

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 construction of a 3 bedroom detached
house with associated parking and landscaping to replace
an existing 3 bedroom mobile home.**

The Old Fairground, Bursledon Road, SO19 0NL

**Appeal by: Mrs Cheryl Wellstead-Clarke, on behalf of Mr &
Mrs Cole**

**Planning Inspectorate Reference:
APP/W1715/W/24/3338678**

Eastleigh Borough Council Reference: F/23/95867

May 2024

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1.0 Introduction

- 1.1 The Council's Statement of Case should be read in conjunction with the Officer's Delegated Report and Decision Notice, decision issued 27 November 2023. These documents, along with 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 21 August 2023 and registered as valid on 2 October 2023. It was given a reference number of F/23/95867. The proposed development was described as follows:

The construction of a 3 bedroom detached house with associated parking and landscaping to replace an existing 3 bedroom mobile home.

- 2.2 The decision was issued 27 November 2023 whereby 1 reason for refusal was listed:
 - 1) *The proposed erection of a dwelling in lieu of mobile home, by reason of its nature, degree of permanency, siting, appearance and excessive dimensions, would result in a visually intrusive addition and would have an unacceptable urbanising impact which would be detrimentally harmful to the intrinsic character and landscape of the countryside and settlement gap, thus the proposals would be contrary to Policies S5, S6, DM1 and DM26 of the Eastleigh Borough Local Plan (2016-2036), and the provisions of the NPPF (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 is located to the south of the crossroads junction where Bursledon Road (A3024) and Botley Road (B3033) adjoin. The site, subject to this appeal, is specifically located to the south-west of Bursledon Road situated behind existing vegetation. The site is accessed via Bursledon Road (east) and is currently bound by close board fencing and gates (which are slightly set back within the site).
- 3.2 The appeal site currently comprises a travelling showpeople site with 2no. lawful mobile homes and associated paraphernalia. From the site visit, as part of the original planning application, it was also noted that there were numerous vehicles/ lorries/ fairground equipment, on a predominantly gravelled surface.

- 3.3 The appeal site itself and surroundings fall within designated countryside and settlement gap. To the south is open fields (the former old fairground). When travelling (north-west) along Bursledon Road you get a feeling of countryside and openness with vegetation either side of the road.

There is a pedestrian pathway on one side of the road and some streetlighting, however the urban tendencies/ characteristics are limited, until the cross road junction, which is located to the north/ north-east of the appeal site. It should also be noted that to the north of the site is where the administrative boundary of Eastleigh Borough Council ends and Southampton City Council starts.

To the north-west of the application site (north of Botley Road) is a comprehensive residential estate. To the north-east of the application site (north of Botley Road) is a car garage and further east is an ambulance station.

From an aerial view of the site and surroundings it is apparent where the urbanisation of Southampton City Council starts (north of Botley Road). To the south of Botley Road, still within the Borough of Eastleigh there is stark contrast, with there being open fields, and protected countryside and gap, which is important given the dense and urban nature of Southampton City to the north.

4.0 Relevant Planning History

4.1 F/17/79859

Use of land to form 2no. permanent plots for use by travelling show people, including storage for vehicles, up to 12 caravans and associated equipment, and the creation of a new access road from Bursledon Road and service road.
Permitted (July 2017)

4.2 DC/17/82029

Discharge of Conditions Application for conditions 3, 4, 5, 6, 7, 8, 9 & 10 for Planning Permission Application F/17/79859.
Discharged (February 2021)

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)
- S3 (Location of New Housing)
- S5 (New Development in the Countryside)
- S6 (Protection of Settlement Gaps)
- DM1 (General Development Criteria)
- DM2 (Environmentally Sustainable Development)
- DM3 (Climate Change)
- DM4 (Zero or Low Carbon Energy)
- DM6 (Sustainable Surface Water Management and Watercourse Management)
- DM8 (Pollution)
- DM10 (Water and Waste Water)
- DM13 (Transport)
- DM14 (Parking)
- DM26 (Residential Extensions and Replacement Dwellings in the Countryside)
- DM31 (Gypsies, Travellers and Travelling Showpeople)
- DM38 (Funding Infrastructure)

5.5 Policies S5, S6, DM1 and DM26 are of specific relevance to the reason 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 Whilst it is acknowledged that the Inspector will have been furnished with the content of the relevant policies, for clarity, Policy DM26 is laid out below:

1. The extension or replacement of a permanent dwelling in the countryside will be permitted subject to the general development criteria and transport policies of the Local Plan and provided:

- a. the extension or replacement dwelling will not be disproportionate in size to the existing dwelling, neighbouring properties or in relation to its plot, or involve any extension to its curtilage; and*
- b. in the case of a replacement dwelling, the proposal includes the replacement of the dwelling within the curtilage, and on the same footprint as the existing building, unless environmental and/or access benefits arise from an alternative location within the curtilage; and*
- c. no additional dwellings are created.*

2. Permission will not be given for the replacement of mobile homes with permanent dwellings.

3. Residential institutions will be treated for the purposes of this policy in the same way as dwellings.

4. Proposals to extend or to replace rural workers dwellings will be considered under Policy DM27.

This Policy clearly states that permission will not be given for the replacement of mobile homes with permanent dwellings. Of which, the appeal proposals are in categorical conflict with.

