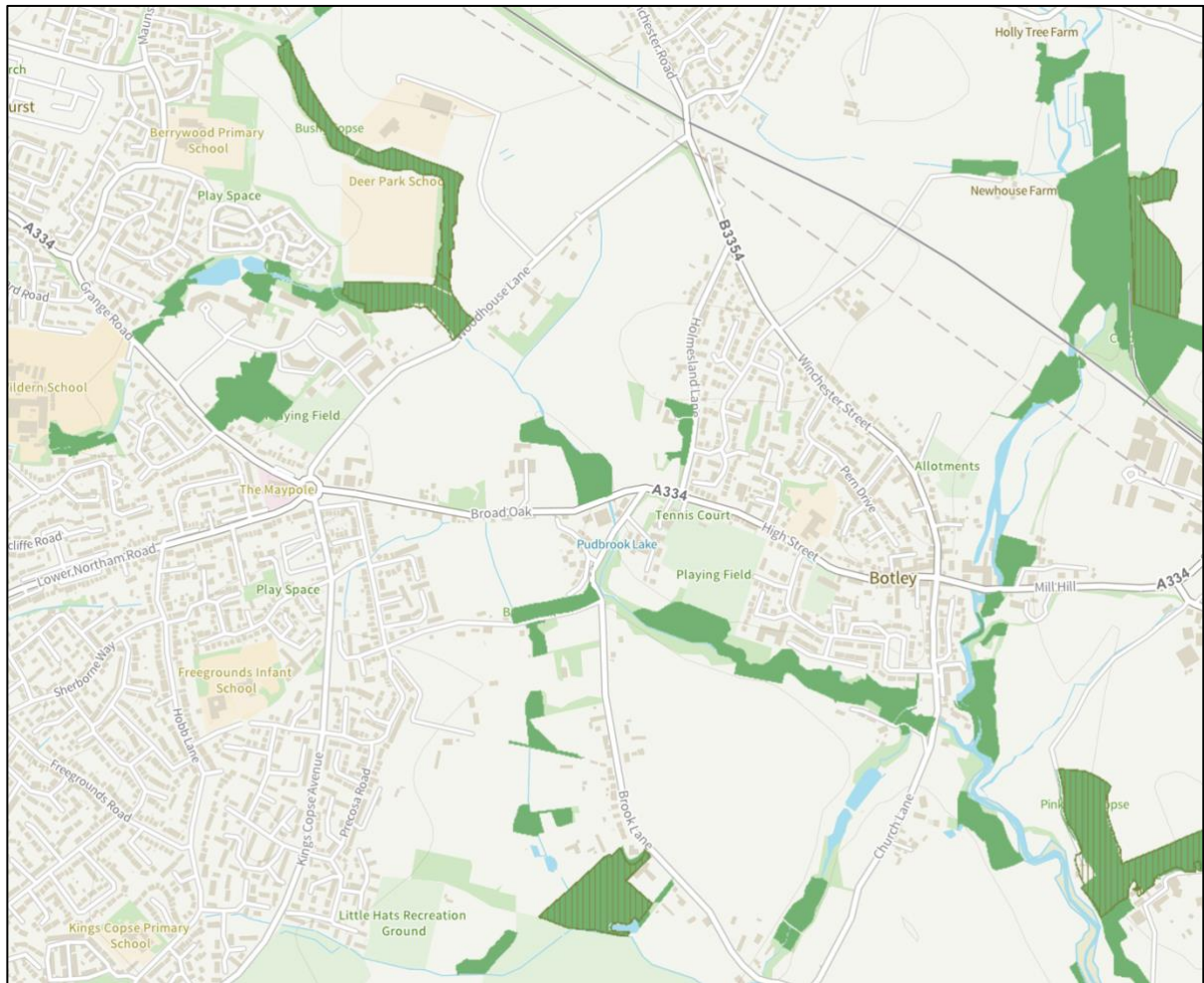


Fig 1. Extract from Natural England's Magic Maps showing the brown cross hatched area of ancient woodland located to the northwest of the appeal site, north of Woodhouse Lane.

5.32 Lizard's Ecological Impact Assessment²⁸ concludes that, "Once avoidance, mitigation and compensation measures have been taken into account, the impacts of the planned development upon diversity will be negligible and non-significant"²⁹.

