

Statement of Common Ground

**Between The Trustees of the Mulberry Pension Investment Scheme &
Eastleigh Borough Council**

Land to the West of Cobbett Way, Botley

Planning Inspectorate Reference: APP/W1715/W24/3350858

Eastleigh Borough Council Reference: O/23/96432

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

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Introduction

1. This Statement of Common Ground (SoCG) has been prepared by Andrew Burgess Planning Ltd on behalf of The Trustees of The Mulberry Investment Pension Scheme ("the Appellant") and agreed with Eastleigh Borough Council ("the LPA"). It relates to an appeal made pursuant to Section 78 of the Town and Country Planning Act 1990, in respect of land off Cobbett Way, Botley, SO30 2ET ("the Appeal Site").
2. The purpose of the SoCG is to identify the areas where the principal parties (the Appellant and LPA) are in agreement and to narrow down the issues that remain in dispute. This will allow the Hearing to focus on the most pertinent issues.
3. The appeal is against the decision of the LPA to refuse the Appellant's application for planning permission ("the Application") for the following development:

Outline application for residential development of up to 34 dwellings and associated infrastructure (access only to be considered).

4. The Application was validated by the Council on 4 December 2023 and was refused planning permission on 1 March 2024 (ref. O/23/96432.) There were five reasons for refusal:

4.1 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).

4.2 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).

4.3 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).

4.4 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).

4.5 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).

5. This SoCG should be read in conjunction with the submitted Statement of Cases.

Application plans and documents

6. There were a number of documents and plans submitted with the application that were considered as part of the determination process and the ultimate reasons for refusal. These are listed below:

- Parameter site location (CB_63_311_PARAM_000 Rev C)
- Illustrative masterplan (CB_63_311_PARAM_001 Rev C)
- Parameter land use plan (CB_63_311_PARAM_002 Rev C)
- Parameter open space plan (CB_63_311_PARAM_003 Rev C)
- Parameter building heights plan (CB_63_311_PARAM_004 Rev C)
- Parameter access and movement plan (CB_63_311_PARAM_005 Rev C)
- Base plan (CB_63_311_XXX)
- Constraints plan (CB_63_311_901 Rev E)
- Illustrative landscape strategy (GLS_090_1200 Rev B)
- Landscape illustrative masterplan (GLS_090_104_1200 Rev B)
- Design and access statement (CB_63_311 Rev C)
- Acoustic report; PropG Stage 1 Risk Assessment by Clarke Saunders dated 25/07/23 (AS12976.230413.RA Rev.A)
- Air Quality Assessment by Hawkins Environmental dated November 2023 (H3802-AQ-v3).

- Agricultural Land Classification and Considerations by Kernon Countryside Consultants Limited dated November 2023
- Flood Risk Assessment & Drainage Strategy Report by Jubb Consulting Engineers Ltd. (23233_FRA01)
- Drainage Assumptions by Jubb Consulting Engineers Ltd. (23233)
- Surface water drainage strategy (JUB_XX_XX_DR_C_500 Rev P1)
- Preliminary Ecological Appraisal dated January 2024 by MM Ecology.
- Reptile Survey & Mitigation Strategy, dated November 2023 and superseded by January 2024, by MM Ecology.
- Landscape and Visual Impact Assessment (GLS_090_104_1001 Rev A)
- Transport Statement dated November 2023 by Paul Basham Associates Ltd. (187.0012/TS/5)
- Arboriculture Impact Appraisal and Method Statement dated 27th October 2023 by Barrell Tree Consultancy (23088-AA-PB)
- Tree protection Plan by Barrell Tree Consultancy (23088-2)
- Manual for managing trees on development sites (Barrell Tree consultancy)
- Archaeological Desk Based Assessment dated July 2023 by Thames Valley Archaeological Services (BOB 23/132)
- Planning statement incorporating affordable housing statement (October 2023)
- Assessment of Housing Land Supply in the Borough by Intelligent Land (November 2023, Issue 2).
- Sustainability statement by sees (Rev 4.0 dated 27.10.2023)
- Biodiversity Net Gain Assessment dated November 2023 by MM Ecology.
- Bat Activity Surveys dated November 2023 by MM Ecology.
- Highways Response Note (187.0012/HRN/2)

7. In addition, some additional documents have been submitted within the appeal submission and considered by the main parties. These are listed below:

- Ecological Support Summary Report (24.0057.0001.F0)
- Drainage Technical Note (4247-JUBB-XX-XX-RP-C-001_P1)
- Landscape and Visual Hearing Statement (R002a_2229)
- Five Year Housing Land Supply Analysis Eastleigh Borough Council Strategic Planning Research Unit DLP Planning Ltd (HA5072PS, April 2024).

