

EASTLEIGH BOROUGH COUNCIL

Town and Country Planning Act 1990 – Section 78

STATEMENT OF CASE OF LOCAL PLANNING AUTHORITY

Prior Approval for agricultural access from Pembers Farm Avenue

Pembers Hill Farm, Mortimers Lane, Fair Oak, Eastleigh, SO50 7EA

Appeal By: Mrs Annette Cooper

Planning Inspectorate Reference: APP/W1715/W/24/3347834

Eastleigh Borough Council Reference: PN/23/96630

October 2024

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APPENDIX 1: Local Planning Authority Suggested List of Planning Conditions

PARTICULARS OF APPLICATION AND APPEAL

1. This appeal relates to application reference PN/23/96630 which sought prior approval for the construction of an agricultural access from Pembers Farm Avenue to Pembers Hill Farm in Fair Oak, Eastleigh, SO50 7EA.

REASONS FOR REFUSAL

2. The application was considered at the Bishopstoke, Fair Oak and Horton Heath Local Area Committee on 31 January 2024 where members resolved to refuse prior approval in line with the Case Officer's recommendation. The decision notice was subsequently issued on 8 February 2024. Copies of the Council's Decision Notice, Committee Report and Minutes of the Committee Meeting have been provided to the Planning Inspectorate as part of the appeal questionnaire.

3. The reasons for refusal were as follows:

(1) The siting of the proposed agricultural access would be harmful to the visual and landscape amenity of the area by virtue of the loss of hedgerows and impact on attractive vista contrary to Policy DM1 of the Eastleigh Borough Local Plan (2016-2036).

(2) The siting of the proposed agricultural access at the end of Pembers Farm Avenue would result in unacceptable and inappropriate traffic movements through a quiet and safe residential area with associated risks to road safety and amenity, including impacts from debris, dust and noise, contrary to Policies DM1 and DM13 of the Eastleigh Borough Local Plan (2016-2036).

THE APPEAL SITE AND SURROUNDINGS

4. The application site lies along the northern perimeter of a new residential housing estate (the Pembers Hill Farm Estate) at the point where this borders existing countryside in the form of an agricultural field. This boundary is presently marked by hedging and planting, with an area of green verge, post and rail fencing and the kerb edge separating this from the highway. Pembers Farm Avenue, a main route through the centre of the residential development, leads up to this point and joins the one-way Keepers Drive and Chislebourne Lane which run parallel to the field, with the proposed access to be directly onto the latter. There is a mature tree situated in close proximity to the location of the new access which is a prominent visual feature, along with longer range views over the countryside beyond.
5. An existing field gate lies to the east of the proposed new access (along Keepers Drive) which had previously allowed movement from field to field prior to the residential development having been undertaken. This has, however, been enclosed by the landscape scheme associated with the development which includes new hedging and other soft planting. This gated entrance is therefore not in current use, leaving the field landlocked from the public highway. Other accesses, including one from Mortimers Lane, currently provide

access to the fields, although they are in third party ownership. The fields to which the access forming the subject of this appeal would connect to are understood to be farmed by one of these third parties.

RELEVANT PLANNING HISTORY

6. The application the subject of this appeal followed on from the submission of a previous application for prior approval for the construction of the agricultural access (LPA Ref: PN/23/96033). That application was however withdrawn on 07 November 2023.
7. Also of relevance to this application is the planning history for the residential development on the edge of which the appeal site falls, known as the Pembers Hill Farm Estate. Outline planning permission for up to 250no. dwellings was granted for this development in May 2018 under application reference O/15/77190, with a subsequent reserved matters application pursuant to this outline permission being approved for 242 dwellings and the retention of 2 existing properties in November 2018. The full descriptions of these applications are as follows:
 - O/15/77190 – Outline: Construction of up to 250no. dwellings with access from Mortimers Lane and pedestrian/cycle links, open space and landscaping, all matters other than access reserved – PERMIT (May 2018)
 - RM/18/83278 – Reserved matters for the construction of 242 dwelling units and retention of 2 dwellings pursuant to outline permission O/15/77190 for residential development of 250 dwellings. (Details of appearance, landscaping, layout and scale of development only for consideration) – APPROVED (November 2018)
8. Conditions 10 and 11 of the above referenced outline planning approval respectively required the submission of a landscaping scheme and landscape, ecology and open space management plan and maintenance schedule for approval by the Local Planning Authority prior to the commencement of development. These conditions were discharged under application reference DC/18/83411 on 8 July 2020.
9. Further applications to seek to re-discharge Conditions 10 and 11 (DC/23/96078) and for a non-material amendment to revise the landscape plans approved as part of the above referenced reserved matters consent (RM/18/83278), both of which were to incorporate the new agricultural access which forms the subject of this appeal, were withdrawn in April 2024.

