



The Planning Inspectorate
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Appeal	6015024
Application	F/26/100809
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Monday 28th September 2026

Dear Sir / Madam,

**Town and Country Planning Act 1990
The Town and Country Planning (Development Management Procedure)
(England) Order 2015**

Appeal by:	E Bizzey, c/o Macra Ltd.
Appeal No:	6015024
Application No:	F/26/100809
Description:	Construction of 8No. detached dwellings with associated amenity space, parking and landscaping
Site:	The Orchard, 5 Westgate Mews, Kenilworth Gardens, Southampton, SO30 3RE, United Kingdom

With reference to the above planning appeal and the Appellant's submitted appeal statement and additional information, the Local Planning Authority (LPA) are of the opinion that this statement does not address the LPA's concerns, raises no new issues or significant evidence and as such would ask that the appointed Inspector treats the delegated officer report and consultee responses, which were submitted with the appeal questionnaire, as the LPA's statement of case together with the following comments and appendices.

NPPF 2026

Shortly before submission of the appeal a new National Planning Policy Framework was published. The Appellant's statement highlights the most relevant decision-making policies of the new NPPF to the appeal. In the LPA's view, the adopted Eastleigh Borough Local Plan 2016-2036 is in broad accordance with the new NPPF.

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It is also the LPA's view that the publication of the NPPF does not alter the LPA's view or concerns in relation to the appeal proposal.

General Comments:

At paragraph 3.4 of the Appellant's appeal statement, reference is made to the LPA not accepting any further details and information from the Appellant once the application was submitted. This seems to imply that the LPA were not willing to discuss amendments to the scheme or to allow additional information to be submitted following the LPA raising concerns. This is not the case. All concerns raised were highlighted as part of the LPA's pre-application response, which set out the same issues and concerns. These appeared to have been largely ignored, based on the scheme which was formally submitted and later refused. In the LPA's view, the amendments required for the scheme to be considered acceptable would have resulted in a materially different development to that originally submitted. Given the Appellant's response to the pre-application advice provided and their unwillingness to consider the scale of revisions required to provide an acceptable scheme, there appeared to be little benefit to either party to prolong the application process when it was very likely to result in the same outcome.

At paragraph 7.3 of the Appellant's appeal statement states that the appeal site is "a brownfield site, within the settlement boundary". Whilst within the settlement boundary, the site should not be considered as a brownfield site or as 'previously developed land' to better quote the new NPPF. The NPPF definition of previously developed land, as set out in NPPF Appendix B, specifically excludes "*land in built-up areas such as residential gardens, parks, recreation grounds and allotments*". As such, the appeal site should not be considered as being previously developed or brownfield land.

Paragraphs 7.4 and 7.5 of the Appellant's statement make reference to the LPA's current lack of a five year housing land supply (5YHLS), which it is acknowledged is correct. The statement goes on to suggest that the Local Plan policies in respect of housing should be considered as outdated and only afforded limited weight, with the tilted balance in favour of sustainable development taking precedent. The presumption in favour of sustainable development remains the backbone of the new NPPF, with clear tests being set out for sites inside and outside settlement boundaries. Notwithstanding, the LPA accepts, and has always accepted, that the principle of developing the appeal site for residential purposes is acceptable with or without a 5YHLS. However, this does not mean development at all costs, or that unacceptable development should be approved. As set out in the delegated officer

report, the LPA felt that there were a number of significant issues of concern which warranted grounds for refusal.

Refusal Reason 1: Layout

The Appellant contends that the application was refused on the grounds of overdevelopment and makes reference to Policy DM23 and the requirement to provide a minimum of 40 dwellings per hectare on sites within the urban edge as justification for the number of units proposed. However, this is incorrect. Overdevelopment is not referenced at any point in Reason for Refusal 1 or the delegated officer report, which even states that “in principle there is no objection to providing 8 or more units on site” (last paragraph of the site layout section).

Overdevelopment or excessive density were not the concern of the LPA, rather the cramped and constrained manner in which it was proposed to provide the new dwellings, which was not considered to have adequately or appropriately addressed the very specific constraints of the appeal site. Whilst the Appellant’s statement makes various declarations about the appeal scheme having acceptably responded to the site constraints and the layout being carefully considered, simply stating this without demonstrating how or why does not make it so. Nothing within the Appellant’s appeal statement or any of the additional information submitted in support of the appeal has overcome the LPA’s concerns in relation to the first reason for refusal.

Refusal Reason 2: Access

The transport note submitted in support of the appeal was forwarded to the Local Highway Authority (LHA) to review, and their response is provided as LPA Appendix A. Having reviewed the additional information, the LHA have confirmed that they no longer have any concerns in relation to the ability of the existing Westgate Mews access to be able to deal with two-way passing traffic and no longer raise any objection in this regard.

Whilst the expert view of the LHA in this regard is acknowledged, concerns remain as to the amenity impact of the significantly increased number of vehicle movements through Westgate Mews which would result. It is very unlikely that the existing residents of Nos.1 – 4 Westgate Mews would agree that the increase in through traffic for the resulting nine dwellings, rather than the current single property “*will barely be perceptible*” as is suggested within the Appellant’s appeal statement at paragraph 7.51.

