

Appeal Ref
LPA Ref
Email

APP/W1715/W/25/3363580
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The Planning Inspectorate
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21 May 2025

Town and Country Planning Act 1990

Appeal By: Dorrington Homes (UK) Limited

Site Address: Land adjacent to Pear Tree PH, Winchester Road, Southampton, Hampshire

Appeal Reference: APP/W1715/W/25/3363580

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 12 December 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 Land Supply

The Appellant refers to the matter of the Council's five year housing land supply position within Paragraph 3.4 of their Statement of Case. The Council have, subsequent to the determination of the planning application the subject of this appeal, formally published its updated calculation of five year housing land supply (see Appendix 1). This report was initially prepared in draft in November 2024 with a base date of 1 April 2024. The draft report was published online in November 2024 and the finalised version, which is appended to this document, was published in May 2025 with the 1 April 2024 base date being retained.

The final report (as stated within paragraph 5.3) identifies a supply of 4.3 years. However, for the purposes of calculating the Council's current position the revised National Planning Policy Framework (NPPF), which was published in December 2024 (after the Council's latest report was drafted in November 2024), introduced a 5% buffer to be applied to all assessments of housing supply. In accordance with these provisions, the supply therefore falls to 4.1 years, which reflects the Council's latest position on housing supply.

It is, therefore, accepted that the Council is currently unable to demonstrate a five year housing land supply. Whilst the shortfall in this regard is considered to be modest, it is nonetheless accepted that Paragraph 11d 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 six dwellings. 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 12 December 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.

Reason for Refusal 1

The harmful and detrimentally urbanising impacts that the development would have upon the character of the site and its surroundings within the area of designated countryside within which it falls, are set out within the first Reason for Refusal of planning permission as listed on the LPA's Decision Notice and explained in detail within the Case Officer's Delegated Report. It is not considered necessary, therefore, to repeat that analysis in full here.

In response to some of the matters raised by the Appellant within their Statement of Case, however, it is noted that a great deal of emphasis is placed on other approvals, a number of which precede the adoption of the current Local Plan (adopted April 2022), that have been given for residential development within designated countryside elsewhere within the wider area of Boorley Green. This is in the context of seeking to justify the scheme that is now proposed at the appeal site and its conflict with the development plan.

The LPA would highlight, however, that each case must be considered on its own merits, in the context within which it falls and on the grounds of its specific and particular impacts, rather than on the basis of a generalisation that as some residential development may have been approved within the countryside, any development should thereby be allowed. The LPA would also disagree with the Appellant's intimation, within paragraph 3.19 of their Statement of Case, that the Local Plan process should be disregarded as a means of identifying areas to be preserved as designated countryside and of assessing the acceptability of development within this location, with this being counter to the fundamental principle set out within National Planning Policy that the planning system should be genuinely plan led.

The site specific nature of the assessment in each of the cases alluded to by the Appellant that led to a recommendation to approve consent in those instances is clear

within the respective Case Officer's reports, which the Appellant has included within their Appendix 2 and which the Inspector is invited to review in full. These cases and the context of each site is not considered to be directly comparable to the appeal site, a comprehensive assessment of the characteristics of which, along with an explanation of the positive contribution it currently makes to the surrounding area, is detailed within the Case Officer's Delegated Report. The harm that would arise from the appeal development to these characteristics is also clearly explained within the Report, as well as within Reason for Refusal 1 as set out on the Council's Decision Notice.

In addition to the above, it is also noted that the Appellant's Statement of Case makes reference to the supportive comments of the Council's Heritage Officer on the application (paragraph 3.37). It would be highlighted, however, that the decision to grant or refuse a planning application that is submitted to a Local Planning Authority (LPA) ultimately rests with that authority, taking into account all of the relevant material planning considerations. The Heritage Officer was a consultee on the application and his comments are therefore a material consideration in the assessment of the proposals. Whilst the LPA reached a decision which did not accord with their comments, these were fully considered as part of the application, with an alternative view on the acceptability of the development proposals being reached having regard to all relevant matters, with this being clearly and comprehensively justified within the LPA's Decision Notice and the Case Officer's Delegated Report.

Reason for Refusal 2

The concerns raised by the LPA in relation to the potential adverse impacts of the proposals on the Pear Tree Public House as a community facility and upon its operation and viability are covered within Reason for Refusal 2 as set out in the Council's Decision Notice, with this being expanded upon and further explained within the Case Officer's Delegated Report. The LPA would, however, reiterate in response to the matters raised within paragraph 4.1 of the Appellant's Statement of Case, that the segregation of legal title, for the purposes of redevelopment or indeed any other reason, is not in itself considered to be a determinative factor to the planning use of the land and the implications of its potential redevelopment. The LPA do also not purport to contend that the land constitutes a stand-alone informal play area which would be viewed independently from the public house and, thereby, would refute the Appellant's contention that there are other sports pitches, open spaces and play areas within surrounding and forthcoming developments that could directly replace and mitigate for the loss of the appeal site.

