



Appeal Statement

Land adjacent to Pear Tree PH, Winchester Road, Southampton, SO32 2DH

24 January 2025

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1 QUALIFICATIONS AND EXPERIENCE

QUALIFICATIONS AND EXPERIENCE

- 1.1 I hold a 2:1 Planning Studies Bachelor of Arts Honours degree and a Diploma in Urban Planning from Oxford Brookes University. I am a member of the Royal Town Planning Institute.
- 1.2 I have worked in Hampshire since 1996. From 1996 to 2014 I worked at Eastleigh Borough Council as a Senior Planning Officer and then as a Principal Planning Officer in the Major Applications Team.
- 1.3 I have practised as a planning consultant since September 2014. I established my Town Planning practice, Wessex Planning Ltd, in September 2016, specialising in small to medium scale residential development.
- 1.4 I was instructed to appeal against the refusal of planning permission F/24/97934 by Eastleigh Borough Council for erection of 6no. dwellings with associated parking and landscaping and creation of new access from Winchester Road.

2 REFUSAL REASONS

2.1 Planning permission was refused by Eastleigh Borough Council on 12th December 2024 for the erection of 6no. dwellings with associated parking and landscaping and creation of new access from Winchester Road (planning application reference F/24/97934) at Land adjacent to Pear Tree PH, Winchester Road, Southampton, SO32 2DH for the following five reasons:

- 1. The proposals represent an unjustified form of development within an area of designated countryside which, owing to its layout, design and siting, would have an unacceptably harmful and detrimentally urbanising impact upon the character of the site and that of the immediate surrounding area. The application is therefore contrary to the requirements of Policies S5 and DM1 of the Eastleigh Borough Local Plan 2016-2036, and Paragraphs 135 and 180 of the National Planning Policy Framework.***
- 2. The proposals fail to demonstrate that the development of the application site and the resulting reduction in the outdoor area available for the use of the Pear Tree Inn Public House, would not unacceptably diminish this part of the community facility, or adversely affect the operation or viability of the Public House, thereby reducing the benefits that it provides to the local community. The application is, as a result, contrary to Policy DM36 of the Eastleigh Borough Local Plan 2016-2036 and the provisions of Paragraphs 88 and 97 of the National Planning Policy Framework.***
- 3. Insufficient information has been provided to demonstrate that the residential amenity of the future occupiers of the development would not be unacceptably impacted by noise, vibration and odour arising from the adjacent Long Common Wastewater Pumping Station, or noise arising from the nearby railway line and the Pear Tree Inn Public House and, as a result***

and in addition, that the development would not inhibit or create risks to the operations of the Public House having regards to noise pollution and the agent of change principle. The application is therefore contrary to Policies DM1 and DM8 of the Eastleigh Borough Local Plan 2016-2036 and Paragraphs 135, 180, 191 and 193 of the National Planning Policy Framework.

- 4. The application fails to make provision for the securing of the minimum 10% biodiversity net gain required by the Environment Act 2021, as well as its subsequent retention, management and monitoring. The proposals are therefore contrary to the provisions of this legislation, as well as those of Policy DM11 of the Eastleigh Borough Local Plan 2016-2036 and Paragraphs 180 and 186 of the National Planning Policy Framework.***
- 5. 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) 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.***

3 REBUTTAL OF REASON 1

REBUTTAL OF REASON 1

The proposals represent an unjustified form of development within an area of designated countryside which, owing to its layout, design and siting, would have an unacceptably harmful and detrimentally urbanising impact upon the character of the site and that of the immediate surrounding area. The application is therefore contrary to the requirements of Policies S5 and DM1 of the Eastleigh Borough Local Plan 2016-2036, and Paragraphs 135 and 180 of the National Planning Policy Framework.

- 3.1 It is considered that the planning, design and access statement submitted with the appeal application fully justifies the proposed development in terms of both its countryside location and its layout, design and siting. In short, there has been wholesale change to the local and wider area as a result of strategic – sized development on a major scale which is considered to nullify the function of this narrow strip of designated ‘countryside’. The appeal site sits at the centre of this strategic-sized area of new development.
- 3.2 The officer report states that the countryside designation boundary was consciously altered for the current adopted development plan in order to take account of the significant level of new development surrounding the site. The new development was both planned and unplanned in the sense that a significant sized area (680 homes – Boorley Gardens) was permitted at appeal. The apparent reason was in order to protect the “*intermittent and loose patterned ribbon development*” on the western side of Winchester Road, although this reasoning is not alluded to anywhere in the Local Plan adopted in 2022, nor the Inspector’s report that accompanied the Plan’s adoption.
- 3.3 The level of construction and planned development is indicated on the plan on Page 7 of the Planning, Design and Access Statement, and the excerpt from the policies map and key, attached at Appendix 1.

- 3.4 It is accepted that the proposal is contrary to Policy S5 of the Local Plan as it proposes residential development within the countryside. Since the application was refused, the LPA have confirmed in relation to another recent appeal, that they do not have a 5 year housing land supply (see Appendix 11) , thus engaging the ‘tilted balance’ rather than the usual ‘planning balance. In addition, with regard to the principle of development it is considered that there are other material considerations that strongly indicate that a decision could be taken other than in complete accordance with the Development Plan in this particular case.
- 3.5 These material considerations are identical to those put forward by the LPA for the following permissions (plans, officer report and details attached at Appendix 2):

Braxells Farm – 20 Dwellings – Permissions given in 2019 and 2022

- 3.6 The location of this site is indicated by a purple star on the plan below. In the officer reports, two separate LPA planning officers reported:
- 2019 - “*The fact that the application is contrary to Planning Policy is not sufficient grounds to refuse the proposal. The application should be considered in relation to other material planning considerations in accordance with Section 38(6) of the Planning And Compulsory Purchase Act 2004. The purpose of Saved Policy 1.CO is to protect the countryside from inappropriate development, improve opportunities for access to the countryside and to facilitate the management of those areas in which agricultural activity may be in decline. It is not considered that the development would be inappropriate as the site would **no longer contribute to the wider countryside** given the existing and committed development around the site. The proposal is to be surrounded by new dwellings the north, south, east and west.*”
- and,

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2022 - “Although the site is located within what was an area of countryside with the majority of the buildings in close proximity being of a rural nature, the consent for the Boorley Green development currently under construction to the east and the development allowed at appeal to the south and west, (known as Boorley Gardens) **fundamentally changes the character of the landscape.**”

