

EASTLEIGH BOROUGH COUNCIL

Town and Country Planning Act 1990 – Section 78

**Town and Country Planning Appeals (Determination by Inspectors) (Inquiries
Procedure) (England) Rules 2000**

PROOF OF EVIDENCE

of

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Senior Ecologist, Eastleigh Borough Council

**Land east of Little Hatts Recreation Ground, Tickner Close, Botley, Southampton,
SO30 2SW**

Appeal by Mr Sonny James

Planning Inspectorate References:

APP/W1715/W/19/3231762

APP/W1715/W/19/3231763

APP/W1715/W/19/3231764

Eastleigh Borough Council References:

E/15/15959

F/17/81707

DECEMBER 2022

CONTENTS

	Page
1 Summary	3
2 Introduction	4
3 Description of the Appeal Site and Surroundings	5
4 Legislation, Policy and Guidance Context	6
5 Discussion	8

Appendices

1. Nutrient Budget Calculator Guidance Document v1 (Ricardo, Natural England, March 2022).
2. Natural England's advice regarding mitigation for recreational impacts on the New Forest SAC/ SPA/ Ramsar.

1.0 SUMMARY

- 1.1 Insufficient information has been provided by the appellant with regards to the treatment of the wastewater and nutrients generated on the site, without which it is not possible to determine the impacts on the water environment or with certainty that the development will not adversely affect the integrity of the Solent and Southampton Water Special Protection Area (SPA) and Ramsar site and Solent Maritime Special Area of Conservation (SAC) in connection with Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”).
- 1.2 A nutrient budget has not been submitted by the appellant, nor has sufficient information been provided for the Local Planning Authority to calculate this accurately which is required to ensure there is no impact on the internationally designated sites for nature conservation.
- 1.3 Justification for not complying to the presumption for connection to the mains sewer system, or the next preferred option of a Package Treatment Plant, has not been provided.

2.0 INTRODUCTION

- 2.1 I am Sarah Boyd, Senior Ecologist at Eastleigh Borough Council. I have worked in nature conservation for 14 years within the charity, public and private sectors. I have a BSc (Hons) in Geology and an MSc in Environmental Management from the University of Durham. I have a Certificate in Biological Recording and Species Identification from the University of Birmingham. In 2018, I was appointed as the Ecologist for Eastleigh Borough Council where one of my principal duties is providing ecological and drainage advice to the Council's Planning Department.
- 2.2 The evidence which I provide with regards to ecology and surface water treatment in this Proof of Evidence is true and has been prepared in line with current guidance. I confirm that the opinions expressed are my true and professional opinions. I am familiar with the location of the appeal proposal and have visited the site in question.
- 2.3 My evidence focuses on Reason for Refusal 5 of the refusal of planning permission 17/81707 appealed against.

3.0 DESCRIPTION OF THE APPEAL SITE AND SURROUNDINGS

3.1. The appeal site is described in the Council's Statement of Case and the proof of evidence by Alexandra Webb, Senior Planner and in further detail below.

3.2. The appeal site lies within the north-west corner of an agricultural field and is bounded by a wide hedgerow/ treeline to the west and woodland and a ditch to the north. The field comprises rough grassland, scattered scrub and woodland and is bounded by a woodland belt to the north, east and south and the wide hedgerow/ treeline along the western boundary. The site drains into a tributary, a main river, of the River Hamble which runs within the woodland along the southern boundary of the field. Approximately 1.9 km downstream, the River Hamble is designated for its international importance for nature conservation as the Solent Maritime Special Area of Conservation (SAC) and the Solent and Southampton Water Special Protection Area (SPA) and Ramsar Site.

4.0 LEGISLATION, POLICY AND GUIDANCE CONTEXT

National

- 4.1. Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”) as amended, states that: *(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in-combination with other plans or projects), and (b) is not directly connected with or necessary to the management of that site, must make an appropriate assessment of the implications for that site in view of that site’s conservation objectives. (2) A person applying for any such consent, permission or other authorisation must provide such information as the competent authority may reasonably require for the purposes of the assessment or to enable it to determine whether an appropriate assessment is required.*
- 4.2. Following recent nutrient neutrality case law, Natural England published advice on achieving nutrient neutrality for new development in the Solent Region to ensure that effects from this source do not adversely affect the integrity of the European sites. A Nutrient Budget Calculator and Guidance Document has since been published (March 2022) with the latter provided in Appendix 1.
- 4.3. Section 15 of the National Planning Policy Framework (NPPF), supported by Circular 6/2005, provides guidance to Local Planning Authorities on how conserve and enhance the natural environment. Paragraph 174 states that *“Planning... decisions should contribute to and enhance the natural and local environment by... protecting and enhancing... sites of biodiversity.... (in a manner commensurate with their statutory status...);”* and *“minimising impacts on and providing net gains for biodiversity”*