Rather, and as explained within the Case Officer's Delegated Report, the LPA consider that the appeal land forms part of and supports the function and use of the public house. This view is clearly and evidently supported by the information provided within the application submission, the existing situation on site, the planning history for the public house, and the significant number of third party representations received in response to the application, which collectively demonstrate this association over a number of years. In line with the provisions of Policy DM36 of the adopted Local Plan, public houses constitute community facilities in planning terms,

and it is therefore in the context of the impacts upon the function and viability of the public house and the role in the local community that it plays, that the LPA consider that the appeal development should be assessed.

The Appellant's contention in this respect that the application confers no intention to reduce the pub's viability (paragraph 4.2) is noted, as is the subsequent suggestion that in the event that the viability of the public house was to be undermined, it could simply increase its opening hours and its food offering to negate this (paragraph 4.5). The LPA would contend, however, in regard to the former, that intention is separate and distinct from the likelihood of material impact, with there also being no evidence presented that the latter measures would suitably mitigate for any reduction in the viability of the public house.

The LPA, therefore, maintain that the proposals have not suitably demonstrated that the loss of the appeal site and the outdoor area that it provides for the Pear Tree 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. In these respects, the proposals are contrary to the provisions of the adopted Local Plan and the National Planning Policy Framework.

Reason for Refusal 3

Reason for Refusal 3 relates to what the LPA consider to be an insufficiency of information having been provided to demonstrate that the future residents of the proposed development would not be unacceptably impacted by noise, vibration and odour arising from the adjacent Wastewater Pumping Station, or noise from the nearby railway line and the Pear Tree 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 regard to noise pollution and the 'agent of change' principle.

The deficiency in the information provided and, specifically, the submitted Noise Assessment, is explained within the Case Officer's Delegated Report and, in particular, within the consultation response of the Council's Environmental Health Officer which is summarised within that report, and which has been provided in full to the Planning Inspectorate as part of the Council's Appeal Questionnaire.

Briefly, in response to some of the matters raised within the Appellant's Statement of Case, however, and specifically those within paragraphs 5.12 and 5.13, the LPA would highlight that any absence of past complaints in relation to the operations of the public house is not in itself a determinative factor in regards to the consideration of the potential impacts upon the future residents of the development, nor does it negate the need for this to be properly and appropriately assessed. This is particularly the case when this sensitive receptor would be introduced in such close proximity to the public house and what would be its remaining outdoor area.

In addition, it is accepted that, as the Appellant has alluded to, potential purchasers of the proposed properties would be aware of the adjacent public house and its car park

and garden when deciding whether or not to live there. The LPA would, however, highlight that such potential purchasers would also likely have a not unreasonable expectation that the appropriateness of the relationship between these uses had been suitably considered and assessed as part of the planning process to ensure that their amenity would not be unduly compromised, particularly when this is a requirement of both local and national planning policy.

Further and as the Appellant has highlighted, whilst the Council's Environmental Health Team do have enforcement powers should noise arising from the public house and its outdoor operations and activities cause a nuisance to residents of the development, paragraph 200 of the NPPF is clear that "existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established", with the onus being placed on the 'agent of change' (in this case the appeal development) to ensure that suitable mitigation is provided as part of the development.

The compatibility of the uses and the appropriateness of any mitigation can only, however, be determined following the undertaking of a suitable and robust assessment of the noise related implications of the development which, for the reasons as set out within the comments of the Council's Environmental Health Officer and the Case Officer's Delegated Report, the LPA do not consider has been provided for in this case. Accordingly, the development does not comply with the requirements of the development plan or national planning policy in this regard.

Reason for Refusal 4

It is common ground that the mandatory Biodiversity Net Gain (BNG) requirements as set out within Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021) apply to the appeal proposal and that the requisite 10% net gain is not able to be fully provided for on site. Accordingly, it is necessary for the development, in addition to on-site mitigation, to also utilise off-site credits in this regard. Whilst the LPA accept that such mechanisms can be an appropriate means by which to achieve the required net gain, such measures must be suitably secured, maintained and monitored.