- 5.7 The LPA would also highlight that the main purpose of this Policy is to protect the intrinsic character of the countryside and to avoid any unacceptable development which could have an adverse impact upon the qualities and nature of the countryside. In this particular instance, it is clear this Policy has sought to protect the countryside from permanent development which would have a demonstrable adverse impact. Generally, mobile homes are low key moveable structures. This is quite the opposite to a dwelling, requiring significant construction works with a permanent end feature. The two are therefore not comparable thus the Policy sets the stance that a dwelling could not be in lieu of a mobile home.

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 Delivering a sufficient supply of homes

Given the nature of the appeal, Paragraph 63 of the NPPF is considered to be relevant, *“Within this context of establishing need, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. These groups should include (but are not limited to) ... travellers...”*

- 6.10 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 erection of a dwelling in lieu of mobile home, by reason of its nature, degree of permanency, siting, appearance and excessive dimensions, would result in a visually intrusive addition and would have an unacceptable urbanising impact which would be detrimentally harmful to the intrinsic character and landscape of

the countryside and settlement gap, thus the proposals would be contrary to Policies S5, S6, DM1 and DM26.

- 7.3 The Officer's Delegated Report identifies the clear conflict with numerous Policies. Starting with Strategic Policies, S5 and S6 both seek to ensure that future development does not have an adverse impact upon the intrinsic qualities of the countryside and, in this specific instance, the settlement gap.
- 7.4 The LPA would like to reiterate to the Inspector that Policy S5 does not support the addition of new residential development, which is what this appeal is effectively proposing. Policy S5 is also supported by DM26 (residential extensions and replacement dwellings in the countryside), and DM31 (Gypsies, Travellers and Travelling Showpeople), which the Inspector has been furnished with.
- 7.5 As set out within the Officer's Delegated Report, Policy DM26 (section 2) explicitly states: "*Permission will not be given for the replacement of mobile homes with permanent dwellings*". This Policy stance offers no ambiguity. It is clear that mobile homes will not be replaced by permanent dwellings to ensure there would be no adverse permanent harm to the intrinsic character of the countryside.
- 7.6 The appellants statement of case makes reference to the Design, Access & Planning Statement (DAPS) which noted that the appellants health has deteriorated, hence the *need* for the appeal proposals. The DAPS does not, however, expand or explain the ailments the appellant suffers.
- 7.7 The Officer's Delegated Report had a 'Conclusion' section which acknowledged that the proposals would result in personal benefits to the appellant, however were not considered to be a *significant* material consideration, or one which carry *significant* weight to warrant complete departure from Local Plan Policies (which at the date of decision had only been formally adopted approx. 19-months prior). The LPA maintain this stance. Whilst the appellant's health condition is noted, the LPA do not consider these to hold greater weight than the harm arising from the proposals.
- 7.8 Paragraph 7 of the appellants statement of case is noted. This is a section of the Officer's Delegated Report "*.. another potential benefit could be securing a comprehensive landscaping scheme to resolve the previous landscape deficiencies and enhancements to the overall context of the site*". The Officer's Delegated Report also went on to note that screening/ planting should not be used to hide unacceptable development. Whilst acknowledging that improving the landscaping could be a positive element, the LPA consider the principle of development to be unacceptable and therefore trying to hide the development would not make it acceptable. Furthermore, the LPA could look at other options (enforcement) to ensure that the previous landscaping is reinstated. The LPA (or in this case, Inspector) do not need to grant planning permission to improve/ enhance landscaping. In any event, it is not considered that improved landscaping would mitigate the overall harm arising.
- 7.9 Further to the above, and as set out within the Officer's Delegated Report, the proposed dwelling would be of greater dimensions than the existing mobile home. The appellants statement states that *further comprehensive landscape plan could be introduced to negate the issues*. However, whilst the LPA have set out their stance above, it would also

be argued that if development needs to be further concealed then the development is not appropriate in the first instance.

