

Appeal Ref
LPA Ref
Email

APP/W1715/W/24/3355788
F/24/97118
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The Planning Inspectorate
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15 January 2025

Town and Country Planning Act 1990

Appeal By: Mr S Michael

Site Address: 17 O'Connell Road, Eastleigh, SO50 9GN

Appeal Reference: APP/W1715/W/24/3355788

LPA Reference: F/24/97118

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 20 May 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.

Reason for Refusal 1:

The Council's first reason for refusal was as follows:

The proposed detached dwelling, owing to its form, scale, siting and unduly cramped layout, would result in the unacceptable overdevelopment of the site and the undue erosion of the current spacing that exists to the side of No. 17 O'Connell Road, thereby disrupting the prevailing pattern of development in the locality and adversely impacting upon the character of the street scene. The application is therefore contrary to the requirements of Policy DM1 of the Eastleigh Borough Local Plan 2016-2036 and the provisions of Paragraph 135 of the National Planning Policy Framework.

As noted above, the concerns raised in these respects are expanded upon in detail within the Case Officer's Delegated Report. The Local Planning Authority (LPA) would, in addition, refer the Inspector to the recent appeal decision, ref. APP/W1715/W/24/3339114 (Appendix 1), which had also sought approval for the construction of a new detached dwelling on the site. This appeal was dismissed on 8

November 2024 and the LPA would highlight in particular the findings of the Inspector in that case within Paragraphs 4, 5 and 6 of their decision.

Within these paragraphs, the Inspector notes, *inter alia*, that O'Connell Road is characterised by semi-detached or terraced houses, with the generous gaps between buildings providing the street with a spacious feel (Para. 4), and how the infilling of the particular gap provided by the appeal site through the introduction of a detached dwelling, would both erode the sense of spaciousness that currently exists and result in a very cramped and contrived form of development which would look incongruous with its immediate surroundings (Para. 5).

Further, it is noted that the Appellant makes reference within their Statement of Case to the infill developments that have taken place within Spencer Road, which lies in near proximity to the appeal site. The difference in context between these and the appeal site is explained in the Case Officer's Delegated Report and was also highlighted in the aforementioned Appeal Decision, with the Inspector noting the difference in plot widths as well as the quite different character of Spencer Road to O'Connell Road, with the built form in the former being tighter knit and less spacious than in the latter (Para. 7). The LPA would therefore reiterate that the developments within Spencer Road do not provide support or justification for the appeal scheme and that each case must be determined upon its own merits and within its particular context.

It is acknowledged, as the Appellant has alluded to, that the current appeal scheme does differ, albeit to a modest degree, to the previous appeal scheme with the property now being a 2- as opposed to a 3-bedroom dwelling, the width of the building having been reduced, and its roof form also having been altered. Nonetheless, the differences are not such as to overcome the fundamental harm identified by the LPA in both the current and previous cases, as well as by the Planning Inspector in determining the appeal for the latter, with the development still serving to unacceptably erode the spacing that exists to the side of No. 17 O'Connell Road and disrupt the prevailing pattern of development, thereby resulting in an adverse impact upon the character of the street scene.

Reason for Refusal 2:

The Council's second reason for refusal was as follows:

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

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), the River Itchen SAC and SSSI, 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').

Under the provisions of Regulation 63 of the Habitat Regulations, the competent authority must ensure that, when making a planning decision, a development will not have an adverse impact on any European protected sites or the features for which they are designated and that any impacts are identified and appropriately mitigated. As the Inspector will be aware, as part of an appeal, the Planning Inspectorate are the competent authority for the purposes of the Habitat Regulations and must thereby be satisfied that the proposal would not have an adverse effect on the integrity of the aforementioned European protected sites. To assist the Inspector, however, the Council would provide the following comments on these matters.

