

EASTLEIGH BOROUGH COUNCIL

Town and Country Planning Act 1990 (As Amended by the Planning and Compensation Act 1991) – Section 78

LOCAL PLANNING AUTHORITY'S (LPA) STATEMENT OF CASE

Planning appeal against refusal of outline planning application for residential development of up to 34 dwellings and associated infrastructure (access only to be considered).

Land to the West of Cobbett Way, Botley

Appeal by The Trustees of the Mulberry Pension Investment Scheme

Planning Inspectorate Reference: APP/W1715/W24/3350858

Eastleigh Borough Council Reference: O/23/96432

October 2024

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1. Introduction

- 1.1 The Council's Statement of Case should be read in conjunction with the Delegated Report and both documents should be taken as forming the Council's Case in relation to this appeal.

2. Description of Appeal Application

- 2.1 The appeal application was received by the Council on 16th November 2023 and registered as valid 4th December 2023. This was given a reference number of O/23/96432.
- 2.2 The application description reads "Outline application for residential development of up to 34 dwellings and associated infrastructure (access only to be considered)".
- 2.3 The application was publicised and all the necessary statutory and non-statutory consultations were carried out.
- 2.4 The appeal application is to consider the principle and access of the proposed development as access is the only reserved matter put forward within the outline application.
- 2.5 The whole development would be served by one vehicle access from Cobbett Way, which itself is accessed from Broad Oak (A334) via Brook Lane. There is also a potential pedestrian access indicated on the submitted plans, from the proposed development to the north of the site to access Broad Oak (A334). Although the route of this access is outside of the application red line boundary, it is shown as being under the ownership of the appellant.
- 2.6 The indicative plans also show two SuDS ponds (one towards the western boundary just above the halfway point of the site, and the other in the south-western corner of the site), and a play area to the east of the SuDS Pond to the south of the site.
- 2.7 The application was refused on the 1st March 2024 under delegated powers, listing 5 reasons for refusal:
- 1) The proposals represent an inappropriate and unjustified form of development which would have an unacceptably urbanising and visually intrusive impact upon the designated countryside and settlement gap, thus the proposals would be contrary to Policies S1, S5, S6, and DM1 of the Eastleigh Borough Local Plan (2016-

2036), and the provisions of the National Planning Policy Framework (2023).

- 2) There is insufficient information to determine if the access road can be achieved without causing harm to the adjacent priority habitat (Lowland mixed deciduous woodland) during construction and operation, contrary to Policy DM11 of the Eastleigh Borough Local Plan (2016-2036), and the provisions of the National Planning Policy Framework (2023).
- 3) Insufficient information has been provided to demonstrate that the sustainable drainage can provide three forms of natural filtration, and mitigate all pollution hazards, which is necessary to maintain the quality of runoff water entering the Solent and Southampton Water Special Protection Area and Ramsar Site and Solent Maritime Special Area of Conservation. The application is therefore contrary to the requirements of Policies S1, DM5, DM6, DM10 and DM11 of the Local Plan, the provisions of the National Planning Policy Framework (2023), and the Conservation of Habitats and Species Regulations (2017) (as amended).
- 4) The application fails to secure provision for developer contributions towards the on and off-site provision of facilities and infrastructure made necessary by the development or to mitigate against any increased need or pressure on existing facilities. The application is therefore contrary to the requirements of Policies S11, DM13, DM28, DM33 and DM38, and the provisions of the National Planning Policy Framework (2023).
- 5) The application fails to provide the required mitigation to offset the impacts of the development upon the European protected Solent Complex (SPA, SAC and Ramsar sites), River Itchen (SAC) and New Forest National Park (SPA, SAC and Ramsar sites) from additional recreational pressure and nitrogen loading generated by the residential nature and additional sewage resulting from the development. The proposal is therefore contrary to the requirements of Policy DM11 of the Eastleigh Borough Local Plan 2016-2036, the provisions of the NPPF (2021) and the Conservation of Habitats and Species Regulations 2017 (as amended).

3. Site and Surroundings

- 3.1 The appeal site comprises an open piece of land, situated to the south of Broad Oak (A334). Broad Oak stretches from Maypole Roundabout (west) towards Botley High Street (east), thereby experiences changes from the

built environment (west) to countryside and settlement gap before moving into Botley Conservation Area.

- 3.2 The appeal site and immediate surroundings to the north, west and south comprise countryside and settlement gap. To the immediate north are a few residential dwellings (south of Broad Oak (A334)), which also fall within the countryside and settlement gap, and to the east are rear gardens of properties along Cobbett Way. Cobbett Way is a semi-circular cul-de-sac which defines the urban edge of Botley, accessed from Broad Oak (A334) via Brook Lane.
- 3.3 To the south and immediate west there are open fields, and some associated countryside buildings/ activities. There is also a bridleway (no.17) to the south of the application site, as shown in figure 1 below.
- 3.4 The area of local gap is detailed within the Eastleigh Settlement Gap Study (2020) under 'Area I' and further sub-divided under 'Area I 6'. This study will be explored further later in the report and the relevant extract is included at Appendix 1.

