

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

**Removal of two mobile homes and accompanying
buildings and replacement with two new self-build
dwellings, creation of new paddock area, improvements to
access sight lines, and new landscaping of site frontage.**

**Old Oak Farm, Winchester Road, Fair Oak, Eastleigh SO50
7HD**

Appeal by: Wessex Planning, on behalf of Mr J Lomas

**Planning Inspectorate Reference:
APP/W1715/W/24/3343675**

Eastleigh Borough Council Reference: F/23/96082

June 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 5 January 2024. 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 26 September 2023 and registered as valid on the same day. It was given a reference number of F/23/96082. The proposed development was described as follows:

Removal of two mobile homes and accompanying buildings and replacement with two new self-build dwellings, creation of new paddock area, improvements to access sight lines, and new landscaping of site frontage.

- 2.2 The decision was issued 5 January 2024 whereby 2 reasons for refusal were listed:

- 1) *The proposed erection of 2no. permanent dwellings in lieu of 2no. mobile homes, by reason of their nature, siting and excessive dimensions, would result in visually intrusive additions and would have an unacceptable urbanising impact which would be detrimentally harmful to the character, intrinsic qualities and landscape of the countryside, thus the proposals would be contrary to Policies S5, DM1 and DM26 of the Eastleigh Borough Local Plan (2016-2036), and the provisions of the NPPF (2023).*
- 2) *Insufficient information has been provided to demonstrate that the development would not have an adverse impact in terms of contaminated land, and its impact upon future occupiers. The proposals are therefore contrary to Policies DM1 and DM8 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 east of Winchester Road (B3354), accessed via an existing track. The appeal site comprises 2no. static mobile homes situated within the south-eastern portion of the site, and a large piece of land including open fields and horse grazing. The appeal site is bound by fairly mature dense vegetation along its western boundary fronting Winchester Road (B3354), which does provide some screening.

- 3.2 The surrounding area is classified as designated countryside. To the north-east of the site is a protected area for minerals. To the east and south are some residential properties (some accessed via Chestnut Drive). To the west is a strategic footpath along Winchester Road. Further west is a garden centre. To the north-west are other residential properties as part of Hillview Manor Park.

4.0 Relevant Planning History

- 4.1 LDC/21/90862
Lawful Development Certificate for an existing use: Siting of 2no. static mobile homes.
Certificate Issued (November 2021)
- 4.2 O/20/89174
Outline application for the erection of 4no. dwellings.
Withdrawn

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 are:
- S1 (Sustainable Development)
 - S2 (Approach to New Development)
 - S3 (Location of New Housing)
 - S5 (New Development in the Countryside)
 - 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)
 - DM11 (Nature Conservation)
 - DM13 (Transport)
 - DM14 (Parking)
 - DM26 (Residential Extensions and Replacement Dwellings in the Countryside)
 - DM38 (Funding Infrastructure)

- 5.4 Policies S5, DM1, DM8 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.
- 5.5 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.

- 5.6 The LPA would also highlight that the main purpose of Policy DM26 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 seeks 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 provided 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. 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 decisions on proposed development in a positive and creative way”* and states that decision-makers at every level should *“seek to approve applications 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 requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise”*.

- 6.9 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 2no. permanent dwellings in lieu of 2no. mobile homes, by reason of their nature, siting and excessive dimensions, would result in visually intrusive additions and would have an unacceptable urbanising impact which would be detrimentally harmful to the character, intrinsic qualities and landscape of the countryside, thus the proposals would be contrary to Policies S5, DM1 and DM26 of the Eastleigh Borough Local Plan (2016-2036), and the provisions of the NPPF (2023).

- 7.3 The Officer’s Delegated Report identifies the clear conflict with numerous Policies. Starting with Strategic Policy S5, this seeks to ensure that future development does not have an adverse impact upon the intrinsic qualities of the countryside.

- 7.4 The LPA would like to reiterate to the Inspector that Policy S5 does not support the addition of new dwellings in the countryside. Policy S5 is also supported by DM26 (residential extensions and replacement dwellings in the countryside).