Whilst it may now have been demonstrated that the existing Westgate Mews entrance is physically capable of providing an adequate access to the site, it is still far from ideal. Notwithstanding, the LPA accepts the technical view of LHA and is willing to

withdraw this element of Reason for Refusal 2. However, the LPA remains of the opinion that there will be an unacceptable impact upon existing Westgate Mews residents through the significant increase in vehicle, cycle and pedestrian movements through the mews, to the detriment of their amenity and contrary to Policy DM1 of the Eastleigh Borough Local Plan 2016-2036.

Refusal Reason 3: Amenity

As with the Appellant's response to Reason for Refusal 1 above, simply stating that there would be no adverse impact upon the amenity of future occupiers of the development does not make it so. Whilst new section drawings have been provided, these do not alleviate the LPA's concerns as to the oppressive impact of the 4.2 metre high wall which will be required along the north-eastern boundary of the site to mitigate the noise impact from the adjoining commercial yard.

Whilst it is acknowledged that high boundary walls are present along the boundary between the commercial yard and neighbouring residential properties in Kenilworth Gardens and behind Nos.8 & 10 Botley Road, only one of the examples shown (Image d) within the Appellant's Appeal Statement appears to be of a similar height to that proposed for the appeal site, i.e. the wall to the side and rear of Nos.4 – 7 Kenilworth Gardens. However, in this instance, with perhaps the exception of No.4, the rear gardens of these properties are deeper and more open than would be the case for the plots proposed within the appeal scheme. The Inspector is asked to visit these nearby developments to assess for themselves the potential impact of a similar but taller boundary treatment upon future occupiers of the appeal scheme.

Despite the presence of these existing boundary walls, it should be noted that these developments were constructed some 40 years ago, since which time the standard of design and quality of amenity considered acceptable has improved considerably. To apply the same standards to new development is not deemed appropriate in this instance.

Paragraph 7.74 of the Appellant's Statement states that the LPA has not demonstrated that there would be unacceptable amenity impacts upon future occupiers. In response, it is the Appellant's role to demonstrate that there will be no unacceptable harm. It is not for the LPA to demonstrate that there will be an adverse impact. Whilst site sections have now been provided, these do not provide the full picture of the boundary treatment's impact. No daylight or sunlight studies, or simple 3D visualisations have been provided from within these amenity spaces. Such studies would clearly demonstrate the impact of a high boundary treatment upon the gardens

and internal environments of the plots affected. Without such evidence, it cannot be conclusively stated that there would be no unacceptable impact.

Notwithstanding, should the Inspector be willing to accept that the construction of such a high boundary wall is a necessary compromise, the LPA would highlight the other amenity concerns set out on the delegated officer report, and how these together with the visual and physical impact of the wall would result in a generally poor quality of environment and amenity for future occupiers.

The LPA remain of the view that the amenity and quality of environment for future occupiers would be compromised contrary to Policy DM1 of the Eastleigh Borough Local Plan 2016-2036 and the Council's 'Quality Places' Supplementary Planning Document.

Refusal Reason 4: Noise

The more thorough noise assessment submitted in support of the appeal has been reviewed by the Council's Pollution Control Manager, whose response is provided as LPA Appendix B.

As can be seen within this response, whilst the LPA acknowledge that adequate noise mitigation can be provided to meet acceptable standards in terms of impact upon the appeal properties, this mitigation is predominantly through the construction of a 4.2 metre high boundary wall along the whole of the eastern site boundary, together with mechanical ventilation to most if not all dwellings. Although these measures would likely address the existing noise issues, as has been set out above and in the Pollution Control Manager's response, the construction of such a high wall will bring with it other amenity issues which the LPA deems unacceptable.

Additionally, whilst the new noise assessment adequately reviews the existing situation, or at least that demonstrated at the time of noise surveys, it does not take into consideration the lack of operational controls at the neighbouring commercial yard or how the yard could reasonably be used in future. Equally, it has not acknowledged how disturbance from people leaving late night events at the neighbouring stadium could impact the appeal scheme. As such, the LPA remain of the view that it has not been demonstrated that the amenity of future occupiers of the development would not be unacceptably impacted by noise and other forms of disturbance from neighbouring commercial uses, and the neighbouring sports

stadium, contrary to Policies DM1 and DM8 of the Eastleigh Borough Local Plan 2016-2036.

Refusal Reason 5: Trees

The Council's Tree Officer has reviewed the additional information supplied: Tree Plan reference 706-7-R1. It is noted that the Manual for Managing Trees on Development Sites – Chapter 10 has again been provided and was already considered previously.

