

Statement of Case

Appeal by Written Representation
Against Refusal of Planning Approval
By Eastleigh Borough Council
Application ref: F/22/93835

On behalf of:

The Appellant
Country Homes Ltd

In respect of:

Moorlands Farm
Botley Road
West End
SO30 3HD

Date: 10th November 2023

Reference: 12084-Appeal-R001

1.0 Introduction

1.1 This Statement provides the case on behalf of the appellant, Country Homes Ltd ('Country Homes').

1.2 It addresses the appeal against the refusal of planning permission by Eastleigh Council ('EBC') on 2nd October 2023, under ref F/22/93835 for the:

Demolition of all existing buildings and detailed planning approval for light industrial floorspace [Use Class E(g)(ii) & E(g)(iii)], warehouse floorspace [Use Class B8] and estate office (Use Class E(g)(i)).

1.3 This Statement:

- describes the appeal site, its setting, designations, and its planning history (Section 2);
- describes the appeal scheme and its evolution in discussion with EBC officers and statutory consultees which resulted in all matters being agreed and the application being put forward with a recommendation for approval that was considered by the Council's Hedge End, West End and Botley Local Area Committee on 25th September 2023 (Section 3);
- sets out the appeal case against the Council's three reasons for refusal (Sections 4 to 6);
- addresses other matters (Section 7); and
- provides a brief conclusion (Section 8).

1.3 The full list of submission documents and plans is summarised in the accompanying **List of Appeal Documents**. These are referenced throughout this Statement. The documents and plans that are in [blue](#) text are those that comprise the details for approval and that make up the summary list provided at **Appendix 91**.

2.0 The Appeal Site

The Site

- 2.1 The appeal site is indicated on the Location Plan at **Appendix 3**. It totals 1.71ha.
- 2.2 The existing site plans are provided at **Appendices 4 to 8**, with site photographs at **Appendix 22** and within the Landscape Visual Impact Assessment (**Appendix 33**).
- 2.3 A description of the site is provided in the Planning & Economic Statement (**Appendix 24**), Design and Access Statement (**Appendix 75**) and the Planning Officer's Committee Report (**Appendix 93**)
- 2.4 In summary, the site is a former farmstead, located at the urban edge of Hedge End. It comprises an access road off Botley Road, a two-storey residential house, a separate, fully independent flat attached to one side of the house, a series of outbuildings, a substantial area of hardstanding and open space.
- 2.5 It is understood that before the appellants purchased the site, a number of the outbuildings were rented out informally to different businesses. These included a fire log business, mechanics and welding fabricator.

Ownership and Condition of the Site

- 2.6 The appellants purchased the site in 2020 from the charity Hearing Dogs for Deaf People who had been bequeathed it by the previous owner.
- 2.7 The charity inherited the site in a very run-down and depilated condition. They secured a number of planning approvals for the building of a new dog training facility on the site. The most recent renewal of the planning permission for the facility only expired in April 2022.
- 2.8 Ultimately the dog training facility was not needed and the site was marketed

for sale.

- 2.9 The marketing brochure (**Appendix 105**) included photographs of part of the site and stressed that the accommodation would need 'refurbishment'. During the three additional years that have lapsed since the appellants bought the site and have sought planning approval for its redevelopment, the site has no doubt deteriorated further. This is as a result of it not being in active use, but principally because it has become the focus for trespassers. Police and fire services have had to attend the site on a number of occasions, which the appellants have informed EBC about. They have also discussed with EBC what security measures (1) can be put in place quickly under permitted development rights and (2) would require prior approval / permission. An on-site caretaker has also put in place – adding to the number of measures that have been taken and also to the associated costs associated with this; all whilst the appellants continued with positive discussions with EBC officers about their proposals.

Wider Land Title

- 2.10 The land title for the appeal site includes adjoining land (indicated by the blue line at **Appendix 3**). This comprises open land and the adjoining Moorgreen Meadows, which is a designated SSSI and that is accessed from the main built site via a bridge over Moorgreen Stream (River Itchen).
- 2.11 The extent of the SSSI is shown in the Preliminary Ecological Assessment (**Appendix 80, page 24**) and Natural England's 'Moorgreen Meadows SSSI Whole Feature Assessment', July 2023 (**Appendix 106, page 5**). The appellants have been engaging proactively and positively with Natural England on the condition and management of the site since they bought it. Further details of this are provided later.

Wider Setting Outside of the Land Title

- 2.12 The site is on the built edge of Hedge End that is characterised by existing employment and retail uses.

- 2.13 **To the west** of the site's access road and to the west and north of the main part of the site is a Public Right of Way (PROW) (Footpath 10). The DAS (**Appendix 75, page 8**) shows the route of the footpath and photographs along it, next to the site. Additional photographs are provided by the LVIA at **Appendix 33**.
- 2.14 Part of the Footpath is separated from the site's access road by dense planting. Other parts are separated from the site by mixed fences and screen planting.
- 2.15 To the west of the Footpath is the M27 motorway embankment and carriageway. Part of the embankment has been planted with saplings that will screen the Footpath from the motorway and that will add further screening to the site access road and main built area.
- 2.16 On the opposite side of the M27, is a mixed area comprising a new residential development, Moorgreen Hospital (north side of Botley Road) and the Ageas Bowl Cricket Ground, with its linked leisure facilities (south side of Botley Road). From here, Botley Road continues west towards West End's wider residential, community and commercial service areas.
- 2.17 The Ageas Bowl Grounds are the subject of proposals that include major residential, employment and leisure-based facilities. EBC's planning reference and agreed description of the proposals, that are still pending a decision at this time, are as follows.

F/22/93194. Full planning application for the erection of 186 dwellings, a 71-bedroom care home (Use Class C2), a 142-bedroom hotel (Use Class C1), a well-being centre (Use Class E / F2), improvements to existing stadium, new vehicular access, car parking, pedestrian circulation, together with associated tree planting, landscaping, SuDS and biodiversity enhancements

- 2.18 EBC owns the Ageas Bowl land and stadium and the Ageas Hilton Hotel and Spa which it leases to Hampshire Sport & Leisure Holdings Ltd (*ref. Eastleigh Borough Council Audit Planning Report. Year Ended 31 March 2022, July 2022*). The Council accordingly has a direct interest in the new proposals and

the new local employment opportunities that are being promoted.

- 2.19 **To the north** of the appeal site, crossed by the continuation of Footpath 10, is open land.
- 2.20 **To the east** of the main area of the application site is Moorgreen Stream and the SSSI. Moorgreen Meadow continues east to Tollbar Bar and the Berrywood Business Village that has been built on a former farmstead and comprises low rise buildings that are appropriate in that location, close to its more residential setting. An allocation for the extension of the Business Village is included in the Local Plan (Policy WE3) (**Appendix 95, page 208-209**) .
- 2.21 **To the east of the site's access road** and **south** of the main built area of the site is Wellington Park that comprises large, modern employment buildings that also back onto but are screened from Botley Road.
- 2.22 Further east into Hedge End, beyond Wellington Park via Botley Road, are further retail and employment parks that ultimately lead into more residential areas.
- 2.23 Glimpsed views of the appeal site are possible from the M27 carriageway (**Appendix 23**). Glimpsed views of Wellington Park are possible from the site access road and the Botley Road crossing over the M27 (**Appendix 22**). The principal views of the site are close up from Footpath 10 (please see the LVIA at **Appendix 33**).

Access

- 2.24 The accessibility of the site is summarised and mapped in the DAS (**Appendix 75, page 19**).
- 2.25 It is well connected by road via Botley Road that connects West End to the west and Hedge End to the east.

- 2.26 Bus services connect along Botley Road. A designated cycle path is demarcated on the main road / footpath, with signposting for it at the junction into the site.
- 2.27 Pedestrian routes to Hedge End train station are also signposted close to the site entrance, with footpaths providing excellent links across the area and to the numerous housing, employment and leisure destinations nearby. As already outlined, PROW Footpath 10, which is also signposted at the site's main access on Botley Road, runs to the west and north of the site.