Planning policy

8. All parties agree and accept that under the provisions of Section 38 (6) of the Planning and Compulsory Purchase Act 2004, applications for planning permission must be determined in accordance with the Development Plan read as a whole, unless material considerations indicate otherwise.

9. The Development Plan covering the appeal site comprises the Eastleigh Borough Local Plan (2016-2036) and the Hampshire Minerals and Waste Plan (2013).

10. The Eastleigh Borough Local Plan 2016 -2036 was adopted in April 2022. The Delegated Officer Report refers to the following planning policies and Supplementary Planning Documents.

11. Planning Policies:

- S1 (Delivering sustainable development),
- S2 (Approach to new development),
- S3 (Location of new housing),
- S5 (Countryside),
- S6 (Settlement gaps),
- S8 (Historic environment),
- S12 (Strategic footpath, cycleway and bridleway links),
- DM1 (General development),
- DM2 (Environmentally sustainable development),
- DM3 (Adaption to climate change),
- DM4 (Zero or low carbon energy), DM5 (Managing flood risk),
- DM5 (Managing flood risk)
- DM6 (SuDs),
- DM8 (Pollution),
- DM10 (Water & wastewater),
- DM11 (Nature Conservation),
- DM12 (Heritage assets),
- DM13 (Transport),
- DM14 (Parking),
- DM24 (Creating a mix of housing),
- DM28 (Affordable housing),
- DM29 (Dwellings with higher access standards),
- DM30 (Internal space standards),
- DM33 (Provision of recreation and open space facilities with new development),
- DM38 (Funding infrastructure).

12. Supplementary Planning Documents:

- Affordable Housing (Dec 2023),

- Biodiversity (Dec 2009),
- Environmentally Sustainable Development (Mar 2009),
- Housing Mix (Feb 2003),
- Planning Obligations (Jul 2008),
- Quality Places (Nov 2011),
- Residential Parking Standards (Jan 2009),
- Trees and Development (Apr 2022).

13. The Botley Neighbourhood Plan is at a very early stage in the plan-making process and as such no weight can be given to it. The Botley Neighbourhood Plan Committee has resubmitted the draft Botley Neighbourhood Plan along with its supporting evidence and documentation to Eastleigh Borough Council for public consultation. Consultation will take place between Wednesday 4 September and Wednesday 16 October 2024 in accordance with Regulation 16 of the Neighbourhood Planning (General) Regulations 2012.

Matters not in dispute

General

14. It is agreed that the Development Management Procedure Order requires that reasons for refusal must state clearly and precisely the full reasons for refusal specifying all policies in the Development Plan that are relevant (Article 35).
15. It is agreed that the format of the planning application forms, plans and the supporting documents fulfilled the requirements of the various regulations and validation checklists, applicable at the time of submission.
16. It is agreed that the LPA agreed to register the application as an outline application with access only to be considered.
17. It is agreed that the appeal proposals do not represent EIA Development for the purposes of the EIA Regulations.
18. It is agreed that an Environmental Statement was not required to support the planning application nor is one required for this appeal.
19. It is agreed that there are no statutory landscape designations affecting the site.
20. It is agreed that there are no statutory ecological designations on the site.

