

EASTLEIGH BOROUGH COUNCIL

**Town and Country Planning Act 1990 (As Amended by the
Planning and Compensation Act 1991) – Section 78**

LOCAL PLANNING AUTHORITY'S STATEMENT OF CASE

**Planning appeal against refusal of full planning.
Application for the conversion of first floor of existing
detached garage to C1 AirBnB.**

**Moorgreen Farmhouse, Moorgreen Farm, Burnetts Lane,
West End, Southampton, SO30 2HH**

**Appeal by: Mrs Louise Cutts, on behalf of Mr Stephen
Pryor**

**Planning Inspectorate Reference:
APP/W1715/W/23/3329709**

Eastleigh Borough Council Reference: F/23/95117

January 2024

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1.0 Introduction

- 1.1 The Council's Statement of Case should be read in conjunction with the Decision Notice, decision issued 15 June 2023. This Decision Notice, and this Statement should be taken as forming the Council's Case in relation to this appeal.
- 1.2 This statement focusses on the matters pertaining to the Council's reasons for refusal of planning permission as set out below and in order to provide further details and justification in relation to these. Where necessary and relevant to the reasons for refusal, matters raised within the Appellants statement of case will also be responded to within this statement.

2.0 Description of Appeal Application

- 2.1 The appeal application was received by the Council on 26 April 2023 and registered as valid on the same date. It was given a reference number of F/23/95117. The proposed development was described as follows:
Conversion of first floor of existing detached garage to C1 AirBnB.
- 2.2 The decision was issued 15 June 2023 whereby 2 reasons for refusal were listed:
 - 1) *Insufficient information has been submitted to demonstrate whether the originally approved first floor ancillary store and office was implemented and lawfully established for a reasonable period of time prior to the proposed holiday let use, thus would not be considered 're-use' in terms of Policy S5. The change of use would therefore result in an intensification of development within the countryside. The proposals would therefore be contrary to Policies S1, S2, S5 and DM26 of the Eastleigh Borough Local Plan (2016-2036) and the provisions of the NPPF (2021).*
 - 2) *The application fails to provide the required mitigation to offset the impacts of the development upon the European protected Solent Complex (SPA, SAC and Ramsar sites), and New Forest National Park (SPA, SAC and Ramsar sites) from additional recreational pressure and nitrogen loading generated by the population increase and additional sewage resulting from the development. The proposal is therefore contrary to the requirements of Policy DM11 of the Eastleigh Borough Local Plan (2016-2036), the provisions of the NPPF (2021) and the Conservation of Habitats and Species Regulations 2017.*
- 2.3 A copy of the Council's Decision Notice was sent to the Planning Inspectorate with the Council's Appeal Questionnaire.

3.0 Site and Surroundings

- 3.1 The application site comprises a detached dwelling and garage situated to the north of Burnetts Lane. The main dwelling, Moorgreen Farmhouse, is a Grade II Listed Building, with Historic England's Listing description reading as follows: C16 origin with C18 and C19 extensions/alterations. Two storeys. Half-timber exposed on first floor at one end; old chimney stack. Red tile with catslide at rear. Walling generally red brickwork. Mixture of casements and sashes.
- 3.2 The subject of this application comprises the existing detached garage located to the east of the main dwelling. The erection of the garage received permission in November 2021.

4.0 Relevant Planning History

- 4.1 H/22/93563 & L/22/93565
Installation of solar panels on garage roof.
Permitted (October 2022)
- 4.2 H/21/91427
Detached garage with storage and office above and new stone driveway.
Permitted (November 2021)
- 4.3 H/17/81675 & L/17/82196
Single storey side extension.
Permitted (December 2017 & February 2018)

5.0 Development Plan Policy

- 5.1 Town and Country Planning Act 1990
Sections 70(2) and 79(4) of the Town and Country Planning Act 1990 set out that this Appeal must be determined in accordance with the Development Plan unless material considerations indicate otherwise.
- 5.2 Planning and Compulsory Purchase Act 2004
Section 38(6) of the Planning and Compulsory Purchase Act states as follows: *"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise"*.
- 5.3 Development Plan
The Development Plan comprises the Eastleigh Borough Local Plan (2016-2036). The relevant policies to the determination of the planning application and current appeal comprise Policies:
- S1 (Sustainable Development)
 - S2 (Approach to New Development)
 - S5 (New Development in the Countryside)
 - S8 (Historic Environment)
 - S12 (Strategic Footpath, Cycleway & Bridleway Links)
 - DM1 (General Development Criteria)