Designations

- 2.28 Following the adoption of the new Eastleigh Local Plan in 2022 and as summarised in EBC's committee report (**Appendix 93**), the site is subject to the following designations:
- Countryside (Local Plan Policy, S5)
 - Solent Mitigation & Disturbance Zone
 - TPO trees along the eastern boundary of the site (94-E)
 - Flood Zone (east of application site)
 - Moorgreen Meadows SSSI (east of application site)
 - Urban edge & Existing Employment Sites (south-east).
- 2.29 Under the previous Local Plan, the site was included within a designated Strategic Gap. That designation has been carried forward into the current Local Plan (Policy S6, Local Plan – **Appendix 95**, page 34), but with amendments that (amongst other changes) exclude the appeal site and the Moorgreen Meadows SSSI.
- 2.30 The purposes of the Strategic Gap designation are to ensure new development (a) would not undermine the physical extent and/or visual separation of settlements; and (b) would not have an urbanising effect detrimental to: (i) The character of the countryside; or (ii) The separate identity of the adjoining settlements.

2.31 The appeal site was removed from the designation, following a review of the designation boundaries that was requested to be undertaken by the Local Plan Inspector. A copy of the review document is at **Appendix 101**. The appeal site falls within **Area C** of the Assessment (pages 46 – 59) and is part of the **C6 sub-area (Moorgreen Meadows SSSI)**. The Assessment in this regard recognises the existence of the farmstead but focuses on the extent and significance of the open land here, with an assessment line drawn across the area, north of the farm complex.

2.32 At its page 53 the Assessment states:

‘C6 – Moorgreen Meadows SSSI (Site of Special Scientific Interest) comprises a mix of woodland and meadow supporting a range of protected flora and fauna. The presence of *mature woodland blocks provides a strong physical and visual separation* between the settlement edges of West End to the south, Moorgreen Road to the west and the retail uses to the south.’

2.33 At its page 57 the Assessment states:

‘The area of woodland surrounding Hedge End does not contribute to the open nature of the Gap and *whilst its important in visually and perceptually separating Hedge End from West Endit is protected in its own right from development by a SSSI designation* and can be removed from the Gap without any harm to its functions.’

2.34 Moorlands Farm was accordingly removed from the Strategic Gap designation. EBC’s Local Area Committee that considered the appeal scheme made reference to this in their discussions; with the site’s removal from the designation being reconfirmed to them.

2.35 The consideration of redevelopment proposals for the site must therefore have regard to its continued countryside designation and related policies, potential impact on the SSSI and other material considerations. The Strategic Gap Assessment’s description and summing up of the character of this area

however does still provide a useful understanding of the character of the site. The SSSI and adjoining open land are considered to contribute to the sense of physical separation between Hedge End and West End but the assessment is again based on a line taken north of the farm complex (page 52 of the Assessment), with its existing buildings in fact interrupting the physical separation and openness of the area, and the area also generally being recognised to be heavily screened.

- 2.36 The Council's *Landscape Character Assessment* also informed the production of the new Local Plan (**Appendix 102**). The site falls within *Area 11, the M27 Corridor* which is appraised as being dominated by the motorway and a pressure for new development. The appeal scheme has been appraised and designed with regard to this. The site is a long established farmstead within the corridor. It long pre-dates the motorway, requires redevelopment and has the potential to make a significant positive contribution to the improvement of the site and its immediate landscape and countryside setting.

Moorgreen Meadows SSSI

- 2.37 Natural England (NE) is responsible for the designation and continued oversight of SSSIs and for providing support for their ongoing protection and maintenance.
- 2.38 NE provides advice on its Central Government website for owners of SSSIs (last updated at the time of this submission, 31st August 2023). They state:
- Their objective ‘...is to achieve ‘favourable condition’ status for all SSSIs. Favourable condition means that the SSSI’s habitats and features are in a healthy state and are being conserved by appropriate management.’
 - They must be notified within 28 days of a change of ownership or occupation of SSSI land.
 - They will survey and undertake condition surveys of SSSIs and provide

advice and support on their management in order to achieve 'favourable condition.'

- 2.39 The appellants have been engaging with NE since they purchased the site and this has been reported to EBC on a number of occasions. This includes within the Planning and Economic Statement (**Appendix 24, page 5, para 3.9**) and through a number of updates during the progress of the application.
- 2.40 EBC expressed an interest in purchasing the SSSI from the appellants whilst discussions about the application were on-going. Ms Rachel Hardy led on this for the Council and outlined that the LPA's interest was to establish its own biodiversity project here. Discussions continued over some months, with EBC ultimately setting out its expectation that the SSSI land title would be transferred to the Council, together with a large financial contribution. This was rejected on the basis that EBC no longer to purchase the land and instead wanted it gifted along with a significant sum.
- 2.41 The SSSI land is not part of the application site, it is not needed for any mitigation linked with the proposed development and the development would not impact on the SSSI; save for the significant biodiversity enhancement that would be provided within the site and that would complement the appellant's plans to bring the SSSI back onto favourable condition under the guidance of NE.
- 2.42 The SSSI land has accordingly remained with the appellants and they have continued to liaise with NE on a plan to bring it back to a favourable condition.
- 2.43 NE was able to undertake a new *Whole Feature Assessment* of the SSSI in July 2023 (**Appendix 106**). This was unconnected to their statutory responses to the appeal scheme, but nonetheless was carried out in full knowledge of the proposals for the appeal site.
- 2.44 On page 4 for the *Whole Feature Assessment*, a section deals specifically with the Northern Marsh Orchid and states:

'Northern marsh orchid Dactylorhiza purpurella, (and hybrids) Feature is no longer relevant. Northern marsh orchid has been absent since 1999 (BSBI database). There is no realistic prospect of natural re-colonisation. Unfavourable – No change'

2.45 The Assessment also sets out in its 'Summary of Visit':

'The features of special interest comprise: '[A] Lowland mire grassland and rush pasture. Lowland neutral grassland (MG5). Wet woodland Population of declining plant species and species at the edge of their range - Dactylorhiza purpurella, Northern marsh orchid (and hybrids).'

'Historically managed with cattle, [the] condition of the grassland is declining due to a lack of management, with the absence of grazing and scrub control allowing more sensitive habitat to degrade. This is combined with longstanding changes to the hydrology. Despite losing the Northern Marsh Orchid, the range of habitats and characteristic species persist, and recovery is possible...'

2.46 The assessment therefore acknowledges that some parts of the protected habitats within the SSSI were destroyed some significant time ago as a result of the diversion of the stream during construction of M27. The loss of the Northern Marsh Orchid is connected to the changes in the hydrology of the area and also occurred a very long time before the appellants bought the site.

2.47 The lack of management and degradation of the SSSI has accordingly been inherited by the appellants who are again proactively engaged with NE. The *Whole Feature Assessment* now provides the basis for the agreed steps to bring the site back to a favourable condition. These steps are being followed. Farm equipment that is required for some of the on-going remediation and management steps has been purchased. The appellants are also currently seeking agreement from NE (Mr David Le Grice) on the use of grazing stock to form part of the management plan.