Nutrient loading on the Solent Complex and River Itchen protected sites:

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 and phosphorus input 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 arising from an excessive presence of nutrients are impacting on the protected habitats and bird species for which the River Itchen and the Solent (into which the River Itchen ultimately feeds) are designated for. 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's guidance, one way to address the uncertainty regarding the nitrates and phosphates impacts of development on the Solent Complex and River Itchen SAC and SSSI is through the achieving of nutrient neutrality, with this being a means of ensuring that development does not add to existing nutrient burdens and providing certainty that the whole of the scheme is deliverable in line with the requirements of the Habitat Regulations. 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' for the development

which sets out the level of additional nutrient burden arising from the proposals. This is then required to be offset by a developer through the provision of mitigation. The nutrient budget for the appeal scheme, which the Appellant provided as part of the application submission, shows the phosphorus load for the development to be 0.07kg/TP/year and the nitrogen load to be 3.16kg/TN/year. Whilst not the only option available to a developer, the Council operates its own mitigation scheme for both nitrates and phosphates, details of which are explained further within the Reports to the Council's Cabinet that are included within Appendix 2 and Appendix 3.

The LPA's standard procedure is for this matter to be addressed through the imposition of a planning condition in the event that planning permission is granted. This condition would require the submission and implementation of a mitigation package prior to first occupation of the development. The full wording of the suggested condition is set out within the Council's Appendix 4 (Local Planning Authority Suggested List of Planning Conditions – See Condition 11).

Recreational disturbance on the Solent Complex:

In addition to the above effects of nutrient loading, 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 5.

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 unit proposed. The required figures are updated on 1 April each year by Bird Aware Solent, with the current rates requiring a contribution of £671 per 2-bedroom dwelling, with this being subject to indexation from the 1 April 2024 base date. The LPA consider that this financial contribution needs to be secured prior to the granting of planning permission. No obligation, in the form of a legal agreement or otherwise has, however, been proposed to secure this and thereby address the aforementioned recreational impacts.

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 any 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. While 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 6 and Appendix 3 for the Inspector's reference.

The Local Planning Authority consider that this financial contribution is required to be secured prior to the granting of planning permission and would need to be done so via a planning obligation. No obligation, in the form of a legal agreement or otherwise has, however, been proposed to secure this and thereby address the aforementioned recreational impacts.

Conclusion:

The Council consider that without appropriate mitigation, the development would have a significantly adverse impact upon the Solent Complex, River Itchen SSSI and SAC and New Forest SPA, SAC and Ramsar sites which are protected under the provisions of the Habitats Regulations. At this stage, in the view of the Council, the mitigation in relation to the nutrient loading arising from the development could be secured by way of an appropriately worded planning condition. The financial contributions required to mitigate the recreational impacts on the Solent Complex and New Forest protected sites, however, are required to be secured by way of a planning obligation which has not been provided for as part of the appeal. As such the proposals are contrary to the provisions of the Habitats Regulations, as well as Policy DM11 of the adopted Local Plan.

Conclusion:

As set out within this Statement, along with the Council's Decision Notice and the Case Officer's Delegated Report, there is a clear conflict between the proposals and the Policies within the adopted Eastleigh Borough Local Plan 2016-2036 (in particular DM1 and DM11), as a result of which it is clear that the proposals do 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. The LPA consider that there are no such material considerations and, accordingly, respectfully request that the Inspector dismisses this appeal.

Should the Inspector, however, be minded to grant planning permission, the LPA would request that the conditions set out in Appendix 4 be included as part of the approval.

Yours faithfully

A handwritten signature in black ink, appearing to read "N Parker", written over a horizontal line.

Nicholas Parker
Planning Manager

List of Appendices:

- APPENDIX 1: Appeal Decision APP/W1715/W/24/3339114
- APPENDIX 2: Phosphates Mitigation Strategy Cabinet Report July 2022
- APPENDIX 3: Nutrient and New Forest Mitigation Cabinet Report December 2022
- APPENDIX 4: Local Planning Authority Suggested List of Planning Conditions
- APPENDIX 5: Solent Recreation Mitigation Strategy
- APPENDIX 6: New Forest Mitigation Strategy Cabinet Report March 2022