The Tree Plan shows a significant increase in the number of planted trees on site compared to the original application documents. Paragraph 32.2 of the Trees and Development SPD states: *"Applicants must provide suitable replacement tree planting for all trees removed in line with the Tree Replacement Policy (Appendix 1), regardless of categorisation. Where replacement trees have been agreed, these will be in direct compensation for trees removed and will not be double counted for other purposes."*

On paper, it appears that the appellant has achieved the necessary replacement tree planting numbers, with 15 trees proposed to be planted. However, paragraph 43.1 of the Trees and Development SPD goes on to state that: *"Planting new trees close to buildings, infrastructure and private gardens, may limit their future potential canopy size and leaf area either through physical barriers or through pruning requirements."*

It appears that these trees do not have the necessary room to mature and/or will cause significant future conflict with reasonable use of the residential properties. Most appear to be within 10 metres of dwellings (some significantly closer), and the space provided is insufficient for some of the trees at maturity (e.g. European Beech *Fagus sylvatica*).

That being the case, the LPA considers the updated planting plan to be contrary to advice provided in the Trees and Development SPD and as such, contrary to Policy DM1 of the Eastleigh Borough Local Plan 2016-2036 and the above-mentioned Supplementary Planning Document.

Refusal Reason 6: Protected Species and Biodiversity

As can be seen in the response from the Council's Ecologist in LPA Appendix C, whilst the inclusion of on-site ecological enhancement measures is welcomed, there remains a discrepancy in the site area used for assessing BNG, together with a number of errors in the Biodiversity Metric. Notwithstanding, provided these discrepancies are addressed and the level of BNG provision agreed between the Appellant and LPA before any on and/or off-site provision is secured; and on the

proviso that the Inspector is satisfied with the Unilateral Undertaking submitted in support of the appeal, the LPA would no longer contest this reason for refusal.

Refusal Reason 7: Nitrates and Recreational Disturbance

As set out in the delegated officer report, there is a need for the nitrate and recreational impacts resulting from the development upon The Solent and New Forest European protected sites to be suitably mitigated. There are Council led and regional schemes which would address these issues, and which would be available to the Appellant should the appeal be allowed. The LPA is satisfied that the necessary mitigation would be secured through the supporting Unilateral Undertaken, should the Inspector be minded to allow the appeal.

Habitats Regulations Assessment (HRA)

Notwithstanding the LPA's willingness to withdraw this reason for refusal provided suitable mitigation is secured, it is acknowledged that the appointed Planning Inspector has a duty under the Habitat Regulations as the competent authority to make their own assessment which may differ from that of the LPA.

Planning Balance

NPPF Policy S3 maintains a presumption in favour of sustainable development, with Policy S4 stating that "*Development proposals within settlements should be approved unless the benefits of doing so would be substantially outweighed by adverse effects*".

It is acknowledged that the appeal scheme would provide a modest contribution to the Borough's housing land supply, which stands at 4.2 years. It would also provide a modest contribution to the local economy through the provision of construction jobs and future residents who could contribute to the local economy. However, these are positive contributions which any new residential scheme would provide. A further positive contribution would be the securing of BNG, albeit this is a national requirement for any scheme of this scale.

Mitigation towards the development's impact upon European protected sites in The Solent and New Forest would be secured as part of an approved development. However, these are considered to carry neutral weight in the planning balance as the mitigation is only required to offset the development's own impact.

Weighing against the development are the various concerns set out in the original delegated officer report and this appeal submission. Whilst it is acknowledged that some of the LPA's concerns have been addressed to some extent, such as the site access, the strong concerns as to the quality of environment and the amenity of future

occupiers of the development remain. These issues are as a result of failure to adequately take into account and work with the site constraints, which runs contrary to NPPF Policy DP3 which states that "*Development proposals should respond to their context (the history, character and features of their site and its setting), so that they integrate with and enhance their surroundings*". These requirements are broadly reflected in Local Plan Policy DM1 and within the LPA's 'Quality Places' SPD.

As such, it remains the LPA's view that the benefits of the appeal scheme are substantially outweighed by the negative impacts which would result.

Conclusion

The site lies in a sustainable location within the urban edge and forms part of a predominantly residential area. As such, the principle of developing the site for residential purposes is acceptable. The LPA has no objection to redevelopment of the site, or in general to the quantum of development proposed. The LPA's concerns relate to the specifics of the appeal scheme and the failure to adequately take into account and work with the site constraints. Whilst the proposed density of the site is not particularly high, the proposed layout results in a cramped and unnecessarily constrained scheme which would provide a poor quality of environment for future occupiers, and which would very likely result in an unacceptable level of increased disturbance to existing neighbouring properties. As such, the appeal proposals are considered to be contrary to adopted Local Plan Policies DM1 and DM8 and guidance within the Council's 'Quality Places' and 'Trees and Development' Supplementary Planning Documents, as well as the NPPF policies set out above.

Accordingly, the Local Planning Authority respectfully request that the Inspector upholds the reasons for refusal and dismisses the appeal. However, should the Inspector be minded to grant permission, the Local Planning Authority would ask that the conditions attached in Appendix D are included as part of any approval.

Yours faithfully,

A handwritten signature in black ink, appearing to read "N Parker", with a horizontal line underneath.

Nicholas Parker
Planning Manager