



Planning Appeal under Section 78
Town and Country Planning Act 1990

**Land to the South of Peewit Hill,
Bursledon, SO31 8BL**

Appellant's Statement of Case

Appellant:
Groves Group Ltd

Local Planning Authority:
Eastleigh Borough Council

LPA Ref: F/24/96970

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1. INTRODUCTION

- 1.1 Luken Beck mdp Ltd has lodged this appeal on behalf of the Appellant, Groves Group Ltd, against the decision of Eastleigh Borough Council to refuse full planning permission for the erection of 2 semi-detached 3-bed dwellings, with associated access, parking and landscaping on land south of Peewit Hill, Bursledon (site location plan attached at Appendix 1 and aerial photograph at Appendix 2).
- 1.2 The planning application was submitted to the Council on 27th February 2024 and registered under application reference F/24/96970. The application was refused permission by Planning Officers under delegated powers on 17th July 2024 for the following three reasons:
 1. *The proposals represent an unjustified form of development within an area of designated countryside and settlement gap which, owing to its layout, scale, design and siting, would have an unacceptably harmful and detrimentally urbanising impact upon the character of the site and that of the immediate surrounding area. The application is therefore contrary to the requirements of Policies S5, S6 and DM1 of the Eastleigh Borough Local Plan 2016-2036, and Paragraphs 135 and 180 of the National Planning Policy Framework.*
 2. *Insufficient information has been provided to demonstrate that the proposed development will provide net gains for biodiversity in accordance with local and national planning policy requirements. The proposals are therefore contrary to Policy DM11 of the Eastleigh Borough Local Plan 2016-2036 and Paragraphs 180 and 186 of the National Planning Policy Framework.*
 3. *The application fails to provide for the required mitigation to offset the impacts of the development on the European protected Solent Complex (SPA, SAC and Ramsar sites) and New Forest SPA, SAC and Ramsar sites, from additional recreational pressure and nutrient loading generated by the population increase and additional sewage resulting from the development. The application is therefore contrary to the requirements of Policy DM11 of the Eastleigh Borough Local Plan 2016-2036, Paragraphs 180 and 186 of the National Planning Policy Framework, and the provisions of The Conservation of Habitats and Species Regulations 2017*
- 1.3 The Appellant disagrees with the Council's assessment of the proposals in the reasons for refusal. This statement provides the Appellant's case and demonstrates why permission should be granted, having regard to the relevant planning policies within the Development Plan and the National Planning Policy Framework ("the Framework") and other material considerations.
- 1.4 A Unilateral Undertaking is being prepared and will be submitted during the course of this appeal to address the third reason for refusal.

2. THE APPEAL SITE AND SURROUNDINGS

- 2.1 The appeal site measures around 527 sq.m (0.05 hectares) of land located to the south of Peewit Hill, Bursledon in Eastleigh Borough, Hampshire. Peewit Hill is accessed off West End Road (A27) to the west. West End Road is a main arterial route with footways on both sides that links to the Windhover roundabout in the south, which provides strategic routes to M27 J8 in the east (via Bert Betts Way, A3024) and towards Southampton in the west (via Bursledon Road, A3024). There are also pedestrian routes that link towards Tesco supermarket to the south of the Windhover roundabout (around 430m south of the appeal site) and Miller and Carter public house and restaurant (around 450m south east of the appeal site).
- 2.2 Peewit Hill is a highway with a single carriageway in each direction that accesses residential and commercial properties. To the east of the appeal site are existing residential properties on rising ground fronting Peewit Hill, comprising semi-detached two storey houses set back from the road behind front gardens with single storey bungalows situated further east. The residential development to the east is on rising land and the properties are in a semi-circular arrangement, facing a central area of green space.
- 2.3 To the west and south of the appeal site are residential properties and a residential care home fronting West End Road (A27). These properties principally comprise a mix of two storey, traditional semi-detached properties set back from the road behind front gardens and parking areas. To the north of the site, on the opposite side of Peewit Hill is an area of mature woodland (designated as SINIC) and vegetation that provides screening and an area of hardstanding that has been in storage type uses, with a gated access to the north-west.
- 2.4 The appeal site is roughly rectangular in shape, is currently underused and in a generally derelict condition, largely accommodating poor quality vegetation. The northern site boundary, with Peewit Hill, is largely open and marked with heras-style fencing, with an existing mature Oak tree towards the north-west corner that is protected by a Tree Preservation Order (TPO 514). The eastern, western and southern boundaries are enclosed by close boarded fences to the rear gardens of properties fronting West End Road (A27) and Peewit Hill.
- 2.5 Photographs of the appeal site and its surrounding are attached at Appendix 3.