RELEVANT PLANNING POLICIES

Eastleigh Borough Local Plan 2016-2036:

10. For the purposes of this appeal, the Development Plan comprises of the Policies of the Eastleigh Borough Local Plan 2016-2036 which was adopted in

April 2022.

11. The relevant policies to the determination of the prior approval application were Policies S5 (New development in the countryside), DM1 (General criteria for new development), DM11 (Nature conservation), and DM13 (General development criteria – transport).
12. Policies DM1 and DM13 are of specific relevance to the reasons for refusal. Copies of these policies have been provided to the Planning Inspectorate as part of the Council's appeal questionnaire and it is therefore not deemed necessary to repeat them in full here. Their respective requirements are, however, referenced where relevant in the below section pertaining to the Council's Reasons for Refusal.

Other Material Considerations

National Planning Policy and Guidance

13. The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are expected to be applied. The latest iteration of the NPPF was published in December 2023 and is a material consideration in the determination of this appeal.
14. Whilst not a definitive list, the following Sections and Paragraphs of the NPPF are considered to be of particular relevance to this appeal and the reasons for refusal:
 - Section 9 (Promoting sustainable transport) and in particular Paragraph 114 which stipulates amongst its requirements that in assessing specific applications for development, it should be ensured that safe and suitable access to the site can be achieved for all users, and 115 which states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety.
 - Section 12 (Achieving well-designed and beautiful places), with Paragraph 135 stating, *inter alia*, that planning decisions should ensure that developments: will function well and add to the overall quality of the area; are visually attractive as a result of good architecture, layout and appropriate and effective landscaping; are sympathetic to local character, including the surrounding built environment and landscape setting; establish a strong sense of place; and, create places that are safe, inclusive and accessible, with a high standard of amenity for existing and future users.
15. The Planning Practice Guidance (PPG) provides additional guidance in support of the provisions of the NPPF and is also a material consideration in the determination of this appeal.

PRINCIPLE OF DEVELOPMENT

16. Schedule 2, Part 6, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (herein after referred to as the “GPDO”) sets out that the following is Permitted Development:
 - A. The carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area of –
 - (a) works for the erection, extension or alteration of a building; or
 - (b) any excavation or engineering operations,which are reasonably necessary for the purposes of agriculture within that unit.
17. For the purposes of Part 6, Class A, ‘agricultural land’ is defined as land in use for agriculture and which is so used for the purposes of a trade or business. Agriculture is not defined in the GPDO, but section 336(1) of the Town and Country Planning Act 1990 provides examples of agricultural activities. This includes, but is not limited to, the use of land for horticulture, seed growing, the breeding and keeping of livestock, grazing, and meadow land.
18. The information provided with the application explains that the land is permanent pasture and is therefore used for a hay/silage crop with aftermath grazing, usually by sheep. These activities are considered to fall within the definition of agriculture and would take place on a holding that is in excess of 5 hectares (being circa. 13.5 hectares), with the creation of the private way (access) being deemed to constitute an engineering operation which is allowed for under Class A (b).
19. Development which is permitted by Class A is, however, subject to a range of conditions that are specified within the GPDO. As set out within paragraph A.2 sub paragraph 2, these conditions include that where such development consists of the formation or alteration of a private way, the developer must, before beginning the development, apply to the local planning authority for determination as to whether the prior approval of the authority will be required as to the siting and means of construction of the private way.
20. In order for approval to be granted therefore, the particular development proposed must be considered to be acceptable and to accord with the relevant development plan policies (which are detailed in paragraph 12 above) in these respects and, for the reasons as set out within the Council’s Decision Notice dated 8 February 2024 and within the section below pertaining the Reasons for Refusal, the Local Planning Authority do not consider this to be the case.

