

Appeal Ref
LPA Ref
Email

APP/W1715/W/24/3353080
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The Planning Inspectorate
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FAO: Jonathan Alden

13 December 2024

Town and Country Planning Act 1990

Appeal By: Groves Group Ltd

Site Address: Land to the South of Peewit Hill, Bursledon, SO31 8BL

Appeal Reference: APP/W1715/W/24/3353080

With reference to the above planning appeal, the Local Planning Authority (LPA) are of the opinion that the majority of issues raised are covered in the Reasons for Refusal contained within the LPA's Decision Notice dated 17 July 2024 and the Case Officer's Delegated Report, and would therefore ask that the appointed Inspector take these documents, which have been forwarded to the Planning Inspectorate as part of the completed questionnaire, as the LPA's Statement of Case together with the following comments in relation to the matters raised within the Appellant's Statement of Case.

Housing supply

The Appellant refers to the matter of the Borough's five year housing land supply position within their Statement of Case (paragraph 5.10), including with reference to the provisions that were set out within the Revised Consultation Draft National Planning Policy Framework in this respect. The Local Planning Authority note that, since the submission of this appeal, the revised National Planning Policy Framework (herein after referred to as the NPPF or Framework) has now been published (on 12 December 2024).

The Council note that the updated NPPF has, within Section 5 (Delivering a sufficient supply of homes), removed the provisions that were set out within Paragraph 76 of the previous iteration of the Framework (December 2023) and which had stated that local planning authorities with an adopted plan that is less than five years old and which were able to demonstrate at least a five year supply of specific, deliverable sites at the time of its examination (as is the case with Eastleigh Borough Council), were 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.

These provisions have now been superseded by those within Paragraph 78 of the December 2024 Framework, which the LPA acknowledge are therefore of relevance to the determination of this appeal. Paragraph 78 requires that all local planning authorities identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against, as is applicable in this case, their housing requirement set out in adopted strategic policies (as the Council's strategic policies are less than five years old).

The Council last formally published its calculation of five year housing land supply in August 2022 (Appendix 1), with this showing 5.1 years' worth of housing supply. The Council has, however, recently submitted a draft updated five year housing land supply calculation to the Planning Inspectorate as part of its evidence in respect of the, as yet undetermined, planning appeal for a proposed residential development at Land off Cobbett Way in Botley (appeal reference APP/W1715/W/24/3350858). A copy of this draft calculation is included within Appendix 2.

Whilst the Council is still in the process of formally updating its five year housing land supply, this draft calculation gives an indication of the Council's current position based upon the best available evidence and information at this point in time, with this showing that the Council can demonstrate 4.4 years' worth of supply against the strategic housing target that is set out within the adopted Eastleigh Borough Local Plan 2016-2036. On this basis, therefore, and for the purposes of the consideration and determination of this appeal, the LPA acknowledges that it is currently unable to demonstrate the requisite minimum five year housing supply. Whilst the shortfall in this regard is considered to be modest, it is nonetheless accepted that Paragraph 11 of the NPPF is, as a result, engaged for the purposes of this appeal.

In this regard, it is acknowledged that the appeal development would contribute to the Borough's housing land supply and that this would be a benefit of the scheme in the context of the aforementioned shortfall. Such a benefit would, however, be particularly modest in its extent given that the scheme would deliver just two dwellings, and the LPA remain of the view therefore that the adverse impacts of the development, which are detailed within the Reasons for Refusal of planning permission (as per the Decision Notice dated 17 July 2024) and the Case Officer's Delegated Report, and which are further supported by the contents of this letter, significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole.

Borough Housing Requirements and Local Plan Review

The Appellant has raised the matter of the Borough's housing need and the shortfall that was identified in this respect by the Local Plan Inspector in their report on the Council's Local Plan (Appendix 3), which was subsequently adopted in April 2022. Within Paragraph 5.17 of the Appellant's Statement of Case it is stated that "*A revised LDS was published in June 2023, identifying adoption of a new Local Plan in Spring*

2029. As such this does not meet the early review anticipated by the Local Plan Inspector and will leave the Council with insufficient allocated sites and unlikely to be able to demonstrate a suitable supply of housing."

