

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 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).**

**Moorlands Farm, Botley Road, West End, Southampton,
SO30 3HD**

Appeal by: Ms Marie Nagy, on behalf of Mr Tom Francis

**Planning Inspectorate Reference:
APP/W1715/W/23/3332895**

Eastleigh Borough Council Reference: F/22/93835

March 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 2 October 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 15 September 2022 and registered as valid on the same date. It was given a reference number of F/22/93835. The proposed development was described as follows:
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).
- 2.2 The decision was issued 2 October 2023 (Committee date 25 September 2023) whereby 3 reasons for refusal were listed:
- 1) *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).*
 - 2) *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).*
 - 3) *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).*
- 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 appeal site comprises a 1.71ha piece of land, situated to the north of Botley Road (B3035) accessed via a road which runs parallel with the M27. The site itself comprises a derelict farmstead, with a number of run-down buildings. An existing industrial site is located to the south east of the site.
- 3.2 The appeal site falls within the designated countryside, with TPO trees and a SSSI to the east of the site. The western boundary is also bound by trees, providing screening to the M27. To the south-east of the site are the outskirts of Hedge End Industrial Centre which falls within the urban edge and is also a designated employment protection site. This area comprises a mixture of usages including retail, commercial and industrial. Further west of the application site and M27 there are residential estates, also falling within the urban edge. To the south-west of the site is the Utilita Bowl cricket ground and leisure complex.

4.0 Relevant Planning History

- 4.1 F/12/71729
Construction of dog training hall with associated dog exercise area, parking and landscaping following demolition of existing barn
Permitted (February 2013)
- 4.2 F/15/77341
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.
Permitted (December 2015)
- 4.3 F/18/84683
Construction of a dog training hall with associated exercise area, parking and landscaping following demolition of existing barn.
Permitted (April 2019)
- 4.4 O/21/91192
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)].
Withdrawn (February 2022)

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)
- S4 (Employment Provision)
- S5 (New Development in the Countryside)
- S11 (Transport Infrastructure)
- S12 (Strategic Footpath, Cycleway & Bridleway Links)
- DM1 (General Development Criteria)
- DM2 (Environmentally Sustainable Development)
- DM3 (Adaption to Climate Change)
- DM4 (Zero or Low Carbon Energy)
- DM6 (Sustainable Surface Water Drainage)
- DM8 (Pollution)
- DM11 (Nature Conservation)
- DM13 (Transport)
- DM14 (Car Parking)
- DM15 (Safeguarding Existing Employment Sites)
- DM17 (Agricultural Development)
- DM18 (Extension & Replacement of Non-Residential Buildings in the Countryside)
- DM38 (Funding Infrastructure)

5.5 Policies S1, S5, S11, DM1, DM11, DM18, DM38 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.

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 Making effective use of land

Paragraph 123 of the NPPF states that planning decisions should promote an effective use of land in meeting the need for homes and other uses, but also highlights the importance of safeguarding and improving the environment. Emphasis is placed on the utilisation of brownfield land within settlements (Paragraph 124c).

6.10 Protecting the environment

Section 12 of the NPPF sets out the objectives for achieving well designed and beautiful places and states in paragraph 135(c) that planning decisions should ensure that developments are sympathetic to local character and history, including the surrounding environment and landscape setting.

6.11 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**

The proposed construction of 4no. industrial units would result in an unacceptable urbanising impact which would be detrimentally harmful to the countryside.

7.3 As the Inspector will be aware, this application was determined at Planning Committee. The recording of the Committee can be viewed via the following link: [Hedge End, West End and Botley Local Area Committee - 25 September 2023 \(youtube.com\)](https://www.youtube.com/watch?v=HedgeEndWestEndBotleyLocalAreaCommittee-25September2023)

7.4 The proposal would involve the construction of 3no. new industrial buildings and an office on the site following demolition of a number of existing derelict buildings, including a farmhouse.

7.5 Policy S5 of the Local Plan sets out the type of development that would be supported in the countryside, with the overall aim of protecting its intrinsic

character and landscape. In relation to employment development, part (a) allows for the provision of employment through agricultural development, extensions and replacement of existing employment uses and the re-use of buildings. The Policy does not support new build employment development in the countryside, unless it is a replacement for existing employment uses and complies with Policy DM18.

- 7.6 Policy DM18 relates to the extension and replacement of non-residential buildings in the countryside. Whilst the LPA acknowledges that not all of the buildings on the existing site are non-residential (the farmhouse), this Policy was determined to be the appropriate Policy under which to assess the proposals. This Policy sets out various criteria (a-h) that need to be met. The Inspector has been furnished with the full Policy wording. The LPA would highlight the following points to be of relevance:
- (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*
 - (d) access, car parking, landscaping and services can be provided without having a detrimental impact on the character of the countryside*
 - (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.*
- 7.7 Starting with Policy S5, the proposals could not be seen to be 'agricultural development', given their industrial use. The appeal site is also not an existing employment site, nor do the proposals result in the re-use of buildings. The proposals are therefore contrary to Policy S5 (1(a)).
- 7.8 Turning to Policy DM18, with specific regard to the highlighted points:
- (c) The proposed buildings would have an urbanising effect on the countryside as a result of their scale, massing and height. The appellant accepts and acknowledges that the proposed development extends into existing open land and is larger in footprint and height than the existing combination of buildings. The existing buildings on the site are predominantly single-storey and relatively small scale in terms of footprint. Despite their derelict appearance, their low scale means they are not visually intrusive. In comparison, the proposed industrial buildings, notably Units A, B and C, would all be two-storey in height, and Units A and B would extend northwards into a currently undeveloped area of the site. The section plans submitted with the application provide a clear illustration of the increased height of the new buildings compared to existing. When combined with the significant footprint of these buildings, the overall result would be a much more visually dominant and urban form of development in a countryside location, contrary to Policy DM18 and harmful to the character and appearance of the area, which could be viewed from public vantage points along the footpath (10) and motorway (M27). The LPA would also like to make the Inspector aware that since this appeal, the appellant has submitted a new planning application with a reduced footprint for similar development, which indicates that it may be possible to undertake a similar development without such an urbanising impact upon the countryside.*