Long Garden Cottage – 2 detached dwellings– Permission 2022

3.7 The location of this site is indicated by a blue star in the plan below. For this site the officer reported:

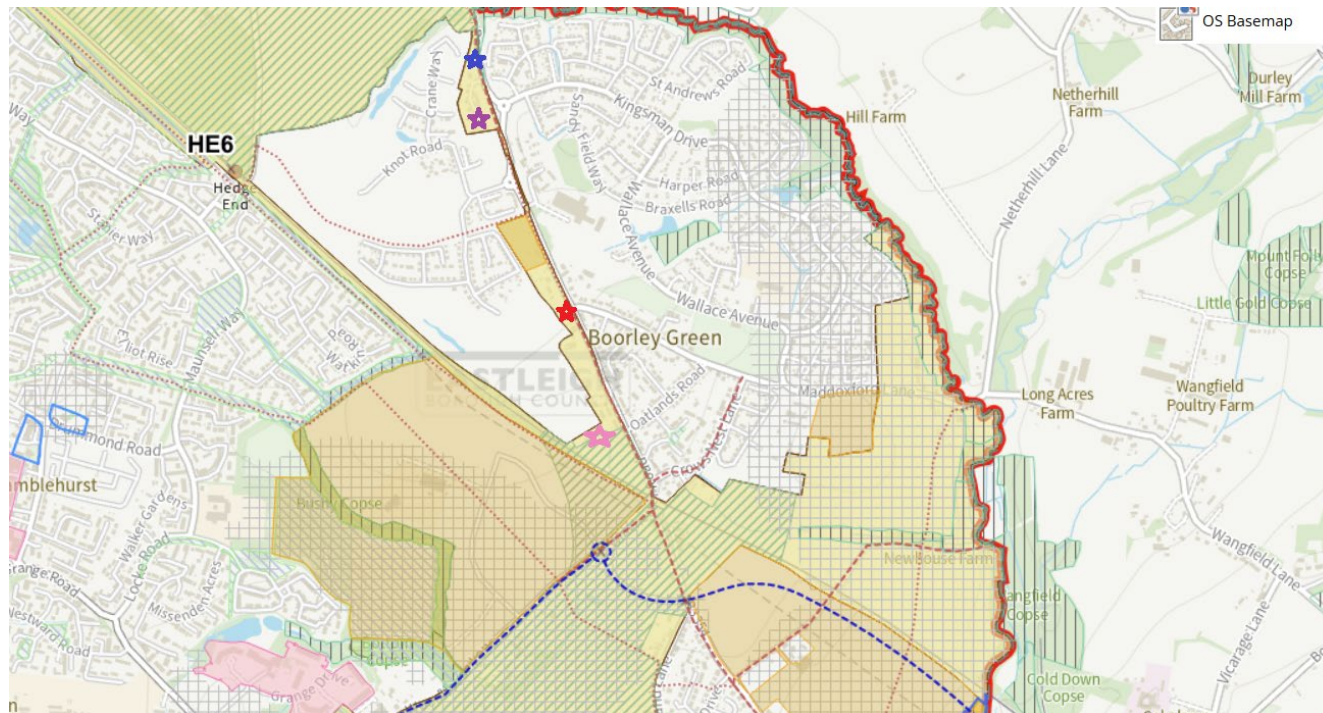
“The fact that the proposal does not accord with S5 is not enough to refuse the application in itself and other material considerations can be applied. It is noted that the site location is adjacent to the recently developed Boorley Park housing development and smaller scale developments (F/17/80382) of 14.no dwellings and (F/19/85038) of

*4.no dwellings which has reduced the overall Countryside character of this specific location. Policy S5 seeks to protect the countryside from inappropriate development, and it is not considered that this would represent an inappropriate form of development as this proposed development location **does not contribute to the wider countryside character given the existing development close-by.**”*

Land to the Rear of Fairways – Permission given in 2021 – 7 dwellings

3.8 The location of this site is indicated by a pink star on the plan below. For this site the officer confirmed the continued designation of ‘countryside’ for this area under the then emerging plan (now adopted) but stated:

“While the site is within an area of designated countryside, it is sited on the edge of the settlement boundary of Boorley Green and is to the immediate south of a major housing development that has been



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*approved for up to 680 residential units. **The site itself does not have typical countryside characteristics**, as it is mostly covered by a ramshackle collection of low-level industrial buildings and large expanses of hardstanding."*

- 3.9 The reason for refusal states that the development of the appeal site would be harmful and detrimentally urbanising to the character of the countryside. In terms of consistency, whilst it is accepted that all sites have different factors that can be brought to the planning balance assessment, each of the LPA professional officers for the above development sites, located in the same area of countryside designation, noted the dramatic change in the 'on the ground' character of the area.
- 3.10 Even allowing for the conscious provision of a finger of designated countryside in this location during the Local Plan process, the magnitude of change in the 'on the ground' character of the area could never have been accurately foreseen.
- 3.11 Both the original, and newly constructed development, within this 'finger of countryside' have now reduced or even nullified any functionality of the countryside designation in this area. The site contains play equipment, several picnic tables and other smaller ramshackle structures. It does not contribute to a wider countryside character (as there is now no surrounding countryside) and has limited countryside characteristics in itself.
- 3.12 Therefore the 'character' of this area of designated 'countryside' is one that includes residential development, not all of which can be classified as ribbon development (See Land to the Rear of Fairways development plans at Appendix 2, which now represents a more pragmatic and visual edge to the new settlement boundary).
- 3.13 Of course, this does not mean that there are no characteristics along this stretch of Winchester Road to be respected. The gaps between

the buildings, the set-backs from the road, the building lines, the frontage hedges and the dwelling types have all been considered carefully in the design of the proposals.

- 3.14 As one travels northwards (looking west along Winchester Road), the Pear Tree pub is a striking and attractive building. Immediately past this, the major development under construction to the west can be seen across the pub car park encroaching into, what was once, designated countryside. This encroachment will continue southwards, as construction continues, to complete the urban vista from this part of Winchester Road, beyond the appeal site. Further north is a small care home and then 3 more detached residential dwellings.

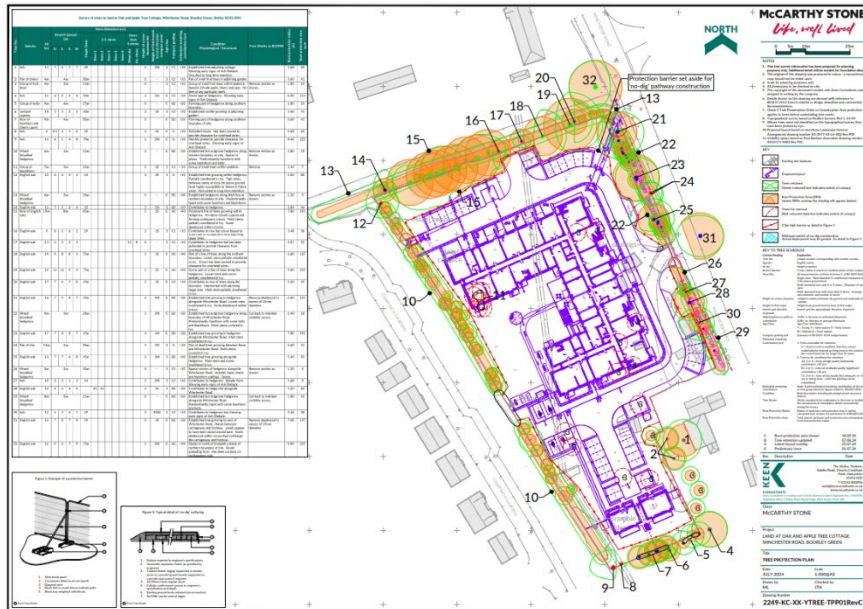


- 3.15 Then, Oak Cottage is reached, which is allocated in the Local Plan for 22 new dwellings but which is currently subject to an application for 52 retirement apartments (see plans in Appendix 2). Further north the hoardings of the new major development site come into view.
- 3.16 It is worth spending some time considering the allocated site at Oak Cottage. Whilst the current application may or may not be permitted, it is clear that the access point is very likely to be retained. It is also likely that the LPA will want to attempt to maintain a buffer of soft

REBUTTAL OF REASON 1

landscaping along the Winchester Road frontage including any trees that can be retained.