A copy of the Local Development Scheme (LDS) published in June 2023 is included within Appendix 4, with the Council having recently published its Issues and Options document for consultation (see summary document in Appendix 5). As set out within the latter document, the consultation period runs until 29 January 2025. Whilst the adoption of the updated Plan is not anticipated until 2029 in accordance with the LDS timetable, the LPA would refer the Inspector to the Local Plan Inspector's Report on the Council's current Local Plan (Appendix 3) and specifically paragraph 48 which states that "...there will be a shortfall over the Plan period housing requirement of some 2614 dwellings towards the end of the Plan period, specifically from 2032 onwards." The timescales, therefore, which are associated with the Local Plan review and its anticipated adoption in 2029 (which is prior to the 2032 date highlighted by the Local Plan Inspector from and beyond which the shortfall would occur), would therefore, in the view of the LPA, adequately address the matter of the identified shortfall.

Reason for Refusal 2 (Biodiversity Net Gain)

Paragraph 187 of the National Planning Policy Framework states that planning policies and decisions should contribute to and enhance the natural and local environment by, amongst other things, minimising impacts on and providing net gains for biodiversity. Paragraph: 021 Reference ID: 8-021-20240214 of the Planning Practice Guidance sets out that Local Plans, and particularly those containing strategic policies, can be used to set out a suitable approach to net gains in biodiversity and how they will be achieved. These provisions are reflected within Policy DM11 of the Eastleigh Borough Local Plan 2016-2036 which, within part 1(c), states that the Council will work with statutory and voluntary agencies and developers, and will determine planning applications, to seek a net gain of biodiversity on all development sites.

The seeking and securing of biodiversity net gain as part of development proposals is therefore an established part of the planning process and something which is endorsed by both national and local planning policy. Whilst acknowledging the reference made by the Appellant to the statutory framework for BNG (as established by the Environment Act 2021) and the mandatory 10% net gain requirement it places upon development not being applicable in this case, nonetheless, there still remains a policy requirement for a net gain for biodiversity to be achieved.

As such, and in order to do so, it is necessary to establish an ecological baseline for the site. In this respect, and as set out within the comments of the Council's Ecologist on the planning application and as reflected in the Case Officer's Delegated Report, it is evident that extensive vegetation clearance works were undertaken on site prior to the submitted Preliminary Ecological Appraisal (PEA) being carried out, with this being reflected in the difference between the photographs of the site presented within

the Design and Access Statement which accompanies the planning application and those within PEA.

Whilst, as noted within the Case Officer's Delegated Report, such clearance works are not in themselves unlawful, it is nevertheless clear that the habitat, and the biodiversity it can support, has been altered significantly. Therefore, and regardless of whether the requirement for BNG is as a result of the mandatory provisions of the Environment Act or as a result of planning policy requirements, the LPA consider that it is both reasonable and necessary to seek to understand the impact of the clearance works undertaken on the baseline biodiversity value of the site as well as the current biodiversity value that it offers and, that without this information, it is not possible to be certain that the development would not result in an overall net loss to biodiversity.

Reason for Refusal 3

With regards to Reason for Refusal 3 which relates to the failure to secure appropriate mitigation to off-set the impacts of the development upon the European Protected Solent Complex and the New Forest SPA, SAC and Ramsar sites, the Appellant has submitted a signed Unilateral Undertaking to secure the required provisions as part of the appeal process. This agreement has been reviewed by the LPA in conjunction with its legal team, and we are satisfied that this would be sufficient to address the matters raised. Accordingly, and subject to the Inspector accepting the submitted planning obligation, the LPA do not wish to further pursue this reason for refusal.

The LPA are aware, however, that Under the provisions of Regulation 63 of the Habitat Regulations and as the decision making body for this appeal, the Planning Inspectorate assume the role of the competent authority and thereby must ensure that, when making a planning decision, a development will not have an adverse impact on any European protected sites or features for which they are designated and that any impacts identified are appropriately mitigated. To assist the Inspector in this regard therefore, the following background information to the matters set out within the Council's Reason for Refusal 3 is included.