Local Development Plan

- 4.4. Policy DM8 *Pollution* of the Eastleigh Borough Local Plan 2016-2036, states that *“Development will not be permitted if it is likely to cause... unacceptable environmental impacts through... b. pollution of surface, underground, coastal waters or other watercourses”*.

- 4.5. Policy DM11 *Nature Conservation* of the Eastleigh Borough Local Plan 2016-2036, states that “*The Council... will determine planning applications, to: Protect, conserve and enhance all i. international, national and local nature conservation designations and ii. Networks of natural habitats and features, including... watercourses, wetland complexes... important to biodiversity.*” It also states that “*Development which is likely... to adversely affect the integrity of an international or European nature conservation site will not be permitted subject only to imperative reasons of overriding public interest and securing any necessary compensatory measures in the absence of alternative solutions*” and that “*Development will not be permitted if it is likely... to have a direct or indirect adverse effect on priority habitats, priority and protected species, and the local ecological network unless it can be demonstrated that: a. there are no alternative solutions; b. the adverse effects are unavoidable; c. measures are taken to mitigate or, as a last resort, compensate for the adverse effects; d. there is an overall biodiversity net gain; and e. if there are any residual effects, the benefits of the development clearly outweigh the adverse [ecological] effects.*”

Eastleigh Borough Council’s Biodiversity Supplementary Planning Document (SPD),
December 2009

- 4.6. Section 3.14 of the Biodiversity SPD states that “*The developer is required to provide the Council with the necessary information in order to undertake an Appropriate Assessment...*”.
- 4.7. Section 3.17 of the Biodiversity SPD states that “*If it cannot be demonstrated that the application will not adversely affect an international or European site... then the application will be refused unless there are no alternative solutions and the development has to be carried out for imperative reasons of over-riding public interest...*”.

5.0 DISCUSSION

Refusal of application F/17/81707 (appeal ref APP/W1715/W/19/3231764)

Reason for Refusal 5 – The impact of the use of the cess pit has not been adequately assessed in relation to the impact on the catchment area that serves the River Hamble Special Area of Conservation and Special Protection Area. In relation to the cess pit it has not been demonstrated that more sustainable methods of foul water disposal could be utilised that would have a lesser impact on water quality. The impact is therefore considered likely to have an unacceptable impact on a European Designated site contrary Policy 25.NC and The Conservation of Habitats and Species Regulation (2017).

- 5.1. Insufficient information has been provided by the appellant with regards to the treatment of the wastewater and nutrients generated on the site, without which it is not possible to determine the impacts on the water environment or with certainty that the development will not adversely affect the integrity of the Solent and Southampton Water Special Protection Area (SPA) and Ramsar site and Solent Maritime Special Area of Conservation (SAC). This is required to comply with Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”) as amended. This is supported in Policies DM8 and DM11 of the emerging Local Plan and the Biodiversity SPD.
- 5.2. The development must achieve nutrient neutrality (specifically nitrogen within the Hamble catchment) to prevent likely significant effects on the SAC, SPA and Ramsar site. A nutrient budget is required to assess the likely increase in nutrients from both the domestic wastewater and the land use change and to determine the level of required mitigation to achieve nutrient neutrality. The appellant has not submitted a nutrient budget, nor submitted sufficient information to inform a fair nutrient budget.
- 5.3. A septic tank and drainage field is proposed to treat the foul water from the static van and day room. Information has not been provided regarding the manufacturer’s specification for the likely nitrogen content of the wastewater discharge from the septic tank and drainage field. This is required for a relatively accurate and fair calculation in Stage 1 of the nutrient budget. A standard occupancy rate of 2.4 people per dwelling can be applied to the calculation in line with Natural England’s advice.

[Note, the General Binding Rules must also be adhered to for the use of a septic tank and facilitated within the planning process, for example, ensuring the correct size and standard, or an Environment Agency permit is required].