Planning History

- 2.48 The planning history of the site is set out in the Planning and Economic Statement (**Appendix 24, page 8-9**). It provides a slightly extended list to that given in EBC's Committee Report (**Appendix 93, para 15-18**) – reflecting the change in the administration of the area during the course of this recent history.
- 2.49 Taking into account the appeal scheme, the updated list of records comprises:

Z/29431/000/00 - Land To The North Of The B3035 And East Of The M27, Adjacent To Moorlands Farm Hedge End ,

- Valid date: **18/03/1987**
- Outline: Erection of Leisure Centre Including Tennis Hall and Bowls Hall with Outdoor Courts and Associated Parking
- Type of Application: Full planning
- Decision: **Granted – the records for this are not available**
- Decision Date: 14/08/1987

Z/17321/005/00 - Moorlands Farm, Botley Road West End,

- Valid date: **08/04/1987**
- Retention of Dwelling Without Complying With Agricultural Occupancy Condition
- Type of Application: Full planning
- Decision: **Withdrawn** By Applicant, *it is understood that an occupancy condition does not apply to the property*
- Decision Date: 16/11/1992

F/12/71729 - Land at Moorlands Farm, Botley Road, West End, Southampton SO30 3HD

- Valid date: **16/11/2012**
- Construction of dog training hall with associated dog exercise area, parking and landscaping following demolition of existing barn
- Type of Application: Full planning
- Decision: **Permit**
- Decision Date: 13/02/2013

F/15/77341 - Land at Moorlands Farm, Botley Road, West End, Southampton SO30 3HD

- Valid date: **30/09/2015**
- Renewal of planning permission F/12/71729 for the construction of dog training hall with associated exercise area, parking and landscaping following demolition of existing barn.
- Type of Application: Full planning
- Decision: **Permit**
- Decision Date: 21/12/2015

F/18/84683 Moorlands Farm, Botley Road, West End, SO30 3HD

- Construction of a dog training hall with associated exercise area, parking and landscaping following demolition of existing barn
- Decision: **Permit**
- Decision Date: 5/04/2019 – **now expired**.
- Conditions, include
 1. The development hereby permitted shall be implemented in accordance with the following plans numbered: Loc 01, 01 Rev B, 02 Rev A, 03, H16 07 S1

O/21/91192 Moorlands Farm, Botley Road, West End, SO30 3HD

- Demolition of all existing outbuildings and outline planning approval with details of access to be approved and all other matters reserved for redevelopment to provide light industrial floorspace [Use Class E(g)(ii) & E(g)(iii)] and warehouse floorspace [Use Class B8], conversion of existing farmhouse to provide ancillary office space [Use Class B8] and provision of an estate office [Use Class E(g)(i)]
- Decision: ***Withdrawn***

F/22/93835 Moorlands Farm, Botley Road, West End, SO30 3HD

- Demolition of all existing buildings and detailed planning approval for light industrial floorspace [Use Class E(g)(ii) & E(g)(iii)], warehouse floorspace [Use Class B8] and estate office (Use Class E(g)(i).
- Decision: **Refused – The appeal scheme.**

2.50 The Planning and Economic Statement provides a copy of the site plans, officer's report and approval notice for the most recent planning permission for the Dog Training facility. (**Appendix 24 page 40**). The plans extended outside of the existing built part of the site. The series of approvals were considered against the previous Local Plan, its previous Strategic Gap and now retained countryside designations, the need for the facility and the availability of the site to accommodate the training centre that was most appropriately located away from housing. The approvals also took into account the proposed introduction of dogs being exercised and trained outside, adjacent to the SSSI – an area designated for its botanical interest but which also provides a biodiverse, natural habitat for a range of fauna as well as flora.

3.0 The Appeal Scheme

Scheme Evolution

- 3.1 The evolution of the proposals for the site are summarised in the accompanying DAS Rev F (**Appendix 75, pages 4 and 5**).
- 3.2 The proposals were originally submitted as an outline application under ref O/21/91192). A proposed building parameter plan included the retention of the farm house and a series of employment buildings extending across the existing built area of the site and into adjoining open land, set back from the M27

embankment. This took into consideration the footprint of the approved dog-training centre that was still extant at that time.

- 3.3 The application was withdrawn following constructive discussions with EBC officers who advised that the built area should be reduced and focused more around the existing built area of the farm complex; with the application also to be submitted in detailed form to provide certainty over the arrangement and management of the site.
- 3.4 A number of arrangements were considered for the site as part of a further feasibility study, taking into account the feedback provided in response to the outline proposals. A detailed scheme was submitted on 13th September 2022. The Proposed Plans and Documents that made up the original submission are at **Appendices 1-39**. The Proposed layout is also at **Appendix 75 page 4** of the DAS, that shows the evolution of the plans.
- 3.5 The detailed scheme is for the removal of all existing buildings, including the farmhouse, to provide x3 light industrial units, a management office and an open storage yard, all set around or back from a new central courtyard, with open land to its north and south and a separation from Moorgreen Stream and the SSSI to its east.
- 3.6 The main access is off Botley Road. The junction will be rearranged with improvement works along the length of the main service road leading to the main built area of the site. Towards the northern end of the road is an existing row of conifers that contribute to the screening of the site from Footpath 10 and the M27. At the southern end of the line of conifers, the existing service road will become a one-way route leading into the main part of the site. A new exit only single carriageway will be provided on the inner (east side) of the conifers. This will retain the established screening and safely filter traffic through the site.
- 3.7 From the entrance to the main built area of the site, the new buildings are arranged around a central courtyard with two industrial units (A and C) located on the north side of the courtyard and a further industrial building (Unit B) and the management office (Unit D) located on its south side.

- 3.8 The service road will continue as a one-way route through the courtyard towards the eastern end of the site where it will loop back into the site around a new SUDS pond and a central line of parking bays. From here it will continue to the exit only carriageway that will run along the east side of the line of conifers and where it will provide an entrance to a small open storage area that will be located next to Unit B. The exit only carriageway will continue south and filter into the main two-way service road for traffic to exit onto Botley Road.
- 3.9 The buildings have been designed to a very high standard, with: a mix of green planting and photovoltaic panels on their roofs; rain gardens forming part of the SUDs scheme that also includes swales, a new pond and permeable surfaces; and a mix of high-quality materials to break up the visual extent of the elevations of the new buildings and to reflect the former farm use and the countryside setting of the site.
- 3.10 Extensive new planting will be provided across the site, including within the central courtyard, alongside a raft of additional biodiversity enhancements for a breadth of species. The extent of the greening of the site is not appreciated if the general site plans only are considered. The principal layout that presents the visual affect of the changes within the site is the Landscape Mitigation and Enhancement Plan (**Appendix 73**) Detailed matters, including lighting are proposed to be conditioned, with sensitive, habitat appropriate lighting to be positioned along the service road and within the main built area.

Scheme Evolution

- 3.11 Statutory responses to the proposals are at **Appendix 103**. These are in chronological order as they were provided and they span each of the consultations undertaken by EBC to consider the original submission pack and the subsequent amendments to it. The Officers report (**Appendix 93**) summarises the consultee responses by respondent / planning matter and includes a small number of responses that we do not have on file.
- 3.12 In response to the matters raised and following detailed discussions with EBC officers, an amended scheme and updated planning documents were formally

submitted for re-consultation on 15th December 2022 (**Appendices 40-60**) (**DAS, Appendix 75, page 4** – updated layout). The accompanying cover letter and Summary of Responses explain the reasons for the changes and how they address the matters raised (**Appendix 40 and 41**).

- 3.13 At the request of EBC's Ecologist, the site plans were amended again to ensure all principal built parts of the site are set back by at least 15m from the SSSI's boundary, as it wraps around the eastern and south-eastern areas of the site – with a distance of 20m to be respected as far as possible. This resulted in the repositioning of: (1) the eastern end of the service road next to the SUDS pond, (2) the management office (Unit C) further into the site; and (3) a number of parking spaces. This new arrangement, with the minimum distancing lines shown, are provided by the plans at **Appendix 62 and 63**).
- 3.14 A further set of updated plans and documents was submitted on 12th May 2023 (**Appendix 61 to 85**).
- 3.15 Two further sets of supplementary information were provided in June (**Appendix 86**) and July 2023 (**Appendix 87-90**) that provided additional drainage details and highways plans in a form that are appropriate for compliance purposes and for referencing within planning conditions.
- 3.16 This final consultation confirmed full agreement with all statutory consultees and EBC's officers in order to enable it to be put forward with a recommendation for approval.
- 3.17 The list of documents and plans at **Appendix 91** was provided to help agree the draft list of proposed conditions with the case officer.
- 3.18 The appellants also agreed to make financial contributions towards off-site highways improvements and public art, in accordance with policy.
- 3.19 Whilst all matters were agreed with officers by July 2023, the application was not taken to the Council's Local Area Committee until 25th September 2023, due to the limited number and frequency of meetings that are scheduled for

that Committee. The time available was therefore used to draft the detailed s106 document, such that it is already in a very detailed form, with only a small number of drafting matters to be agreed. The current draft is at **Appendix 92**.