Background and context

The development site lies within the zone of impact of the Solent and Southampton Special Protection Area (SPA) and Ramsar site, the Solent Maritime Special Area of Conservation (SAC) (collectively known as the Solent Complex), as well as the New Forest SPA, SAC and Ramsar sites, as advised by Natural England. These sites are internationally recognised and are protected under the Conservation of Habitats and Species Regulations 2017 (hereinafter referred to as 'the Habitat Regulations').

Nitrates impacts on the Solent Complex and the requirement the achieving of nutrient neutrality

The water environment within the Solent region is one of the most important for wildlife in the United Kingdom. Natural England have advised that there are high

levels of nitrogen inputs to this water environment with evidence that these nutrients are causing eutrophication at these designated sites. These nutrient inputs currently mostly come either from agricultural sources or from wastewater from existing housing and other development. The resulting dense mats of green algae and other effects on the marine ecology resulting from an excessive presence of nutrients are impacting on the Solent's protected habitats and bird species. There is presently uncertainty as to whether new growth will further deteriorate designated sites and whilst this uncertainty remains, Natural England have advised that new housing developments across the Solent region have the potential to exacerbate these impacts and create a risk to the future conservation status of these sites.

In line with Natural England guidance, one way to address the uncertainty regarding the nitrates impacts of development on the Solent Complex is through the achieving of nutrient neutrality, with this being a means of ensuring that development does not add to existing nutrient burdens and provide certainty that the whole of the scheme is deliverable in line with the requirements of the Conservation of Habitats and Species Regulations 2017 (as amended). The background to this methodology is set out within the Natural England guidance available in full at:

<https://www.gov.uk/guidance/using-the-nutrient-neutrality-calculators#nutrient-neutrality-catchments>

This process involves the calculating of a nutrient 'budget' which sets out the level of additional nutrient burden arising from the development, which is then required to be offset through the provision of mitigation. The Appellant has submitted a nutrient budget for the appeal scheme and stated that their intention would be to purchase nitrates credits from an established provider to address the impacts of their development. The Council operates such a mitigation scheme for this purpose and the Appellant's intention to utilise this scheme is noted, with the relevant enquiries having been made with the Council to confirm the availability of the credits required (as per the Appellant's Appendix 21). Further details of the Council's mitigation scheme are explained within the Report to the Council's Cabinet that is included within Appendix 6.

As noted above, the LPA are satisfied that this matter would be satisfactorily addressed by the provisions within the submitted Unilateral Undertaking (UU) dated 22 November 2024 and which require a nitrate mitigation package to be submitted to and approved in writing by the Council prior to occupation of the development (which would be the point at which the aforementioned impacts would begin to occur). As set out within the Appellant's Statement of Case (paragraph 6.35), the Council have also routinely covered this matter by way of a negatively worded condition applied to planning permissions and which imposes the same pre-occupation requirements as those contained within the submitted UU. Should the Inspector be minded to accept the use of a condition as an alternative to the planning obligation provided, the LPA would have no objection in this regard. The wording of the suggested condition is set out within the LPA's suggested list of planning conditions (Condition 14 of Appendix 7) and is also reflected within paragraph 6.35 of the Appellant's Statement of Case. For clarity, however, the LPA do consider that the matters pertaining to recreational disturbance upon the Solent Complex and New Forest protected sites which are

covered below, and which necessitate the securing of financial contributions, are required to be covered by a planning obligation and are not capable of being conditioned.

Recreational disturbance on the Solent Complex

In addition to the above effects of nutrient loading on the Solent Complex, Natural England have also highlighted the impacts arising from additional recreational pressure associated with population increase (from a net gain in dwellings) within a defined zone of impact (5.6km) on the Solent Complex. These sites, amongst other things, are designated for the presence of certain species of breeding birds. This additional pressure, which can arise from walkers, dog walkers etc., can result in the disturbance or influence of birds' behaviour or compromise their survival. For example, this could be through the disruption of breeding, the reduction in the success of breeding, the disruption of foraging and feeding, or the increasing of stress on birds, thereby increasing the risk of mortality. The distribution of birds can also be affected through increased recreational pressure in these protected sites, as they may attempt to avoid areas with disturbance activities.