²⁸ Doc 11 – Ecological Impact Assessment

²⁹ Paragraph 7.4, page 24

- 5.33 The Planning Officer refers to the proposal as being contrary to Policy DM11 on the basis of inadequate information. A full Arboricultural Impact Assessment and Method Statement³⁰ accompanied by a Tree Retention and Protection Plan³¹ plus a Surface Water Drainage Strategy³² was submitted in support of the application.
- 5.34 The general approach of DM11 (1)³³ is to “*work with statutory and voluntary agencies and developers.....to protect, conserve and enhance....a-d*” whilst DM11(4) will not permit development if it is likely to have a direct or indirect adverse effect on.....a Site of Importance for Nature Conservation (SINC) unless it can be demonstrated that a-e. At DM11(7) it states that buffers free from development will be provided to avoid / mitigate impacts.
- 5.35 The supporting paragraph 5.75 in the Local Plan³⁴ states that “*Planning applications should be supported by an adequate and proportionate assessment of their effect on the network, and by mitigation or compensation and biodiversity net gain proposals as required.*” This approach has been adopted to support this application with detailed tree and ecological surveys accompanied by suitable impact reports combined with a surface water strategy.
- 5.36 At the northeast part of the site there is a tarmac apron beneath which is some circa 50cm of hardcore rubble. There is no ecological value of this land whatsoever and it lies on the southeast perimeter of the SINC. There are two drainage channels currently designed to take any surface water off the apron into the ditch, known as Woodhouse Gulley. It should be noted that the gulley normally remains dry unless in the event of very heavy and sustained rainfall when it does drain into the tributary. The applicant, who has lived on the site for 40 years, cannot recall when the gulley last flowed with water. It is understood

³⁰ Doc 12 – Arboricultural Impact Assessment and Method Statement prepared by Lizard Landscape

³¹ Doc 13 – Tree retention and Protection Plan

³² Doc 14 – Surface Water Drainage Strategy

³³ Doc 5 – Local Plan page 74

³⁴ Page 78

the tarmac apron, used for the parking of haulage vehicles and trailers has been in situ for some seventeen years.

- 5.37 For information, an application for a Certificate of Lawful Development was submitted to Eastleigh Borough Council on the 25th April 2023 the determination of which is awaited at the time of submitting this appeal.
- 5.38 The proposal is to remove the tarmac apron and replace it with additional landscaping to include an attenuation pond which will store surface water to be released into the gully via filter drains. The pond also has the potential to increase and enhance biodiversity which can only be an improvement to the current position thus supporting the SINC. Due to the levels of the land, the pond can only be reasonably located around the edge of the SINC within the buffer; but, as the purpose of any buffer is to protect the SINC, the solution being proffered can only be an enhancement.
- 5.39 It is our opinion that the design and location of the attenuation pond in proximity to the SINC is acceptable based upon the Ecological, Arboricultural and Drainage technical reports in support of the application but, given the comments by the LPA, a revised drainage pond has been designed to demonstrate how it could be remodelled within the constraints of the red line application, the contours of the site and any buffer afforded to the SINC. The redesign affords a little more space around the pond for landscaping, pulling the eastern edge away from the SINC. Please see amended plan Ref: DR-001 Rev C.
- 5.40 It is noted that within the Council's Ecologist's memo dated the 27th January 2023 under the heading 'Ecology' it is suggested that a 20m buffer must be provided regardless of individual circumstances.³⁵ The Ecologist presumes that the pond could be 12m deep, which might have influenced the conclusion that the impact of such a pond would be unacceptable; but this is incorrect. The

³⁵ Doc 10 - Council Ecologist memo dated 27th January 2023

level of the water will be at 12m AOD (above ordnance datum). The actual depth of the pond is more likely to average 60cm across its length.

- 5.41 The Council's Ecologist continues by saying that, "*If the application is permitted, the following information will be required*", which is agreed. The Inspector can be assured that any development permitted will be carried out in accordance with the SuDs Manual and, if appropriate, could be conditioned. There is clearly no in-principle policy objection to the proposed development based on ecological grounds otherwise the Council's Ecologist would not have intimated the application be permitted.
- 5.42 The Council's Ecologist's memo dated the 27th January 2023 continues to comment upon the proposed Surface Water Drainage Strategy³⁶. It is regrettable the information was not available until the day before the expiration of the statutory determination period when the LPA felt obliged to refuse the application otherwise perhaps some constructive dialogue could have taken place.
- 5.43 Nonetheless, there appears to be some misunderstanding in the reading of the Water Strategy and / or the drawings. Regarding the proposed drainage from the attenuation pond on the northeast part of the site, in response to the Ecologist's question, it is estimated that the distance water would travel in the ditch before reaching the stream is approximately 100m.
- 5.44 Section 14 of the Drainage Strategy follows normal practice considering the SuDS features within the applicant's control, concluding at 14.5 that, "*the treatment measures are deemed to be appropriate.*"
- 5.45 It is perhaps paragraph 14.6 of the Drainage Strategy³⁷ which causes most concern because the Council question how the proposed permeable surfaces would function. In response, the replacement vehicle storage area proposed to

³⁶ Doc 14

³⁷ Doc 14, page 7

the northwest of the site is a permeable surface meaning that any rainwater will percolate through the grasscrete. The details are shown on drawing DR-001. The runoff will be the same as the existing greenfield rates and the ‘permafilter’ is designed to ensure no pollution arises.

5.46 For the sake of completeness, the AiAMS (Arboricultural Impact Assessment and Method Statement)³⁸ states the following in brief;

- Paragraph 2.3 – *“All trees within and to the outskirts of the site are to be retained and no root protection areas of any trees are likely to be impacted”*;
- Paragraph 2.4 – *“This (the low single ornamental hedgerow (prunus laurocerasus) is a low value hedgerow and is not considered to be a notable landscape feature”*;
- Paragraph 2.7 – *“All high, moderate and low value trees are to be retained”*;
- Paragraph 2.9 – *“All trees around the development area can be protected completely using barriers”*;
- Paragraph 2.10 – *“There will be no encroachment into RPA’s of any trees by means of formation of access or site compound, change of levels, construction of structures, etc”*;

5.47 The Method Statement describes exactly what precautions may be employed to protect existing trees if applicable.

5.48 On the topic of ‘Amenity’ referred to in the Officer’s report at page 8³⁹, it is agreed that if the appeal is allowed, a condition could be applied regarding the position, direction and specification of any external lighting required.