Whilst the Appellant's comments within their Statement of Case in respect of the conditioning of these matters are noted, the LPA consider that, in line with the provisions of the Planning Practice Guidance and Schedule 7A of the Town and Country Planning Act 1990, this should instead be secured by way of a planning obligation prior to the issuing of any planning permission. Indeed, it is noted that the BNG Management and Monitoring Report that accompanied the application (Ecosupport, 26 July 2024) advises the same – see section on '*Management Responsibilities*' which states that "all management works as described above will need to be secured by a Section 106 agreement for the site that will legally oblige Dorrington Homes UK Ltd or other agreed party to carry out the works".

In terms of the off-site mitigation proposed, it is noted that an offer from the company 'Bio Diverse' (dated 25 July 2024) accompanied the application. Whilst this

incorporates the number and type of habitat units necessary to meet the development's BNG requirements, limited detail is provided in terms of the specific site of the BNG provision (it is noted to be within Bishopstoke), the manner in which the credits would be secured, and the ongoing management and monitoring provisions. The provider / site is also not listed on the Biodiversity gain sites register. Accordingly, additional information in these regards is deemed to be required and the LPA consider that this would need to be secured by way of a legal agreement / planning obligation.

It is noted that the Appellant makes reference to a submitted executed Unilateral Undertaking to secure the BNG credits within their Statement of Case (paragraph 6.8). This agreement did not, however, accompany the appeal submission and whilst the LPA note the Appellant's subsequent email correspondence with the Planning Inspectorate dated 16 April 2025 concerning delays with its production, the LPA have as yet still not received a copy of this document and, as such, are unable to comment upon its content or suitability for securing the required measures.

Reason for Refusal 5

Reason for Refusal 5 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 LPA are aware 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 5 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 and 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 for 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 the Council utilising its adopted nitrogen mitigation scheme in order to address the impacts of their development, with the relevant enquiries having been made with the Council to confirm the availability of the credits required (as per the Appellant's Appendix 10). Further details of the Council's mitigation scheme are explained within the Report to the Council's Cabinet that is included within Appendix 2. Such mitigation would be required to be in place prior to first occupation of the development, with provision for this needing to be appropriately secured as part of the appeal.

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 latest iteration of the SRMS (now referred to as the Bird Aware Solent Revised Strategy) is included within Appendix 3.

As set out in this strategy, 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 £907 per 3-bedroom dwelling (a total of £5,442 based on the six dwellings proposed as part of the appeal scheme), with this being subject to indexation from the 1 April 2025 base date. The published rates are available on the Bird Aware Solent website at: [Developer contributions - Bird Aware Solent](#) with a copy of the relevant webpage also included within Appendix 4 for the Inspector's ease of reference. The LPA consider that provision for this contribution should be secured prior to the granting of planning permission through an appropriate planning obligation.

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 5 and Appendix 2 for the Inspector's reference.

The Local Planning Authority consider that the financial contribution (totalling £13,320) which is required in this regard, should be secured prior to the granting of planning permission through an appropriate planning obligation.

The Appellant's Unilateral Undertaking

It is noted that, within the Appellant's Statement of Case (paragraph 7.1), reference is made to an executed Unilateral Undertaking being provided to make provision for the

aforementioned mitigation measures. Whilst, in a similar manner to the case of the BNG requirements for the development which are referred to above, the LPA note the email correspondence between the Appellant's agent and the Planning Inspectorate in relation to the delays with this document, the LPA have not yet received a copy of this document nor, therefore, had the opportunity to comment upon its content or the suitability of the obligations and provisions contained therewithin. In the absence of a suitable planning obligation to secure the requisite mitigation measures, the LPA consider that the appeal proposals are contrary to the requirements of local and national planning policy, as well as the provisions of The Conservation of Habitats and Species Regulations 2017.

Conclusion

As set out within the Council's Decision Notice dated 12 December 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, DM1, DM8, DM11, DM36), 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.

As set out above, the Council accepts that it cannot currently demonstrate a five year housing land supply and, whilst the shortfall in this regard is considered to be modest, it is nonetheless accepted that Paragraph 11d 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 six dwellings and the LPA remain of the view, therefore, that the adverse impacts of the development significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole.

There are no other material considerations that outweigh the conflict with the development plan and, therefore, the Local Planning Authority respectfully requests that the Inspector dismisses this appeal. Should the Inspector, however, be minded to grant permission, the Local Planning Authority would request that the conditions set out in Appendix 6 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 November 2024
- APPENDIX 2: Nutrient and New Forest Mitigation Cabinet Report December 2022
- APPENDIX 3: Solent Recreation Mitigation Strategy (Bird Aware Solent Revised Strategy – September 2024)
- APPENDIX 4: Bird Aware Solent – Developer Contributions April 2025
- APPENDIX 5: New Forest Mitigation Strategy Cabinet Report March 2022
- APPENDIX 6: Local Planning Authority Suggested List of Planning Conditions