- 3.17 Nonetheless, especially from the access point (which would be widened to 6m), it is likely that new residential development will be viewable though the frontage landscaping, especially once the removal of deadwood, ivy etc has taken place on the trees to be retained. In addition any proposed landscaping along the Winchester Road frontage would require approval and the submitted Transport Statement states that within the 2.4m x 43m visibility splay metres on either side of the access, any landscaping would need to be retained below 0.6m and any retained trees crown lifted to 2m.
- 3.18 Whilst this application may or may not be approved, it is likely that any other proposal would be subject to the same requirements for landscaping within the visibility splay. As such, the character of this long frontage along Winchester Street is likely to change significantly and become much more urban.



Proposed Site Layout



Proposed Winchester Road Street Scene



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- 3.19 It is considered that the development management process, rather than the Local Plan process, provides a better method of protecting those existing and future remaining features that contribute to the attractive character of western side of Winchester Road.
- 3.20 Rather than attempting to justify the refusal of any development of this site due to the site's supposed valued contribution to a rapidly declining vestige of wider countryside character, surely it makes more sense to consider the current and future 'on-the-ground' character, establish the features that it is important to retain or include, and then secure those characteristics as part of a planning permission.
- 3.21 In particular, the features considered necessary to retain the future character of Winchester Road are:
- Significant frontage native-mix landscaping including hedging and additional tree planting
 - Substantial gaps between discrete traditional building forms
 - The building line and deep set-back of dwellings from Winchester Road
 - Side boundary native mix hedges assisting sequential views of dwellings 'held' in soft landscape.
 - Rear boundary native mix hedges and trees to the rear of dwellings forming additional 'backdrop' greenery.
 - Grass verges in front of frontage hedges.

- 3.22 In relation to the appeal proposal, each of these features are considered in turn.

Frontage landscaping

- 3.23 The proposal retains the existing native-mix frontage hedgerow which will be located within a new wide frontage grassland strip. This will maintain and reinforce the attractive soft-landscaped frontages so characteristic of the residential dwellings along Winchester Road.
- 3.24 Whilst not required for BNG purposes, 6 new trees would also be planted along the frontage. This is a significant benefit as the site frontage is currently devoid of any trees, which is out of step with the site frontages along the street.

Gaps between buildings

- 3.25 The building forms include just three traditionally-shaped blocks. Whilst each block represents two, semi-detached dwellings, it is unlikely that they would be viewed as such within the street scene due to the level of greenery retained and proposed to the site frontage and side boundaries. Each of the three blocks would measure 11.5m in width, but have gaps of 7m between with further distances to the nearest buildings either side, retaining the characteristic of spacious siting of buildings within Winchester Street.



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Building lines and set-backs

3.26 The LPA suggests that the development is out of character with the existing larger detached properties along the western side of Winchester Road. They suggest that these have a varied building line, and have a looser-knit arrangement on more extensive and spacious plots. In response, and as explained above, the historic character of Winchester Road may have been accurately described as such. However, as various planning officers have confirmed, this character is irrevocably changed. As a result of the development that has already taken place and the allocation of the Oak Lodge site for 22 dwellings, Winchester Road can no longer be divided into a western 'countryside' character and an 'urban' eastern side. The evolving character of Winchester Road will need to be characterised to include both sides of the street. As such, the building lines of Winchester Road were considered in the design of the proposal at an early stage. Both sides of the street have dwellings with a fairly uniform set-back distance from the highway edge (see plan opposite). This is a pleasing feature that was considered appropriate to include within the appeal proposal.

3.27 The LPA also suggest that the appeal proposal has a rigid linear arrangement that is out of step with the 'countryside' character of the area. In response, the 'countryside' character has been addressed above. The gentle 'rhythm' of the proposal provided by the building form and sequential spaces is not one that is disagreeable or out of place within the evolving street scene and character of Winchester Road. As with many of the dwellings along Winchester Road, it is likely that the soft landscaping of the site will become the more dominant feature within the street scene over time, with just the upper floors/roofs of the dwellings being visible amongst the new trees and hedging.



Side boundary landscaping

3.28 Sites are more usually experienced in a sequential manner as one travels along roads and footpaths, rather than 'front-on'. Part of the attractive character of Winchester Road is in its sequential series of side boundary hedges and vegetation which significantly contributes to the area's pleasing arboreal appeal.

3.29 It was therefore considered important that the appeal proposal reflect this characteristic. As such the existing hedge to the north of the site is proposed to be retained and strengthened with 4 new trees. To the southern boundary there is currently no hedge, and the proposal for a new native hedge and another 4 new trees is considered a significant benefit in terms of the character of the area.

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Rear boundary landscaping

- 3.30 Rear boundaries are often overlooked in terms of landscaping. This site is fortunate in that it has an existing well-established native hedge to the rear boundary which is to be retained in addition to an established Oak Tree. There is also sufficient space for rear garden planting, all of which can soften the visual backdrop to a new development.
- 3.31 From Winchester Road, it is likely that this development and its proposed landscaping has the ability to partly screen the more strategic-sized development to the west, thereby reinforcing Winchester Road's discrete characteristics for the future.

Grass Verges

- 3.32 It is a significant benefit of this application that the existing hard-landscaped frontage to a section of highway edge (on the highway side of the existing frontage hedge) would be substituted for a grass verge, which is much more in keeping with the existing character of those frontages along Winchester Road.



- 3.33 In conclusion then, whilst it is accepted that each site is considered on its own merits, it is also the case that there is an expectation of consistency in a professional officer's description of the character of an area, especially one that is rapidly evolving.
- 3.34 The prevailing character within this area is not one of open countryside, or even a finger of countryside but of ribbon development of varying typologies set back in a fairly uniform manner in well-landscaped plots.
- 3.35 The western side of Winchester Road has dramatically changed in terms of its wider character and will continue to do so, especially as a result of recently permitted development and residential site allocation.
- 3.36 The Pear Tree pub sits centrally within a much wider development of strategic scale which means that the prevailing character of the area is now not rural nor even semi-rural. Before very long, the area could be more properly described as suburban at the very least.
- 3.37 It is notable that the Heritage Officer, in his consultation response stated that the design of the dwellings were appropriate adjacent to a locally listed building:
- "The buildings are of a simple basic form of fair-face brickwork and plain tiled roofs with bay windows to the principle front rooms on both floors clad in tile hanging at first floor level. The front doors are protected by a porch roof and given some separation from the neighbour by a stub wall between the two. The porches and projecting gabled bays give interest and modelling to the frontages to lift the basic form. The choice of form and materials is appropriate for the locality of mixed styles of building spanning many years and retains the gap of the pub car park between the new development and the existing building."*

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- 3.38 It is also notable that the same officer appears to accurately sum-up the proposal stating:

“From a built form perspective there is no problem and it makes good use of a space that has been under used for many years but with all the surrounding development closing in, it appears a logical solution as an infill site.”