- 3.20 Whilst all statutory consultees confirmed agreement with the proposals, a small number of private individuals maintained objections to the scheme throughout the Council's consultation stages, these being on ecological grounds and impact on the adjoining SSSI (**Appendix 104**). We responded to these directly to EBC, including as part of our re-submission packs as the application progressed.
- 3.21 Before the Local Area Committee meeting on 25th September, we asked the planning case officer to provide details for a site visit by the Committee members. It was confirmed that a site visit was not going to be undertaken. Whilst unusual we took this as a positive sign given the positive engagement with officers and the detailed drafting of the officer's report.

Council Decision

- 3.22 The officer's report (**Appendix 93**) provides a clear summary of the background to and evolution of the application scheme and of the consultation responses that were received at each stage that the proposals were (re) consulted on.
- 3.23 The report lists the relevant policy documents. We have provided EBC's documents these at **Appendices 95-102**).
- 3.24 The officer's report goes on to summarise her consideration of each of the substantive matters, before concluding with her recommendation to approve the scheme, subject to the proposed list of conditions and the s106 agreement.
- 3.25 The Local Area Committee meeting was held on 25th September 2023. One objector spoke against the scheme, The appellant attended the meeting but elected not to speak given that all matters had been fully and robustly addressed in the Committee report. A speaker for the scheme would serve no purposes only to take up Committee time by repeating elements of the officer's

report.

- 3.26 After a discussion, which only a small number of the Committee members contributed to, the Members unanimously refused the application on three grounds. That is, against their officer's advice and the guidance of their expert advisors and statutory consultees.
- 3.27 The refusal notice was issued on 2nd October 2023 (**Appendix 94**).
- 3.28 The recording of the Committee Meeting was made public on 19th October 2023. In light of the discussion and references made by a number of Committee members, which informed their decision to refuse the scheme, the intention is to submit a claim for costs on the grounds that they acted unreasonably.
- 3.29 A claim for costs will be submitted separately.
- 3.30 We will now deal with each of the three reasons for refusal in turn.

4.0 Appeal Case – Reason 1 – Urbanising Impact on the Countryside

- 4.1 EBC's Reason 1 for refusal of the application states:

*The proposed construction of 4no. industrial units would result in an **unacceptable urbanising impact** which would be **detrimentally harmful to the countryside**, thus the proposals would be contrary to **Policies S5, DM1 and DM18** of the Eastleigh Borough Local Plan (2016-2036), and the provisions of the National Planning Policy Framework (2023).*

Policies

- 4.2 A full copy of the Local Plan is at **Appendix 95**.
- 4.3 The three Local Plan policies referenced in this reason for refusal are provided below with a brief summary of how the appeal scheme complies with each of the individual requirements of the policies. This complements the summary of responses and the recommendation provided by the planning officer's Committee Report (**Appendix 93**):

Strategic policy S5, New development in the countryside	
1. Planning permission will be granted for new development in the countryside provided it is related to:	
	Response
a. the provision of employment through agricultural development (policy DM17), the extension and replacement of existing employment uses (policy DM18) and the re-use of existing buildings (policy DM19);	The former use of the site as a farmstead was employment based with a residential house and flat. A number of independent businesses are also understood to have rented accommodation on the site in the past. The existing buildings (save for the house) are in a very poor condition. The site is between the M27 and a major employment site. The now lapsed planning approvals for the dog training centre was acceptable in this location on amenity grounds – with that use best located away from residential areas. The appeal scheme provides an acceptable alternative use for which there is an assessed need and a demonstrable requirement (Policy DM18 and Appendix 35 – 38).

b. residential extensions and replacement buildings (policies DM18 and 26), limited residential conversions (policy DM19), rural workers' dwellings (policy DM27) and accommodation for Gypsies, Travellers and Travelling Showpeople (policy DM31);	Not applicable. The existing farmhouse and flat are proposed to be replaced in order to provide additional employment space, for which there is identified need and requirements. The Council's evidence on provision for Travellers and Travelling Showpeople for the Local Plan, concluded that only a small number of additional pitches are required. A proposal for larger sites that have not already been provided or allocated must be accompanied by a need assessment. We have no evidence that a need for additional facilities exist. This is in contrast to the need and requirements that have been demonstrated for the proposed employment uses (Appendix 35-38)
c. community, tourist, or visitor uses through the re-use of buildings including facilities for the interpretation of heritage assets (policies DM12);	Not applicable. It is considered that EBC will not support these uses in this location next to the M27 on amenity grounds.
d. outdoor recreation and open space (policies DM32 and DM33); e. allotments and community farms (policy DM32); f. cemeteries (policy DM37); and g. essential public utilities (policy DM9).	Not applicable The site is already developed, with employment focused uses being long established here. It carries an existing use value and opportunity to provide new facilities. It can accordingly help to reduce the need for greenfield sites to have to be developed elsewhere to meet the Borough's requirements.
2. In permitting new development in the countryside the Borough Council will seek to:	
a. avoid adverse impacts on the rural, woodland, riparian or coastal character, the intrinsic	This has been demonstrated by the suite of documents and plans provided with the application, including the Landscape Visual Impact Assessment (LVIA) (Appendix

character of the landscape including the avoidance of adverse landscape impacts on areas adjoining national parks and their settings, the significance of heritage assets and on the biodiversity of the area;	33) , LVIA Addendum (Appendix 82), Archaeological Desk Top Assessment (Appendix 79), Preliminary Ecological Assessment (Appendix 80) BNG Matrix Calculations (Appendix 81) and BREEAM Pre-Assessment (Appendix 39).
b. secure long-term beneficial management practices that will enhance the landscape and biodiversity of the countryside and coast;	These are set out in the proposed site plans, the Landscape Mitigation and Enhancement Plan (Appendix 73), Preliminary Ecological Assessment (Appendix 80) and proposed planning conditions (Officer's Report, Appendix 93).
c. avoid sterilisation of mineral resources, in accordance with the Hampshire Minerals and Waste Plan;	Not Applicable
d. safeguard the best and most versatile agricultural land unless the benefit of the development clearly outweighs the loss; and	Not Applicable The site is already developed. The open land on the site was classified Grade 4 in the Council's Local Plan SHLAA of the site (Appendix 24, Annex 2).
e. protect soils during construction wherever possible in line with the 'Defra code of practice for the sustainable use of soils on construction sites'.	The site is already developed. Proposed planning conditions 4, 5 & 6 deal robustly with (1) the protection and (2) any required remediation of soils.
[Note: DM (development management) policies are in Chapter 5.]	