3. APPEAL PROPOSAL

- 3.1 The appeal sites measures around 527 sq.m and the proposals comprise the erection of 2 semi-detached 3-bed dwellings, with associated access, parking and landscaping on land to the south of Peewit Hill, Bursledon.
- 3.2 The two proposed semi-detached dwellings are set back from the road frontage, behind the existing protected Oak tree that will be retained within an area of landscaping, with additional landscaping proposed east of the site access and to the dwelling frontage. Site access off Peewit Hill is proposed from the site's north-east corner, with an area of hardstanding/parking to the front of the dwellings (with each dwelling provided with 2 allocated parking spaces; plot 1 provided as frontage parking and plot 2 as side parking).
- 3.3 There are paths to the side of each dwelling which provide access to their rear gardens, to enable the movement of cycles from the cycle stores and bins for refuse collection. The rear gardens are of a regular shape and proposed to be landscaped with a comprehensive planting scheme, including new tree and shrub planting. In addition, each dwelling is provided with an electric vehicle charging point and a water butt for the collection of rainwater from the roofs for use in garden irrigation.
- 3.4 The homes are designed as symmetrical semi-detached dwellings with a traditional appearance that are appropriate to the character of the area. Visual interest is provided to the street scene through the use of projecting bays and gable detailing, attractive arched open porches to the front doors and good quality levels of fenestration. Good quality materials are also proposed, reflective of the local area, with a mix of red brick, brown tiled roofs and tile hanging detailing.
- 3.5 The dwellings are two storeys in height and designed as 3 bedroom, 5 person homes with a gross internal floor area of 95.47 sq.m. This exceeds the minimum requirements of the Government's 'Technical housing standards – nationally described space standard', which require a minimum floor area of 93 sq.m, to ensure that the proposals are fully NDSS compliant.

4. PLANNING HISTORY

4.1 There is no recent planning history for the site, but it has the following history:

Application Ref: 27756/001

Proposal: Erection of detached dwelling and garage

Decision: Refused, 1985

Application Ref: 27756/002

Proposal: Outline: Construction of two dwellings

Decision: Refused, 1990

Application Ref: 27756/003

Proposal: Outline: Erection of 1no. two bedroom bungalow with garage

Decision: Refused and dismissed at appeal, 1991

Application Ref: F/04/51285

Proposal: Outline: Construction of 2 semi detached dwellings with parking and access

Decision: Withdrawn, 2004

Application Ref: F/04/52672

Proposal: Outline: Construction of 2 semi detached dwellings with parking and access

Decision: Refused and dismissed at appeal, 2005

5. PLANNING POLICY CONTEXT

NATIONAL PLANNING POLICY

National Planning Policy Framework (NPPF)

- 5.1 The Government's national planning policy is set out in the NPPF, last updated in December 2023. This is a significant material consideration in the determination of planning applications, including this appeal. The NPPF confirms that the purpose of the planning system is to contribute to the achievement of sustainable development (Paragraph 8). Furthermore, it advises that there are three overarching objectives to sustainable development, namely economic, social and environmental. With regard to each objective, the NPPF defines their purpose as;

An economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;

A social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and

An environmental objective – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

- 5.2 Paragraphs 11 continues;
Plans and decisions should apply a presumption in favour of sustainable development. It confirms that in decision taking this means (inter alia); approving development proposals that accord with an up-to-date development plan without delay;
- 5.3 With respect to decision-making, Paragraph 38 of the NPPF advises;
Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.
- 5.4 The governments' objective is to significantly boost housing supply, as detailed in paragraph 60;
To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. The overall aim should be to meet as much of an area's identified housing need as possible, including with an appropriate mix of housing types for the local community.

- 5.5 The NPPF also places an importance on the contribution small and medium sized sites can make to housing delivery, Paragraph 70 states:

"Small and medium sites can make an important contribution to meeting the housing requirement of an area and are often built-out relatively quickly. To promote the development of a good mix of sites local planning authorities should [...]"

d) support the development of windfall sites through their policies and decisions – giving great weight to the benefits of using suitable sites within existing settlements for homes;"

e) work with developers to encourage the sub-division of large sites where this could help to speed up the delivery of homes.

- 5.6 Paragraph 76 requires local planning authorities to identify and update a supply of deliverable sites to provide a minimum of five years worth for housing, unless the adopted plan is less than 5 years old and the adopted plan identified at least a 5 year supply of specific and deliverable housing sites. Paragraph 11(d) requires that where development plan policies are out of date (where a plan is more than 5 years old) that permission should be granted where there is a shortfall in the housing land supply unless policies in the Framework protect areas or assets of particular importance provides a clear reason for refusing the development or where any adverse impacts would significantly and demonstrably outweigh the benefits.

- 5.7 Section 11 relates to making effective use of land and paragraph 123 states that *"planning policies should promote an effective use of land in meeting the need for homes and other uses"*.

- 5.8 Paragraph 180 outlines that planning policies and decisions should contribute to and enhance the nature and local environment.

Written Ministerial Statement

- 5.9 The Ministerial Statement made by the Deputy Prime Minister and Secretary of State for Housing, Communities and Local Government on 30th July 2024 acknowledges the country's 'acute housing crisis' and has set out the proposed reforms to the planning system and the target to build 1.5m new homes in the next five years (see Appendix 22). Planning is identified as a key process to addressing the housing crisis through a sufficient supply and delivery of land for new homes. It is proposed that the changes made to the NPPF in December 2023 are reversed, to require local planning authorities to maintain a supply of deliverable housing land and mandating that the standard method is used as the basis for determining housing requirements in all circumstances.

