
Appeal Decision

Site visit made on 15 April 2025

by **B Plenty BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4th June 2025

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

Land to the South of Peewit Hill, Bursledon, Hampshire SO31 8BL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Groves Group Ltd against the decision of Eastleigh Borough Council.
 - The application Ref is F/24/96970.
 - The development proposed is the Erection of 2no. semi-detached 3-bed dwellings, with associated access, parking and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A Section 106 Agreement, in the form of a Unilateral Undertaking¹ (UU), has been submitted to make contributions and measures as mitigation towards protected European sites. This would make provision towards a New Forest Ranger, New Forest Suitable Alternative Green Space (SANG) and a monitoring sum, New Forest SANG Mitigation Contribution and Nitrate Mitigation Package. The UU also provides a contribution towards the Solent Recreation Mitigation Strategy. The sums are to be paid prior to the occupation of the proposed dwellings. I shall return to this matter later.

Main Issues

3. The main issues are:
 - Whether the proposed dwellings would affect the integrity 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;
 - Whether the proposed development would be in a suitable location, with regard to local policies, and in consideration of the effect on the character and appearance of the site and its surroundings; and
 - Whether the proposal would make a suitable provision towards Biodiversity Net Gain (BNG).

¹ Unilateral Undertaking, signed by Grant Ronald Strange & Jane Cini and Groves Group Ltd, dated 22 November 2024

Reasons

European Protected Sites

4. The appeal site is within the zone of influence of the Solent Complex SPAs and the New Forest SPA, SAC and Ramsar sites. In accordance with the Conservation of Habitats and Species Regulation [2017] I have assessed the effect on the integrity of these European Protected Sites within the framework of an 'appropriate assessment' and my findings are set out below.

New Forest

5. The New Forest SPA, SAC and Ramsar sites are subject to the Council's Interim Mitigation Strategy. This strategy identifies visitors to the SPA create a potential impact through recreational disturbance. The strategy promotes two approaches to manage visitors attracted to the protected site consisting of the delivery of a SANG and Strategic Access Management and Monitoring (SAMM). These are proposed to be funded by developer contributions paid per dwelling.
6. The appellant's contribution towards the New Forest SANG Mitigation would address the requirements of the Interim Mitigation Strategy. However, Natural England has raised concerns that the interim strategy includes a reduced provision of SANG, insufficient information with respect to visitor capacity at the Itchen Valley Country Park and the absence of an associated monitoring strategy. This leads to significant uncertainty as to the effectiveness of the measures. The approach of the interim strategy therefore fails to provide the required certainty that the offered mitigation secured through the UU demonstrates, beyond reasonable scientific doubt, that the proposal would not adversely affect the integrity of the sites, a conclusion shared by Natural England².
7. Consequently, I cannot be satisfied that the protected species and their habitat would not be adversely affected. Also, there are no imperative reasons, of public interest of a social or economic nature that are of sufficient magnitude, to override the harm to the site. Accordingly, I cannot be satisfied that this matter would be adequately addressed by the UU as alternative solutions to the proposal may be available.

Solent Complex

8. The Solent Recreation Mitigation Strategy [2017] (SRMS) identifies that tens of thousands of coastal birds fly from as far as Arctic Siberia to spend the winter on the Solent. Its coastline, particularly its mudflats, shingle and saltmarshes, provide essential winter feeding and roosting grounds for birds that spend the winter in the Solent. The Solent Complex is subject to increased recreational pressure which, in combination with other development in the area, could lead to additional recreational impacts on the European sites designated for their nature conservation importance.
9. The strategy is designed to prevent bird disturbance from recreational activities through a series of management measures to ensure visitors enjoy their visits in a responsible manner. The measures include the provision of a team of rangers,

² Natural England letter, Emma Foster, 2 June 2025

communication, marketing and education initiatives, and initiatives to encourage responsible dog walking. These are proposed to be delivered through developer contributions collected by the Council and transferred to the Partnership for implementation.

10. The appellant's SRMS contribution would comply with the requirements of the strategy. I am satisfied that this matter would be satisfactorily addressed by the UU, requiring the sum to be made prior to the occupation of the dwellings.
11. Furthermore, the Solent complex includes a body of water deemed to be one of the most important for wildlife in the country. Natural England has identified that there are high levels of nutrients in the water causing eutrophication in these designated sites, a key source of these nutrients is from development. To prevent this problem worsening there is a requirement for future development to achieve nutrient neutrality.
12. The appellant's nutrient budget demonstrates that mitigation, in the form of the purchase of nutrient credits from an established provider, would address the impact of the development and achieve nitrate neutrality. The Council has confirmed that sufficient nitrate credits are available to address the adverse effects of the development. This would comply with the Council's mitigation scheme. The requirement to confirm the relevant nitrate mitigation package for the development has been included in the UU. I am satisfied that the appellant's nitrate mitigation measures would be satisfactorily addressed by the UU, requiring a nitrate mitigation package to be submitted to and approved in writing by the Council prior to occupation of the development. The Council has suggested a negatively worded condition to secure the same pre-occupation requirements to those secured by the obligation. However, as a condition does not include the same level of certainty as the UU, I favour the use of the UU in this regard.