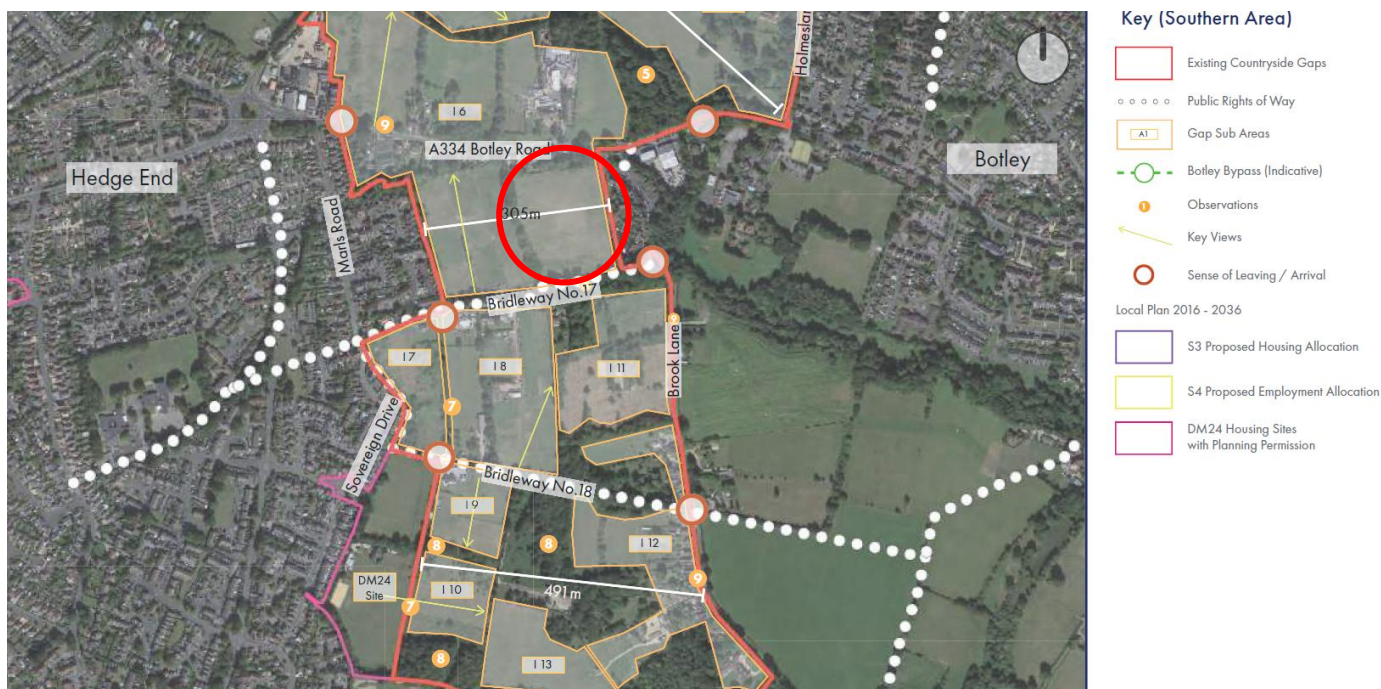


Figure 1 - Gap Analysis - Eastleigh Borough Council Settlement Gap Study (2020) pg.130

4. Planning History

- 4.1 The below details the relevant planning history for the site.

- Z/15794/000/00 - Residential development – Refused – February 1975
- Z/15794/00A/00 - Residential development on land – Refused – January 1976
- Z/15794/001/00 - Residential development – Refused – 1979
- Z/37218/000/00 - Construction of new section of underground pipeline – Permitted - November 2000

4.2 As evidenced above, the site has a history of residential development being considered inappropriate.

5. Development Plan Policy

5.1 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”*.

5.2 The Development Plan for the Borough of Eastleigh is the Eastleigh Borough Local Plan (2016-2036), which was adopted in April 2022, and the Hampshire Minerals and Waste Plan (October 2013).

5.3 The Adopted Local Plan

The appeal site is located outside of the urban edge as identified on the development plan map; and is on land designated as countryside and settlement gap covered by policies S5 and S6. A full list of all the relevant planning policies are listed on page 15 of the Delegated Report and copies were provided with the appeal questionnaire.

5.4 Hampshire Minerals and Waste Plan (October 2013)

The Hampshire Minerals and Waste Plan covers the plan period from 1 January 2011 to 31 March 2030. It is noted that the south-eastern part of the site falls within the Hampshire Minerals and Waste Consultation Area (MWCA) due to the presence of underlying sand/gravel. Policy 15 of the Hampshire Minerals and Waste Plan seeks to protect resources from sterilisation by non-minerals development over 3ha in size (as per guidance set out in the Minerals and Waste Safeguarding in Hampshire SPD). Hampshire County Council was consulted during the application process but provided no comments. However, as the appeal site is below 3ha and only a small part of the site is within the minerals area, it is not considered that there would be any implications in relation to minerals safeguarding.

6. National Planning Policy

- 6.1 The National Planning Policy Framework (NPPF) (Dec 2023) sets the Government's planning policies for England and how it expects them to be applied. The NPPF is a significant material consideration when making planning decisions.

Achieving sustainable development

- 6.2 The NPPF states in paragraph 2 that *"Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise"*. Other sections from the NPPF that are considered relevant in determining this appeal and align with the principles of Eastleigh's Development Plan are set out below.
- 6.3 Paragraph 11 states that *"Plans and decisions should apply a presumption in favour of sustainable development" and "For decision-taking this means:*
c) approving development proposals that accord with an up-to-date development plan without delay
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".
- 6.4 Paragraph 12 states *"The presumption in favour of sustainable development 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 (including any neighbourhood plans that form part of the 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."*
- 6.5 It is the LPA's position that the appeal proposal does not accord with the adopted development plan and as such, as set out in national policy, should be refused without delay. In addition, there are no other material considerations that would justify a departure from the development plan

when it is considered the proposals would create adverse harm to the locality outweighing any positive impacts from the scheme.