- DM2 (Environmentally Sustainable Development)
- DM8 (Pollution)
- DM11 (Nature Conservation)
- DM12 (Heritage Assets)
- DM13 (Transport)
- DM14 (Car Parking)
- DM26 (Residential Extensions and Replacement Dwellings in the Countryside)

5.5 Policies S1, S2, S5, DM11 and DM26 are of specific relevance to the reasons for refusal. Copies of these policies were provided to the Planning Inspectorate as part of the Councils Appeal Questionnaire, however their importance and pertinence will be expanded upon below.

5.6 Policy S5 – New Development in the Countryside

This Policy sets out that new development in the countryside is generally restricted and notes (1) compatible usages for which new development in the countryside is appropriate.

Section 1.c relates to *community, tourist, or visitor uses through the re-use of buildings including facilities for the interpretation of heritage assets*, this would also be in conjunction with Policy DM12 (heritage assets).

5.7 The above has been highlighted as the most important criteria for this specific proposal. In particular, the wording relating to the ‘re-use of buildings’ for tourism use, which is a key consideration of this appeal.

6.0 National Planning Policy

6.1 The National Planning Policy Framework (NPPF) 2023 sets the Government’s planning policies for England and how it expects them to be applied. The NPPF is a significant material consideration for the purposes of making planning decisions. However, it is just one of the material planning considerations which must be taken into account, and it does not negate or undermine the primacy of the Development Plan laid out in statute, nor any other material planning considerations. Indeed, Paragraph 2 of the NPPF states:

“Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the development plan and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.”

6.2 Sustainable Development

Paragraph 7 notes that *“the purpose of the planning system is to contribute to the achievement of sustainable development”*. Paragraph 8 explains that this entails three overarching objectives: an economic objective; a social objective; and an environmental objective.

- 6.3 Paragraph 9 notes that:
“These objectives should be delivered through the preparation and implementation of plans and the application of the policies in this Framework; they are not criteria against which every decision can or should be judged. Planning policies and decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area.”
- 6.4 Paragraphs 10 and 11 note that at the heart of the NPPF is the “presumption in favour of sustainable development”, stating that:
“For decision-taking this means:
c) *approving development proposals that accord with an up-to-date development plan without delay; or*
d) *where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*
i. *the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
ii. *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”*
- 6.5 Paragraph 12 reiterates the point made in Paragraph 2 that the presumption does not change the statutory status of the development plan as the starting point for decision making:
“Where a planning application conflicts with an up-to-date development plan ... permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.”
- 6.6 Plan-Making
Section 3 of the NPPF relates to “plan-making”, and notes at the outset (Paragraph 15) that: *“the planning system should be genuinely plan-led.”*
- 6.7 Decision-Making
Paragraph 38 requires Councils to *“approach decision on proposed development in a positive and creative way”* and states that decision-makers at every level should *“seek to approve application for sustainable development where possible”* (but not unsustainable development).
- 6.8 Determining Applications
Paragraph 47 of the NPPF reiterates Paragraph 2, stating that *“Planning law require that application for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise”*.

- 6.9 Paragraph 88 of the NPPF relates to supporting a prosperous rural economy, whereby planning policies and decisions should enable (c) *sustainable rural tourism and leisure developments which respect the character of the countryside.*
- 6.10 It is noted within the appellants Statement of Case that they argue the NPPF is a material consideration which allows for new businesses in rural areas in 'well designed new buildings', as per the above referenced paragraph. The Eastleigh Borough Local Plan was adopted in April 2022, after rigorous scrutiny. Policy S5, which the LPA consider the most relevant, is considered to be consistent with Paragraph 20 of the NPPF in that it is a strategic policy that forms a key part of the overall strategy for the pattern of development and seeks to conserve and enhance the natural environment. It is also consistent with Paragraph 180 in that it recognises the intrinsic character and beauty of the countryside.
- 6.11 Policy S5 takes a balanced approach to development in the countryside. Tourism is considered to be acceptable in the countryside in accordance with paragraph 88 of the NPPF referenced above, however this would be through the 're-use' of buildings (as per Section 1.c). The Policy does not allow for new buildings to provide tourism development. As noted above, this Policy is balanced and fair, as well as consistent with the NPPF.
- 6.12 It is the Council's position that the Policies contained within the Eastleigh Borough Local Plan (2016-2036) are pertinent to the decision making of the appeal and are considered to be consistent with the NPPF and therefore should be given full weight.