21. It is agreed that the site is not located within or adjacent to a Conservation Area or Listed Building, nor would the proposal be within the setting of any heritage asset. The LPA does not object to the appeal proposals on built heritage grounds.
22. It is agreed that the site is not protected as public open space and nor is it designated as Local Green Space.
23. It is agreed that there is no objection on archaeological grounds, subject to the conditions recommended by the Hampshire Archaeologist.
24. It is agreed that there is no objection on contamination grounds, subject to conditions recommended by the Council's Environmental Health Officer.
25. It is agreed that there is no objection on noise grounds subject to recommended conditions.
26. It is agreed that there is no objection on air quality grounds subject to recommended conditions and developer contributions.

5-year housing land supply

27. The parties agree that the assessment of deliverable sites sufficient to provide a minimum five years' supply against the relevant housing requirement is a main issue for the Appeal.
28. The parties agree that the provisions of paragraph 76 of the NPPF(Dec)2023 are not engaged. The parties further agree that transitional arrangements determining this are provided via references in footnotes 40 and 79 of the NPPF(Dec)2023, specifying that these provisions of paragraph 76 should only be taken into account as a material consideration from the date of publication when dealing with applications made on or after the date of publication of this version of the Framework.
29. The parties agree that the transitional arrangements do not require any assessment of the criteria under parts (a) or (b) of paragraph 76 of the NPPF(Dec2023) prior to being engaged.
30. The parties agree that 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 is over two years old and further agree that this will be updated in advance of the Hearing event.
31. The parties further agree that a separate Statement of Common Ground on Housing Land Supply for an updated assessment of deliverable supply against the

relevant requirement with a base date of 1 April 2024 will be prepared and will be submitted in advance of the Hearing.

32. While the details of the parties' respective cases and the Council's ability to demonstrate a five year supply are not agreed, the following points are agreed to assist preparation for the Hearing in advance of the updated assessment to be released to the Appellant by the LPA.
- a. The parties agree that for the purposes of the requirement against which supply is to be assessed under NPPF 2023, paragraph 77, the adopted Local Plan is less than 5 years old (adopted in April 2022). The land supply requirement for Eastleigh is 729 dwellings per annum in the period 2016-2036, as per the housing figure identified in the adopted Local Plan.
 - b. As of 1st April 2024, 6,745 net new dwellings have been completed in Eastleigh since the base date of the Eastleigh Local Plan (1st April 2016), which represents a cumulative overprovision of +913 dwellings compared to the requirement in adopted strategic policies.
33. The parties further agree that if the local planning authority cannot demonstrate a 5-year housing land supply, then the provisions of paragraph 11(d) of the NPPF are engaged for the determination of the appeal.

Consultation on Proposed Changes to the NPPF and Planning Reform

34. The parties agree that the Written Ministerial Statement (WMS) made by Angela Raynor, Deputy Prime Minister and Secretary of State (SoS) for Housing Communities and Local Government, on 30th July titled "Building the Homes We Need" and consultation draft of the National Planning Policy Framework are now separate material considerations in the determination of this appeal.
35. The parties agree that as a Ministerial Statement, weight may be attributed to the changes referred to as indicating a direction of travel in terms of policy. It is further agreed that the WMS clearly sets the tone and direction of the newly elected Government in their approach to reform and growth.
36. The parties agree that the draft NPPF provides policy mechanisms to support the ambitions of the Government set out within the WMS, but that at this consultation draft stage it can only be given limited weight.
37. Both parties agree that this appeal will be determined against the policies of the extant Framework at the decision date; at present this remains the December 2023 NPPF.

Highways and access

- 38. It is agreed that neither the LPA nor the Local Highway Authority raises any objections to the appeal proposals on traffic or transportation grounds.
- 39. It is agreed that the proposals would not have an unacceptable impact on highway safety and that the residual cumulative impacts on the road network would not be severe.
- 40. No objections have been raised to the principle of a safe and suitable means of access for all users but this would be subject to conditions and a S278 agreement.
- 41. No objection was raised in relation to accessibility and sustainable transport.

Design, Layout and Density

- 42. It is agreed that this is an outline application/appeal and that the detailed design and layout can be addressed satisfactorily through a reserved matters application.
- 43. The current NPPF at paragraph 139 states 'Development that is not well designed should be refused.'

Impact on Residential Amenity

- 44. Based off the submitted illustrative masterplan, it is agreed that a layout could be achieved with appropriate separation distances to prevent unacceptable impacts on the amenities of neighbouring residents in relation to outlook, light and privacy.