Delivering a sufficient supply of homes

- 6.6 Section 5 of the NPPF outlines the Government's objective of significantly boosting the supply of homes and sets out guidance on how the need for housing should be assessed and calculated. This includes the requirement for local planning authorities to maintain a five-year supply of deliverable housing sites as per paragraphs 75 and 77, unless the points set out in paragraph 76 apply.
- 6.7 Paragraph 76 states that (subject to transitional arrangements), local planning authorities are not required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years worth of housing for decision making purposes if: a) their adopted plan is less than five years old; and b) that adopted plan identified at least a five year supply of specific, deliverable sites at the time that its examination concluded.
- 6.8 The Council has an up-to-date Local Plan that is less than 5 years old (adopted in April 2022), and a 5-year housing land supply was demonstrated at the time of adoption. However, in accordance with the transitional arrangements set out in footnote 79 of the NPPF, it is agreed that in the case of this appeal, paragraph 76 of the NPPF cannot be taken as a material consideration, as the appeal application was submitted before the publication date of the current version of the NPPF (i.e. before 19 December 2023). Further commentary on five year housing land supply is set out in Section 7 of this Statement.

Conserving and enhancing the natural environment

- 6.9 Section 15 of the NPPF sets out objectives for conserving and enhancing the natural environment, including protecting the environment from pollution.
- 6.10 Paragraph 180 states that planning decisions should contribute to and enhance the natural and local environment, by (among other things), recognising the intrinsic character and beauty of the countryside, and preventing unacceptable risk from soil, air, water or noise pollution. Where possible, it is stated that development should help to improve local environmental conditions such as air and water quality.

- 6.11 Paragraph 186(a) states *“When determining planning applications, local planning authorities should apply the following principles: a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused”*.
- 6.12 Paragraph 188 states *“The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.”*.
- 6.13 Paragraph 191 states *“Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:*
(c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation”.

7. Five Year Housing Land Supply

- 7.1 The Council's last published figure for land supply is contained within the Eastleigh Borough Council 'Calculation of Five-Year Housing Land Supply', dated August 2022. This sets out the land supply position as of 1 July 2022 and concludes 5.1 years worth of supply. A copy of this document is included at Appendix 2.
- 7.2 The Council is in the process of preparing an update to its five-year housing land supply calculation as part of the review of the Adopted Local Plan, with a base date of 1 April 2024. The updated calculation is not yet available therefore the LPA is unable to confirm its exact position on five-year housing land supply at this point in time. The Council has therefore agreed in liaison with the Appellant and the Inspectorate, to provide an update on its five year housing land supply position and a response to the Appellant's case in relation to specific sites by no later than 21 November 2024. A schedule of sites which will form the basis of the land supply calculation and confirmation of housing completions between 1 April 2016 and 1 April 2024 are included in Appendices 3 and 4.
- 7.3 Whilst a detailed response on the land supply calculation is not set out in this Statement of Case, the LPA has reviewed the Appellant's Five-Year Housing Land Supply Analysis (prepared by Strategic Planning Resource

Unit dated April 2024), and would like to respond to the commentary set out in section 4.0(b) regarding Council funded development, as follows:

- The Council received a Best Value Notice (BVN) on 19 December 2023 and this was reported to Cabinet in January 2024. The Cabinet report provided background on the Government's Best Value framework, updated Cabinet on work already done prior to receipt of the notice and set out the overall proposed approach to the Council's response to the BVN and other recent external reviews in the form of a single consolidated action plan (refer to Appendix 5). The Chartered Institute of Public Finance and Accountancy (CIPFA) reported positively in July 2023 on EBC's capacity and capability in treasury management, finance, commercial property and housing (refer to Appendix 6). It noted there was a high level of capability and experience, and the Council had demonstrated an awareness of how it needs to change and increase resources to deliver on its strategic ambitions and work is already underway. The CIPFA report, noted that: *'The Council has not purchased a commercial asset since 2018/19 with strategy now focused on housing developments, in effect an informal moratorium. We recommend that this is formalised with a view to ensuring that the overall debt burden does not rise. Plainly the terms of the restriction would allow for 'force majeure' or certain categories of desirable economic intervention'*.
- Neither the BVN notice or the CIPFA report prevented the Council from funding housing schemes (or other development) that are supported by a sound business case. The Eastleigh Homes Strategy (Appendix 7), sets out the Council's rationale and vision in supporting thriving and healthy communities and maintaining an attractive and sustainable environment that residents value. The Council is driven by its aim to ensure a sustainable supply of new housing is delivered in the Borough in the next twenty years. By developing its own assets, the Council's intervention will diversify the offer available to those in housing need. The Council operates a different financial approach to the major housebuilders and other private sector developers. This means decisions to invest in projects are influenced by the need for social and environment, rather than purely commercial, outcomes.
- As landowner and developer for the strategic housing site at One Horton Heath, the Council has committed to an 'infrastructure first' approach with significant infrastructure already delivered across the whole site (highway, drainage, boreholes for ground source heat pumps), and planning applications for site wide infrastructure and secondary roads currently under consideration. In December 2023 and July 2024, Cabinet approved the financial commitment to bring forward the first residential phase (381 dwellings at Lower Acre), for

which ground works are underway. Copies of the Cabinet reports are included at Appendix 8.