- 3.39 Finally, it should also be noted that a similar proposal (for 4 dwellings, that eventually became 5) was submitted by the same appellant to the LPA on land adjacent to another pub to the north – The Brigadier Gerard. Permission was granted by the LPA. In terms of planning policy, this site was located in the designated ‘settlement gap’ and ‘countryside’ prior to the adoption of the current Local Plan. Even after the permission was granted and the dwellings constructed the site remains within the designated ‘countryside’ within the current adopted plan. The officer report, site layout plan, location plan and location plan relevant to adopted plan policies are all attached at Appendix 2. This example is included not only because the applicant was the same but due to the planning similarities between it and the appeal site. The permission demonstrates that the LPA is not averse to assessing material considerations that might indicate a decision other than in complete accordance with policy, and that, whilst it is accepted that each application should be considered on its own merits, the similarities between these two sites (and the others mentioned above and also included in Appendix 2) are too great not to suggest that the LPA’s refusal of the appeal application was not potentially irrational.
- 3.40 For the above reasons, therefore, it is not considered that the appeal proposal would result in an unacceptably harmful and detrimentally urbanising impact upon the character of the site and that of the immediate surrounding area. It is a low density proposal that retains,

respects and enhances all the valued characteristics of Winchester Road, benefitting its overall character.

4 REBUTTAL OF REASON 2

The proposals fail to demonstrate that the development of the application site and the resulting reduction in the outdoor area available for the use of the Pear Tree Inn Public House, would not unacceptably diminish this part of the community facility, or adversely affect the operation or viability of the Public House, thereby reducing the benefits that it provides to the local community. The application is, as a result, contrary to Policy DM36 of the Eastleigh Borough Local Plan 2016-2036 and the provisions of Paragraphs 88 and 97 of the National Planning Policy Framework.

- 4.1 Despite the fact that the appeal site is under separate legal title and could be physically separated from the pub at any time, the LPA consider this land to be integral to the use and viability of The Pear Tree pub as a 'community facility'. They are concerned that the loss of this area to 6 dwellings would impact the long term viability of the pub's operation, and therefore, the eventual loss of the pub itself.
- 4.2 It should be confirmed that this application confers no intention to reduce the pub's viability. The pub's viability is certainly not dependent upon the use of this outside area on the very limited number of days/evenings in the year when it is warm enough to do so.
- 4.3 In addition, whilst any pub operator may sometimes hold an outdoor event, these are also weather-dependent, and there are other outdoor areas within the current title of the pub which would allow such events.
- 4.4 The pub's opening hours are advertised as the following (excerpt from online home page):

The Pear Tree Inn	Opening Hours
Winchester Road	Monday Closed
Botley	Tuesday 5pm-10pm
SO32 2DH	Wednesday 2pm-10pm
	Thursday 2pm-10pm
	Friday 2pm-10pm
	Saturday 12pm-10pm
	Sunday 12pm-8pm
Tel: 01489 799637	

- 4.5 This means that the pub is currently only open during the afternoons (after lunchtime) between Monday and Friday until 10pm, and only serves food on Thursday evenings, Saturdays and Sundays. If there ever were a threat to viability, the pub could easily improve its attractiveness through increasing both its opening hours and its food offering, amongst other things.
- 4.6 The pub was constructed in the Edwardian era. When first constructed, it was remote from any major residential development and only accessible by car. It served just a small population of local people. Such remotely located 'country' pubs suffered as a result of the drink-driving laws passed in the 1970's. Many endured long and lingering deaths as a result of a reduced number of customers, eventually succumbing to redevelopment proposals for other uses. Conversely, well-run pubs located in more densely populated and sustainably located areas continued to fare well.
- 4.7 The Pear Tree is now the only pub serving a new and rapidly growing population and is located within the heart of the strategic development area – Boorley Green and Boorley Gardens - a new development of over 2,000 new dwellings, two-thirds of which have now been constructed and are occupied, as well as the original population of Boorley Green village.
- 4.8 The pub does not suffer any competition. It is located at the very heart of this strategic development and so is now located within a walkable distance of a significant number of new homes. It also benefits from a half-hourly bus service. Whether such a large hard-surfaced car park remains required to service the pub is now genuinely questionable. This is likely to have accompanying implications as to how best to use the existing outside space located within the pub's title because of its newly sustainable location.

4.9 In short, The Pear Tree is extremely well-placed to take advantage of the changing demographics in the area and the hugely increased population in its immediate environs in what was originally a sparsely populated, inaccessible 'countryside' area. The risk to the pub's viability as a result of the appeal proposal is negligible.

4.10 Nonetheless, the LPA have suggested that Policy DM36 of the adopted Local Plan applies. This states, at point 5 (in relation to the loss of community facilities) that

"The loss of existing community, leisure or cultural facilities to other forms of development will not be permitted unless:

- a. alternative provision is made which is more appropriate to the needs of the community, or is more accessible; or***
- b. the existing facility can be shown to be surplus to local needs.***

Any facilities surplus to requirements should where possible be re-developed/reused in a way that maximises benefits to the local community."

4.11 If the Inspector agrees that the limited availability of the site to the children of pub-goers as an informal 'play area' constitutes a 'community facility', the loss of which should not be permitted unless alternative provision is made which is more appropriate to the needs of the community or is more accessible, then one only needs to consider the significant level of community facilities providing and currently being made available as a result of the construction of the surrounding new strategic development.

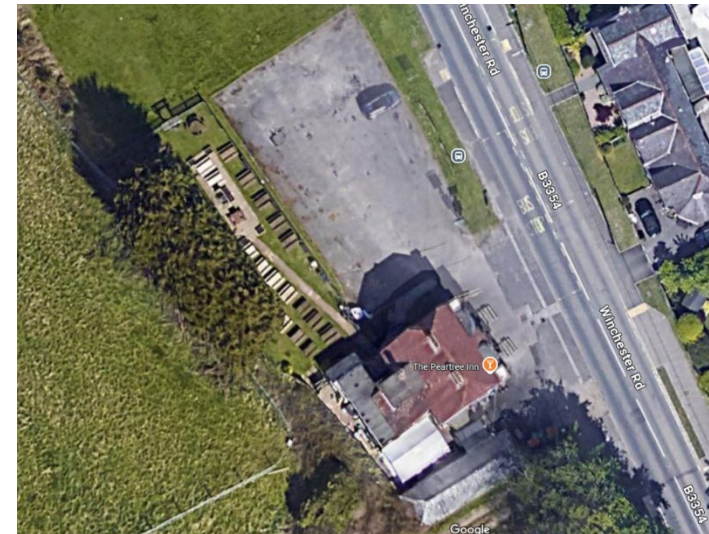
4.12 In the original 1,400 homes development of Boorley Green, a multi-use games area, a community centre, a sports pitch with pavilion were all required, amongst other facilities, and have recently been

completed. In addition, two smaller play areas on separate parcels of open space within the development were required and have been provided. (See permitted land use plan below and attached original committee report at Appendix 3)