Summary of the impact on European sites

13. Therefore, despite finding no harm to the integrity of the Solent Complex sites, following appropriate assessment, I find that in combination with other development, the proposal would lead to adverse effects on the integrity of the New Forest sites. As competent authority, I cannot agree to the proposal, and therefore there would be conflict with LP policy DM11 (parts 2 and 3), with respect to the impact on the integrity of the New Forest SPA, SAC and Ramsar Sites. This policy seeks, *inter alia*, for development that would affect the integrity of a European nature conservation site to be subject to suitable mitigation measures to ensure it would result in no adverse impact.

Suitability of location

14. The appeal site and adjacent housing are within a defined Settlement Gap between the settlements of Hedge End and Bursledon and is within the countryside for policy purposes. Policy S5 of the Eastleigh Borough Local Plan [2022] (LP) identifies that a limited range of development is supported in the countryside. The proposed scheme would not meet these criteria. Furthermore, LP policy S6 states that development proposed within settlement gaps will be permitted provided it would not undermine the physical extent or visual separation of settlements and not have a detrimental urbanising effect on the character of the countryside.

15. The proposal would be set behind housing of West End Road along a country lane that is a 'no through road'. As such, the proposed scheme would be relatively discreet in wider views having a minimal impact on the physical extent of local settlements that LP policy S6 seeks to prevent from merging. Furthermore, it would not materially erode the visual separation of nearby settlements, despite being within the Settlement Gap.
16. Peewit Hill is a country lane in a semi-rural setting. The appeal site is adjacent to two groups of houses; a linear form of development that follows West End Road and an enclave of semi-detached homes arranged around a square of public open space. Residential plots are arranged within an open and dispersed setting. The site is an area of overgrown land severed from local residential plots and which makes a neutral contribution towards the character and appearance of the area.
17. The proposed semi-detached dwellings would stand between the two groups of existing housing and would therefore be within an infill plot. It is of insufficient size to provide a meaningful visual break between adjacent houses. Peewit Hill has a sylvan character, with boundary landscaping and fencing that contain the lane's rural character.
18. The proposed dwellings would be set behind a relatively deep frontage, including landscaped pockets, that would complement the local sylvan setting. The proposal would not be readily apparent from West End Road and would accord with the spacious and dispersed setting of neighbouring dwellings. Accordingly, the proposal would be recessed, with development that would respect its countryside setting. It would be in keeping with adjacent housing of Peewit Hill and would not materially contribute to the urbanisation of the land within the Settlement Gap.
19. The proposal would infill a space between two existing groups of development and would be well contained by existing built form. Although resulting in the provision of new built form, the proposed dwellings would not create a more urbanised street due to its degree of recess and retention of frontage planting. Consequently, the proposal would accord with surrounding housing and would complement the character and appearance of the area.
20. Consequently, the proposal would result in a loss, albeit very small, of the Settlement Gap through new development causing conflict with LP policy S5 and would therefore fail to comply with the locational restrictions of the development plan. This is a matter to be weighed in the planning balance.
21. However, the proposal would complement surrounding housing within this countryside setting, would not result in an urbanising effect on the area and would not therefore cause material harm to the character and appearance of the area. As such, the proposed development would comply with LP policies S6 and DM1 and the National Planning Policy Framework (the Framework). These seek, among other matters, for development to enhance the character and appearance of an area and take full and proper account of the context of a site.

Biodiversity issues

22. During my visit I noted that the site consists of low-lying scrub and brambles. An Oak tree, subject to a Tree Protection Order, together with several other trees are evident within the site's frontage. My understanding of the ecological value of the site, as seen during my visit, reflects the description of the site found in the

appellant's Preliminary Ecological Appraisal³ (PEA). The Council's evidence indicates that the appeal site was previously occupied by large shrubs that reached above the fence lines. I understand that the site is in an amber impact risk zone for great crested newts and there are records of protected species found nearby.