- In addition to the strategic housing site, the Council has a positive track record of successfully bringing its own sites forward for development as evidenced by the construction and imminent opening of a scheme for 28 dwellings at 14 High Street, Eastleigh (permission ref. F/20/89125), and a recent resolution to permit a scheme of 18 dwellings at Queens View in Netley (application ref. F/23/96224).

- 7.4 The above commentary confirms the Council's on-going commitment and ability to deliver development, contrary to the points raised by the Appellant.
- 7.5 Whether or not the Council can demonstrate a five year housing land supply, the LPA would contend, as set out in this Statement, that there are adverse impacts of the development that would demonstrably outweigh the benefits (when assessed against paragraph 11 of the NPPF), and that there are no material considerations that would warrant a decision that departs from the adopted Development Plan.
- 7.6 The balance between the benefits of housing delivery and identified harm was assessed in a recent appeal for 61 dwellings at Satchell Lane in Hamble (appeal ref. 3292580, 13 December 2023). A copy of this decision is included at Appendix 9. The site for this appeal was located in the countryside and was not allocated for housing in the Adopted Local Plan. The Inspector concluded that the Council could demonstrate a 4.7 year supply of housing (paragraph 112). In paragraph 113, the Inspector considered the benefits of the scheme and noted that it would contribute 61 units towards the Council's housing requirement and support the NPPF objective of significantly boosting the supply of homes, but that he considered the extent of the land supply shortfall to be 'moderate'. He assessed various further benefits of the scheme in the following paragraphs but ultimately determined in the planning balance (paragraphs 142-147), that the harm caused by the development, which was contrary to the development plan and resulted in adverse effects on the character and appearance of the area, outweighed those benefits. The Inspector concluded in paragraph 147 that: *"Taking these matters together, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. As a result, the application of paragraph 11 does not indicate that permission should be granted. The proposal does not benefit from the presumption in favour of sustainable development."* In paragraph 148 he goes on to say that: *"In coming to my conclusion, I have considered all relevant matters that have been raised. The proposal conflicts with the development plan as a whole and there are no material*

considerations to outweigh this conflict. Accordingly, the appeal should be dismissed.”

- 7.7 The matters addressed in relation to the above appeal at Satchell Lane are considered equally relevant to this appeal, which is also for a proposed housing development on unallocated land in the countryside, in conflict with the development plan. Furthermore, this appeal site is located in the settlement gap, which represents a further policy conflict that must be taken into account, and is for a lesser amount of housing therefore providing less of a contribution to the Council's housing land supply.
- 7.8 Another appeal decision of relevance is one relating to a proposal for 106 dwellings rear of Sovereign Drive, Botley (appeal ref. 3269897, 4 August 2022). A copy of this decision is included in Appendix 10. The site at Sovereign Drive was located in the countryside and in the same settlement gap as the current appeal site and was not allocated for development in the adopted Local Plan. In this appeal decision, the Inspector did not conclude on whether the Council could demonstrate a five-year housing land supply, but noted that if they could not, then the benefits of housing provision should be given substantial weight (paragraph 41). However, the Inspector concluded that the development would result in an urbanising impact and harm the settlement gap and gave substantial weight to this conflict with Policy S6 (paragraph 42). In the planning balance, the Inspector commented in paragraph 46 that: *“... the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when considered against the policies of the Framework read as a whole. Accordingly, whether or not there was a shortfall in housing land supply, the presumption in favour of sustainable development outlined at Framework paragraph 11 would not apply.”* The Inspector concluded in paragraph 48 that the material considerations including the benefits of housing delivery, did not indicate that a decision should be made otherwise than in accordance with the development plan.
- 7.9 These appeal decisions demonstrate that, whether or not the Council can demonstrate a five-year housing land supply, the benefits of housing delivery are still required to be balanced against any identified harm. In the case of this appeal, for the reasons set out in this statement, the LPA concludes that the harm to the character of the countryside and local gap, and the uncertainty relating to drainage and ecology impacts, would significantly and demonstrably outweigh the benefits of housing provision. The LPA does not consider there to be any material benefits that would warrant a decision otherwise than in accordance with the development plan.

8. Reasons for Refusal

- 8.1 This section addresses the reasons for refusal, addressing the harm and the conflict with the development plan.
- 8.2 Reason for Refusal 1
The proposals represent an inappropriate and unjustified form of development which would have an unacceptably urbanising and visually intrusive impact upon the designated countryside and settlement gap, thus the proposals would be contrary to Policies S1, S5, S6, and DM1 of the Eastleigh Borough Local Plan (2016-2036), and the provisions of the National Planning Policy Framework (2023).
- 8.3 The site sits within countryside and settlement gap, covered by policies S5 and S6 of the Local Plan respectively. Policy S5 sets out the types of development that might be considered acceptable within the countryside, of which new residential development is not included (except for replacement dwellings, limited residential conversions, agricultural dwellings and accommodation for Gypsies, Travellers and Travelling Showpeople). Therefore, this appeal for 34.no dwellings is in direct conflict with policy S5. Moreover, policy S6 states that development within the gap would only be permitted if it does not undermine the physical extent and or visual separation of settlements; neither should it have an urbanising effect detrimental to the character of the countryside or the separate identity of adjoining settlements. It is considered this appeal scheme also directly conflicts with policy S6 for the reasons set out in this statement.
- 8.4 This area of the local settlement gap is referred to as Area I 6 of the Eastleigh Borough Settlement Gap Study 2020 and is described on page 131 as: *“Combination of ribbon development, scattering of mature trees and paddocks to the rear provide a short lived but clear change of character from the built form edges to Hedge End and the wooded arrival to Botley. Whilst the horse paddocks are poor in landscape character, the remnant field boundaries and open nature contribute to the separation between the two settlements particularly when experienced from the A334 and bridleway No. 17.”*. The area is further referenced on page 135 where it is noted that: *“This area lies at the narrowest section between Botley and Hedge End and performs all Gap functions. The fields on both sides of Botley Road (A334) contribute to the perception of Gap’s openness and the separation between the two settlements. Thanks to the open nature of those fields, and their predominantly undeveloped character, the sense of leaving / arriving to either of the settlements is maintained despite the short distance (approximately 300m). The fields also contribute to the separation of the settlements for viewers on the bridleway No. 17 to the south”*.