7.0 Reasons for Refusal

- 7.1 This section addresses the reasons for refusal, including conflict with the Local Plan Policies, Adopted SPDs and the NPPF.
- 7.2 **Reason 1**
Insufficient information has been submitted to demonstrate whether the originally approved first floor ancillary store and office was implemented and lawfully established for a reasonable period of time prior to the proposed holiday let use, thus would not be considered 're-use' in terms of Policy S5.
- 7.3 As the Inspector will note, Officer's recommended, on balance, that the application be approved, which was then overturned at Planning Committee, with the reasons for refusal set out within the Decision Notice dated 15 June 2023.
- 7.4 Following the presentation by the Officer at Planning Committee, Councillors considered the application. They felt that the applicant/ appellant had not provided sufficient information to justify compliance with Policy S5, with specific regard to Section 1.c concerning the 're-use' of a building.

- 7.5 With regard to the appellants Statement of Case, concern is initially raised with regard to paragraph 3.1, whereby *“the room was constructed with a small en-suite and kitchenette to serve the office”*. Appendix 1 shows the approved elevations and floor plans as part of planning application H/21/91427. The approved floor plans show only ‘store/ office’ space, no en-suite or kitchenette. It should also be noted that the garage and store/ office was approved on the basis of being a garage at ground floor with office space at first floor, thus being ancillary to the host dwelling. Had the LPA have known about the introduction of such facilities (en-suite and kitchenette) concern would have been raised as this domestication starts to create a more independent living unit, as opposed to a garage with office and store space, which was approved.
- 7.6 In Paragraph 3.2 of the appellants Statement of Case, the appellant sought to *“reconsider the use of the ‘spare’ room above his new garage”*. Again, this suggests a different use of the room to the store/office that was approved by the LPA. The approved plans (Appendix 1) explicitly state that the first floor would be used as a store/ office space, not a ‘spare room’ with domestic facilities.
- 7.7 Paragraph 3.3 of the appellants Statement of Case states that *“the appellants long term intention is for the first floor room to be used for flexible ancillary and incidental residential uses over time”*. All parties are reminded that this specific appeal is for the retention of the first floor as a ‘holiday-let’ and not any other use. This use was not considered ancillary or incidental to the use of the dwellinghouse thus requiring planning permission. Ancillary and incidental uses would not require planning permission, and therefore could be undertaken outside of the planning and appeal processes.
- 7.8 Paragraph 3.7 of the appellants Statement of Case introduces Policy DM19 (Change of Use of Buildings in the Countryside). The LPA did not refer to this Policy within their report or decision notice as it was not considered relevant to the appeal proposals. However, as this has been raised by the appellant, the full Policy wording has been provided for the Inspector (Appendix 2).
- 7.9 Paragraph 3.10 of the appellants Statement of Case explicitly states: *“Clearly the proposal does not comply with Policy S5 as the proposed holiday-let use of the new first floor room, whilst not originally intended as such, was the first use of the room, rather than a ‘re-use’ of a room with a pre-existing use.”* From this, it is clear that the reason for refusal cannot be addressed, as this relates to insufficient information being provided with regard to the ‘re-use’ of the building. From the appellants Statement of Case it is understood that the approved store/ office was never implemented and therefore the ‘holiday-let’ cannot be considered a ‘re-use’ but rather as a new development, and is therefore contrary to Policy S5.
- 7.10 It is unclear whether Paragraph 3.11 seeks to contend that Policy DM19 is relevant to the determination of the appeal proposals, however the LPA will address this. Appendix 2 provides the full wording of this Policy, however

the following parts are highlighted and discussed below. Section 1 relates to: *The change of use of existing buildings in the countryside that are demonstrably unsuitable for continued use for their existing purpose will be permitted subject to the general development criteria and transport policies of the Local Plan and provided that* (points a-e are suitably addressed). Section 2 relates to: *Change of use to residential, where this is not permitted development will only be permitted if* (points a-d are met). For the purpose of this Statement, 2.a *the building is demonstrably unsuitable for other uses allowed under this policy*. Section 3 states *where the proposal also involves extension or replacement of the building, Policy DM18 will apply* (Extension and replacement of non-residential buildings in the countryside).