Revised Consultation Draft NPPF

- 5.10 In order to bring about change and promote the delivery of new homes, the Government is currently consulting on a revised version of the NPPF. The Government is proposing to amend the NPPF to re-establish the requirement for all local planning authorities, regardless of local plan status, to continually demonstrate 5 years of specific, deliverable sites for housing. Eastleigh Borough Council's latest published 5 year housing land supply position was published in August 2022, which claimed a 5.1 year supply, however this supply was later tested at appeal, where the Inspector clarified that only a 4.7 year supply could be demonstrated (appeal reference APP/W1715/W/22/3292580, attached at Appendix 4). On the basis of the proposed changes to the NPPF the Council will fail to demonstrate a five-year housing land supply and the presumption in favour of sustainable development will apply, in accordance with NPPF paragraph 11 (d).

LOCAL PLANNING POLICY

5.11 Section 38(6) of the Planning and Compulsory Purchase Act confirms that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The Development Plan for the appeal site comprises the following:

- Eastleigh Borough Local Plan (2016-2036)
- Hampshire Minerals and Waste Local Plan (October 2013)

5.12 The site is not located within a Neighbourhood Plan Designation Area and there is therefore no Neighbourhood Plan for the site.

Eastleigh Borough Local Plan (2016-2036)

5.13 The Eastleigh Borough Local Plan (2016-2036) was adopted on 25th April 2022 and consequently pre-dates the revised National Planning Policy Framework (December 2023). The most relevant policies are set out below (attached at Appendix 5):

- ***Strategic policy S1, Delivering sustainable development*** – sets out a presumption in favour of sustainable development, in accordance with the aims of NPPF
- ***Strategic policy S2, Approach to new development*** – sets out that the delivery of a minimum of 14,580 new dwellings during the plan period (2016-2036), to be phased and includes a windfall allowance and states that the Council will ensure a minimum 5 year supply of deliverable sites across the Borough
- ***Strategic policy S3, Location of new housing*** – this sets out that the Council will focus ‘as much new housing development as possible’ within the existing urban areas, with the remainder on greenfield sites in the form of a number of larger strategic sites, urban extensions and a number of smaller sites to meet more local needs
- ***Strategic policy S5, New development in the countryside*** – this is a restrictive policy for development in the countryside
- ***Strategic policy S6, Protection of settlement gaps*** – outlines that development in strategic gaps ‘will be permitted’, provided that it would not undermine the physical extent and/or visual separation of settlements and would not have an urbanising effect to the detriment of the character of the countryside and the separate identity of adjoining settlements
- ***Policy DM1, General criteria for new development*** – this is a criteria based policy which development should have regard to, including development not having an unacceptable impact on, or where possible enhance residential amenities of new and existing residents, biodiversity, and significance of heritage assets; make an efficient use of land; take account of the local context; does not damage trees, woodlands, hedgerows, ponds, priority habitats or other landscape features
- ***Policy DM11, Nature conservation*** – seeks to protect, conserve and enhance sites of international, national and local importance and seek a net gain in biodiversity on all developments, through the protection, enhancement and connection of existing and provision of new and habitats and features of nature conservation interest
- ***Policy DM30, Internal space standards for new residential development*** – requires all new dwellings to meet as a minimum the Nationally Described Space Standards

Local Plan Inspector's Report

- 5.14 The Local Plan Inspector's Main Modifications to the now adopted Plan sought the deletion of the Borough's Strategic Growth Option (SGO) which proposed the delivery of 5,300 new homes (approximately 3,500 during the plan period).
- 5.15 Paragraph 48 of the Inspector's report sets out that the effect of the deletion of the SGO is a shortfall of 2,614 dwellings towards the end of the plan period but confirms the Council's commitment to an early review to address this issue. Paragraph 49 states that *"legislation requires a review of the Plan to take place within 5 years from the date of adoption. However, in the case of this Plan, I have concluded that this shortfall will necessitate an early review. This is important for a number of reasons, primarily to ensure that the shortfall is suitably addressed through the Plan making process. This is necessary to ensure that the Plan is sound. MM11 therefore outlines the requirements for an early review which the Council should commence within 1 year from the adoption of this Plan"*(our emphasis).
- 5.16 Extracts from the Local Plan Inspector's Report are attached at Appendix 6.

Revised Local Plan

- 5.17 The Council has not completed any review of the plan in accordance with Regulation 10A of the Town and Country Planning (Local Planning) (England) Regulations 2012 and have not made any productive start on a Local Plan review. A revised LDS was published in June 2023, identifying anticipated adoption of a new Local Plan in Spring 2029. As such, this does not meet the early review anticipated by the Local Plan Inspector and will leave the Council with insufficient allocated sites and unlikely to be able to sufficiently demonstrate a suitable supply of housing.