8.5 Further commentary on how the separate settlements are experienced when travelling along the A334 and Bridleway 17 is provided on page 125 of the 2020 Settlement Gap Study. In relation to the A334 it is noted that visual separation, whilst brief, encompasses several landscape features that contribute to a sense of departure and arrival, including: *“historic residential ribbon dwellings with glimpsed views of paddocks and field boundaries behind”*. Bridleway 17 is described as providing access to small scale paddocks and associated small, detached dwellings and that whilst the landscape is of a poor quality, there is still a sense of departure from each settlement (Hedge End and Botley).

8.6 Within the 2020 Settlement Gap Study (page 134), all the areas in Area I are marked against 5 criteria. These criteria include:

- The area helps preserve the open nature of the gap;
- The area helps maintain the sense of separation between settlements;
- The area plays an important role in defining the settlement character;
- The area plays an important role in separation of settlements at risk of coalescence;
- The land is necessary in preventing coalescence of settlements.

The lowest scoring area in Area I scored 2 out of these criteria, whereas the area of the appeal site (I 6) met all 5 of the criteria, highlighting its importance.

8.7 Looking at the two separate settlements, Hedge End has a more suburban character compared to the village form of Botley, representing two different identities. Travelling in either direction, the appeal site, which lies in a section of undeveloped gap, holds a clear sense of separation between the two settlements. If this section of gap were to be developed, this experience would be altered, merging the two identities of the settlements together. This is a direct conflict with policy S6 of the Development plan and should be resisted.

8.8 The revised LVIA (Landscape and Visual Impact Assessment - Hearing Statement) submitted by the appellant implies that the visual impact of the development would be reduced by existing vegetation screening views. However, much of this vegetation that is relied on is outside of the red line boundary on the location plan and is not demonstrated to be within a blue line ownership either. Other parties would therefore be responsible for maintaining and managing this vegetation which is outside of the appellant's control. Moreover, due to the constrained nature of the site, including underground services with their respective easements, the ability to mitigate the impact through planting will be restricted and should not be

relied on to screen an inappropriate development. Also worthy of note is that overt levels of planting would not necessarily be welcomed by the LPA due to the open nature of the area being a key reason this field was retained as settlement gap and contributes to the undeveloped character of the area.

- 8.9 Overall, this point of the settlement gap is narrow. The appeal site is widely experienced by people using the main road (Broad Oak) to the north and the Bridleway to the south. The site is a crucial point in the locality to denote the feeling of separation between Hedge End and Botley and transitioning from town to village (or vice versa).
- 8.10 In addition, the LPA has noted that the appellant's appeal submission includes new information in the form of a more detailed illustrative masterplan, as shown in Figure 5.3 of the Appellant's revised LVIA, and Figure 1 of the Appellant's Drainage Strategy Technical Note. This updated illustrative masterplan is more detailed and indicates an entirely different layout to that shown on all of the parameter plans on which the application decision was made. The Planning Appeals Procedural Guide, section 16, makes it clear that the appeal process should not be used to evolve a scheme and that amendments that involve a 'substantial difference' or 'fundamental change' to the application as determined, should not be considered as part of the appeal. It is the LPA's view that the submitted alternative illustrative masterplan represents a substantial difference in the information originally assessed, which has not been formally consulted on, and should therefore not be accepted for consideration under this appeal.
- 8.11 To summarise, the proposed development is not within the designated types of development usually permitted within the countryside and settlement gap; as such would directly conflict with policy S5 and policy S6 of the Development Plan. The direct conflicts with the specific criteria of policy S6 are explained further in the following sentences. The already narrow gap would be reduced further with the proposed development, which would physically undermine the development gap between Hedge End and Botley (S6.1.a). The development would be urbanising beyond doubt, particularly to those who walk or cycle along Broad Oak or the Bridleway (S6.1.b.i). As all 5 criteria within the 2020 gap study were met for this appeal site, it is clear that the site offers a sense of separation between settlements and plays an important role to stop coalescence of settlements (S6.1.b.ii).
- 8.12 Reason for Refusal 2
There is insufficient information to determine if the access road can be achieved without causing harm to the adjacent priority habitat (Lowland mixed deciduous woodland) during construction and operation, contrary to Policy DM11 of the Eastleigh Borough Local

Plan (2016-2036), and the provisions of the National Planning Policy Framework (2023).