Policy DM1, General criteria for new development	
1. All new development should (as relevant):	
a. not have an unacceptable impact on, and where possible should enhance: i. residential amenities of both new and existing residents; the character and appearance of urban areas, the countryside and the coast; ii. biodiversity (avoiding significant adverse impacts); and iii. the significance of heritage assets	Response
	The site is already developed and in a very poor condition, which has been inherited from previous owners. It has been targeted by trespassers and arsonists. The development scheme is of a very high quality. It's layout and design reflects the input of EBC's specialist advisors including strategic policy, urban design, landscape, drainage and tree officers. It was recommended for approval following their positive support.
	The development will provide a BNG equating to +36% for both Habitat and hedgerow biodiversity (Appendix 81).
	A Desk-Based Assessment has been provided (Appendix 79). No responses on archaeology have been received.
b. make efficient use of the site, maximise opportunities to increase density and have regard to potential development opportunities on adjoining land; c. take full and proper account of the context of the site including the character, appearance and land uses of the locality or neighbourhood, and be compatible with adjoining uses	The earlier iterations of the site plans demonstrated capacity for significantly more built development within the site (DAS, Appendix 75, pages 4 & 5). The proposed plans were reduced and drawn back to principally within the existing built area of the site at the request of EBC's officers and specialist advisors, The proposed plans, including the arrangement of the buildings, their height and roof and elevational treatments have all been agreed with EBC officers taking into account the existing built status of the site, its location on the built edge of Hedge End, its setting, site levels and screening

and be well integrated with these in terms of mass, scale, materials, layout, density, design and siting, both in itself and in relation to adjoining buildings, spaces and views. Where adjoining development is poor in urban design terms, new development should contribute to improving the character of the area;	between the M27 and Wellington Park (DAS assessment of the site. Appendix 75) (LVIA provided Appendix 33 7 82). The site plans accordingly provide a positive balance between maximising the efficient use of this already built site and respecting its character and countryside location.
d. not involve the loss of or damage to trees, woodlands, hedgerows, ponds, priority habitats or other landscape features of value to the character of the area, for appearance or biodiversity unless they can be replaced with features of equivalent or enhanced value, (recognising that some species and habitats may be irreplaceable);	The proposed site plans, ecology, drainage and landscaping plans demonstrate that all of these matters have been fully and positively addressed. This is again demonstrated by the BREEAM Pre-Assessment ecology and landscaping credits that contribute to showing that the scheme will very comfortably meet the BREEAM Excellent standard (Appendix 39) and also by the BNG Matrix Calculations that show a very positive enhancement for habitat and hedgerows (Appendix 81). All matters have been agreed with EBC's ecology officer and Natural England.
e. include a landscape scheme covering the design and layout of external space;	The application scheme includes a Landscape Mitigation and Enhancement Plan (Appendix 73) and a Boundary Treatments Plan (Appendix 74) which form part of the comprehensive design responses and that are reflective of the site's countryside designation. All matters have been agreed with EBC's Landscape and Tree officers.
f. protect and enhance public rights of way and National Trails and provide fully connected green infrastructure that interlaces the	Adjoining PROW, Footpath 10 will not be affected by the proposals. Boundary treatments along the footpath will be replaced / repaired as appropriate in accordance with the Boundary Treatments Plan

development and connects into the wider network;	(Appendix 74). The Highway Agency and Ramblers Association requested that a number of details be clarified. (Committee Report, Appendix 93 para 33 and 22). Proposed conditions 8 & 9 deal with the provision of further details of works, boundary treatments and maintenance details along the footpath / M27 boundary. All matters have been satisfactorily addressed.
g. provide satisfactory management arrangements for all landscape, green infrastructure and biodiversity enhancement;	The Landscape Mitigation and Enhancement Plan (Appendix 73) and Preliminary Ecological Assessment (Appendix 80) set out the basis for the management of the site in this regard. Proposed Conditions 9 to 13 in the Committee Report) deal further with landscape and ecological matters (Appendix 93). All matters have been satisfactorily addressed.
h. incorporate provision for people with disabilities and create accessible communities that cater for all;	Parking is provided next to each of the buildings which will be fully accessible from ground level. The buildings will all provide flexible accommodation with general facilities also at ground level. They will be fitted out by tenants in compliance with building regulation and associated accessibility standards.
i. incorporate design measures to inhibit criminal and anti-social behaviour;	The site has been targeted by trespassers and arsonists. Gates are currently provided along the main access road. The intention is not to have gates into the main built area but the individual buildings will be fully secured and gates will be provided to the open storage yard. Security lighting will be provided, designed and positioned to protect nocturnal species and to ensure no light-spill towards the M27 and SSSI. Proposed condition 17 deals with this (Committee Report, Appendix 93).

j. incorporate provision for on-site waste management; and	Bin stores are provided next to each of the industrial buildings (Appendix 62). The management office will generate very limited waste with waste storage inside the building to be taken off-site.
k. include provision for public art associated with new large-scale development in accordance with the Council's adopted Public Art Strategy.	The appellant has agreed to make a financial contribution towards the Council's Public Art Strategy. This is included in the draft s106 legal agreement (Appendix 92).

Policy DM18, Extension and replacement of non- residential buildings in the countryside	
1. The extension or replacement of non-residential buildings in the countryside will be permitted, subject to the general development criteria and transport policies of this Local Plan and provided that:	
a. the existing building is in lawful use and is not subject to a temporary permission;	Response The proposal is for replacement buildings on a long-established site.
b. the extension or replacement building is for a non-residential use;	The replacement buildings are for light industrial use, a site management office and a small storage yard. EBC's Economic Development and Strategic Planning Officers have welcomed the proposals (Appendix 93).
c. the extension or replacement building would not have an urbanising effect on the countryside in terms of its density, scale, massing, layout and height;	This is the basis of EBC's refusal of the development and is responded to in detail below.

d. access, car parking, landscaping and services can be provided without having a detrimental impact on the character of the countryside;	All highways, parking, landscaping and servicing matters are dealt with fully within the proposed layout and highway works plans (Appendix 62, 63, 71, 72, 73, 74, 83-85 and 87-90). The service road will remain screened from viewpoints outside of the site and the main built area of the site will also remain screened from all views apart from limited locations close to the site. The buildings have been designed to a very high standard with a mix of materials that reflect the site's established farmstead use and its countryside setting. Highways, Landscape, Urban Design and Strategic Planning officers have all supported approving the scheme.
e. so far as possible the property is sustainably located in terms of accessibility by means of transport other than the private car;	The site is on the edge of Hedge End urban area, adjacent to established employment / retail developments. The proposal is for employment uses that will require employees to travel to the site. Provision is made for service vehicles that deliver goods to / from the site. The development will provide EV charging points for all vehicular types. Botley Road also provides access via a variety of means including on foot, bicycle and bus (Appendix 75, page 19). The Planning and Economic Statement (Appendix 24) provides an assessment of the site against the sustainable site criteria that was used to informed site allocation options for the

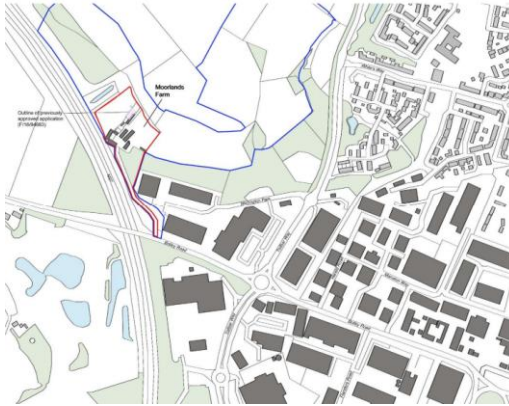
	new Local Plan. The assessment demonstrates that the appeal site compares very favourably with the local sites that have been allocated.
f. the extended building or its replacement would be located within the existing curtilage unless its relocation or extension would contribute to improving the character and quality of the local area;	The units have been arranged to replicate a farm courtyard. The arrangement of the site and proposed provision of flexible accommodation that can be let as individual units or sub-divided, reflects the modern space arrangements that are appropriate for the light industrial sector. The development is contained within the existing built farmstead as far as possible taking into account building depth requirements for the type of flexible space proposed and the vehicle parking, tracking and other on-site service requirements. The built footprint does extend marginally into adjoining open land but this is not dissimilar to what the Council has already accepted for the previously approved dog training centre. The arrangement again ensures the efficient but still attractive arrangement of the site that will provide a significant enhancement to the site and its contribution to its countryside setting.
g. in the case of a replacement building, the proposal also includes the demolition of the building to be replaced; and	The farm house and adjoining flat are proposed to be demolished and replaced by the Unit B light industrial building.
h. the development would not by itself or cumulatively with other recently permitted schemes undermine the Council's strategy for the	The Planning and Economic Statement (Appendix 24), Agents Report and Tenants Letters (Appendix 35 to 38) confirm that the appeal scheme will make a positive contribution

development of employment related floorspace (see strategic policy S4).	towards employment provision in Eastleigh, without undermining the prospect of existing and new sites to be retained / developed. EBC's Strategic Policy and Economic Development Officers have welcomed the proposals (Appendix 93).
2. Where the proposal also involves a change of use of the building , criteria (a), (b) and (c) of policy DM19 will apply. Notwithstanding this, where the proposal is for the development of town centre uses as defined in the National Planning Policy Framework (NPPF), criterion (b) of policy DM19 will apply.	
	This is not applicable.