6. THE APPELLANT'S CASE

- 6.1 It is important to note in the first instance that the Borough's housing requirement set out at strategic policy 2 is expressed as a 'minimum' and not a maximum or ceiling for development and furthermore that this figure includes a contribution of over 10% of new housing being provided on windfall sites. The appeal site represents a windfall site, which would help contribute to the windfall allowance in helping the Borough meet its housing requirement. Notwithstanding this however, it is clear from the Inspector's Report that the Local Plan is unable to demonstrate a sufficient level of housing to meet its housing requirement for the plan period, which has necessitated the need for an early review. As outlined above, the Council is not progressing a review of its housing sites to meet its requirement in isolation, to meet this shortfall, but is instead progressing a longer term wholesale Local Plan review, with adoption not anticipated until 2029. Due to the failure of the Council to undertake any early review, it is not considered that the Plan remains up to date.
- 6.2 Any future review of housing requirements in the Borough will need to plan, as a minimum starting point, for the new standard method, which is identified to increase the Borough's annual housing requirement from 645 dwellings to 902 dwellings per annum, whereas average net annual additions to the housing stock for the years 2020/21-2022/23 is 713 dwellings. Consequently the Borough is currently failing to meet its future housing requirement under the new standard method and provides justification for the positive consideration of this site.
- 6.3 In light of the above, the support provided at Paragraph 70 of the NPPF to the contribution that small sites play in meeting housing land supply and the conclusions of the Inspector in the Satchell Lane appeal (Appendix 4) that the Council is unable to demonstrate a five year supply, it is considered that substantial weight should be attached to the delivery windfall sites such as the appeal site and considered favourably for development.
- 6.4 As set out in Paragraph 2.1 above, despite a 'countryside location', the site is nevertheless situated in an accessible location, being within walking and cycling distance to a range of facilities and services and is accessible to bus stops at Providence Hill and at Tesco, which provide access to the wider area. As such, the site is therefore within a sustainable location (which is recognised in the Officer's delegated report under 'highway matters'), where national and local planning policy supports the residential development.
- 6.5 It is disappointing that it has been necessary to pursue an appeal on this site, as despite the appellant's best endeavours to engage with Officers during the application process, it is unfortunate that no responses from the Council were received. As set out above, the planning application was refused permission by Officers under delegated powers on 17th July 2024 for three reasons, a copy of the Officer's delegated report is attached at Appendix 7. Each reason for is addressed in turn below.

REASON FOR REFUSAL 1

The proposals represent an unjustified form of development within an area of designated countryside and settlement gap which, owing to its layout, scale, design and siting, would have an unacceptably harmful and detrimentally urbanising impact upon the character of the site and that of the immediate surrounding area. The application is therefore contrary to the requirements of Policies S5, S6 and DMI of the Eastleigh Borough Local Plan 2016-2036, and Paragraphs 135 and 180 of the National Planning Policy Framework

- 6.6 The Officer has stated in their delegated report, the proposals *"are not a form of development which is permitted by Policy S5, and the scheme would have an urbanising effect upon both the site itself as well as this area of countryside. The proposals would also diminish, albeit to a modest extent, the amount of open and undeveloped land in the settlement gap. As such, the proposals are unacceptable in principle and there would, therefore, have to be material considerations which would outweigh the conflict with the development plan to justify the granting of planning approval. For the reasons as set out below, this is not considered to be the case in this instance"*.
- 6.7 It is acknowledged that the appeal site is located within an area designated as countryside and settlement gap in the Local Plan, however it is considered that the Council has been overly restrictive and narrow in its consideration of the proposals and its interpretation of policy in this instance and has failed to appropriately or effectively consider the characteristics of this site, the character of the area and the lack of any contribution that it makes to the countryside or gap function. It is considered that if the proposals had been properly considered then it would not have been concluded that the proposals would have the impacts alleged in this reason for refusal.
- 6.8 In relation to impacts on the countryside, it is important to note that the appeal site is very small in area, is surrounded by existing built development on three sides, is well contained and located within an area with significant levels of built development, is not readily visible or open to its surroundings, is not in any beneficial or productive use and does not form part of any wider land holding or agricultural, forestry or horticulture enterprise and is not of a sufficient size to be viable for such a use. Consequently, the site and its surrounding area do not have a countryside character, the area is effectively urban in nature and the site represents an area that was 'left over' following wider development, presenting as an infill site. The proposals do not therefore affect or erode any existing countryside character and if it remains undeveloped, will remain underutilised and continue to contribute little, if anything, that is beneficial to the area (either visually or functionally) and will remain an inefficient use of land, which is significant especially given the level of local housing need.
- 6.9 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that *'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'* (our emphasis). Furthermore, NPPF Paragraph 12 enables local planning authorities to depart from a development plan, but only if *'material considerations in a particular case indicate that the plan should not be followed'* (our emphasis). Although the overall aims and objectives of the countryside policies are supported in principle, it is considered that there are significant and overriding material considerations in this case given the site's size, its location and relationship with surrounding development and its characteristics to confirm that the site does not have or contribute to a countryside character, to enable a departure from policy. Consequently it is not considered that it was sufficient for the Council to simply to apply its narrow and restrictive policy interpretation in this case, especially when the overarching purpose of the countryside policies are considered.