5.49 As mentioned previously, if the appeal is allowed, it is the applicant’s intention to instal photo voltaic solar panels although their absence is not included in the reason for refusal. This is agreed with the Council.

³⁸ Doc 12 – pages 6-7

³⁹ Doc 2

- 5.50 In summary, the second RfR is largely based upon an alleged '*insufficient information*' demonstrating the proposed development will not result in unacceptable harm to the adjacent ancient woodland and designated SINC through damage to the existing trees and habitat or pollution to the adjacent watercourse through discharge of surface water, contrary to policy.
- 5.51 The ancient woodland is not adjacent to the site but some 252m away located to the northwest on the northern side of Woodhouse Lane.
- 5.52 A detailed Arboricultural Impact Assessment and Method Statement together with a Tree Protection Plan has been prepared demonstrating there will be no harm to any existing trees including those in the SINC. All existing trees will be protected during construction.
- 5.53 The Ecological Impact Assessment concludes, "*Once avoidance, mitigation and compensation measures have been taken into account, the impacts of the planned development upon biodiversity will be negligible and non-significant.*"⁴⁰ which is wholly in accordance with the adopted Local Plan.
- 5.54 The Surface Water Drainage Strategy⁴¹ sets out at paragraph 2.1 on page 2 that, "*the surface water management strategy will adhere to the principles set out in DEFRA's Non-Statutory Technical Standards for Sustainable Drainage Systems.*" On page 7 of the report⁴², it clearly states that "*the treatment measures are deemed to be appropriate.*"
- 5.55 On the basis of the supporting technical reports, it is considered there will be no harm caused as expressed in the second RfR.

⁴⁰ Doc 11 – para 7.4 page 24

⁴¹ Doc 14

⁴² Doc 14, para 14.5

6 Other considerations

- 6.1 There has been a successful business operating from the Broadway Farm site for over 30 years during which time the commercial buildings have evolved to meet new standards and to provide investment for the future. This appeal to include a new warehouse and replacement parking area is critical to the ongoing business. The site is somewhat unique in terms of its elevated security levels over the 24-hour period making it extremely attractive to clients with high value products. This, combined with the location within a short distance of the motorway network and the docks in Southampton ensure the warehousing remains in high demand. The warehouses themselves are temperature controlled, once again making the facility most beneficial to clients with particular requirements to store products at various temperatures.
- 6.2 In order to achieve sustainable development, the NPPF (July 2021) makes it evident that the planning system has three overarching objectives namely, economic, social and environmental.⁴³ These objectives are not criteria against which decisions can or should be judged but planning policies and decisions should play an active role in guiding development towards sustainable solutions.⁴⁴
- 6.3 The various adopted Local Plan policies identified by the Planning Officer⁴⁵ and in the Planning Statement⁴⁶ should be considered in order to achieve a balance as per the NPPF of environmental, economic and social objectives.
- 6.4 Cognizance has been given to the Council's SPD 'Quality Places' but this document provides much of the detail for creating sustainable development and good design. As the introduction to the document states, "*This document is designed to provide guidance on the Council's expectations for the design of*

⁴³ Doc 7 - NPPF, para 8

⁴⁴ Doc 7 - Ibid, para 9

⁴⁵ Doc 2 – Planning Officer's report

⁴⁶ Doc 7, pages 18 and 19

new development in the Borough.” The application, now subject to this appeal, not only has a Design and Access Statement provided but includes a Landscape D&A Statement besides the other technical reports. It is noted that whilst reference is made to this document within the second RfR, there is no criticism within the Officer’s report of the actual design of the proposed warehouse building or indeed the details of the proposed landscape per se.

- 6.5 In this case the jobs created and retained will contribute to the local and regional economy whilst the wider supply chain will benefit from related jobs aligning with the Council’s ambitions to create 103,500sqm of new employment space during the Plan period.⁴⁷ The additional Council rates amounting to circa £20,000 pa will contribute to the Council’s ability to invest in the local community each and every year. Socially, the employment opportunities available to the local community will assist mental and physical wellbeing whilst the salaries will improve local spending in the locality and beyond.
- 6.6 Environmentally, the application is compliant with the Development Plan despite the reasons for refusal contained in the Council’s decision notice. There is no demonstrable harm resulting from this proposed development. To the contrary, job opportunities will be created whilst the development itself has been sensitively designed within the landscape setting. With the additional landscaping and enhanced ecology, the SINC will be supported whilst the countryside and Gap will be enhanced in this location.
- 6.7 The Inspector is respectfully invited to allow the appeal.

GB July 2023

⁴⁷ Doc 5 - Policy S2, Eastleigh Local Plan 2022 (page 25)