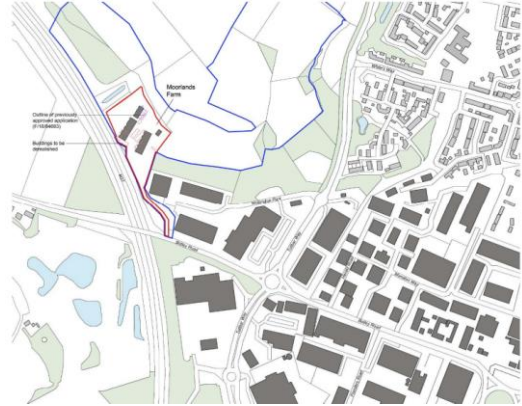
Response

- 4.5 We deal with a number of comments made by Committee Members in relation to the redevelopment proposals in Section 7 (Other Matters).
- 4.6 In response to the actual wording to the first reason for refusal, it refers to x4 light industrial units having been proposed. This is incorrect. The proposal is for x4 employment units, 1 being a small management office.
- 4.7 The reason for refusal also does not relate to the principle of the redevelopment of the site or to the proposed uses. It relates only to the proposed scale of the development and to the matters set out specifically in Policy DM18c and DM18d with regard to the extent of any negative urbanising impact on the countryside.
- 4.8 The submitted plans and assessment provide a comprehensive assessment of the proposed scheme, taking into account its countryside setting on the urban edge of Hedge End and its wider setting and context.
- 4.9 The following plans are especially useful in demonstrating the small scale of

the proposed development in its wider setting, together with the extent of soft landscaping that will be provided, linked with very significant biodiversity enhancements.



Appendix 75, Page 10 (existing footprint)



Appendix 75, Page 10 (proposed footprint)



Appendix 70 - Site Sections



Appendix 73 – Site Layout with Landscaping

4.10 Following EBC's planning officers and other specialist advisors worked positively with the appellant on the detailed proposals for the site, taking into account the full suite of plans and documents that have been provided and updated as the detailed plans developed.

4.11 The balancing of the relevant considerations in this case can be summarised as follows.

- 4.12 The built footprint within the site will be larger than the existing footprint and the new buildings and hardstanding will extend further into the adjoining open land. This can be seen on the Proposed Site Layout Plan which includes the outline of the existing buildings in red (**Appendix 62**).
- 4.13 This proposed plans reflect the configuration of modern, flexible light industrial units, with their related service areas and follow the principle of new footprint extending into the open area to accommodate a new use that was accepted by EBC in respect of the dog training centre.
- 4.14 The proposed buildings however will still be centred around an inner courtyard and the footprint of the small management office is further kept to a minimum by configuring that accommodation over two floors. The service road and areas are also centred within and around the built courtyard, to form a very efficient site arrangement, with the built area contained within a still tight area, set low relative to Botley Road and behind established dense screening.
- 4.15 The design of the buildings uses a mix of materials, fenestration arrangements, roof lines and treatments, elevational insets and planting that reduce the overall visual effect and massing of the buildings and that will provide a very attractive and high-quality scheme that will be modern but still of a distinctly rural character (**Appendix 74, Page 4, inset, and Page 14**).
- 4.16 Unit B is positioned over the plot of the existing 2 storey house. The other new buildings will clearly be taller than the existing single storey outbuildings. They however again follow the design requirements for modern light industrial buildings and they will again be centred in a still very contained area, extending only marginally outside of the existing built area of the site. The buildings will again be set low relative to Botley Road and will be screened from the main external viewpoints(which we return to below). Changes in levels within the site mean the buildings will also sit at different levels, which will also reduce the visual effect of their bulk and massing when seen from the limited viewpoints that are available into the site (**Appendix 75, page 15**).
- 4.17 One side of the roofs of the three light industrial buildings will be planted green

roofs that will provide a first stage of filtration for SUDS drainage within the site and that will also provide additional green screening across the site. The other side of the roofs will have photovoltaic panels providing solar energy to the new buildings (**Appendix 75, page 16**). The sustainability provisions of the scheme will contribute to it comfortably securing a BREEAM Excellent rating (**Appendix 39**).

- 4.18 The main service road will be improved with some widening and the provision of a new exit only lane. These will also be set behind screening, with the one-way system enabling the line of existing conifers to be retained. The internal tracking of vehicles and arrangement of parking spaces will also be very efficient and includes the use of permeable surfaces.
- 4.19 The SUDS strategy includes swales, new rain gardens and a drainage pond that will be linked to the adjoining open land and stream by habitat migration channels.
- 4.20 The proposals will include very significant replacement and additional planting (Plan at **Appendix 73 and below**). This includes new planting around the outer, open parts of the site and within the central courtyard. The proposals will further screen the site and contribute towards the significant BNG enhancements within the site (+36% for both habitat and hedgerow calculations).
- 4.21 The LVIA (**Appendix 33 & 82**) appraised that there are only limited views towards the site. The proposals will lead to a change in the site but over a relatively small plot of land which is not prominent and that is closely associated with Wellington Park and the urban edge of Hedge End. The assessed magnitude of the change over the wider landscape character is **potentially low** over the long term with a **slight** degree of effect on the M27 Corridor Character Area of EBC's Landscape Assessment (**Appendix 102**). The proposed site arrangement, the quality of the new buildings and the soft planting plans have taken into full consideration the need to protect the countryside setting of the site, as well as the opportunity to address its very degraded condition and to provide very significant and positive landscape and biodiversity enhancements.

- 4.22 The scheme will provide new employment space with linked local employment opportunities that meet with the Council's up to date Local Plan objectives (**Policy DM18**) and for which there is an identified need and requirement (**Appendix 35 to 38**).
- 4.23 Overall, whilst the new buildings will take up some additional open land, they will have only a small impact on the openness of the area. Being located on the edge of the urban area they will relate well with adjoining uses and in this respect will not raise any amenity issues. The proposals will provide new required employment space and will deliver significant biodiversity enhancements within the site without impacting on the adjoining SSSI (a matter which is dealt with under in the next section).
- 4.24 In conclusion, the development's significant benefits will outweigh any harm that will arise from it infringing on a small additional area of open land and from its inclusion of a small number of taller buildings, within a small already built site that has been assessed by EBC as not contributing to the visual openness of the countryside between West End and Hedge End.
- 4.25 The plans and assessments that have been provided and recommended for approval by EBCs officers, together with the additional information that EBC officers were content could be dealt with by condition, provide the necessary certainty over the arrangement, quality and on-going maintenance of the development.
- 4.26 It should also be noted that the members of the Local Area Committee who determined the application:
- Had not carried out a site visit;
 - Made unreasonable comments that the Borough has a high level of employment and as such does not need a development of this type – a statement that is contrary to the Local Plan (Policy DM18 that supports new employment provision), ignored the evidence that there is a local need and requirement of the

space proposed (**Appendix 35 to 38**), and ignored the recommendation of their planning, Strategic Policy and Economic Development officers who have welcomed the proposed employment uses.