THE REASONS FOR REFUSAL

21. The following sections provide additional detail and justification for the Council’s reasons for refusal as set out within its Decision Notice. Certain matters raised within the Appellant’s Statement of Case, in so far as these are relevant to

these reasons, are also covered within these sections, with the remaining issues raised, where necessary and appropriate, being covered in the section thereafter entitled 'Response to the Appellant's Statement of Case'.

Reason for Refusal 1 (Impacts on the Visual and Landscape Amenity of the Area)

22. Policy DM1 (General criteria for new development) of the Local Plan requires, *inter alia*, that all new development should not have an unacceptable impact on, and where possible should enhance the character and appearance of urban areas and the countryside; take full and proper account of the context of the site including the character, appearance and land uses of the locality or neighbourhood, and be compatible with adjoining uses and be well integrated with these in a number of respects including its layout, design and siting, both in itself and in relation to adjoining buildings, spaces and views. It also states that development should not involve the loss or damage to landscape features of value to the character of the area which includes trees and hedgerows.
23. The proposed agricultural access would be sited at the northern end of Pembers Farm Avenue, in the proximity to its junction with Chislebourne Lane and Keepers Drive. These roads form part of a recently constructed modern residential housing estate which to its northern side marks the boundary of the urban edge with designated countryside within the Council's adopted Local Plan. In recognition of the location and the transitional nature of this part of the development, it was considered essential that the residential scheme included a suitable boundary that provided for an appropriate interface between the more urban character of the housing and the greener open countryside.
24. In this regard, the landscaping scheme which was approved as part of the discharge of condition 10 of outline planning approval O/15/77190 (under application DC/18/83411) made provision for the northern boundary of the site, where the new access is proposed, to be marked by a combination of a 1.2m high post and rail fence which would be mounted within a verge of flowering grassland, with a continuous mixed native hedge to strengthen what was the existing field boundary beyond. These provisions, which are reflective of the current conditions on site, provide for a boundary which both respects the character of its setting, and which contributes significantly and positively to the visual attractiveness and amenity of the new development and its surroundings.
25. The interjecting of this boundary by the new access that is proposed to be created, therefore, and the associated permanent loss of the established hedgerow and green verge that would result from it, would significantly disrupt the visual continuity that this presently provides and adversely impact upon the amenity and character of the area. These negative impacts would be notably compounded by the prominent location of the proposed access point which would not only be visibly apparent when in nearby proximity to it but also from longer range views when moving northwards along the length of Pembers Farm Avenue, whereby the current boundary treatment provides for an attractive and verdant backdrop to this key vista within the residential development.

26. Whilst it is noted that the proposals incorporate a commitment to a landscaping scheme which would include new hedge planting to replace the existing field gate which lies further to the east along Keepers Drive, it is not considered that this would provide for adequate compensation for the visual and landscape loss that would result from the proposals given the notably less prominent location where the existing field gate is situated.
27. Taking account of these factors, the siting of the proposed agricultural access is considered to be unacceptable and to be in conflict with the provisions of Policy DM1 of the Local Plan and Paragraph 135 of the NPPF in that it fails to take account of the context of the site, would involve the loss of a landscape feature of value to the visual amenity of the locality in the form of the existing established hedgerow and the site boundary that it forms part of, and would adversely and unacceptably impact upon the character and appearance of the area.