- 6.10 It is important to note that the Council has taken a more pragmatic and proactive approach elsewhere in the Borough to the consideration of residential development in the countryside, under the same development plan policies. A scheme for 2 dwellings on a countryside site was permitted in February 2023 on land at Long Cottage, Botley (ref: F/22/93954) where the circumstances are similar to the appeal site and where the Council's assessment was based on the site's characteristics and its lack of contribution to the countryside, justifying a departure from strategic policy 5, with the Officer's report stating:

"The fact that the proposal does not accord with S5 is not enough to refuse the application in itself and other material considerations can be applied. It is noted that the site location is adjacent to the recently developed Boorley Park housing development and smaller scale developments (F/17/80382) of 14.no dwellings and (F/19/85038) of 4.no dwellings which has reduced the overall Countryside character of this specific location. Policy S5 seeks to protect the countryside from inappropriate development, and it is not considered that this would represent an inappropriate form of development as this proposed development location does not contribute to the wider countryside character given the existing development close-by. Therefore, it is considered the principle of this development could be suitable, provided there are no other material considerations to indicate otherwise"

- 6.11 A copy of the Officer's report is attached at Appendix 8.
- 6.12 Similarly in relation to the settlement gap, it is alleged in the Officer's report that the proposals 'would also diminish, albeit to a modest extent, the amount of open and undeveloped land in the settlement gap'. Furthermore, whilst accepting that the overall design of the proposals would be reflective of house design in this area and are acceptable, it is suggested that 'the introduction of an extensive area of hardstanding and a formalised point of access to the site, along with what is a not-insignificant degree of built form that would be readily visually apparent from both Peewit Hill as well as its entrance from West End Road, would erode the current pleasant sense of openness and the visual and physical break that the site provides between the existing development within the street scene. It would also have a notable and unacceptably urbanising impact upon both its character as well as that of the area of designated countryside and settlement gap within which it is situated'.
- 6.13 Similar to the above, it is noted that the site is small and well contained by existing built development and consequently is not readily visible from the wider area. Furthermore, due to its containment and relationship with existing built development it does not provide any sense of openness to the wider area or contribute to any separation between settlements. It is noted that the site forms part of analysis area B4 (south of Peewit Hill) in the Council's 'Settlement Gap Study' (October 2020), and whilst the wider analysis area was identified having longer range views, no reference is made to the site or any contribution it make any sense of openness or separation between settlements (extract attached at Appendix 9). The development would not therefore affect the integrity, purpose or function of the gap.
- 6.14 In terms of any impacts to or any views south along Peewit Hill from West End Road; this view is shown in Photograph 1 at Appendix 3. The development proposals will be viewed in their context with surrounding development and assimilate into their surrounding and furthermore, being set back from the road behind the retained mature Oak tree, will ensure it is not readily visible and or have any significant detrimental impact on any views, overall character or undermine any physical or visual separation of settlements.

- 6.15 It is concluded that the appeal site and its surroundings do not perform visually or functionally as either countryside or settlement gap and proposals can be satisfactorily accommodated as the site is well contained and surrounded by existing built development, to represent an appropriate site for new housing, especially as it is sustainably located in terms of access to facilities and public transport.

REASON FOR REFUSAL 2

Insufficient information has been provided to demonstrate that the proposed development will provide net gains for biodiversity in accordance with local and national planning policy requirements. The proposals are therefore contrary to Policy DM11 of the Eastleigh Borough Local Plan 2016-2036 and Paragraphs 180 and 186 of the National Planning Policy Framework

- 6.16 In the first instance, it is important to note that whilst the Environment Act 2021 introduced a requirement for all new developments to deliver a +10% Biodiversity Net Gain (BNG), the transitional arrangements for minor development (developments of less than 10 dwellings) set out that mandatory BNG is only required in relation to planning applications made after 2nd April 2024. The application the subject of this appeal was made on 27th February 2024 and as such before these provisions came into force and consequently they do not apply in this case. It appears that this position is common ground with the Council, noting the response from the Council's Ecologist (attached at Appendix 10).
- 6.17 Local Plan Policy DM11 seeks to protect, conserve and enhance international, national and local nature conservation designations and *"seek a net gain in biodiversity on all development sites, through the protection, enhancement and connection of existing and provision of new habitats and features of nature conservation interest compatible with the native biodiversity characteristics of the Borough, having regard to local geodiversity and soils"*. This Policy therefore does not set a target for any net gain in biodiversity and is quite distinct from the statutory BNG requirements.
- 6.18 The application was accompanied by a Preliminary Ecological Assessment (PEA) to assess the habitats on site, establish the ecological baseline, determine whether ecological receptors such as protected species are likely present and recommend enhancement measures to secure a net gain in biodiversity. The PEA has confirmed that the site is not of any significant ecological value and does not support any habitats of interest or protected species.
- 6.19 The PEA identifies a low suitability for the site to support reptiles, with precautionary working methods to be put in place during construction; a recommendation that any site clearance works take place outside of the bird nesting season (or following a check by a qualified ecologist); bat sensitive lighting and implementation of pollution control measures during construction to avoid impacts on the woodland to the north. The appellant is supportive of the proposed measures to avoid any significant ecological impacts, which can be controlled by conditions attached to the grant of any planning consent.
- 6.20 Section 6.0 of the PEA specifically relates to enhancement measures, to achieve a net gain in biodiversity, which includes:
- Installation of a bat brick within the fabric of the building during construction or erect a bat box on a tree. Bat boxes should be made from woodcrete which is durable and has a long lifespan. Integrated bat boxes must be installed high on the building, close to the eaves and away from artificial sources of light. Bat boxes on trees must be installed ~ 3 m high, facing south or southwest, with a clear flight path to the entrance.