- 8.13 Policy DM11 of the Eastleigh Borough Local Plan states that:
“The Council will work with statutory and voluntary agencies and developers, and will determine planning applications, to:
a. protect, conserve and enhance all:
i. international, national and local nature conservation designations; and
ii. networks of natural habitats and features, including the Local Ecological Network, Priority Biodiversity Areas and Priority Biodiversity Links, watercourses, wetland complexes, woodland trees, and trees and hedgerows important to biodiversity and local character”...
- “Development will not be permitted if it is likely (either individually or in combination with other developments) to have a direct or indirect adverse effect on priority habitats, protected or priority species, or on the local ecological network unless it can be demonstrated that:*
a. there are no alternative solutions;
b. the adverse effects are unavoidable;
c. measures are taken to mitigate or, as a last resort, compensate for the adverse effects;
d. there is an overall biodiversity net gain; and
e. if there are any residual adverse effects, the benefits of the development clearly outweigh the adverse effects on priority habitats, priority and protected species, and the local ecological network.”
- 8.14 At the application stage, the LPA raised significant concern with the close proximity of the access road to the priority habitat (lowland mixed and deciduous woodland) to the south of the site. The access road would pose additional harm to the habitat, which is in addition to the existing harm the end of Cobbett Way creates by being close to this habitat. The LPA has a duty under the Natural Environment and Rural Communities (NERC) Act 2006 (Section 41), which was further strengthened by the Environment Act 2021, to consider the protection of priority habitats in decision making. It was therefore concluded that the proposal could not provide an appropriate buffer to the priority habitat to protect it from harm, and as such this formed a reason for refusal.
- 8.15 To seek to address this reason for refusal, the Appellant has submitted an Ecological Support Summary (the appellant's Appendix 1 for appeal) by Ecosa (August 2024), which has been reviewed by the Council's Ecologist. This document states in paragraph 2.2 that: *“None of the woodland habitats to the south of the site are proposed to be removed as part of the proposals and will be retained on site. A suitable buffer of at least three metres from the trunk of the nearest tree will be established between the retained woodland habitats to the south of the site and the proposed*

roadway entering the site from the south-east". However, the LPA maintains that there are significant uncertainties regarding this statement due to a lack of detailed information. The appellant has stated that a 3m buffer can be provided from the woodland however, there is no detailed arboricultural tree plan to determine which is the 'nearest tree' on which the buffer has been based, and there is no information regarding root protection zones (RPZ), which can extend more than 3m depending on the size of the canopy. On the basis of the submitted information, the LPA cannot determine if an appropriate buffer would actually be achievable with the access road in the position proposed.

- 8.16 Whilst the woodland to the south of this site is not a Site of Importance for Nature Conservation (SINC), it is priority habitat, which is functionally linked to the Pudbrook Lake SINC, both by Pudbrook Lake stream, a tributary of the River Hamble, and the continuous priority habitat corridor consisting of priority lowland deciduous woodland and coastal and floodplain grazing marsh. Therefore, due to this importance, at the time of the application, the Council's ecologist requested that this buffer should measure 10m to suitably protect the priority habitat. The appeal scheme falls vastly short of this figure.
- 8.17 In addition, concerns remain about the ability to maintain a dark corridor adjacent to the woodland edge. Without this, the operation of the road would result in car headlights shining into the woodland, causing disturbance to bats and nesting birds. Again, it is not demonstrated that a dark corridor could be maintained with the access road in the position proposed.
- 8.18 The LPA considers that this issue needs to be resolved prior to a decision in order to be certain that the development can be achieved without unacceptable harm to the priority habitat. However, should the Inspector take a different view, and without prejudice to the Council's position, a condition has been included within the suggested list of conditions (Appendix 11).
- 8.19 Reason for Refusal 3
Insufficient information has been provided to demonstrate that the sustainable drainage can provide three forms of natural filtration, and mitigate all pollution hazards, which is necessary to maintain the quality of runoff water entering the Solent and Southampton Water Special Protection Area and Ramsar Site and Solent Maritime Special Area of Conservation. The application is therefore contrary to the requirements of Policies S1, DM5, DM6, DM10 and DM11 of the Local Plan, the provisions of the National Planning Policy Framework (2023), and the Conservation of Habitats and Species Regulations (2017) (as amended).

- 8.20 Policy DM6 of the Eastleigh Borough Local Plan (Sustainable surface water management and watercourse management) states new development will only be permitted if it incorporates Sustainable Drainage Systems (SuDS) with naturalised filtration: *“On sites of 1 hectare or more, or within 100m of the River Itchen SAC or Solent Maritime SAC, SuDS schemes should include at least three forms of naturalised filtration. On sites within 100m of headwaters and tributaries draining into a SAC, SuDS schemes should include at least three forms of naturalised filtration unless hydrological studies and project-level Habitats Regulations Assessment demonstrate this to be unnecessary to protect the integrity of the SAC and its qualifying features”*. The policy also lists requirements from SuDS schemes to reduce flooding and maintain water quality.
- 8.21 Within the original application the LPA and Hampshire County Council, as the Lead Local Flood Authority (LLFA), raised concerns with the suggested drainage proposals. Infiltration is not an option here due to ground conditions and the original proposal was to attenuate runoff and discharge at greenfield runoff rates. However, the drainage features were not proposed in suitable locations for discharge and clarification was requested in regard to basin and discharge locations, greenfield runoff rates proportionately applied to developed areas, revised calculations for peak rainfall, flood exceedance flow routes and water quality and maintenance information. With the additional information received during the application stage, the LLFA still noted persistent issues with the drainage proposals, which in part led to this reason for refusal in conjunction with the lack of naturalised filtration.
- 8.22 To seek to address these concerns, the appellant has submitted a Drainage Strategy Technical Note by Jubb (rev P1, August 2024) (the appellant's Appendix 2 for appeal). The Council's ecologist is satisfied that the drainage strategy is capable of showing three forms of filtration for all surface water drainage, which includes permeable paving, a conveyance swale and a pond.
- 8.23 However, the drainage path of the water collected on domestic roofs is not clearly demonstrated. Rainwater harvesting would use water butts, the rainwater would not enter the permeable paving / swale / attenuation basin system. As such, a small pollution level would enter the watercourse due to only one level of filtration being proposed for this pathway.
- 8.24 It is worth noting that the drainage design has been demonstrated on the alternative masterplan layout as submitted with this appeal, which is a layout not previously considered at application stage and should not be considered at appeal stage, as set out above.

