

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's) STATEMENT OF CASE

**Erection of detached bungalow with associated parking, access
and landscaping**

Land adjacent to Croft Farm, Winchester Road, Botley, SO32 2BX

Appeal by:

MR L COLLINS

Planning Inspectorate Reference:

APP/W1715/W/24/3349577

Eastleigh Borough Council Reference:

F/24/97352

October 2024

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1. Introduction

- 1.1 The Council's Statement of Case should be read in conjunction with the Council's Decision Notice and Delegated Officer's Report, which were issued on 9th July 2024.
- 1.2 This statement focusses on the matters pertaining to the Council's reasons for refusal of planning permission as set out below and in order to provide further details and justification in relation to these.

2. Description of the Appeal Application

- 2.1 The appeal application was received by the Council on 6th May 2024 and registered as valid on 24th May 2024. It was given a reference number of F/24/97352. The proposed development was described as follows: *Erection of detached bungalow with associated parking, access and landscaping.*
- 2.2 The application was publicised in the form of neighbour notification letters as well as a site notice. No comments were received.
- 2.3 The decision was issued on 9th July 2024 with 4 reasons for refusal being listed on the Council's Decision Notice (APPENDIX 1):
 1. The proposed dwelling would be unsuitably located resulting in an urbanising and undesirable intrusion into the countryside. As such the proposal is contrary to policies S5 of the Eastleigh Borough Local Plan [2016-2036].
 2. 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) and New Forest National Park (SPA, SAC and Ramsar sites) from additional recreational pressure by the population increase 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 [2023] and the Conservation of Habitats and Species Regulations 2017.
 3. Insufficient information has been provided to demonstrate the development will not cause adverse harm to the biodiversity interests of the site and species, including great crested newts, common toads, bats, badgers and nesting swifts which are protected by virtue of the Wildlife and Countryside Act (1981) (as amended) and the Conservation of Habitats and Species Regulations (2017) (as

amended). The proposals are therefore contrary to Policy DM11 of the Eastleigh Borough Local Plan [2016-2036].

4. Insufficient information has been provided to demonstrate a biodiversity net gain and as such is contrary to Policy DM11 of the Eastleigh Borough Local Plan [2016-2036].

2.4 The application was determined using the following plans: PL01 Rev A, PL02, PL03 Rev A and PL04.

2.5 The delegated officer's report was sent to the Inspector with the questionnaire documents.

3. The Site and Surroundings

3.1 The site is situated between Horton Heath and Boorley Green, to the north-east of Winchester Road. Development along this stretch of road is sporadic, typical of the countryside location.

3.2 The road has a verdant nature, with tree-lined and dense vegetation to the road verges.

3.3 The site has an approval for a detached bungalow within the blue line land to the north-west of the appeal site, as identified on the submitted location plan with the application. This adjacent bungalow was approved through a variation (application reference X/22/92989) to an approval originally allowed under the prior notification process (application reference PN/18/84177) and further amended by a full application (application reference F/21/90176), due to the presence of an existing agricultural building which was a material consideration when determining that application against countryside policy within the local plan.

4. Planning History

4.1 The full planning history of the site was set out within the 'Planning history' section of the Delegated Officer's Report. This included:

- *Z/28480/004/00 - Renovate existing farm building for use as office – Refuse – Mar 1988*
- *Z/34623/000/00 - Outline: construction of two dwellings – Refuse Outline – Jul 1997*

- *O/15/76894 - Outline application for replacement of agricultural buildings with 2no. live/work units (B1/C3 uses). Matters for consideration: access, layout & scale – Refuse outline – Sept 2015*

4.2 The following applications are of relevance as they are associated to the blue line land on the location plan.

- *PN/18/84177 - Prior Notification of change of use from agricultural building to a dwellinghouse (Class C3) with associated external alterations – Prior approval granted – Dec 2018*
- *F/19/86814 - Erection of detached bungalow – Dismissed at appeal – Dec 2020*
- *F/21/90176 - Erection of detached bungalow – Permit – Nov 2021*
- *X/22/92989 - Variation of condition 1 (approved drawings) of planning permission F/21/90176 for erection of detached bungalow – Permit – Oct 2022*

5. Development Plan Policy

- 5.1 Sections 70(2) and 79(4) of the Town and Country Planning Act 1990 set out that this Appeal must be determined in accordance with the Development Plan unless material considerations indicate otherwise.
- 5.2 Section 38(6) of the Planning and Compulsory Purchase Act states: “If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise”.
- 5.3 For the purposes of this appeal, the Development Plan comprises of the Policies of the Adopted Eastleigh Borough Local Plan (2016-2036).
- 5.4 The relevant policies to the determination of the planning application and current appeal comprise Policies:

Strategic Policies:

- S1 (Delivering sustainable development);
- S2 (Approach to new development);
- S5 (New development in the countryside).