(d) Access to the site would be in and out via one access point, with a hard surfaced one way road extending around a SuDS pond on the eastern side of the site. The combination of hard surfacing, parking, increase in vehicle movements including HGVs, and general activity associated with the proposed industrial use would all contribute significantly to the urbanising nature of the development in this countryside location.

(f) As previously noted, the proposed buildings would extend beyond the footprint of the existing buildings on the site, which can be seen clearly on the proposed site layout plan where the outlines of the original buildings are identified in relation to the proposed. The position of units A and B in particular would be positioned further north than the existing buildings, intruding into the most open part of the site, and therefore impacting significantly upon the character and appearance of the site and surrounding countryside.

7.9 The LPA acknowledges that the proposals would include a new landscaping scheme, which would help mitigate views of the new development, particularly from the adjacent public footpath but would not totally screen the extent of the development. The fact that significant new landscaping is necessary to reduce the increased visual impact of the proposed development in relation to the existing site and surrounding countryside highlights the significance of the change and incursion into the countryside of new built development.

7.10 As such, and to conclude, it is the LPA's view that the proposed development would result in an unacceptable urbanising impact on the countryside in this location, contrary to the abovementioned Policies. The LPA does not consider that there are sufficient material considerations to outweigh this identified harm.

7.11 **Reason 2**

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).

7.12 During the debate at Committee, concern regarding the impact of the development on the adjacent SSSI area was raised. Policy DM11 relates to ecology/ nature conservation, and is separated into 8 sections. Section 7 specifically relates to 'Buffers', whereby *buffers free from development will be provided to designated sites to avoid/ mitigate impacts*. Given the extent and intensity of development proposed in close proximity to the adjacent SSSI and the change in characteristics of the site leading to an industrial redevelopment the Committee had significant concerns with the direct and indirect impact the development would have on the adjacent SSSI. Disturbances such as additional light, noise and air pollution and overall increased activity of the site was felt to have adverse impacts on the overall condition of the SSSI. Whilst recognising the ability to mitigate these impacts to a certain degree through planning conditions it was considered that the risk to the adjacent SSSI's ecology could not be adequately

mitigated through the use of conditions, given the degree of change to the site proposed. As such, it was concluded that the proposals would not respect, and would actually have an adverse impact upon the condition of the SSSI.

- 7.13 Following the submission of this appeal, the appellant has provided a new document:
- Natural England, Moorgreen Meadows SSSI Whole Feature Assessment, July 2023

Importantly this report was not available to the Council at the time the planning application was assessed and determined by the Committee and has only been submitted by the appellant as part of this appeal.

- 7.14 This report confirms that in 2013 the SSSI was in an unfavourable condition but was recovering. The latest report concludes the SSSI remains in an unfavourable condition with grassland declining; wet woodland recovering and Marsh Orchid absent since 1999.
- 7.15 Had the report been made available to the Council prior to determination it is clear the Committee would have had a better understanding of the condition of the SSSI and would have informed their assessment of the sensitivities of the SSSI. Had the Committee known of the SSSI's unfavourable condition it is clear the Committee would have placed less weight on the current value of the SSSI and therefore would have been advised not to pursue this reason for refusal.
- 7.16 As a result of this new evidence, submitted after the determination of the planning application, the LPA would respectfully seek not to pursue this reason for refusal. Should the Inspector find the proposals acceptable in all other regards, the LPA would advise that the suggested conditions and mitigation measures (set out in Appendix 1) be applied to ensure there would be no adverse harm to the SSSI.
- 7.17 ***Reason 3***
Failure to secure appropriate financial contributions (via a planning obligation) towards sustainable transport and public art.
- 7.18 A S106 agreement was drafted as part of the planning application process. This set out that financial contributions would be required with regard to sustainable transport and public art should permission have been granted.
- 7.19 It is understood that the Appellants Solicitor and Council's Legal Team have been progressing the S106. The LPA would be broadly satisfied with the S106, covering both sustainable transport and public art, however the nuisances would be subject to Legal review.
- 7.20 Subject to ensuring the S106 covers and triggers financial contributions towards sustainable transport and public art the LPA would be satisfied and this reason for refusal would be overcome.

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. It is the LPA's view that the proposed development would result in an unacceptable urbanising impact on the countryside in this location, contrary to Policy. 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 1 be included as part of any approval.