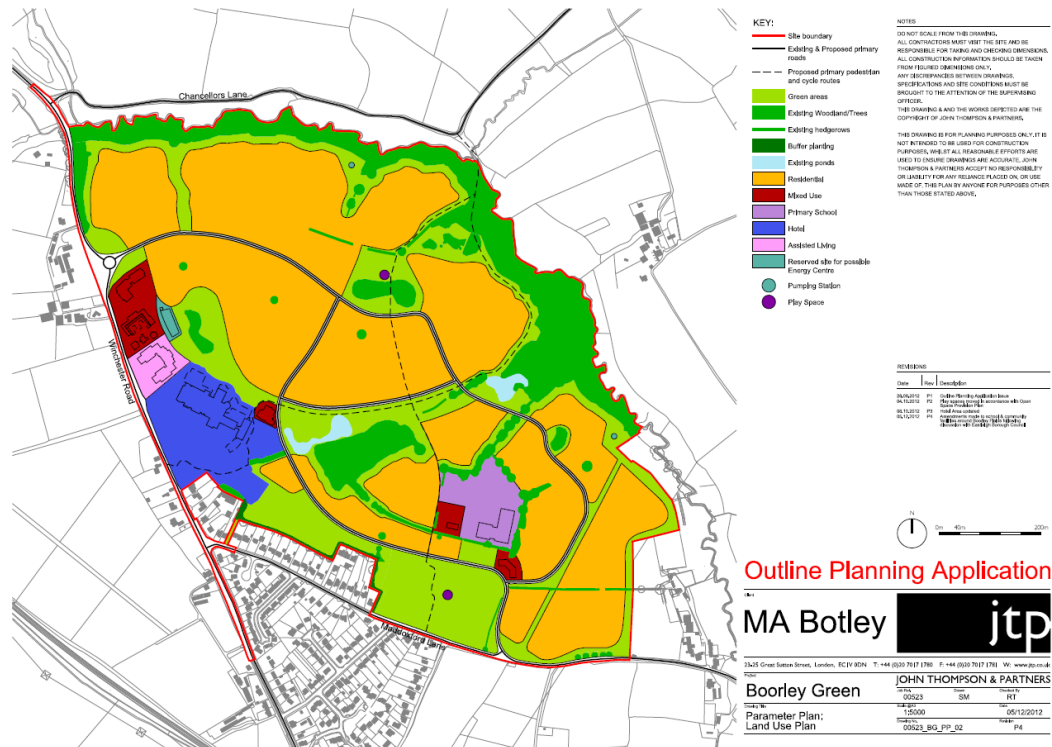
4.13 In the adjacent 680 home Boorley Gardens development, the play area requirement was for two play areas, amongst other community facilities such as sports pitches etc.

4.14 The original plans for these two developments have been included below so that the inspector is aware of their locations in relation to the appeal site's location, and in relation to the home addresses of several of the objectors who occupy those new homes now surrounding the pub. There are several footways and highways connecting the pub to the new surrounding development.

4.15 In addition, the pub is required, through a private covenant, to re-provide the current children's play fixture within its title should the appeal site no longer be made available to the pub. There is more than sufficient room to do this if one considers the need for such a large car parking area in such a newly sustainable location.



The approved Boorley Green 1,400 homes land use plan



The approved Boorley Park 680 homes land use plan



- 4.16 In addition there are two other large development sites to the south, under construction: The Woodhouse Lane site and the Uplands Site (see plan below). These also provide new community facilities such as schools, open space and community buildings.



- 4.17 In conclusion on this point, there is no evidence to suggest that the loss of the current usage of the appeal site would impact or undermine the pub's long term viability.
- 4.18 The use of this outside area by families with children is weather dependant. It is extremely unlikely that its loss would impact the overall viability of the pub.
- 4.19 Neither does the play equipment or pub 'garden' provide an unlimited public play area for children that is not better provided elsewhere within walking distance of the pub or the houses

surrounding. It is not well-secured and is immediately adjacent to a busy road.

- 4.20 Neither is the ability to enjoy the pub as a facility where children are welcome impeded by the appeal proposal. Children will, no doubt, remain welcome both inside the pub and outside in the remaining garden area.
- 4.21 Rather than being detrimentally affected, the long term viability of the pub is very likely to have been significantly enhanced by the close proximity of the surrounding strategic development and the 6 new homes proposed as part of the appeal proposal.
- 4.22 The proximity of such an increased population calls into question the future demand for such a large pub car park, which could provide opportunities for a wholesale relandscaping of the pub site, if a larger garden was considered necessary.
- 4.23 Many of the neighbour objections to the separation of the appeal site from the pub's title appear primarily concerned with regard to the potential loss of the pub. This is neither proposed, nor is there any intention to close the pub by the site operators.
- 4.24 It is of additional note that the LPA has determined not to list this site as an 'Asset of Community Value' (ACV) several times. If the LPA had decided to list the appeal site as an ACV, this may have constituted a material consideration in the overall assessment of this appeal. However it did not, and therefore this failed application should play no part in the assessment The ACV application did not include the pub, only the appeal site land.

5 REBUTTAL OF REASON 3

REBUTTAL OF REASON 3

Insufficient information has been provided to demonstrate that the residential amenity of the future occupiers of the development would not be unacceptably impacted by noise, vibration and odour arising from the adjacent Long Common Wastewater Pumping Station, or noise arising from the nearby railway line and the Pear Tree Inn Public House and, as a result and in addition, that the development would not inhibit or create risks to the operations of the Public House having regards to noise pollution and the agent of change principle. The application is therefore contrary to Policies DM1 and DM8 of the Eastleigh Borough Local Plan 2016-2036 and Paragraphs 135, 180, 191 and 193 of the National Planning Policy Framework.

Pumping Station Noise

5.1 A small waste water pumping station is located adjacent to the site to the north (marked in yellow on the plan below).



5.2 During the course of the application, Southern Water were consulted. They did not object to the application but instead commented that *“No habitable rooms shall be located within a minimum 15 metres of the boundary of an existing water/wastewater pumping station, due to the vibration and noise generated by all types of pumping stations and the potential odour.”*

5.3 Understanding that any noise/odour issues from this pumping station would be negligible (a report is not required for everything), no noise or odour report was instructed. The operational noise from this type of pumping station is known to represent a noise level similar to the noise of a household refrigerator.

5.4 In addition, the application was validated by the LPA without any request for such a report. If such a request had been made, it would not have been considered either an appropriate or proportionate request for the following reasons:

- i. A small care home comprising 8 bedrooms for people with physical and learning disabilities is located immediately adjacent to the existing pumping station. During the application the case officer was asked to liaise with the LPA Environmental Health Officer to understand if there had been any complaints with regard to noise or odour from the pumping station from this or any other nearby residential dwelling. Unsurprisingly, it was confirmed that there had never been any complaints regarding these issues.
- ii. In Southern Water's guidance on development in proximity to Southern Water assets (see Appendix 4), it is stated that this 15m distance retention to habitable rooms is a 'preference' rather than a 'requirement'. Neither Southern Water nor the LPA have any evidence to suggest that this pumping station

emits unacceptable noise or odour, such as to insist on this 15m requirement.