Development Management Policies:

- DM1 (General criteria for new development);
- DM2 (Environmentally sustainable development);
- DM11 (Nature conservation);
- DM13 (General development criteria - transport);
- DM14 (Parking);
- DM29 (Dwellings with higher access standards);
- DM30 (Internal space standards for new residential development).

5.5 The following Supplementary Planning Documents (SPDs) are of relevance to the planning merits of the appeal proposals:

- Quality Places SPD
- Residential Parking Standards SPD

5.6 Strategic policy S5 from the adopted local plan states planning permission will be granted for new development in the countryside provided it is related to: the provision of employment through agricultural development, the extension and replacement of existing employment uses and the re-use of existing buildings; residential extensions and replacement buildings, limited residential conversions, rural workers' dwellings and accommodation for Gypsies, Travellers and Travelling Showpeople; community, tourist, or visitor uses through the re-use of buildings including facilities for the interpretation of heritage assets; outdoor recreation and open space; allotments and community farms; cemeteries; and essential public utilities.

5.7 In principle, additional dwellings are not supported within the countryside, and the proposed development is not one of the forms of development considered to be acceptable in the countryside. This policy is key for the determination of this appeal and was a material consideration in forming the basis of this refusal at the application stage.

5.8 The site is located outside of the settlement gap with Winchester Road forming the boundary. Therefore, although adjacent to the settlement gap, this topic and policy S6 does not form part of the assessment.

6. National Planning Policy

6.1 The National Planning Policy Framework (NPPF) 2023 sets the Government's planning policies for England and how it expects them to be applied. The NPPF is a significant material consideration for the purposes of making planning decisions. However, it is just one of the material planning considerations which must be taken into account, and it does not negate or undermine the primacy of the Development Plan laid out in statute, nor any

other material planning considerations. Indeed, Paragraph 2 of the NPPF states:

“Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the development plan and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.”

- 6.2 Paragraph 11(c) states that decision making should “approving development proposals that accord with an up-to-date development plan without delay”.
- 6.3 Paragraph 12 reiterates the point made in Paragraph 2 that the presumption does not change the statutory status of the development plan as the starting point for decision making: “Where a planning application conflicts with an up-to-date development plan ... permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.”
- 6.4 Moreover, in Section 3, the NPPF emphasises in paragraph 15 that “The planning system should be genuinely plan-led”.
- 6.5 The NPPF also recognises in paragraph 180 that “planning policies and decisions should contribute to and enhance the natural and local environment by... recognising the intrinsic character and beauty of the countryside...”

7. Reasons for Refusal

- 7.1 This section addresses the reasons for refusal, including conflict with the Local Plan Policies, Adopted SPDs and the NPPF.
- 7.2 **Reason for Refusal 1**
The proposed dwelling would be unsuitably located resulting in an urbanising and undesirable intrusion into the countryside. As such the proposal is contrary to policies S5 of the Eastleigh Borough Local Plan [2016-2036].
- 7.3 The proposal is in conflict with policy S5 of the Eastleigh Local Plan (2016-2036), and it is considered that there are no material considerations or overriding planning justifications presented otherwise to allow a departure from the planning policy. At the application stage, this formed the main reason for refusal whereby the proposal would have an urbanising impact and create an undesirable intrusion into the countryside designation.

7.4 The development plan consists of up-to-date policies, which should be used in the determination of this appeal. The introduction of new dwellings into the countryside designation is a direct conflict with policy S5. No other material considerations have been put forward as part of this appeal submission and as such it is the LPA's perspective that this reason for refusal should be upheld.

7.5 In addition, despite what the appellant has stated in their statement of case, the application does not lie within the settlement gap and as such was not assessed against policy S6 nor refused on this basis. The impact of the proposal on the adjoining gap is therefore not relevant to the determination of this appeal.

7.6 Reason for Refusal 2

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) and New Forest National Park (SPA, SAC and Ramsar sites) from additional recreational pressure by the population increase 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 [2023] and the Conservation of Habitats and Species Regulations 2017.

7.7 Under the application stage, the Council, as the responsible determining body, must ensure as part of a planning application that a development will not have an adverse impact upon any European protected sites, and specifically in this case, the European protected Solent Complex (SPA, SAC and Ramsar sites), River Itchen (SAC) and New Forest National Park (SPA, SAC and Ramsar sites). It is recognised that the addition of residential development would have an adverse impact upon the surrounding designated European protected sites.