23. Since the 2 April 2024 it has been a requirement of the Town and Country Planning Act 1990 (as amended) for non-major planning applications to be subject to a statutory BNG Assessment. Planning Policy Guidance (PPG) explains that BNG is measured against the pre-development value of the site. It states that the pre-development biodiversity value should either be measured from the date of the application or, if earlier, must not predate the date that the statutory instrument came into force⁴. Although the PPG also identifies that deliberate harm or degradation of biodiversity might be a relevant factor when considering underlying value, this advice relates to the correct application of the statutory requirements and would not be relevant to this case. The application was made before the statutory provisions came into force and thus the proposal is not subject to the statutory BNG requirements.
24. LP Policy DM11 (Part 1(c)) states that the Council will determine applications to seek a net gain of biodiversity on all development sites. This policy predates the introduction of the statutory BNG requirements, and the LP does not explain how the pre-development biodiversity value of a site should be calculated. I understand that the site, other than the protected Oak tree, was not subject to any protections that would have prevented the landowner from removing green material from the site. As such, I see no reason in policy why the pre-development baseline should not be taken from when the applicant's appointed ecologist undertook their surveys in April 2024.
25. The PEA identified that no evidence of protected species was found on site. It found that the nearby priority habitat woodland could be impacted by construction site pollution and construction vehicles could cause physical damage. It includes ecological enhancement measures that have been designed, including the installation of a bat brick or box, a nest box, and landscaping to include native tree, hedge and shrub landscaping, to support BNG. The provision of these measures could have been secured by an appropriately worded condition had I been minded to allow the appeal. Although the extent of open space around the proposed dwellings would be limited, it would be of sufficient scope to accommodate the landscape provision identified in the PEA to deliver a gain to biodiversity.
26. Based on the provision of the stated ecological enhancements, the proposal would deliver suitable gains to biodiversity in compliance with LP policy DM11 (Part 1(c)).

Other Matters

27. The Council has explained that in its last formal review of housing supply it found it had a 5.1 years of housing land supply⁵. However, it has since identified that a draft calculation shows that it cannot demonstrate a 5-year supply of housing, with a provision of 4.4 years. The Local Plan is under review, and appears to be at the Issues and Options stage, with adoption anticipated in 2029. Although the Council

³ Preliminary Ecological Appraisal, by LHB Ecology, 17/5/24

⁴ Planning Policy Guidance: Paragraph: 012 Reference ID: 74-012-20240214

⁵ Calculation of Five-Year Housing Land Supply, Eastleigh Borough Council, August 2022

anticipate that the shortfall will be addressed by the adoption of the new Local Plan this has a limited bearing on the Council's current 5-year supply position.

28. The appeal site is within the countryside adjacent to a small cluster of dwellings. However, it is adjacent to West End Road providing a footpath link to nearby settlements. It is adjacent to the motorway network and close to train stations at Bursledon (1.5 miles), Sholing (2.5 miles) and Hamble (2.1 miles). Furthermore, a bus service runs along Providence Hill, which is a 9-minute walk along a public right of way, which connects to the stations. The site is near a range of goods and services, with a convenience shop within a 10-minute walk and a doctors surgery, dentist and school within a 20 minute walk. Accordingly, whilst outside a settlement, future occupiers of the proposal would have access to moderate levels of accessibility by sustainable travel means.

Planning Balance and conclusion

29. The Framework seeks to boost the supply of housing, The proposal would provide a modest contribution of two dwellings on a small site which would make better use of land in a moderately accessible location close to services in Hedge End, Sholing and Bursledon. The accessible location of the site would in broad terms comply with paragraph 110, of the Framework, that seeks to limit the need to travel and offer people a genuine choice of transport modes. There would also be some economic benefits during the construction phase when the development would provide jobs and opportunities for local companies and once occupied when future residents would support services in local settlements to which I ascribe modest further weight.
30. Furthermore, the proposal would complement the character and appearance of the area. The Framework requires planning decisions to recognise the intrinsic character and beauty of the countryside and for developments to be sympathetic to local character, to which I ascribe the Council's policies that refer to character and appearance full weight.
31. Weighed against these benefits is the fact that the appeal scheme would conflict with the development plan insofar as it does not meet the criteria of LP policy S5 and would harm the integrity of European sites in conflict with LP policy DM11 (Parts 2 and 3). The weight to be given to the conflict with the Council's locational policy is necessarily reduced, in my judgement, by its inability to demonstrate a five-year supply of deliverable housing sites. The Framework is clear that where this situation arises, relevant policies for the supply of housing should not be considered up to date. As a result, policies that define areas that restrict development must be regarded as 'relevant policies' in this context.
32. Nonetheless, full weight is given to the conflict with LP policy DM11 (Parts 2 and 3), which also complies with the requirements of the Framework at paragraph 193 and 194. These state that where significant harm to biodiversity cannot be avoided, mitigated or compensated then permission should be refused. Paragraph 11(d) states that when a Council cannot demonstrate it has a five-year housing supply a proposal should be given permission unless the application of policies in the Framework that protect areas of particular importance, including habitat sites, provide a strong reason for refusing the development proposed.
33. As such, despite applying reduced weight to the conflict found with LP policy S5, the conflict found with the development plan would result in significant harm to the

integrity of the New Forest SPA, SCA and Ramsar sites, providing a strong reason to resist the scheme. Accordingly, the appeal scheme would not accord with the development plan when taken as a whole and, as a result, the appeal should be dismissed.

B Plenty

INSPECTOR