- iii. The pumping station is located within a robust brick-built building with limited openings.
- iv. The nearest proposed dwelling to the pumping station (Plot 6) is located at least 7 metres distant from the pumping station building beyond a wide landscaped strip.
- v. There is an existing 1.8m timber fence on the boundary between the pumping station site and the appeal site which will be retained and a new 1.8m fence is also proposed on the northern garden boundary. There will therefore be two 1.8m high fences between the pumping station and Plot 6's boundary.
- vi. An existing hedge, to be reinforced to approximately 3 metres wide, is proposed on the boundary between the pumping station building and the dwelling. As the submitted noise statement states (at 6.1), it is accepted that noise is perceived less when its source cannot be seen. Plot 6's parking spaces are also located between the pumping station and the dwelling itself.
- vii. Plot 6 has only a ground floor utility room window, a secondary lounge window and a first floor bathroom window on the side elevation facing the pumping station site. To the rear elevation are a kitchen window and French doors.
- viii. The noise report demonstrates that each of the proposed dwellings will require mechanical ventilation and acoustic glazing to achieve appropriate internal noise levels due to the traffic noise emanating from Winchester Road. This requirement

will incidentally address any negligible noise from the pumping station as the ambient noise levels due to traffic are likely to be well above any negligible noise emitted by a small brick-housed pumping station.

- ix. The noise assessment confirms that the garden noise levels for each plot would be within the maximum allowable level of 55db. This acceptable garden noise level is very likely to be above any noise emitted by a small brick-housed pumping station, and will therefore remain unnoticeable. Any noise from the pumping station is likely to be completely masked by noise from the road, even during night-time hours.

- 5.5 In paragraph 38 of the National Planning Practice Guidance (NPPG) in relation to 'Making An Application', LPAs are required to "*take a proportionate approach to the information requested in support of planning applications*". It is not considered that additional surveying of any negligible noise emitted by a small brick-housed pumping station located within an existing residential area is appropriate or proportionate in this case. It is considered that it can be very safely assumed that any noise/odour/vibration from this source would neither materially nor significantly affect residential amenity.

Pub Noise

- 5.6 The submitted Noise Assessment has considered pub noise, both in terms of traffic movements in the car park, patron and music noise. It notes (at 6.4.1) that the pub is located around 40m from the closest façade of the nearest proposed dwelling (Plot 1) and that the existing dwellings opposite the Pear Tree PH will remain closer than the proposed development.
- 5.7 Patron noise from the pub itself was therefore noted not to be a likely major consideration. Similarly, music noise (which is understood to

REBUTTAL OF REASON 3

be irregular, but permitted under the existing licence) would similarly likely to be acceptable due to this 40m distance. It has been noted that whilst the Pear Tree PH does have a kitchen extract fan, this is inaudible over the ambient noise levels and, again, will be around 40m from the façade of the closest proposed dwelling.

- 5.8 The most likely adverse effects were noted to be in respect of car park noise and intermittent and irregular noise from the remaining pub garden. Both the garden and car park abut the southern boundary of the proposed development site.
- 5.9 On site observations carried out by the instructed noise consultant, undertaken on warm summer weeks, at both lunchtime and into the evening, show some car park movements and some pub garden usage. However, both were observed to be significantly masked by road traffic noise, which as noted to be well in excess of 60dB at the façade of the proposed development during the daytime, well in excess of what would be expected of the maximum levels appropriate in a private garden (55db). This evidence addresses the point made by the LPA's Environmental Health officer regarding both the position of the noise monitor and the timing and duration of the survey, which are fully explained and justified within the Noise Assessment. Any use of this area as part of the pub would result in noise that is both masked by traffic noise, and that is also infrequent.
- 5.10 Additionally, a 3m wide hedge is proposed with a 1.2m high timber fence on the pub boundary and a 1.8m high timber fence around the proposed nearest dwelling's garden area. This will reduce any perceived impact of noise from the pub.
- 5.11 Finally, just one ground floor utility room window and secondary lounge window are proposed on this elevation, and one bathroom window at first floor level. There are therefore no primary habitable rooms facing the pub or its car park.

- 5.12 With no complaints received by the LPA to noise from the existing pub, and noise enforcement available for any major change to the operation of the pub, it is not considered that development of the appeal site for housing would be likely to impact the future commercial operation of the pub, even if its operation were to intensify in the future.
- 5.13 Potential purchasers of the plots would be very aware that the site sits adjacent to a pub car park and garden, and any perceived negative impacts would be balanced against the positive impacts of living so close to a thriving community facility at the time of purchase.

Railway Noise

- 5.14 The Noise Assessment also considered railway noise. The railway is located at 300m distance to the south-west of the site (indicated in orange in the plan below).



REBUTTAL OF REASON 3

- 5.15 At point 4.2 of the Noise Assessment it is confirmed that only during lulls in road traffic noise is rail noise perceptible, but that it must be noted that the predicted rail noise is low due to low frequency of rail movements.
- 5.16 It is also considered that the acoustic requirements for the higher level of road noise would also cover any minimal requirement as a result of rail noise.
- 5.17 The plan included above reveals that the permitted strategic development area has permitted dwellings that are located much closer to the railway line than those proposed as part of this appeal.
- 5.18 In conclusion on this reason for refusal, it is considered that, with the acoustic measures proposed, and the existing and proposed timber fences and wide hedgerows to the northern and southern boundaries of the site, neither the pumping station nor the existing or future operation of the pub, nor the railway would emit such levels of noise as to materially or significantly affect residential amenity, even perceptually.
- 5.19 If the Inspector considered that there could be a potential small likelihood of amenity issue as a result of future pub noise or from pumping station noise in terms of the future resident's use of their garden areas, then the appellant would be willing to accept a planning condition for a full acoustic garden fence rather than a standard timber fence.

6 REBUTTAL OF REASON 4

The application fails to make provision for the securing of the minimum 10% biodiversity net gain required by the Environment Act 2021, as well as its subsequent retention, management and monitoring. The proposals are therefore contrary to the provisions of this legislation, as well as those of Policy DM11 of the Eastleigh Borough Local Plan 2016-2036 and Paragraphs 180 and 186 of the National Planning Policy Framework.

- 6.1 The application was supported by a biodiversity net gain assessment. This shows that a 10% BNG gain cannot be achieved on site, despite additional hedging and landscaping as the site is too small. There is therefore a requirement to purchase 0.23 off-site BNG habitat units (with 0.10 comprising individual trees). The LPA has agreed, in principle, that this is an acceptable means by which to achieve the requisite biodiversity net gain for the development, especially as this is a small site.
- 6.2 The appellant has agreed with 'BioDiverse Management Ltd', a third party specialising in providing off-site BNG units for Eastleigh Borough Council, to pay the required contribution towards their off-site BNG scheme. (See confirmatory letter attached at Appendix 5).
- 6.3 There is nothing to suggest that off-site BNG cannot be secured with the standard 'Grampian' planning condition such that no development can take place until the 10% BNG gain has been secured.
- 6.4 For a Grampian condition to be lawfully applied to a planning permission, planning law requires 'reasonable prospect' (rather than more robust 'scientific certainty' test under the Habitat Regulations) that a 10% off-site gain and 30 years' worth of management and maintenance of the off-site BNG site can be achieved.
- 6.5 A recent appeal decision in the London Borough of Harrow - 14A Station Parade, Kenton Lane, Harrow, HA3 8SB Appeal Ref: APP/M5450/W/23/3335829 (attached at Appendix 6) confirms that

the use of a Grampian condition for the off-site BNG requirement can be appropriate if 'reasonable prospect' of the works being carried out can be shown. In that case, the appellant was negotiating with a third party provider for off-site BNG. However, as no confirmation of the supply of BNG units was before the Inspector, the Inspector did not consider there to be a reasonable prospect of such units being provided. A Grampian condition could not be used in this case.