- 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. The policy seeks to prevent mobile homes being replaced by permanent dwellings, to ensure there would be no adverse permanent harm to the intrinsic character and qualities of the countryside.

- 7.6 The LPA would also note that even in circumstances where Policy DM26 does apply, it states in point 1(b) that replacement dwellings should be within the curtilage and on the same footprint as existing dwellings. The appeal proposal is for two dwellings to replace mobile homes, on a different, undeveloped part of the site. The proposal therefore conflicts with Policy DM26 in more than one aspect.

- 7.7 Turning to the appellants statement of case the LPA would respond as follows:

- 7.8 Paragraph 3.2 sets out the health condition of the appellants father. As set out within the Council’s costs rebuttal, health conditions are a material planning consideration. No evidence of the appellants nor appellants relatives health conditions were provided at planning application stage. Whilst the disability of the appellants father is now noted as

part of this appeal, and whilst this would carry some weight, it is not considered that this would hold sufficient weight to warrant complete departure from the Local Plan Policies.

- 7.9 Paragraph 3.4 states that the *“the appellant agrees, that, technically the proposal is contrary to DM26”*. Policy DM26 is set out in full in paragraph 5.6 of the Council’s Statement of Case. Section 1 *the extension of 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 (criteria a-c are met)*. As the proposals do not constitute a replacement dwelling this section is not applicable. The appellants existing living arrangement comprises a mobile home, whereby Section 2 is engaged, which clearly sets out that *Permission will not be given for the replacement of mobile homes with permanent dwellings*.
- 7.10 Paragraph 3.5 sets out that the appellant sought pre-application advice prior to the submission of the planning application and subsequent appeal. The pre-application advice response was included as an appendix as part of the “Planning, Design and Access Statement” submitted in support of the planning application. The pre-application advice by the Council clearly set out that the principle of the development was not acceptable. The Council, however, helpfully did go on to provide further advice on other relevant material considerations. It is, however, abundantly clear that the LPA advised at pre-application stage that the proposals would not be acceptable. The appellant chose to submit a formal planning application which was refused, consistent with the Council’s pre-application advice response and in line with the Council’s Local Plan Policies. This further renders the costs application unreasonable from the appellant as they were aware prior to the submission of the formal planning application that the principle of development was, indeed, unacceptable as it is contrary to policy.
- 7.11 Paragraphs 3.6 – 3.10 relate to housing need. In accordance with the revised NPPF (December 2023), Local Planning Authorities are not required to maintain a five-year housing land supply if they meet the two criteria in paragraph 76. These are a recently adopted Local Plan, that identified at least a five-year supply when the examination concluded. The Eastleigh Borough Local Plan was adopted in April 2022 and the final Inspector’s report accepted that the Council met the requirement for a five-year supply. The five-year housing land supply position report published by the Council at that time provides further information on the sources of housing supply. The Council is not therefore required to maintain a five-year housing land supply and the tilted balance will not apply. Whilst the point the appellant is trying to make is acknowledged, the appeal proposals would not result in a net increase of residential development, as there are 2no. existing lawful mobile homes on site which provide residential accommodation. The provision of 2no. new dwellings is therefore not considered to contribute towards any housing need. Furthermore, the proposals are within the countryside which is set out in Policy S5 to not be an appropriate or sustainable location for new residential development.
- 7.12 Paragraphs 3.11 – 3.17 relate to self builds. Whilst this is noted to be a positive facet of the appeal proposals, this is not considered to outweigh the harm arising from the replacement of the mobile homes with the proposed permanent dwellings within the countryside, contrary to Policy S5 and DM26.
- 7.13 Paragraphs 3.18 – 3.25 relate to Eastleigh’s settlement hierarchy and sustainability of the appeal site. Within this section other planning applications are referenced. However, as

set out within the costs claim, each application is determined upon its own merits. Application referenced "O/17/79837" related to a different site, albeit nearby, different proposals and was assessed against the previous Local Plan. This application is for the replacement of mobile homes with dwellings, whereby the specific policy wording of DM26 of the adopted Local Plan prevents this type of development.