- In making the comments about employment space not being required, reference was then made to any employment benefit needing to be put aside as it would be outweighed by the resulting harm of the scheme to the countryside and to ecology. These comments were again made without the benefit of a site visit and without reference to the LVIA and the ecological and other environmental reports that have been provided.
- The above comments were made by the Leader of the Council (Cllr House) who is the Council's Cabinet Lead on Planning and Economic Development and who we understand is the Councillor appointee to the nearby Ageas Bowl site, which is the subject of proposals for significant (but different) new employment-based facilities. The Councillor thereby failed to have due regard to the Council's Local Plan (Policy DM18) and to his officers advice and made unreasonable comments about high local employment when the Ageas Bowl application is highlighting the local employment benefits of that scheme.
- uninformed and unacceptable comments were also made by a Committee member that approving the scheme would set a precedent for other landowners to allow their sites in the countryside to deteriorate and to then be promoted for larger redevelopment schemes. The insinuation was that the appellants had allowed the site to deteriorate. They inherited it as a largely derelict site and it has unfortunately become the target for trespassers and vandalism. The appellants have sought to secure the site during the extended period they have been in discussion with EBC about the future of the site. This period of uncertainty has been extended further by Members refusing a scheme that their advisors had worked positively on

and were happy to recommend for approval.

- 4.27 Setting aside the Committee members unreasonable comments, the appeal scheme will alter and extend the built area of the site but the changes will result in its significant improvement and on balance will provide significant employment and environmental benefits that will outweigh the small encroachment of new built space onto currently open land.
- 4.28 In accordance with EBC officers' recommendation we ask that reason 1 of the Councillors refusal be dismissed.

5.0 Appeal Case – Reason 2 – Impact on the Adjoining SSSI

- 5.1 EBC's second reason for refusal of the appeal scheme states:

The proposed development would result in an adverse impact upon the nearby Moorgreen Meadows SSSI (north and east) by reason of its close proximity and sensitivities of the flora associated with the SSSI (marsh orchid), thus the proposals would be contrary to Policies DM1 and DM11 of the Eastleigh Borough Local Plan (2016-2036), the Council's Biodiversity Supplementary Planning Document (2009), and the provisions of the National Planning Policy Framework (2023).

Policies

- 5.2 A full copy of the Local Plan is at **Appendix 95** and a copy of the Biodiversity SPD is at **Appendix 98**.
- 5.3 The relevant extracts from the two Local Plan policies referenced in this reason for refusal read as follows (with emphasis added):

Policy DM1, General criteria for new development

1. All new development should (as relevant):

a. not have an unacceptable impact on, and where possible should enhance:

- i. residential amenities of both new and existing residents; the character and appearance of urban areas, the countryside and the coast;
- ii. **biodiversity (avoiding significant adverse impacts)**; and
- iii. the significance of heritage assets;

.....

d. not involve the loss of or damage to trees, woodlands, hedgerows, ponds, priority habitats or other landscape features of value to the character of the area, for appearance or biodiversity unless they can be replaced with features of equivalent or enhanced value, (recognising that some species and habitats may be irreplaceable);

Policy DM11, Nature conservation

General Approach

1. The Council will work with statutory and voluntary agencies and developers, and will determine planning applications, to:

a. protect, conserve and enhance all:

- i. international, **national and local nature conservation designations**; and
- ii. **networks of natural habitats and features**, including the Local Ecological Network, Priority Biodiversity Areas and Priority Biodiversity Links, watercourses, wetland complexes, woodland trees, and trees and hedgerows important to biodiversity and local character;

and facilitate their adaptation to climate change wherever possible;

b. assist in achieving national, county and local biodiversity targets as set out in Biodiversity Action Plans (BAPs):

c. seek a net gain of biodiversity on all development sites (including sites for redevelopment) through the protection, enhancement and connection of existing and provision of new habitats and features of nature conservation interest compatible with the native biodiversity characteristics of the Borough, having regard to local geodiversity and soils; and

d. contribute to major elements of the PfSH Green Infrastructure Strategy and other strategies for the provision and enhancement of multifunctional green

infrastructure including green routes, ecological networks and biodiversity enhancements (see strategic policy S9).

.....

National and Local Designations

4. Development will not be permitted if it is likely (either individually or in combination with other developments) to have a direct or indirect adverse effect on a Site of Special Scientific Interest (SSSI), Site of Importance for Nature Conservation (SINC) or Local Nature Reserve (LNR) as shown on the policies map (or on a more recent plan provided by the Hampshire Biodiversity Information Centre) unless it can be demonstrated that:

a. there are no alternative solutions;

b. the adverse effects are unavoidable;

c. measures are taken to mitigate or, as a last resort, compensate for the adverse effects;

d. there is an overall biodiversity net gain; and

e. if there are any residual adverse effects which cannot be avoided, mitigated or compensated, the benefits of the development must clearly outweigh the adverse effects on the nature conservation value of the site and any broader impacts on national and local designations.

Priority habitats, protected and priority species and the local ecological network

5. Development will not be permitted if it is likely (either individually or in combination with other developments) to have a direct or indirect adverse effect on priority habitats, protected or priority species, or on the local ecological network unless it can be demonstrated that:

a. there are no alternative solutions;

b. the adverse effects are unavoidable;

c. measures are taken to mitigate or, as a last resort, compensate for the adverse effects;

d. there is an overall biodiversity net gain; and

e. if there are any residual adverse effects, the benefits of the development clearly outweigh the adverse effects on priority habitats, priority and protected species, and the local ecological network.

Irreplaceable habitats

6. Development will not be permitted if it results in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees), unless there are wholly exceptional reasons and a suitable compensation strategy exists.

Buffers

7. Buffers free from development will be provided to designated sites to

avoid/mitigate impacts, including recreational impact and impacts on edge habitats, and to maintain dark skies.

Surveys

8. Development will not be permitted unless it can be demonstrated that:

- a. **there have been thorough habitat and species surveys**;
- b. the great crested newt strategic survey and strategy have been considered in all developments within 500m of a great crested newt pond; and
- c. the strategic bat trapping survey has been considered in all developments within the locality of a woodland or connected habitat networks.

Response

- 5.4 The one objector who spoke against the application at the Local Area Committee meeting on 25th September, focused on ecological matters as well as concern that the scheme would set a precedent for other development in the countryside. He did not declare an expertise in ecology.
- 5.5 During the Local Area Committee members' discussion, one Councillor expressed concern that the site may be rewilding as it lies unused and that the redevelopment of the site could 'push' wildlife away rather than draw it in. This was not carried into the agreed reason for refusal but we highlight it here because it was one example of comments that were made without the Councillor in question having undertaken a site visit, therefore making uninformed assumptions about the site, and also without having due regard to the recommendations of the Council's expert advisers. We also contend that the previously approved dog training centre, with outdoor exercising and training areas could well have disturbed and deterred wildlife within and around the site, in contrast to the very significant biodiversity enhancements that the appeal scheme will provide.
- 5.6 The Councillor who raised concern about impact on the SSSI, which was carried forward into the reason for refusal, referred specifically to personally having looked into the reason for the designation at Moorgreen Meadows, with this relating specifically to the presence of Marsh Orchids. The Councillor referred to the Meadows being one of very few remaining locations and habitats

for the Orchids in the UK. This concern was accepted by other members of the Committee.

- 5.7 The Committee members may have been swayed by the presentation of the objector but, with that possibly aside, it is highly unusual and we consider unreasonable for elected members to:

(1) have relied on a private information search by one of their group (that is, in relation to Marsh Orchids within the SSSI);

(2) have reached their conclusion against the expert advice of Natural England (NE), whose role and responsibility it is to designation and oversee the continued protection of SSSIs; and to

(3) have ignored the advice and recommendations of their in-house Ecologists whose role and expertise it is to provide appropriate guidance with reference to policy. It could be clearly seen from the Committee Report (**Appendix 95, para 27**) that the Councilors' own advisor had robustly appraised the information provided on the SSSI and had required all development to be set well back from the SSSI boundary, in order to provide a robust, precautionary approach for the ongoing protection of the SSSI. The Council's ecologist's requirement for a buffer to be provided between the SSSI and the new built areas of the site, fully accords with Policies DM1 and DM11 and completed her advice and recommendation that the scheme is acceptable with regard to all ecological matters, including the SSSI.