- 7.11 The LPA did not consider Policy DM19 to be relevant. Section 1 specifically relates to existing buildings in the countryside that are demonstrably unsuitable for continued use for their existing purpose. This is clearly not relevant to the appeal proposals, relating to a garage with store/ office above; within the curtilage of a residential dwelling, and being built in 2022. However, if the Inspector found this Policy relevant, the appellant has not provided any information to justify why the proposals were **demonstrably unsuitable** as a store/ office space.
- 7.12 Turning to Section 2, the proposals have resulted in the change of use to a 'holiday-let', a form of residential use. 2.a sets out that development will only be permitted if the building is *demonstrably unsuitable for other uses allowed under this policy*. Again, if the Inspector found this Policy relevant, the appellant has not provided any information to justify that the building, built in 2022, is **demonstrably unsuitable** for other uses, such as its permitted use as an office/store. It is unclear to the LPA how the approved garage with store/ office at first floor is demonstrably unsuitable for its permitted use.
- 7.13 Section 3 of this Policy relates to proposals which also involve extensions or replacement of the building. The appeal proposals are seeking the retention of the 'holiday-let' at first floor, therefore this criteria would not be applicable, even if the Inspector found this Policy relevant.
- 7.14 It is therefore concluded that Policy S5 is the main relevant Policy (as set out within the reason for refusal). This has been applied appropriately to the appeal proposals, and the appellant has failed to address this. Whilst it is acknowledged that the appellant has sought to justify that the appeal proposals do not result in any adverse harm, and that material considerations (including the NPPF) outweigh the conflict with Policy, no evidence has been provided to satisfactorily address the reason for refusal, nor is the LPA convinced that other material considerations suitably outweigh the deviation from Local Plan Policy.
- 7.15 **Reason 2**
Failure to secure appropriate mitigations to off-set the impact upon the European Protected Solent Complex

- 7.16 As part of the planning application, a Habitats Regulations Assessment (HRA) was undertaken and submitted to Natural England. They provided comments requesting additional information. Natural England's comments have been sent to the Planning Inspectorate.
- 7.17 The HRA covered that mitigation would be required for Solent Recreation Mitigation Strategy (SRMS), nitrates and New Forest. It was concluded that the SRMS (£443) and New Forest (£2,200) could be mitigated by financial contributions.
- 7.18 Since the determination of this appeal, an invoice has been sent to the appellant to pay the above mitigations as part of this appeal process. The LPA can confirm that the monetary mitigations have been received 28 December 2023. Whilst the LPA are satisfied with this arrangement, the Planning Inspectorate would also need to be agreeable to the upfront payment method.
- 7.19 The HRA also covered that the proposals result in an additional nitrogen output of 0.84kg/TN/year. As part of this appeal, the appellant has submitted a 'Nutrient Assessment & Budget', which has ultimately concluded that the development can be made nutrient neutral, by replacing the existing sewage treatment plant. This new information submitted as part of this appeal would need to be reviewed by Natural England. Therefore the LPA would suggest that the Planning Inspectorate defer to Natural England for their review on this new information.
- 7.20 The LPA is mindful that conditions will be required and have set out suggested conditions in Appendix 3. The LPA have recommended a condition securing 'nitrate credits'. However, if Natural England and the Planning Inspectorate are satisfied with the findings of the Nutrient Assessment & Budget and conclusions that the development does not result in any additional nitrogen output then this condition would not be necessary.
- 7.21 To conclude, the LPA is satisfied with the monetary mitigations with regard to the SMRS and New Forest, however would defer to Natural England for their view on the impact of nutrients.

8.0 Conclusions

- 8.1 As set out within this Statement, there is a clear conflict between the proposed development, Local Plan Policies, the adopted SPDs and the contents of the NPPF all promoting sustainable development. As a result, it is clear that the proposals do not accord with the Development Plan for the purposes of Sections 70(2) and 79(4) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004. Planning Permission should therefore be refused unless material considerations indicate otherwise.

- 8.2 The Local Planning Authority consider that there are no such material considerations in this case and, accordingly, respectfully request that the Inspector dismisses this appeal.
- 8.3 Should the Inspector, however, be minded to grant permission, the Local Planning Authority would request that the conditions attached in Appendix 3 be included as part of any approval.