

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

**Replacement entrance gate, hardstanding and frontage
fence (Retrospective).**

Willow Bee, Allington Lane, Eastleigh, SO30 3HP

**Appeal by:
Mr Daniel Bowers**

**Planning Inspectorate Reference:
APP/W1715/W/23/3335998**

**Eastleigh Borough Council Reference:
F/23/95507**

April 2024

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Appendices

APPENDIX 1 – DECISION NOTICE

APPENDIX 2 - SUGGESTED CONDITIONS

1. Introduction

- 1.1 The Council's Statement of Case should be read in conjunction with the Council's Decision Notice and Delegated Officer's Report, which were issued on 17th October 2023.
- 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.

2. Description of Appeal Application

- 2.1 The appeal application was received by the Council on 26th June 2023 and registered as valid on 25th July 2023. It was given a reference number of F/23/95507. The proposed development was described as follows:
Replacement entrance gate, hardstanding and frontage fence (Retrospective).
- 2.2 The application was publicised in the form of neighbour notification letters as well as a site notice. No comments were received.
- 2.3 The decision was issued on 17th October 2023 with 1 reason for refusal being listed on the Council's Decision Notice:
 1. *The proposed development would represent an undesirable visual intrusion into an area of countryside for which there is no overriding planning justification or operational need for the development. As such the proposal is contrary to policy S5 of the Eastleigh Borough Local Plan [2016-2036]*
- 2.4 A copy of the Council's Decision Notice was sent to the Planning Inspectorate with the Council's Appeal Questionnaire and will also be appended (Appendix 1).

3. The Site and Surroundings

- 3.1 The site lies on Allington Lane which is mostly and on this stretch of the lane, verdant and sylvan in nature. Prior to the unauthorised erection of brick piers, fencing and entrance gate, the site contributed to this character through the existence of vegetation and added to the overall countryside lane aesthetic.
- 3.2 There are no footpaths to this section of Allington Lane and development is sporadically placed which again contributes to the countryside lane character.

4. Planning History

- 4.1 The history of the site was set out within the 'Planning History' section of the Delegated Officer's Report. This included:
- *O/05/53274 - Outline: Construction of 90 dwellings following demolition of existing buildings – Refuse – Apr 2005*
 - *F/16/78978 - External horse exercise area – Permit – Nov 2016*
- 4.2 Nonetheless, the application F/16/78978 (above) does seem to have a different site location than the appeal site and so is now considered unrelated.

5. Development Plan Policy

- 5.1 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 Section 38(6) of the Planning and Compulsory Purchase Act states: "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 For the purposes of this appeal, the Development Plan comprises of the Policies of the Adopted Eastleigh Borough Local Plan (2016-2036).
- 5.4 The relevant policies to the determination of the planning application and current appeal comprise Policies:

Strategic Policies:

- S1 (Delivering sustainable development);
- S2 (Approach to new development);
- S5 (New development in the countryside).

Development Management Policies:

- DM1 (General criteria for new development);
- DM2 (Environmentally sustainable development);
- DM6 (Sustainable surface water management and watercourse management);
- DM11 (Nature conservation);
- DM13 (General development criteria - transport);
- DM14 (Parking);

- DM18 (Extension and replacement of non-residential buildings in the countryside);
- DM26 (Residential extensions and replacement dwellings in the countryside).

5.5 The following Supplementary Planning Documents (SPDs) are of relevance to the planning merits of the appeal proposals:

- Quality Places SPD
- Residential Parking Standards SPD

5.6 Strategic policy S5 from the adopted local plan states planning permission will be granted for new development in the countryside provided it is related to: the provision of employment through agricultural development, the extension and replacement of existing employment uses and the re-use of existing buildings; residential extensions and replacement buildings, limited residential conversions, rural workers' dwellings and accommodation for Gypsies, Travellers and Travelling Showpeople; community, tourist, or visitor uses through the re-use of buildings including facilities for the interpretation of heritage assets; outdoor recreation and open space; allotments and community farms; cemeteries; and essential public utilities. This is the policy most worthy of note and was a material consideration to form the basis of this refusal and subsequent appeal.