- 8.25 In addition, the LLFA has made comment on the revised information that has been submitted with the appeal. The lowest level of the site is to the east however the discharge points are to the ditch to the west and south where ground levels are considerably higher. The invert level of the ditch to the west is assumed at 13m Above Ordnance Datum (AOD), however the ground slopes to the east with the lowest corner being 12.55m AOD. It is also assumed that the ditch is 2m deep, which is unverified. The site also naturally drains to the south-east so by moving the discharge point to the uphill section, this would change the catchment area of the site and has the potential to increase flood risk off site. This goes against the requirements of the NPPF, specifically paragraph 173 which states *“When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere...”*.
- 8.26 All of the surface water drainage attenuation is located to the west and south of the site which is higher than the south-east corner. Therefore, it would not be possible to provide an appropriate drainage connection to these features without substantial changes to the levels which also has the potential to increase flood risk, particularly given the developed area downstream. In addition, there is insufficient information to be able to conclude on the potential broader impacts this could have for the site, as level changes could have consequent impacts on the root protection zones for trees and wider visual impacts for the site.
- 8.27 Therefore, as it stands, although the principle of three forms of natural filtration is considered to be possible based on the proposals shown, these proposals are not considered satisfactory in relation to other fundamental drainage principles as outlined above. The appellant has therefore not satisfactorily demonstrated that a viable surface water drainage solution incorporating the required forms of natural filtration can be achieved.
- 8.28 The LPA considers that the above issues need to be resolved prior to a decision in order to be certain that the development can be achieved without unacceptable harm from flooding and surface water pollution. However, should the Inspector take a different view, and without prejudice to the Council's position, a condition has been included within the suggested list of conditions (Appendix 11).
- 8.29 Reason for Refusal 4
The application fails to secure provision for developer contributions towards the on and off-site provision of facilities and infrastructure made necessary by the development or to mitigate against any increased need or pressure on existing facilities. The application is therefore contrary to the requirements of Policies S11, DM13, DM28,

DM33 and DM38, and the provisions of the National Planning Policy Framework (2023).

- 8.30 In accordance with Policy DM38, and other relevant policies of the Eastleigh Borough Local Plan, there is a requirement for planning obligations to secure on and off-site provision of affordable housing, facilities and infrastructure. These are either made necessary by the development, or are required to mitigate against the increased pressure on existing facilities or the need for additional facilities resulting from the proposed development.
- 8.31 For the appeal scheme, the planning obligation requirements are as follows:
- Provision of 35% affordable housing;
 - Provision of 1.19 ha on-site public open space (informal open space totalling 1.15 ha and the play area totalling 0.04 ha);
 - Provision of a local equipped area of play;
 - Maintenance and supervision of open space and play area;
 - Off-site open space contribution;
 - Off-site local green space contribution;
 - Sustainable transport contribution towards off-site infrastructure improvements;
 - Traffic Regulation Order (TRO) contribution;
 - Education provision;
 - Health infrastructure improvements contribution;
 - Public Art contribution;
 - Air quality contribution;
 - New Forest recreation mitigation contribution;
 - Solent recreation mitigation contribution;
 - Nutrient mitigation.
- 8.32 The above list of obligations accords with the details set out in the officer's delegated report, and the Council is working with the appellant to agree the detailed heads of terms for a S106 Agreement. It is noted that Hampshire County Council, as Highway and Education Authority, would need to be party to the agreement. Should a S106 Agreement be completed in accordance with the required timescales, then this would address reason for refusal 4.
- 8.33 The planning obligations are justified in the guidance contained within the following documents:
- The NPPF;
 - Policies DM1, DM11, DM13, DM28, DM33 and DM38 of the Eastleigh Borough Local Plan;

- Eastleigh Borough Council Planning Obligations Supplementary Planning Document (SPD), July 2008;
- Eastleigh Borough Council Affordable Housing SPD, December 2023;
- Eastleigh Borough Council Public Art Strategy 2023-2028;
- Hampshire County Council's Guidance on Planning Obligations and Developer Infrastructure Contributions (December 2023); and
- The requirements of Regulation 122 of the Community Infrastructure Levy Regulations.

8.34 The scale of any financial contribution would be calculated in accordance with the various Council and County Council documents as listed above. Further justification for the contributions and details of what they would be spent on will be set out in a CIL Compliance Document prior to the Hearing.

8.35 If a S106 Agreement is not completed, then the Council would maintain that the development would have an unacceptable, adverse impact on local infrastructure, services and facilities and the appeal should be dismissed.