Affordable Housing

- 45. 35% affordable housing can be provided on site, if appropriately secured via a planning obligation.

Public Rights of Way

- 46. It is agreed that there is a public bridleway adjacent to the site.
- 47. It is agreed that the appeal proposals would not alter or divert the alignment of any public rights of way.

Ecology

- 48. It is agreed that the proposals present opportunities for mitigation and biodiversity enhancement. It is agreed that this can be secured by condition.

Flood risk and drainage

49. It is agreed that the area of built residential development shown on the appeal plans is located within Flood Zone 1.

Landscape and Settlement Gaps

50. It is agreed that the methodology of the Appellants' Landscape and Visual Appraisal ("LVA"), prepared by Green Studio, complies with the guidance contained in '*Guidelines for Landscape and Visual Impact Assessment*', 2013 published by the Landscape Institute and IEMA.
51. The project was not an EIA project and the LVA is appropriate and proportional to the landscape and visual issues.
52. The Council did not raise any issues with the LVA methodology during the determination period. No requests were made to the appellant for further information regarding landscape and visual effects.
53. The Council did not instruct, or undertake to prepare its own LVA, the application was determined by reference to the Appellant's submitted assessment.
54. It is agreed that Appellant's Viewpoints are representative of the main visual receptors and user groups.
55. The Appeal Site is not within a National Landscape or NPPF, para 180 a) Valued Landscape.

Public Benefits

56. It is agreed that the proposed development would secure the following benefits, but that these benefits need to be weighed against adverse impacts:
- a. Provision of Open Market Housing
 - b. Delivery of Affordable Housing
 - c. Increased local spending
 - d. Expenditure on construction/employment
 - e. Provision of on-site POS and Play
 - f. Landscape Enhancements
 - g. Nitrate Mitigation
 - g. Contributions towards Sustainable transport measures
 - h. Biodiversity enhancements
57. All benefits and the weight attributed to them will be assessed in Hearing Statements and orally at the Hearing.,

Matters that remain in dispute

- 58. The impact and acceptability of development in the countryside and a settlement gap. The impact and acceptability of the development on the character of the countryside and settlement gap including the relevance of conclusions on deliverable supply against the five-year requirement and the associated application of paragraph 11 of the NPPF2023 in relation to the assessment of these issues.
- 59. Whether the Council can demonstrate a five-year housing land supply and the weight to be given to housing delivery and the Ministerial Statement in the planning balance
- 60. Whether the development would harm priority habitat.
- 61. Whether a suitable sustainable drainage system can be achieved with necessary filtration and pollution mitigation.
- 62. Whether the development will provide necessary contributions to on and off-site infrastructure.
- 63. Whether the impacts of the development on European protected sites can be satisfactorily mitigated.

Note: The LPA and Appellant are negotiating a S106 Agreement which may address points 62 and 63.

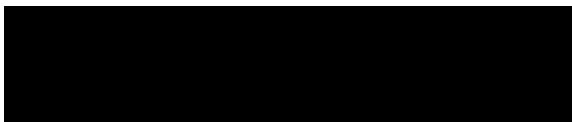
Planning conditions and obligations

- 64. An agreed set of conditions will be provided to the Inspector before the start of the hearing.
- 65. The Appellant will present deeds pursuant to S106 of the Town and Country Planning Act, which will secure the planning obligations that are deemed necessary to make the development proposals acceptable.
- 66. The heads of terms for the S106 Agreement are being agreed in liaison with the LPA.
- 67. It is agreed that the onus rests with the LPA to demonstrate that any planning obligations sought meet the legal tests set out in the CIL regulations. A statement

on compliance with the CIL regulations will be issued by the LPA to assist the Inspector's assessment of this issue.

SIGNED

Eastleigh Borough Council

A solid black rectangular box used to redact the signature of Nick Parker.

Nick Parker – Planning Manager

On behalf of The Trustees of The Mulberry Investment Pension Scheme



Andrew Burgess – Managing Director

21ST OCTOBER 2024