- 6.6 For the appeal proposal however, the off-site BNG provider has confirmed the ability to support the proposal with the required number of units and the LPA and its ecology officer have no objection to this method of provision.
- 6.7 In order to discharge the standard BNG condition proof of payment towards the required number of credits to the off-site BNG scheme will be required. Whether this is done through submitting an 'allocation of credits' agreement between the appellant and the third party BNG provider or through a Section 106 agreement can be decided at condition discharge stage. A Section 106 agreement has always been able to exist as a 'standalone' agreement as well as in connection with a planning application in order to facilitate a planning permission. A standalone 106 agreement can therefore be used to discharge a Grampian planning condition and remain compliant with the BNG legislation.
- 6.8 With a Grampian condition, there is no requirement for an executed legal agreement at appeal stage for the provision of 10% BNG as there is under the Habitat Regulations in order to provide 'certainty'. Nonetheless, the submitted executed Unilateral Undertaking includes securing the off-site BNG credits pre-commencement sufficient to discharge the standard BNG condition.
- 6.9 It is therefore considered that securing the required off-site credits through a willing third party, approved by the Council, and using a standard BNG condition such that that a minimum of 10% off-site

REBUTTAL OF REASON 4

BNG can be secured and delivered as part of this proposal is entirely in accordance with requirements. As such, the proposals accord with Policy DM11 of the Eastleigh Borough Local Plan 2016-2036 and Paragraphs 180 and 186 of the NPPF.

7 REBUTTAL OF REASON 5

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) 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.

- 7.1 An executed Unilateral Undertaking is provided to secure the mitigation required to protect the Solent and Southampton Water SPA, SAC and Ramsar Sites (the Solent Complex) and the New Forest SPA, SAC and Ramsar Sites.
- 7.2 Two likely significant effects upon the SPAs are known:
- i) Recreational Pressure effects (Solent Complex (SPA, SAC and Ramsar sites) and the New Forest SPA, SAC and Ramsar sites)
 - ii) Water quality effects from nutrients in waste water (Solent Complex).
- 7.3 These are considered in turn below.

Recreational Pressure Impacts on Solent Complex (SPA, SAC and Ramsar sites)

- 7.4 In relation to the Solent Complex (SPA, SAC and Ramsar sites), the recreational pressure impacts relate to disturbance to birds feeding within the SPA. Disturbance reduces food intake which in turn detrimentally affects weight and therefore reproduction. The Council has a mitigation strategy 'Bird Aware' to which developers contribute to reduce negative recreational disturbance effects. The mitigation strategy is attached at Appendix 7.

- 7.5 The strategy requires payment from developers towards recreational pressure mitigation. This figure is increased every year and, for 3 bedroom dwellings is currently £875 per dwelling, resulting in a total contribution of £5,250. This payment is secured, prior to the commencement of development, within the submitted Unilateral Undertaking.

Recreational Pressure Impacts on New Forest SPA, SAC and Ramsar Sites

- 7.6 For the New Forest sites, the recreational pressure impacts relate to additional visits to the New Forest by residents of new development within Eastleigh Borough Council (EBC). For similar reasons to the impacts upon the Solent Complex, the increased recreational pressure from rising human population has a detrimental population impact on ground nesting birds.
- 7.7 EBC have produced an interim mitigation strategy to address these recreational impacts within the New Forest comprising the payment of developer contributions towards a strategic mitigation package comprising;
- i) Proportionate provision of SANGs (Suitable Alternative Natural Greenspace) within EBC and
 - ii) Financial contributions to the management of recreational impacts within the New Forest protected sites
- 7.8 The EBC Interim New Forest Mitigation Strategy is attached as Appendix 8.
- 7.9 The strategy requires payments from developers towards recreational pressure mitigation. The interim mitigation contribution required for this development is £2,220 per dwelling, resulting in a total contribution of £13,320.
- 7.10 Unfortunately, Natural England have not yet reached final agreement to EBC's Interim New Forest Mitigation Strategy. Their position is

that, within 13.8km of the New Forest SPA, 0.8ha of SANG should be delivered per 1000 people with no reduction allowed for increases in population from development located further away from the New Forest. This 0.8ha/1000 population is the rate used within the 5km zone of influence of the Thames Basin Heaths and has also been adopted by the New Forest District Council.

- 7.11 However, none of the planned Eastleigh housing growth will be in the 5km zones within which 62% of all day visits originate. EBC's growth accounts for just over 20% of all planned new residential development between 5-14km from the New Forest protected sites from which 13% of all day visits originate.
- 7.12 It is therefore EBC's position that a much smaller proportion of SANG is required from development within EBC's boundaries (approximately 20% of the 0.8ha requirement) as the background study evidencing recreational pressure clearly demonstrates that the number of visits to the New Forest SPA dramatically declines the further one resides from the SPA.
- 7.13 It is important to note that the appeal site is located on the very outer edge of the 13.8km zone of impact (See plan and EBC's justification for contribution level as attached at Appendix 8)
- 7.14 In 2022 an appeal against the refusal of planning permission for 61 dwellings on Land at Satchel Lane, Hamble (within the 13.8km zone, and EBC's boundaries), the Inspector was satisfied that a Unilateral Undertaking clause preventing implementation of the planning permission until a bespoke New Forest Recreational Pressure Mitigation Strategy had been submitted and approved was sufficient to address the objection from Natural England. This followed a round table discussion at the appeal inquiry between the Inspector, Natural England, the appellant and EBC. This appeal is attached at Appendix 9.

- 7.15 The submitted Unilateral Undertaking therefore proposes that, before development commences, either the contribution level within the Interim New Forest Mitigation Strategy is paid, once the strategy is agreed with Natural England, OR that a bespoke mitigation strategy is submitted and approved by EBC, sufficient to address the objection from Natural England.

Water Quality Impacts on Solent Complex

- 7.16 In relation to the impacts of nutrients in waste water from new development, the issue is that high nutrients in wastewater reduce oxygen levels in seawater in the SPA. This causes an overgrowth of algae – a process called 'eutrophication'. The overgrowth of algae leaves thick mats of algae on bird feeding grounds, affecting food intake and therefore reproduction levels.
- 7.17 A nutrients calculation was provided with the planning application which showed that the development would produce 5.09kg of nitrogen per year.
- 7.18 To ensure that this level of nitrogen is off-set, 5.09kg of nitrogen mitigation has been reserved from EBC's own nitrogen mitigation scheme (See Appendix 10). The Unilateral Undertaking requires that before development commences, that this nitrogen mitigation is secured.
- 7.19 In conclusion then, with the executed Unilateral Undertaking securing the required mitigation, the Inspector can be assured that there will be no likely significant effects on protected sites, as a result of the proposal.
- 7.20 As such the appeal proposal is in accordance with 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.

8 **CONSULTEE / NEIGHBOUR RESPONSES**

8.1 It is acknowledged that there have been a significant number (334) of representations to this proposal. The objection headings are addressed below:

Objections

Development is contrary to the Local Plan and the Botley Neighbourhood Plan as the land is designated as Countryside.

8.2 It is accepted that the proposal is contrary to these plans but it is considered that there are material considerations of significant weight which indicate a decision other than in accordance with the Development plan can be legitimately made.