- 1 x small hole nest box to be erected on a mature tree. This should be built from woodcrete. The box must be positioned facing northeast and approximately 3 m above the ground with a clear flight path to the entrance.
 - New native tree and shrub planting.
 - New native species hedgerows
- 6.21 The appellant is supportive of implementing the recommended ecological enhancement measures to secure a net gain in biodiversity and would be willing to accept a planning condition requiring these measures to be implemented prior to first occupation of the development.
- 6.22 In view of the information contained in the PEA about the existing ecological value of the site, measures to avoid harm ecological impacts from the works and recommendations for ecological value to secure a net gain in biodiversity it is unclear how the Council can consider that insufficient information has been submitted. It is considered that information submitted is comprehensive to ensure compliance with the requirements of Policy DM11 and requirements of the NPPF.
- 6.23 The comments set out in the Officer's delegated report and Council's Ecology consultation response are noted in relation to the applicable ecological baseline set out in the PEA, due to vegetation works undertaken. It is important to note that the site does not contain any habitats of importance or vegetation that is subject to protection (with the exception of the Oak tree to the site frontage, which was not affected by the works), with the works not requiring any consent and were merely undertaken as part of responsible site management.
- 6.24 It is noted that the Council's Ecologist has referenced that they consider the ecological baseline for consideration of any net gain in biodiversity should be from before the management works were undertaken on site. It is unclear however how the Ecologist has reached this conclusion or the policy basis upon which they rely in making such an assertion on account of the planning application pre-dating the introduction of the statutory requirement, as referred to above. It is noted that whilst Policy DM11 references an aim for development sites to seek a net gain in biodiversity, no guidance is provided on the application of this policy, the consideration of baseline data, the date upon which baseline information should be assumed or the methodology for calculating and quantifying a net gain. As such without the benefit of any guidance, there appears to be no policy requirement to back date any consideration of baseline information to an unspecified date in the past or how to calculate a net gain. Consequently it is reasonable to assume that baseline conditions are provided at the time that an ecological assessment is carried out and recommendations made on how improvements can be made.
- 6.25 The Officer's delegated report has referenced the Planning Practice Guidance (PPG) in commenting on the baseline date, it is clear however that guidance on BNG set out in the PPG relates specifically to BNG *"under a statutory framework introduced by Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021)"* (Paragraph: 001 Reference ID: 74-001-20240214) and not to other policies seeking to secure a net gain in biodiversity. Such references are irrelevant and not applicable in this case, as BNG under the Act is not required.
- 6.26 The Council has taken a different and more pragmatic approach elsewhere in the Borough to considering a net gain in biodiversity under Policy DM11. On a site on 'land to the rear of 1 Beech Road' (ref: F/24/97078) the Officer has stated in their delegated report under the 'trees and nature conservation' section that *"had the site not been cleared prior to the submission of the planning application, then the proposed scheme may have had to take account of any trees which were worthy of retention in terms of the site layout, etc. as well as assess the habitat potential of the site. However,*

that is not the situation which is currently presented. As such, a balance needs to be struck between making best use of a sustainably located residential site, verses providing mitigation for that lost" and consequently did not agree that any baseline date should be back-dated and the application was approved on this basis, requiring ecological enhancements to be submitted for approval (condition 13), application details attached at Appendix 11.

- 6.27 The requirements of Condition 13 of Permission F/24/97078 were then discharged by approval DC/24/97807, with that approval confirming measures are addressed through planting and measures such as hedgehog holes and hibernacula, which are generally consistent with the type of approaches recommended by this application (details attached at Appendix 12).
- 6.28 In another site to the rear of 33 Chestnut Avenue, Eastleigh (ref: F/24/96720) the Officer has confirmed in their delegated report under the 'ecology' section confirms that biodiversity enhancements were not submitted up front but can be secured by condition (condition 8), details attached at Appendix 13.
- 6.29 In light of the above, it is considered that sufficient information has been submitted to consider biodiversity and identify enhancement measures to demonstrate a net gain in biodiversity and to meet the requirements of Policy DM11, in a form that is consistent with approaches recently accepted elsewhere in the Borough.

REASON FOR REFUSAL 3

The application fails to provide for the required mitigation to offset the impacts of the development on the European protected Solent Complex (SPA, SAC and Ramsar sites) and New Forest SPA, SAC and Ramsar sites, from additional recreational pressure and nutrient loading generated by the population increase and additional sewage resulting from the development. The application is therefore contrary to the requirements of Policy DM11 of the Eastleigh Borough Local Plan 2016-2036, Paragraphs 180 and 186 of the National Planning Policy Framework, and the provisions of The Conservation of Habitats and Species Regulations 2017

- 6.30 This reason for refusal relates to a lack of mitigation being secured at application stage to address impacts from additional recreational pressure and nutrient loading generated by the proposals on the specified European protected sites.