- 7.14 Paragraph 3.26 relates to the lawful development certificate. This paragraph states "*the principle of permanent residential use on the land is without question. Essentially then, the proposals are for 2 replacement dwellings. The LPA does not disagree with this principle*". The LPA would agree that residential use has been established by way of the lawful development certificate, as the mobile homes had been in situ for in excess of 10 years. However, the LPA does not agree that the proposals comprise 'replacement dwellings'. The proposals comprise the replacement of lawful mobile homes, with permanent dwellings.
- 7.15 Paragraphs 3.27 -3.29 set out the "fall-back position" the appellant believes to have. As set out within the Council's cost rebuttal it is contended whether the existing mobile homes could be replaced with larger mobile homes, given the nature of the lawful development certificate and the red line plan which was approved. Again, it would be reiterated that this is not considered to be a matter which is pertinent to the appeal proposals, given that the proposals would result in the replacement of the 2no. mobile homes with 2no. 4bedroom permanent dwellings.
- 7.16 Paragraphs 3.30 – 3.31 relates to protected trees. Again, as set out within the Council's cost rebuttal, the Council's Tree Officer's response to the application stated that limited arboricultural information was provided with the application. There was no information to justify that the removal of the existing mobile homes would improve the trees along the eastern boundary. Further, no evidence has been provided as part of this appeal to support this comment. Even if this were demonstrated to be the case, whilst this would be a positive facet of the appeal proposals, this would not warrant complete departure from the Local Plan policies.
- 7.17 Paragraphs 3.32 – 3.38 relate to landscape improvements. Comments were also provided in response to this as part of the Council's costs rebuttal. Whilst it is acknowledged that the proposals could improve some landscaping, the fact that further significant landscaping is proposed to help screen the development demonstrates the additional visual impact and urbanisation that the development would have. Furthermore, Policy DM11 of the Local Plan requires all new development to "protect, conserve and enhance". This policy therefore requires development to either protect, conserve and enhance the existing landscaping, therefore this is not a benefit of the scheme, but a Policy requirement.
- 7.18 The LVIA was reviewed by the Council's Landscape Officer at the planning application stage, whereby they advised "*The LVIA summary does not recognise the perceptual aspect: the change of the site to permanent residential use will change the perception of this area and the landscape context in a negative way.*" The landscaping proposals are not considered to address the permanent adverse harm arising.
- 7.19 Paragraphs 3.39 – 3.42 relate to access improvements. As per the Council's cost rebuttal the improved visibility splay is not considered to be of significant weight. It is considered

misleading for the appellant to state that the proposals would provide “safer” visibility splays. The Highways Authority have only confirmed that the visibility splays would be an improvement.

- 7.20 Paragraphs 3.43 – 3.58 relate to the design and also make reference to the potential “fall-back” position of replacing the mobile homes with larger mobile homes. The LPA is not convinced the replacement of existing mobile homes with larger mobile homes would be acceptable and such a scenario would also not be comparable to the proposed two-storey permanent dwellings. In any event, a ‘larger mobile home’ is not what the appeal proposals are seeking. Furthermore, and as set out within the Officer’s Delegated Report, the proposed dwellings would be of greater dimensions than the existing mobile homes and would appear overtly domestic as a result of the contemporary finish and excessive amounts of glazing.
- 7.21 Whilst it is noted that there are residential dwellings to the south of the application site, this does not mean that further residential development would be acceptable. The proposed design of the appeal proposals completely contrasts with the existing built environment to the south.
- 7.22 Paragraphs 3.59 – 3.63 relate to living conditions and space standards. The Nationally Described Space Standards set out the minimum space required. The LPA is required to assess new dwellings against this to ensure that the proposals are acceptable. The LPA noted that the proposals would exceed these standards. In terms of living conditions, this is considered to be appropriate. In terms of design, the footprint/ overall size is considered to be excessive. This was assessed accordingly within the Officer’s Delegated Report.
- 7.23 Paragraph 3.60 notes the existing living conditions for the appellant. The LPA would acknowledge that the proposed dwellings may well provide enhanced living conditions compared to a mobile home, but this would not outweigh the policy conflicts.
- 7.24 Paragraphs 3.64 – 3.71 relate to nutrients. This matter was covered within the Officer’s Delegated Report, specifically section titled ‘SPA Mitigations’ which set out that as there are 2no. mobile homes on site, there would be no increase of nitrate output, therefore the LPA is not convinced that this matter is of significant weight. The further information supplied with regard to nitrates would need to be reviewed by Natural England. Should they be agreeable to this suggested nutrient improvement the Inspector would need to weigh this against the harm arising from the impact of replacement mobile homes with permanent dwellings, which is a clear departure from Local Plan policies.
- 7.25 Paragraphs 3.72 – 3.77 relate to the provision of a unilateral undertaking and planning conditions. Paragraph 3.72 specifically states *“the negotiation of a S106 agreement was offered to the LPA, but the LPA was not prepared to work on such an agreement considering the principle of development unacceptable”*. The LPA would advise that there was no request from the appellant to enter a S106 agreement. Appendix 1 is the email chain that was had during the application process. The LPA were very clear that the proposals were unacceptable in principle and therefore would not be supportable. As a result no unilateral undertaking/ S106 agreement was prepared.