Reason for Refusal 2 – Impacts of Highway Safety and Amenity

28. Policy DM1 (General criteria for new development) states that all new development should not have an unacceptable impact on and where possible should enhance residential amenity and that development should be compatible with and well-integrated with adjoining uses.
29. Part 1 of Policy DM13 (General development criteria – transport) of the Local Plan sets out that all new development must have safe and convenient access to the highway network and that access arrangements must meet national and local guidance and standards; not cause or increase danger to roads users or have a significant impact on the operation or safety of the highway network; and be provided without unacceptable environmental impact.
30. As noted above, the proposals are for the construction of an access to an agricultural holding. This access, which would be taken from Chislebourne Lane within the neighbouring residential development, would be 4.2m in width and would incorporate the provision of a dropped kerb and grasscrete surfacing, as well as a new gate across the entrance to the field. The application was supported by a Transport Technical Note (i-Transport, MS/ITS19535-001B TN, 8 December 2023), herein after referred to as the 'TTN', which covers a range of highway related matters in respect of the proposals.
31. These matters, amongst other things, include information in respect of the levels of anticipated movements arising from the development, as well as the types of vehicles that would be expected to be associated with the nature of activities undertaken within the agricultural holding. The TTN sets out that these movements incorporate weekly visits during a normal week, 10 visits over a week or one to two visits per day associated with the hay and silage growth operations during May to August, and daily visits during October to January in relation to sheep grazing that would take place on the land for an approximately 6 week period between these months.

32. Whilst acknowledging that Hampshire County Council (the Highway Authority) have raised no objection to the level of movements and that these are relatively low in purely quantitative terms, the Council consider that the combination of these movements, when taken with the type and nature of vehicles to be used and significantly the routing of them directly from and to an agricultural field through what is a quiet residential estate, would have detrimental implications for both amenity and highway safety.
33. These vehicles include quad bikes, tractors with associated agricultural equipment including hay tedders, and the usage of trailers which would incorporate those to be utilised to transport both livestock and equipment. Such vehicles and movements are considered to be incompatible with their surroundings with them being not of a type and nature that would be reasonably expected to be seen moving through a modern purposely designed housing estate, and their routing through this development necessitating them to not only pass residential properties but also an area of open space which incorporates a children's play area.
34. The implications of the combination of these factors would, as noted above, be detrimental impacts upon highway safety and amenity. This would include by way of noise and disturbance to residents, particularly if a farmer was towing agricultural equipment or livestock, and if such movements were to occur at an unsociable time of the day with unrestricted access to the agricultural holding being sought. Indeed, the potential for noise to occur from movements and vehicles of this nature are acknowledged within the submitted Agricultural Justification Report (Reading Agricultural Consultants, December 2023) which accompanied the application and, which, whilst making reference to the adjacent field gate, can similarly be applied to the access that is now proposed.
35. As well as the general highway safety and amenity implications associated with farm traffic passing through a quiet residential estate and by its open space and play facilities, there is also notable concern arising from the risk of dust, mud and debris transfer onto the highway from vehicles leaving the field, particularly during wet weather periods and given the capacity of tractor tyres for example to collect and deposit notable amounts of mud within and from their tread. Such transferral would not only significantly affect the amenity of the area through making these quiet residential roads untidy, but it would also create a notable risk of slips and slides occurring, both for vehicles and pedestrians, which has the potential to undermine highway safety.
36. This was something that was noted within the comments of the Highway Authority on the planning application, who felt that the grasscrete blocks at the field gate access would not be sufficient to negate this risk. The Highway Authority, therefore, requested a condition be imposed to require that the appellant clear any mud or debris from the road should transferral from the field occur, with this being either by shovel and broom or, if insufficient, through the utilisation of road sweepers.
37. In response to this, the Appellant has, during the course of the application process (see their Appendix 7) and again within their submitted appeal

Statement of Case (paragraph 6.34 and Appendix 9), proposed conditions in this regard. These conditions would require the submission of a farm management plan to include measures as to how mud on the road would be managed and cleared by the farmer / landowner, with a further condition for Pembers Farm Avenue and Chislebourne Lane to be swept by a road sweeper on a fortnightly basis until the roads are adopted by the Highway Authority, after which point the Appellant considers that the responsibility for keeping the roads clean would pass to them.