Nutrient Loading

- 6.31 In terms of nutrient loading, Natural England has advised local planning authorities in the Solent region (including Eastleigh Borough Council) that new housing development is resulting in additional nitrogen being discharged into protected waters arising from sewage generated by new residents, which is causing eutrophication. In order to address these impacts developments should achieve nutrient neutrality. Natural England's Solent catchment map is included at Appendix 14, which confirms that the site is located within the area subject to nutrient neutrality advice.
- 6.32 The Officer's report states that:

HRA (Habitat Regulations Assessment) Screening was required for this development as it falls inside the zone of impact of these designated sites and would result in a net increase in population. The screening concluded that the development could have a significant impact on the protected sites and the features for which they are designated through an increase in recreational pressure (in the case of both the New Forest and Solent Complex sites), as well as from nitrogen loading generated through leaching from additional sewage from the new housing in the case of the Solent Complex. This has the potential to undermine water quality and restrict the growth, distribution and variety of

food available for species designated under European law. These impacts are required to be mitigated as part of the development proposals

- 6.33 It is confirmed in the Officer's report that the relevant nutrients relate only to nitrogen. Eastleigh Borough Council has adopted its own strategy for achieving nutrient neutrality whereby it identifies areas of agricultural land and remove these from a nitrate intensive use, which reduces the nitrogen input into the protected sites, with the level of reduction then being used as a means of offsetting the impacts of development proposals within the Borough (details attached at Appendix 15). This ensures no overall net increase in nitrates within the Solent and thereby allow a development to achieve nutrient neutrality. In order to do this, the Council calculates the level of nitrate mitigation this land provides (measured in kg), with developers able to purchase 'nitrate credits'. Mitigation can also be secured in other ways, including other mitigation schemes operating in the local area.
- 6.34 In order to address this matter, the appellant has commissioned a nutrient neutrality assessment, which accompanies this appeal (attached at Appendix 20), to consider the level of impact of the proposed development and has identified an annual nitrogen budget of 2.38 kg TN/yr. An enquiry was subsequently made to Eastleigh Borough Council to confirm the availability of the necessary nitrate mitigation credits in its scheme to address this impact. Confirmation has been received to confirm that sufficient credits are available to address the impacts of the development (attached at Appendix 21).
- 6.35 The Council routinely applies negatively worded planning conditions to its permissions that require details of the mitigation measures to be submitted for approval before a development is occupied (examples include Condition 14 of permission F/24/97078, attached at Appendix 11 and Condition 12 of permission F/24/96720, attached at Appendix 13). It is understood however that some concern has been made in recent appeal decisions regarding the ability to secure such mitigation by condition, as such, the requirement to confirm the relevant nitrate mitigation package for the development has been included in the draft Unilateral Undertaking. We would ask the Inspector to determine the appropriate course of action and whether to accept the provisions in the Unilateral Undertaking or whether this can be controlled by condition. If a condition is accepted rather than accepting the provisions in the Unilateral Undertaking then we would suggest a condition as follows, or other such wording as considered appropriate by the Inspector:

The development hereby permitted shall not be occupied until a mitigation package addressing the additional nutrient inputs arising from the development has been submitted to and approved in writing by the Local Planning Authority. Such a mitigation package shall address all of the additional nutrient loading upon protected European sites from the development and shall allow the Local Planning Authority to ascertain on the best available scientific evidence that such additional nutrient loading will not have an adverse effect on the integrity of European Sites, having regard to the conservation objectives for they are designated. The mitigation package shall be implemented in full and evidence of this provided to the Local Planning Authority in writing prior to the first occupation of the development.

Recreational Disturbance

- 6.36 The appeal site falls within the 5.6km buffer zone of the Solent SPA and within the 13.8km catchment of the New Forest SPA where it is recognised that new housing development within these areas is likely to result in additional visitor to the protected sites and mitigation is required to avoid significant detrimental impacts on the integrity of these sites from increased recreational disturbance.

Solent SPA

6.37 In relation the Solent SPA, the 'Solent Recreation Mitigation Strategy' (attached at Appendix 16) was adopted in December 2017 and provides a strategic mitigation programme for the area to off-set any disturbance as a result of additional recreational pressure arising from new development by:

- raising awareness and encouraging behavioural change of coastal visitors
- implementing projects to better manage visitors and provide secure habitats for the birds
- providing and promoting new/enhanced greenspaces in less sensitive areas as an alternative to visiting the coast

6.38 The approach seeks to manage visitors rather restrict access, following research which identified that the level of disturbance is determined by peoples' behaviour rather than purely by the number of visitors.