Eastleigh Borough Council formally adopted the Solent Recreation Mitigation Strategy (SRMS) in March 2018. The SRMS provides a strategic solution to ensure the requirements of the Habitats Regulations are met with regards to the in-combination effects of increased recreational pressure on the Solent Complex. This strategy represents a partnership approach to the issue which has been endorsed by Natural England. A copy of the SRMS is included within Appendix 8.

As set out in the SRMS, an appropriate scale of mitigation for this scheme would be a financial contribution based on the size of the residential units proposed. The required figures are updated on 1 April each year by Bird Aware Solent, with the current rates requiring a contribution of £875 per 3-bedroom dwelling (a total of £1,750 based on the two dwellings proposed as part of the appeal scheme), with this being subject to indexation from the 1 April 2024 base date. The Appellant's submitted planning obligation (in the form of a Unilateral Undertaking) makes provision for these contributions and, as such, the LPA do not maintain any further objection in respect of this particular matter.

Recreational disturbance on the New Forest SPA, SAC and Ramsar sites

Natural England have also advised the Council that there is a likely significant effect from additional residential development within the Borough on the New Forest protected sites (Special Protection Area (SPA), Special Area of Conservation (SAC) and Ramsar sites) based on additional visits from the occupiers of new residential development. Whilst Eastleigh Borough Council does not border the New Forest National Park, technical research commissioned by councils in and around the New Forest shows that residents of the Borough choose to visit the area from time to time. These visits risk contributing towards erosion of the habitats for which the New Forest protected sites are designated and the disturbance of the species that they support.

In March 2022, the Council's Cabinet approved an interim strategy based on providing Suitable Alternative Natural Greenspace (SANG) in the Borough (to provide an attractive local alternative to some of the visits to the New Forest) and the securing of contributions towards this, as well as measures within the New Forest National Park, and monitoring. This strategy was revised and updated in December 2022 and sets a charge of £2,220 per dwelling for the mitigation of recreational impacts arising from development on the New Forest protected sites. A copy of the Cabinet Reports from both March 2022 and December 2022 are included within Appendix 9 and Appendix 6 for the Inspector's reference.

The Local Planning Authority consider that the financial contribution (totalling £4,440) which is required in this regard, must be secured prior to the granting of planning permission and as noted above, are satisfied that suitable provision has been made for this within the submitted Unilateral Undertaking agreement.

Conclusion

As set out within the Council's Decision Notice dated 17 July 2024 and the accompanying Case Officer's Delegated Report, and which are further supported by the contents of this letter, there is a clear conflict between the proposal and the Policies within the adopted Eastleigh Borough Local Plan 2016-2036 (in particular S5, S6, DM1, and DM11), as a result of which it is clear that the proposal does not accord with the development plan for the purposes of Section 70(2) and 79(4) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004. Planning permission should therefore be refused unless material considerations indicate otherwise. For the reasons as set out above, there are no such material considerations that are of sufficient weight to outweigh the harm identified and, accordingly, the Local Planning Authority respectfully requests that the Inspector dismisses this appeal.

Should the Inspector, however, be minded to grant prior approval, the Local Planning Authority would request that the conditions set out in Appendix 7 be included as part of the approval.

Yours faithfully

A handwritten signature in black ink that reads "N Parker".

Nicholas Parker
Planning Manager

List of Appendices:

- APPENDIX 1: Calculation of Five-Year Housing Land Supply August 2022
- APPENDIX 2: Draft Five Year Housing Land Supply Calculation
- APPENDIX 3: Eastleigh Local Plan Final Report 14 March 2022
- APPENDIX 4: Eastleigh Local Development Scheme June 2023
- APPENDIX 5: Local Plan Issues and Options Consultation Summary Document
- APPENDIX 6: Nutrient and New Forest Mitigation Cabinet Report December 2022
- APPENDIX 7: Local Planning Authority Suggested List of Planning Conditions
- APPENDIX 8: Solent Recreation Mitigation Strategy
- APPENDIX 9: New Forest Mitigation Strategy Cabinet Report March 2022