- 5.8 In the case of the SSSI, the oversight of that area will also continue with NE outside of a redevelopment proposal. As has been outlined above, NE and the appellants are fully engaged in agreeing a management plan to return the SSSI to 'favourable condition'; a process that is outside of the application / appeal process.

- 5.9 NE's *Whole Feature Assessment*, July 2023 (**Appendix 106**) provides the summary of the agency's site survey and advice for the management and improvement of the SSSI, taking into account the condition that the appellants

inherited from its previous owners.

- 5.10 In the case of the Marsh Orchid, that was specifically referred to by an EBC Committee Member and that is referenced in the refusal notice, NE's July 2023 report states that the hydrology of the area was substantially changed some significant time ago. This was at least in large part connected with the building of the M27. As such the Marsh Orchid has not been recorded on the site since 1999. NE goes on to conclude that there is no reasonable prospect that the SSSI can be brought back into a favourable condition for the Orchid (**Appendix 107, page 4**).
- 5.11 The Committee members obligation was to determine the application with full reference to their officer's detailed report and recommendations. They had been aware of the application from the time of its original submission in September 2022 and had requested that it be taken to Committee for their determination. The application was ready for their determination in July 2023 but the earliest meeting for it to be considered at, was not until September 2023.
- 5.12 The Councillors had had a very significant amount of time to raise any specific questions they might have had regarding the SSSI and Marsh Orchids and to also have consulted the detailed reports, correspondence and consultee responses to fully understand the issues in question. We are not aware that they had specifically asked their planning officers or specialist advisors about the SSSI or the Orchids. If they had, they would have been reassured that potential impacts on the SSSI have been fully appraised. No impact would result but a precautionary approach has been provided through the provision of buffers set back from the SSSI boundary.
- 5.13 Had the appellant been made aware that Councillors had a concern about the SSSI and the Orchids, a copy of NE's *Whole Feature Assessment* would have been provided to them. EBC officers in any case had been informed on a number of occasions that the appellants were working with NE on plans for the SSSI.

- 5.14 Through the course of the application both NE and the Council's Ecologist, had also robustly reviewed the ecological and linked drainage information for the application, with drainage being specifically relevant to the hydrology of the meadow SSSI. It was only when both consultees were fully satisfied that the SSSI would not be impacted that they confirmed no objection to the plans and that the proposals could satisfactorily proceed, subject to the robust proposed plans and assessments being followed and the required planning conditions being satisfied.
- 5.15 Had the Councillors undertaken a site visit, as we had expected and asked EBC officers about, the relationship of the existing and proposed built areas to the SSSI and the extent of the agreed buffers would also have been appreciated.
- 5.16 The BREEAM Pre-Assessment (**Appendix 38**) had been provided to EBC in accordance with Local Plan Policy DM2 (**Appendix 95**). This has remained relevant as the application progressed with EBC and is referred to in the Committee Report (**Appendix 95, para 29**). It shows that the appeal scheme can very comfortably meet the BREEAM Excellent standard, with credits awarded for the early ecology and drainage assessments that have been undertaken (**Appendix 38, page12 to 14**).
- 5.17 A biodiversity net gain assessment has also been provided and was updated as the application plans evolved. The BNG Matrix Calculations at **Appendix 81** show that the scheme will provide no less than +36% BNG in respect of both habitat units and hedgerow units. This marks a significant enhancement of a largely brownfield site that has been inherited in a very poor condition. These enhancements must be considered alongside the fact that the development will not harm the adjoining SSSI. These facts were unfortunately not specifically highlighted to Councillors during the Committee meeting.
- 5.18 Had both the BREEAM and BNG Matrix calculations been duly taken into account, this would have assisted the Committee in understanding the full extent of the biodiversity enhancements that are proposed.

- 5.19 In conclusion, the requirements of Local Plan Policies DM1 and DM11 are fully and robustly met by the appeal scheme. This has been achieved through the positive discussions with NE and EBC officers. EBC's Local Area Committee however erroneously based their consideration and decision on incorrect information with regard to the SSSI. The Marsh Orchids referenced in the original designation of the SSSI and in the reason for refusal have not been recorded on the site since 1999. Further to this, no harm to the SSSI will result, as confirmed by the consultation response of Natural England – the overseers of the SSSI. The scheme plans, together with the requirement to follow a robust, enforcement management regime within the site, will indeed ensure no harm will result. Reason 2 for the refusal of the application must accordingly be dismissed.

6.0 Appeal Case – Reason 3 – S106 Requirement

- 6.1 The Council's third reason for refusal of the appeal scheme states:

In the absence of a planning obligation to secure financial contributions towards sustainable transport and public art, the proposals are unacceptable, contrary to Policies S1, S11, DM1 and DM13 and DM38 of the Eastleigh Borough Local Plan (2016-2036), the Council's Public Art Strategy (2015-2019), and the provisions of the National Planning Policy Framework (2023).

- 6.2 This reason for refusal was included in the Council's refusal notice on the grounds that a signed s106 legal agreement was not yet in place.
- 6.3 Very significant progress had been made on the drafting of the s106 in advance of the Local Area Committee meeting on 25th September 2023. It deals with the required matters relating to financial contributions towards off-site highways improvements and public art provision.
- 6.4 A number of very minor drafting points are still to be finalised which the

appellant will seek to complete.

- 6.5 A final copy of signed document will be forwarded to PINS as soon as possible. This should enable this reason for refusal to fall away, with the agreement of EBC.

7.0 Other Matters

- 7.0 The Local Plan, 2022 is up to date and we consider provides the relevant policies for the consideration of the proposals. If EBC or any other party refers to any other policies or documents in their Statements, we shall respond to those as necessary.
- 7.1 A member of the Council's Local Area Committee queried details of the lighting scheme within the development and in particular along the main access road. The proposals include the principle of low level lighting along the road, as indicated on the Proposed Layout (**Appendix 63**) and the linked highway and Landscape Mitigation and Enhancement works plans. Proposed condition 17 deals with this (**Appendix 93**).
- 7.2 A member of the Local Area Committee incinuated that the appellants had allowed the site to deterioriate. They have not. They inheritaed the site in a very delipidated conditions (Site Marketing Information, **Appendix 106**. Site Photographs **Appendix 22**. LVIA Photos **Appendix 33**). Arson attacks took place twice during the conveyancing process. That is before the appellants purchased the site and after the marketing photos were taken.
- 7.3 Councillors went on to suggest that approving the development could set a precedent and encourage others to let their sites in the countryside fall into disrepair in order to seek approval for alternative, larger development. The appeal site has is own history and background and its own setting and context. We are not aware of any other site that replicates this. It presents its own challenges and opportunities. All sites must be considerd on their merits. The

approval of the appeal scheme will not set a precedent for any other proposals in the designated countryside.

8.0 Conclusion

- 8.1 The appeal scheme is the result of significant and positive discussions with EBC officers and their advisors, supported by a breadth of detailed plans and environmental assessments. The proposals will increase the extent of built footprint within the site but any small harm that may result from this will be significantly outweighed by the benefits that the scheme will provide. These span the significant physical and aesthetic improvement of the site, employment benefits, which the Local Plan makes provision for, and significant soft landscaping and ecological enhancements that will be located across the site, including within the central courtyard and on and abutting the new buildings. The proposal will also not harm the adjoining SSSI.
- 8.2 The Marsh Orchid that are referenced in the second reason for refusal has not been recorded within the SSSI since 1999 – long before the appellants bought the site. The appellants however are working proactively with Natural England to return the SSSI to a favourable condition. This sits outside of the appeal but the status and condition of the SSSI and the development's potential impacts on it all informed Natural England's confirmation that they have no objection to the appeal scheme.
- 8.3 The members of EBC's Local Area Committee based their consideration of the plans on misinformation and without due regard to the detailed, expert advice they had been provided. We request that the appeal is allowed, in accordance with their officer's recommendation.