6.39 Based on the findings of the research on the level of disturbance caused by various recreational activities, the strategy places a particular focus on walkers, cyclists and dog walkers, but with proportionate mitigation measures for other recreational activities. The package of mitigation measures comprises:

- A team of rangers
- Communications, marketing and education initiatives
- Initiatives to facilitate and encourage responsible dog walking
- Codes of conduct
- Site-specific visitor management and bird refuge projects
- New/enhanced strategic greenspaces
- A delivery officer (called 'Partnership Manager' from here on)
- Monitoring to help adjust the mitigation measures as necessary

6.40 The operation of the Solent Recreation Mitigation Strategy is funded through developer contributions secured during the planning process, with the level of contribution based on a sliding scale determined by dwelling size (latest contributions attached at Appendix 17). The contribution for developments approved after 1st April 2024 are as follows:

- 1 bedroom property: £465
- 2 bedroom property: £671
- 3 bedroom property: £875
- 4 bedroom property: £1,029
- 5 bedroom property: £1,204

6.41 As the appeal relates to a proposal for 2 x 3 bedroom properties, the development will be required to pay a total contribution of £1,750 (i.e. 2 x £875) towards the Solent Recreation Mitigation Strategy to address the recreational disturbance impacts of the development on the Solent SPA. The Unilateral Undertaking includes the necessary obligations to secure the required mitigation to address the impacts of the development.

New Forest SPA

6.42 Eastleigh Borough Council adopted an interim mitigation strategy in March 2022 to address the additional recreational impacts of new development on the New Forest Protected sites (attached at Appendix 18). This interim strategy sets out an options based approach to mitigation at Paragraph 15, which includes:

- a. *Contributions to a Strategic Mitigation Package comprising:*
 - i. *proportionate provision of SANGs within Eastleigh borough and*
 - ii. *financial contributions to the management of recreational impacts within the New Forest protected sites*

- 6.43 Paragraph 16 identifies that the Council has developed a strategic mitigation package based on providing alternative countryside recreation opportunities within the borough and including financial contributions to measures within the New Forest National Park. The operation of this strategy is funded through developer contributions secured during the planning process, with a flat fee of £2,220 per dwelling (latest contribution level set out at paragraphs 39-40 of the December 2022 Cabinet report attached at Appendix 19).
- 6.44 As the appeal relates to a proposal for 2 dwellings, the development will be required to pay a total contribution of £4,440 (i.e. 2 x £2,220) towards the interim New Forest Mitigation Strategy to address the recreational disturbance impacts of the development on the New Forest SPA.
- 6.45 The Unilateral Undertaking includes the necessary obligations to secure the required mitigation to address the impacts of the development.

7. CONCLUSIONS & SUMMARY

- 7.1 This Statement of Case has been prepared on behalf of the Appellant, Groves Group Ltd, in support of a planning appeal that has been lodged against the decision of Eastleigh Borough Council to refuse full planning permission for the erection of 2 semi-detached 3-bed dwellings, with associated access, parking and landscaping on land to the south of Peewit Hill, Bursledon by decision notice dated 17th July 2024 (LPA ref: F/24/96970).
- 7.2 The site is located within an area identified as countryside and settlement gap in the Eastleigh Borough Local Plan (2016-2036), but is sustainably located in terms of access to facilities and public transport, to the south and south east of the site.
- 7.3 The appeal site is located to the south of Peewit Hill and measures around 527 sq.m and is therefore small in nature and surrounded on three sides by existing built development, with the only feature of importance being the protected Oak tree to the site frontage. The site is therefore well contained and not readily visible from the surrounding area or any views of importance.
- 7.4 The proposed housing is to be set back from the road, behind protected Oak tree that will be retained by these proposals to maintain this important landscape feature and maintain the overall character of the street. The houses are traditionally designed and use a mix of materials that are appropriate the local area to be acceptable in their setting, with the houses designed to be NDSS compliant and provide sufficient parking in accordance with local parking standards and good quality levels of private amenity space.
- 7.5 Despite the location in the countryside and settlement gap, the appeal site does not appear or function as such a site due to its close relationship with neighbouring built development and does not have or contribute to a countryside character and or to the integrity of any gap between settlements. Instead, the site appears as an infill plot that is urban in its nature that can accommodate the proposed development without any detriment to its surroundings.
- 7.6 The proposals are accompanied by sufficient ecological information to confirm that the site is not of any significant ecological value and does not support any important habitats and protected species, with recommendations made to ensure that any ecological impacts do not occur, and recommendations made to secure a net gain in biodiversity to meet the requirements of Policy DM11 and which can be secured by way of planning conditions.
- 7.7 In terms of addressing impacts on protected European sites from additional recreational pressure and nutrient loading, confirmation has been provided that sufficient mitigation can be achieved, with provisions secured through the Unilateral Undertaking or via a planning condition. In relation to recreational pressure, financial contributions will be provided to the Solent Recreation Mitigation Strategy and the interim New Forest Mitigation Strategy to address the impacts of the development.
- 7.8 It is considered that the appeal proposal is appropriate with significant public benefit by delivering new housing, with the characteristics of the site and its surroundings providing significant material considerations to confirm no demonstrable harm to any interest of acknowledged importance. It is therefore respectfully requested that this appeal is allowed.

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