38. The Council, however, consider that these measures are insufficient given the high likelihood for mud and debris transferral to occur and the access being directly out onto a residential estate road. Whilst the Appellant's proposed condition 2 would now incorporate the use of a road sweeper when debris is more substantial, this is unlikely to be immediate and there would thereby still be an impact upon highway safety and amenity whilst such cleaning is awaited, something which is considered to be unacceptable in the aforementioned context.
39. Additionally, the proposal to sweep the adjacent routes on a fortnightly basis would similarly be insufficient and could lead to sustained periods whereby these roads are subject to levels of mud, dirt and detritus that would be beyond what would be reasonably be expected within a housing estate of this nature and which could endanger highway and pedestrian safety. The Council would also question the reasonableness of the assertion that the responsibility for cleaning up dirt which has directly arisen from the farming operations should be passed to the Highway Authority upon adoption of the roads.
40. Having regard to the above, it is considered that the siting of the proposed agricultural access, given the nature of vehicular movements associated with it and the noise, debris, mud and dust that they would generate, is inappropriate and incompatible within what is a quiet residential area and that it would, as a result, have an unacceptable impact upon road safety and amenity. For these reasons, therefore, the proposals are considered to be in conflict with the provisions of Policies DM1 and DM13 of the adopted Local Plan, as well as Paragraphs 114, 115 and 135 of the NPPF.

RESPONSE TO APPELLANT'S STATEMENT OF CASE

41. A number of the matters raised within the Appellant's Statement of Case are covered, either directly or indirectly, within the above sections on the Reasons for Refusal. There are, however, two further matters which are raised which it is considered necessary and appropriate to respond to, with these pertaining to the consideration of the level of need for the access that is proposed, along with the fallback position which is suggested in respect of the 'existing' access to the east.
42. In relation to the latter of these first of all, the Appellant's Statement of Case refers on a number of occasions to the 'existing' access point, with Paragraph 4.7, for example, emphasising what is purported to be "a very real risk" of "establishing the re-use of the existing and entirely inappropriate access point"

should the appeal proposal not be allowed. The 'access' in question consists of a five-bar gate which is sited on the southern boundary of the field, to the east of the appeal site. It is understood that this would, prior to the residential estate being constructed, have allowed movement from one field to the next.

43. The access has, however, to all intents and purposes been closed off by the landscaping and highway works undertaken as part of the adjacent housing scheme which includes the kerbed edge of the highway (Keepers Drive), a verge, a post and rail timber fence, and a range of soft planting. In order for it to be utilised therefore for vehicles to enter the field, these features would need to be removed and a formal access created from the highway. Collectively, this would constitute engineering operations for which, in the opinion of the Council, prior approval would be required.
44. Whilst the Council do not necessarily disagree therefore that the use of this as an access could, in itself, potentially have amenity and highway safety implications, such matters would need to be fully considered as part of a separate application on their own merits and the Council do not thereby agree that the bringing into use of this access represents a fallback position in the 'either/or' scenario that has been presented between it and the appeal scheme.
45. With regards to the matter of need, the application submission along with the Appellant's Statement of Case explains the personal circumstances of the Appellant that have led to them to seek the provision of an independent access to their land, which would otherwise be 'landlocked' unless access is attained across third party land. Whilst limited evidence has been presented that such arrangements would not in themselves be entirely unfeasible, aside from the suggestion within the Appellant's Statement of Case that this would not be a sustainable solution or that it may expose the Appellant to possible ransom situations, the Council does not dispute that the access would be needed for agricultural purposes nor that "the size of the agricultural holding is sufficient to warrant its own suitable and usable agricultural access" (as suggested within the submitted Agricultural Justification Report (Reading Agricultural Consultants, December 2023) which accompanied the application).
46. The Council do not consider, however, that the particular access proposed is "suitable" in terms of its siting due to the adverse impacts that this would have on the visual landscape and amenity of the area and upon highway safety and the amenity of residents, as set out within the Council's reasons for refusal of prior approval and explained further within this Statement of Case. The level of need for the access is not therefore, in the view of the Council, a material consideration of sufficient weight to outweigh the significant harm identified or the conflict with the development plan in these respects.

CONCLUSIONS

47. As set out within this Statement, there is a clear conflict between the proposal and the Policies within the adopted Eastleigh Borough Local Plan 2016-2036 (in particular DM1 and DM13), as a result of which it is clear that the proposal does not accord with the development plan for the purposes of Section 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. Prior approval should therefore be refused unless material considerations indicate otherwise. For the reasons as set out above, there are no such material considerations. Accordingly, the Local Planning Authority respectfully requests that the Inspector dismisses this appeal.

48. Should the Inspector, however, be minded to grant prior approval, the Local Planning Authority would request that the conditions set out in Appendix 1 be included as part of the approval.