8.36 Reason for Refusal 5

The application fails to provide the required mitigation to offset the impacts of the development upon the European protected Solent Complex (SPA, SAC and Ramsar sites), River Itchen (SAC) and New Forest National Park (SPA, SAC and Ramsar sites) from additional recreational pressure and nitrogen loading generated by the residential nature and additional sewage resulting from the development. The proposal is therefore contrary to the requirements of Policy DM11 of the Eastleigh Borough Local Plan 2016-2036, the provisions of the NPPF (2021) and the Conservation of Habitats and Species Regulations 2017 (as amended).

8.37 As explained in the Officer's delegated report, the appeal site lies within the catchment areas for the Solent and New Forest European protected sites, where new residential development can result in harmful impacts due to increased recreational pressure. The appeal site also has the potential to result in harmful impacts on the Solent protected sites from increased nutrient output. These impacts are required to be mitigated in order to avoid harm to the integrity of the protected sites, to comply with The Conservation of Habitats and Species Regulations 2017.

8.38 The European protected sites relevant to this appeal are as follows:

- Solent and Southampton Water Special Protection Area (SPA);
- Solent and Dorset Coast SPA;
- Portsmouth Harbour SPA and Ramsar Site;
- Chichester and Langstone Harbours SPA;

- Solent Maritime Special Area of Conservation (SAC);
- New Forest SPA, SAC and Ramsar.

- 8.39 At the time of the application, as the scheme was recommended for refusal, the LPA did not carry out a Habitats Regulations Assessment Appropriate Assessment (AA). To assist the Inspector this has now been completed (refer to Appendix 12), and a copy was issued to Natural England. The AA sets out the proposed mitigation, which for recreational impacts would comprise financial contributions towards the Council's Interim New Forest Mitigation Strategy and the Solent Recreation Mitigation Strategy (Bird Aware Solent) (refer to Appendices 13 and 14). For nutrient impacts, the appellant would have the option of purchasing nitrate credits through the Council's Interim Nutrient Mitigation Strategy (Appendix 15).
- 8.40 Natural England responded to the LPA's Appropriate Assessment on 10 October 2024 and a copy of the response is provided at Appendix 16. Natural England has raised no objection to the proposed mitigation for Solent recreational impacts and nutrient impacts, but has raised concerns about the effectiveness of the Council's Interim New Forest Mitigation Strategy. An objection from Natural England is therefore maintained, on the basis that they cannot conclude that the development would have no adverse effect on the integrity of the New Forest designated sites. It is the Council's view, however, that its Interim New Forest Mitigation Strategy is robust and that compliance with the strategy would ensure no adverse impacts on the integrity of the New Forest protected sites. It is acknowledged that for this appeal, the Inspectorate is the competent authority, but in the opinion of the Local Planning Authority, the impacts on the European protected sites could be satisfactorily mitigated, provided that the mitigation is secured through a S106 Agreement. Provided the S106 is completed in the required timeframe, this would address reason for refusal 5.
- 8.41 If the S106 Agreement is not completed and mitigation is not secured, then the appeal scheme would result in likely significant effects on the integrity of the European protected sites, contrary to The Conservation of Habitats and Species Regulations 2017 and Policy DM11 of the Eastleigh Borough Local Plan.

9. Planning Balance and Conclusion

- 9.1 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, require the appeal to be determined in accordance with the Development Plan unless material considerations indicate otherwise.

- 9.2 The appeal proposal is for the outline development of 34 dwellings (access only considered). The site lies outside the defined urban edge and within an area designated as both countryside and settlement gap in the Council's Local Plan (2016-2036), and the principle of development is contrary to policies S5 and S6. The proposal therefore represents a direct conflict with the Development Plan.
- 9.3 Furthermore, the appeal proposal would have an unacceptably urbanising and visually intrusive impact upon the countryside, settlement gap and surrounding area, contrary to policies S5, S6 and DM1 of the Local Plan.
- 9.4 In addition, it has not been demonstrated that the Appellant can adequately mitigate the adverse impacts of the development in terms of the impacts on priority habitat, flood risk and surface water pollution. As such, the proposal would also be contrary to policies DM5, DM6, DM10 and DM11 of the Local Plan.
- 9.5 As per paragraph 2 of the NPPF, applications for planning permission are to be determined in accordance with the development plan unless material considerations indicate otherwise. The LPA has considered the potential benefits of the scheme as outlined by the appellant, which includes the provision of market and affordable housing, economic benefits in the form of construction jobs and increased local spending, contributions towards additional or improved infrastructure including education, health, community and recreational facilities, plus ecological and environmental provisions. It is not considered that these benefits outweigh the harm that would be caused by the proposed development. In addition, these benefits are not bespoke to this scheme and could be achieved through other development within the locality which is not contrary to the development plan and would not cause adverse harm. Therefore, there are not considered to be any material considerations that indicate that permission should be granted for this appeal scheme in conflict with the development plan.
- 9.6 It is acknowledged that should the Inspector consider that the Council are not able to demonstrate a five year housing land supply, paragraph 11(d) of the NPPF would be engaged, which requires a weighted assessment of the adverse impacts against the benefits. As per the conclusion set out above and the detail contained within this statement, the LPA considers that even with the tilted balance applied, the significant adverse impacts of the development would demonstrably outweigh the benefits when assessed against the Framework as a whole.
- 9.7 For all these reasons, the Inspector is respectfully requested to dismiss this appeal.