Already enough housing

8.3 Whilst EBC has an up to date plan on the basis of a previous standard method calculation, the additional housing that will no doubt be required under the new standard method for calculation is a material consideration. Housing targets are not limits and in a time of housing crisis, it is considered that a positive approach to housing should be taken wherever possible.

Housing development in the local area has increased crime levels.

8.4 There is no evidence to substantiate this claim.

Insufficient infrastructure or services in the local area to support more housing.

8.5 The strategic scale of development surrounding the site was permitted subject to all the required transport, drainage, utility, public open space and community infrastructure. There is now more and more modern infrastructure in the area to support both existing and new housing.

Impacts on the sewerage network which is already overloaded.

8.6 There is no evidence to substantiate this claim.

The pub and garden provide for an important space for the local community/children's play space/ is a vital community asset/asset of community value.

8.7 Whilst the play space is no doubt appreciated by pub goers, it is by no means the only play space in the area, and is also private, so only open at limited times. The pub itself and its remaining garden will be retained.

The development will negatively impact on the public house and its business and viability.

8.8 As explained in the sections above, the development is likely only to enhance the viability of the pub.

The public house and its surrounding green space should be maintained for its historical and cultural value.

8.9 The heritage officer was consulted and considers there to be no impact upon the pub in terms of its historical or cultural value.

There are very few family spaces left in the local area.

8.10 This is factually incorrect. There are more family spaces in the area than ever before as a result of the strategic scale development surrounding the site.

This is the only pub and beer garden within walking distance in the local area.

8.11 This demonstrates the newly sustainable location of the pub and the increase to viability an increase in population within walking distance is likely to bring.

Additional traffic and impacts on parking and highway safety.

8.12 The Highway Officer and planning officer have not objected to the proposals on highways grounds. The access point was moved due to a concern about the proximity of the nearby existing junction.

Impacts on wildlife.

8.13 The ecology officer has not objected to the proposals subject to securing the various mitigations required.

Loss of green space / amenity space.

8.14 This area is not a public open space and there are many other public open spaces within walking distance as a result of new developments in the area.

Inadequacy of the noise assessment carried out / impacts of noise from the pub on the future residents of the development which may lead to restrictive noise abatement measures for the pub.

8.15 Patron noise has been taken into account in the noise assessment. The distance between the pub and the new dwellings is significant. In addition it is likely that highway noise will mask any noise from the use of the pub.

Lack of tree and drainage information.

8.16 A full arboricultural impact assessment was submitted with the application and drainage is available to the new dwelling which can be controlled through planning conditions.

Overdevelopment of the site/visually intrusive.

8.17 The density of development is low and good-sized gaps are retained both between the three blocks and between the blocks and the boundaries to respect the character of the surrounding area. Respecting the set-back distances also allows significant levels of soft landscaping to the frontage as well as the side boundaries, again to respect the leafy character of the area. The garden sizes exceed the minimum required and the parking is in accordance with Eastleigh's Residential Parking Standards. The proposal is therefore an effective use of land without being so densely developed as to be out of character with the area.

Support

New homes in the area are paramount to young people.

8.18 It is agreed that new homes are important to provide housing for an increasing population.

The development will provide good sized family homes in a sustainable area.

8.19 The site is now newly sustainable as a result of strategic-scale development. Bringing family homes to sustainable area is in accordance with government and local guidance.

The plans are well thought out and make good use of the under-utilised space.

8.20 This space is only used on certain evenings weather permitting. It is therefore agreed that the site's current use is not an effective use of land.

Smaller developments will bring an element of choice locally for buyers.

8.21 It is known that support for smaller housebuilders is important to bring choice to the housing market.

The whole area has changed and been built on.

8.22 This has been repeatedly acknowledged by LPA planning officers for other sites in the area.

Thousands of houses have been built on the farm and golf course, a few more won't hurt.

8.23 It is true that thousands of houses have been built or under construction around the appeal site dramatically reducing the utility of the 'countryside' designation. Indeed 6 more dwellings will not be materially harmful to this area in any way.

More housing is needed and needed everywhere.

8.24 It is considered that additional housing is always required in a housing crisis and this land is well situated to provide 6 additional dwellings.

9 CONCLUSION

CONCLUSION

- 9.1 The LPA refused the appeal application for 5 reasons. Each of these reasons have been comprehensively rebutted above.
- 9.2 Repeating various planning officers previous observations, the fact that this site is designated as 'countryside' in the Development Plan should not be the sole determinative factor for this planning application, especially where the LPA have confirmed that they do not have a 5 year housing land supply and that the 'tilted balance' is therefore engaged. Additionally, there are other material considerations that strongly indicate that a decision can legitimately be taken other than in strict accordance with 'countryside' policies.
- 9.3 The LPA have previously allowed several developments within this area of designated 'countryside' on the basis that the character of the area has been irrevocably changed as a result of strategic scale development around the site.
- 9.4 The layout, design and siting of the appeal proposal has proactively considered the features that positively contribute to the leafy character of Winchester Road and included these features within the proposal.
- 9.5 The removal of this area for the pub's use will not affect the viability of the pub. The use of this 'garden' area of is available only during pub opening hours. The land is not publicly available and its use is weather-dependent. There are a significant number of other community facilities and play areas within walking distance provided as an integral part of the strategic scale development that now surrounds the pub.
- 9.6 The noise from traffic along Winchester Road, the pub itself and the railway line have all been considered in the submitted Noise Assessment. The pumping station noise is negligible and likely to be completely masked by the noise from the traffic using Winchester Road in any case. Noise mitigation proposals are included in the appeal proposal.
- 9.7 Either a Grampian condition or the clause included within the executed Unilateral Undertaking addresses the requirement for a 10% Biodiversity Net Gain through the use of an established off-site provider of BNG. The off-site BNG site is subject to an agreement with EBC and a long term management plan is included within this. The LPA have no objection to the use of this off-site provider.
- 9.8 The executed Unilateral Undertaking also addresses the impact of the proposal upon protected sites in relation to the increased recreational pressure and additional nutrients as a result of the proposed development through the payment of a mitigation contribution to established mitigation projects.
- 9.9 As such it is considered that the appeal proposal offers 6 attractive new homes, constructed by a small housebuilder, that reflect the best features of the development along Winchester Road. Thereby the proposal is considered to be in sympathy with the surroundings and appropriate in its character. Significant additional hedgerow planting and tree planting is included within the proposal. As such the proposal is an effective use of a site on an area of designated 'countryside' that no longer functions as such within a Borough that can no longer demonstrate a 5 year housing land supply.
- 9.10 Accordingly, the Inspector is respectfully requested to apply the 'tilted balance' to the assessment, and ultimately, allow the appeal.

10 LIST OF APPENDICES

- Appendix 1 – Policy Map Excerpt and Key
- Appendix 2 – Examples of Surrounding Permissions
- Appendix 3 – Boorley Green and Boorley Park
- Appendix 4 – Southern Water Guidance Note
- Appendix 5 – BNG Mitigation Proposal
- Appendix 6 – Appeal Decision re Grampian Condition for Off Site BNG
- Appendix 7 – Solent Recreation Mitigation Strategy
- Appendix 8 – EBC Interim New Forest Mitigation Strategy
- Appendix 9 – Satchel Lane Appeal
- Appendix 10 – EBC Nitrate Mitigation Scheme
- Appendix 11 – EBC 5 year Housing Land Supply