6. 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 Paragraph 11 states that decision making should "approving development proposals that accord with an up-to-date development plan without delay". The development plan was adopted in April 2022 and the decision taken 18 months later, highlighting that the plan is up to date.

- 6.3 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.”
- 6.4 Moreover, in Section 3, the NPPF emphasises in paragraph 15 that “The planning system should be genuinely plan-led”.
- 6.5 The NPPF also recognises in paragraph 180 that planning policies and decisions should contribute to and enhance the natural and local environment by... recognising the intrinsic character and beauty of the countryside...

7. Reason 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 for Refusal.**
The proposed development would represent an undesirable visual intrusion into an area of countryside for which there is no overriding planning justification or operational need for the development. As such the proposal is contrary to policy S5 of the Eastleigh Borough Local Plan [2016-2036]
- 7.3 It is not clear if this entrance is intended for use as a non-residential or residential site as it appears unrelated to anything other than a constructed hard standing. The appeal, and application before, were not supported with any justification for the operational need for the development in this countryside location.
- 7.4 As there is no operational need for development, general countryside restraint policies apply. If referring to the extension and replacement of non-residential building in the countryside, then policy DM18 applies or if for a residential extensions and replacement dwelling in the countryside then policy DM26 applies. Nonetheless, there is no existing building in which to extend or replace so neither of the above policies would be appropriate. Therefore, strategic policy S5 is the most relevant policy for the assessment of this appeal.
- 7.5 It is noted that the retrospective frontage gate with brick piers and fencing serves a hardstanding which forms part of this appeal and has been created by clearing a large area of vegetation. This in turn has created an unauthorised

access to a classified road. While the appellant notes there was an existing gate on this site, as demonstrated in their statement of case appendices, this gate appeared largely unused and due to the large amount of vegetation that had since grown in its place, it is suspected this is a historic access. This previous gate, which was not seen by the case officer prior to its removal, represents a vastly different scale to that proposed as part of the appeal.

7.6 This entrance gate represents a significant urbanising-built form with no clear planning justification to serve and as such is a visually intrusion in this countryside location. The entrance gate with fence represents a sizeable length and scale which does not accord with policy that recommends development will not have an urbanising effect on the countryside in terms of its density, scale, massing, layout and height; and that any access, car parking or landscaping can be provided without having a detrimental impact on the character of the countryside. The previous gate was more akin to a countryside location where an access at some point in time would have been occasionally required.

7.7 The proposed fencing, brick piers and gate represent a stark elevation to Allington Lane. The structures impede views through the site creating a barrier through this stretch of the rural street scene. Their placement is in a location that was once occupied by a large area of dense vegetation which offered a softer and more appropriate edge to the highway in this rural location. Please see the below Google Streetview pictures of the site from 2018-2021 prior to works commencing.

2021



2020



2019



2018



7.8 While it is noted that there are existing permitted access driveways within the locality, they are placed to serve established planning uses and therefore serve

an operation function. As stated, the application is silent in relation to the purpose of the significant access intervention and represents inappropriate and unjustified development in this countryside location.

- 7.9 While an element of landscaping was proposed as part of the planning application to try and soften this appearance, it would ultimately not result in an acceptable scheme. Whilst it is recognised that the planting would assist in reducing the starkness of the new development and the fencing will grey/soften with time, this is not sufficient mitigation to reduce the visual harm caused by the structures and associated hardstanding to overcome the unjustified and inappropriate development. Furthermore, Hampshire Highways make comment to the need to keep this landscaping low-lying (nothing exceeding 0.6 metre in height) to avoid detrimentally impacting the visibility splays and as such landscaping would provide limited screening.
- 7.10 Whilst the visibility splays are below the recommended standard, Hampshire Highways did accept this. However, the Highways officer's comments relate only to the practicalities of the access and does not imply the overall proposal is a betterment for the site. This only helps to influence the planning balance as part of other material considerations.
- 7.11 Overall, given the visual harm and urbanisation caused by the development, in which there is no planning justification, it is considered to have a harmful impact on the rural setting and does not accord with strategic policy S5.

8. Conclusions

- 8.1 As set out within this Statement, there is a clear conflict between the proposed development, Local Plan Policies, SPDs and the contents of the NPPF. 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 2 be included as part of any approval.