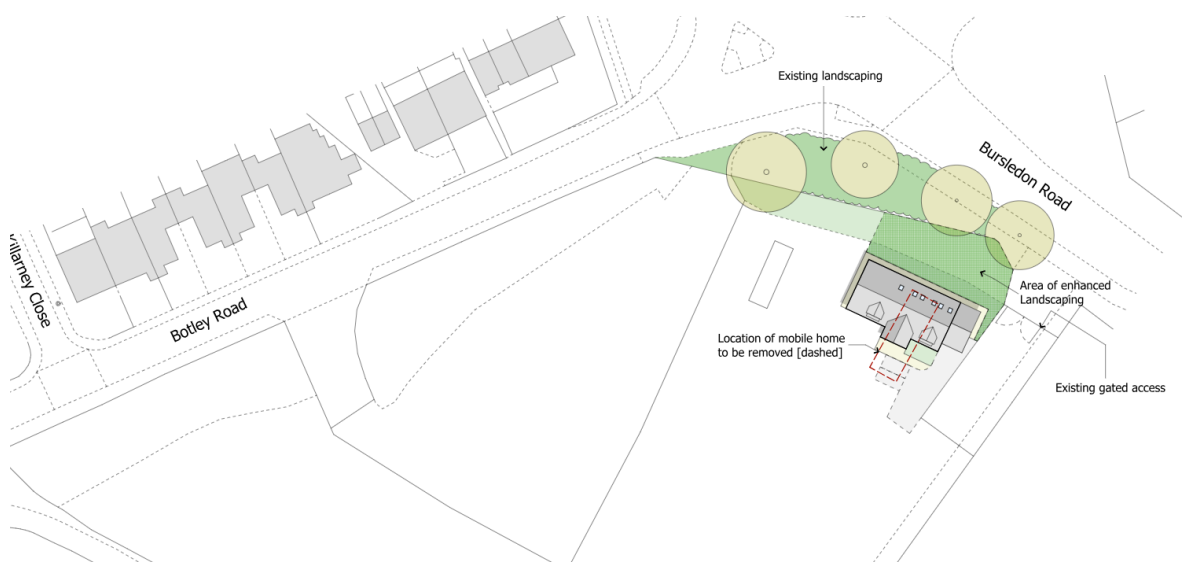
- 7.10 As this is a cross boundary application, Southampton City Council were consulted, and also had their own planning application to determine (23/01067/FUL). Whilst it was noted they appeared to be agreeable to the principle of development, they did have concern with the submitted proposals. Paragraph 14 of the appellants statement notes that *Southampton City Council Gypsy and Traveller Accommodation Assessment Final Report September 2021 highlights a need for additional accommodation for the community.*
- 7.11 It should be noted that the appeal site would not create 'new' or 'additional' Gypsy/ Traveller accommodation, as it is an existing and established site. The proposals specifically relate to the change in accommodation from mobile home, to permanent dwelling. There would be no increase in this specific housing provision.
- 7.12 It is also worth noting, that whilst the application is cross boundary, the majority of the development would be within Eastleigh Borough. The below shows the LPAs mapping system in a wider context. The appeal site being situated to the south-east of the junction of Botley Road and Bursledon Road (approximately outlined in red).



- 7.13 The below shows a closer view of the mapping with the pink/purple hashed line identifying the administrative boundaries (Southampton City Council to the north and Eastleigh Borough Council to the south).



- 7.14 The Location Plan shows that the proposed dwelling would predominantly be within Eastleigh Borough Council's administrative area, (albeit acknowledged that a small corner of the proposed building itself is likely to fall within Southampton City Council).



- 7.15 Paragraph 18 (within the conclusion) of the appellants statement of case states that *“the proposed dwelling has been designed taking into consideration the local surrounding area in regard to architectural styles, scale, the existing site access. Within the Officers Delegated Report it states the neighbouring residential dwellings “...are of modest sizes and designs, with a combination of materials; red brickwork and some buff brick, brown/ dark tile hanging, and upvc fenestration. Generally the properties are set back from Botley Road allowing for vegetation and/or parking provisions. The proposed dwelling does not appear to have sought any design cues from existing residential development...”*. The LPA would therefore conclude that the proposed dwelling has not been designed to take into account the character of the surroundings.
- 7.16 Ultimately, the proposals do not result in any additional Gypsy/ Traveller pitches as the site is established and currently provides the same provision. Further, the personal circumstances of the appellant are noted. Neither planning application or appeal

documentation have elaborated or provided any specifics of these ailments and how the proposed dwelling would significantly improve the quality of life for the appellant. Generally, health/ ailments are very rarely a significant material consideration of any planning application. In this instance, these circumstances are not so special or unique that they would outweigh the harm arising upon designated countryside and settlement gap. It would be for the Inspector to apply the necessary weight they feel appropriate on the personal health circumstances of the appellant. However, it is the LPA's view that these matters cannot and would not be sufficient justification to warrant departure from the Policies contained within the Eastleigh Borough Local Plan.

- 7.17 The LPA would conclude this section by reiterating that the proposals are in conflict with numerous Policies contained within the Local Plan. The most evident conflict is that with Policy DM26, which explicitly states that *permission will not be given for the replacement of mobile homes with permanent dwellings*.

7.18 Other Matters

As set out within the Officer's Delegated Report, the appeal site also falls within this radius of Solent & Southampton Water Special Protection Area, and New Forest. As well as this, the proposals would result in residential development which would create a nitrogen load. However, in this specific instance, the proposal would result in the replacement of an existing mobile home which facilitates a residential use therefore the proposed impact would be assessed against the existing impact, and therefore the proposals are not considered to have a worse impact than the existing, and ultimately would be acceptable in this specific regard.

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 1 be included as part of any approval.