7.8 The proposed development is within the 13.8km catchment zone for the New Forest National Park measured across Southampton Water. In addition, the proposed development is within 5.6km of the collectively known European designated areas Solent SPAs/Ramsar sites. There is therefore the cumulative potential for future housing developments (which involve a net increase in dwellings) across the borough of Eastleigh to impact the status and distribution of key bird species and therefore act against the stated conservation objectives of these European sites.

7.9 There is existing evidence of high levels of nitrogen and phosphorus input into the Solent complex and that these nutrients are causing eutrophication at these designated sites. There is the potential for future housing developments (which involve a net increase in dwellings) across the Solent region to further exacerbate these impacts and thereby create a risk to the potential future conservation status of the Solent Complex and the features

for which it is designated, therefore acting against the stated conservation objectives of the European sites.

- 7.10 As such, due to the nature of the proposals, a Habitat Regulations Assessment (HRA) (APPENDIX 2) was undertaken and submitted to Natural England for their review, but no response was received.
- 7.11 As noted in the HRA, appropriate mitigation for the recreational disturbance impacts of the proposals on the New Forest and Solent Complex SPAs can be provided by means of financial contributions. However, no additional information nor S106 agreement/Unilateral Undertaking to address the required monies for the New Forest Recreation Mitigation Interim Strategy (APPENDIX 3) or Solent Recreation Mitigation Strategy (APPENDIX 4 & 5) have been submitted as part of this appeal.
- 7.12 The council has also adopted a nutrient neutrality scheme (APPENDIX 6) where applicants can purchase credits to offset their development against the Solent Complex. This is usually secured via a pre-occupation condition, but it is acknowledged that this could also have been included in a legal agreement if one were submitted.
- 7.13 Appendices 7-10 also offer further information on the nutrient issue within the Solent.
- 7.14 As no appropriate mitigation has been secured it is considered that this reason for refusal has not been addressed and should be upheld.
- 7.15 **Reason for Refusal 3**
Insufficient information has been provided to demonstrate the development will not cause adverse harm to the biodiversity interests of the site and species, including great crested newts, common toads, bats, badgers and nesting swifts which are protected by virtue of the Wildlife and Countryside Act (1981) (as amended) and the Conservation of Habitats and Species Regulations (2017) (as amended). The proposals are therefore contrary to Policy DM11 of the Eastleigh Borough Local Plan [2016-2036].
- 7.16 Upon submission of the application, the Preliminary Ecological Appraisal was 20 months old and as such could not be relied upon for accurate site-specific information on the species that could be using the area. In addition, there were inconsistencies within the report as the report states in section 1.1 that the survey work was done in October 2021, but in section 2.2 it states the survey was undertaken in August 2022. Therefore, as this report was not sufficiently up to date the application failed to provide sufficient information to enable the impact on protected species and local ecological interests to be fully assessed.

- 7.17 The appellant states that the previous adjacent scheme should be relied upon to provide the relevant ecological information for the site. However, these surveys are now considered out of date and no updated walkover was carried out for this site under appeal.
- 7.18 Therefore, from the LPA's perspective, there is no certainty from the reports that the development would not cause harm to species using the site such as great crested newts, common toads, bats, badgers and nesting swifts. No new information has been submitted for review as part of this appeal and as such the LPA's position remains unchanged and the reason for refusal should be upheld.
- 7.19 **Reason for Refusal 4**
Insufficient information has been provided to demonstrate a biodiversity net gain and as such is contrary to Policy DM11 of the Eastleigh Borough Local Plan [2016-2036].
- 7.20 The Council's Ecologist at the time of the application noted that the legislative 10% Biodiversity Net Gain (BNG) was not required but some level of enhancement would be in order to accord with policy DM11, such as the bat brick or swift brick. As part of the application stage, no information was provided to show details of these potential biodiversity enhancements. As such this formed a reason for refusal.
- 7.21 As part of the appeal, the appellant has stated that they would be willing to accept a condition on this and as such in the event this information was submitted on a plan or the condition was applied, as suggested in the draft condition list (APPENDIX 11), the reason for refusal could fall away.

8. Conclusions

- 8.1 As set out within this Statement, there is a clear conflict between the proposed development, Local Plan Policies and the contents of the NPPF. As a result, it is clear that the proposals do not accord with the Development Plan for the purposes of Sections 70(2) and 79(4) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004. Planning Permission should therefore be refused unless material considerations indicate otherwise.
- 8.2 The Local Planning Authority consider that there are no such material considerations in this case and, accordingly, respectfully request that the Inspector dismisses this appeal.
- 8.3 Should the Inspector, however, be minded to grant permission, the Local Planning Authority would request that the conditions attached in Appendix 11 be included as part of any approval.