- 7.26 The matters that the appellant has set out in paragraph 3.73 that the UU would cover, can predominantly be secured via planning conditions. The LPA's suggested conditions are provided at Appendix 2.
- 7.27 It is also noted that the appellants statement of case is supported by appendices. Appendix 1 relates to other self-build development within the green belt. The LPA would advise that the circumstances of the appeal in their Appendix 1 are different to the appeal proposals. The main comparison is the fact both relate to self-build development. The appeal proposals relate to development in the countryside, not a protected Green Belt. Furthermore, the appeal proposals are in direct conflict with Policy DM26 which seeks to prevent the replacement of mobile homes with permanent dwellings, therefore the LPA consider these situations relatively incomparable.
- 7.28 The LPA assessed all relevant material planning considerations during the application process. Following receipt of this appeal additional information about the appellants fathers health has been provided. Whilst this is noted as a material planning consideration, this is not considered to carry significant weight to warrant departure from the Development Plan.
- 7.29 The LPA would conclude this section by reiterating that the proposals are in direct conflict with policies contained within the Development Plan. In the planning balance, none of the material planning considerations are considered, alone or in combination, to outweigh the identified harm arising from the proposals, which is considered to be significant thus warranting refusal, and dismissal.
- 7.30 **Reason 2**
Insufficient information has been provided to demonstrate that the development would not have an adverse impact in terms of contaminated land, and its impact upon future occupiers. The proposals are therefore contrary to Policies DM1 and DM8 of the Eastleigh Borough Local Plan (2016-2036), and the provisions of the NPPF (2023).
- 7.31 Appendix 1 is the email correspondence that was had during the planning application. This shows that the appellant was furnished with consultee comments, namely the Council's Contaminated Land Officer (CLO) comments (10 November 2023).
- 7.32 The appellant requested the opportunity to address these comments. The LPA initially advised that the proposals were unacceptable in principle and by providing the additional information would not alter the LPA decision, however the LPA did allow the submission of additional information in this regard.
- 7.33 The appellant submitted an 'Environmental Desk Study And Preliminary Risk Assessment' which the Council's CLO reviewed. This report reinforced the concerns of the Council's CLO thus forming a reason for refusal.
- 7.34 The appellant has now submitted a further contaminated land report as part of this appeal. This report has been reviewed by the Council's CLO, and their comments are provided at Appendix 3. The CLO agrees with the findings of the report, that the potential risk of ground gas associated from the presence of made ground from past uses is low. They have confirmed agreement that no remedial actions are required, but that an informal

observation and discovery strategy for unexpected contamination should be followed during construction. This is a matter that could be addressed by condition should the appeal be allowed, and suggested condition wording is set out in Appendix 2.

- 7.35 On the basis of this additional information, the LPA can confirm that the matters relating to Reason for Refusal 2 have been addressed.

8.0 Conclusions

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