- 5.4. Justification has not been provided for not connecting the wastewater to the mains sewer which is a preferred, more sustainable and reliable approach for water treatment to private treatment systems. Natural England guidance states that the Environment Agency has a presumption against private sewage treatment works in sewered areas primarily due to their failure rates. Package Treatment Plants (PTPs) are considered more effective at treating wastewater than septic tanks and therefore justification for not using a PTP is also required.
- 5.5. Natural England states within the Nutrient Budget Calculator Guidance Document v1, March 2022, that *“If a septic tank or PTP is being used then a comprehensive maintenance regime is required as part of the application process.”* A proposed maintenance regime of the system must therefore be submitted prior to determination.
- 5.6. Land use information for the site prior to development is required for Stage 2 of the nutrient budget calculations. The land use of the application site prior to the development has not been stated by the applicant and is not clear because unconsented development had taken place prior to the submission of the application.

Other matters

- 5.7. The following matters were not included in the Reasons for Refusal, either because of a change in Natural England guidance which postdates the planning decision, or the presumption that the resultant impacts arising from the development could be addressed and mitigated to some extent within the planning process should permission be granted, for example, via planning conditions or legal agreement. Recommended conditions to address some of the following points within this section are set out in Appendix 9 of the proof of evidence of Alex Webb.
- 5.8. Since the planning application was decided, Natural England has concluded that recreational activity generated by some new development within Eastleigh Borough is likely to have a significant negative effect on the New Forest SAC/ SPA/ Ramsar site.

Therefore, as the appeal site lies within 13.8km of the New Forest SAC/ SPA/ Ramsar site, recreational impacts will now have to be assessed and mitigation secured prior to determination of the planning application under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”) as amended, in line with the latest advice from Natural England (shown in Appendix 2).

- 5.9. Stable washdown, which could potentially contain other pollutants such as disinfectants and shampoos, and run-off from any manure store could adversely affect the water environment. Appropriate measures will need to be put in place to mitigate any adverse effects. The Environment Agency has requirements regarding these which need to be followed and addressed through the planning process. These may include the installation of sealed storage tanks for tankering wastewater off site or purpose-specific treatment plants if connection to the main foul sewer is not possible. Please note, the effluent from these sources cannot be discharged into the septic tank installed to treat the waste from the dwelling, unless the manufacturer or qualified drainage engineer specifies it will not affect the functioning capacity of the septic tank. Any discharge on site arising from the treatment of this effluent via treatment plant will require an Environment Agency Discharge Permit.
- 5.10. The surfacing of the application site is in part gravel and therefore is likely to be permeable which reduces flood and water quality risks. However, there are unauthorised areas of impermeable hardstanding at the entrance of the site and in front of the stables. The surface run-off from these areas, including run-off from the roofs must be dealt with appropriately to ensure greenfield run-off rates and water quality are not compromised.
- 5.11. No ecological survey information has been submitted at any stage in the planning process and therefore there is no evidence of notable species or habitats being present on or in proximity to the site prior to development. Ecological mitigation, compensation or enhancement proposals have not been provided.
- 5.12. Inadequate buffers have been provided to the hedgerow at the western boundary and woodland and ditch at the northern boundary with the fencing and development abutting these. This has removed invaluable woodland/ hedgerow edge habitat thus degrading the biodiversity value of the adjacent hedgerow and woodland. The fencing and any

other development and hardstanding should be moved away from the boundary vegetation and ditch by a minimum of 5 metres to reinstate this habitat.

5.13. The development has resulted in a net loss of habitat with the removal of approximately 0.15 hectares of rough grassland (identified from historic aerial imagery). Compensation for the loss of habitat must be provided and biodiversity net gain sought in line with Policy DM11 of the emerging Local Plan and Section 15 of the NPPF 2021. This compensation could potentially be provided through the enhancement of the reinstated 5 metre buffer outlined in paragraph 5.12.

5.14. Information on existing or proposed external lighting has not been provided. There must not be any light spill into the adjacent and surrounding habitat to prevent disturbance to nocturnal and crepuscular fauna. Any external lighting must be minimal and directed away from habitats.

5.15. There is a significant amount of debris in the treelines/ hedgerows bordering the site. There must be no storage of materials or dumping of waste in or in proximity to the adjacent hedgerows, woodland, agricultural land and ditches.

Appendix 1: Nutrient Budget Calculator Guidance Document v1 (Ricardo, Natural England, March 2022).

Appendix 2: Natural England's advice regarding mitigation for recreational impacts on the New Forest SAC/ SPA/ Ramsar (December 2021)

Recreational impacts on the New Forest SAC, SPA and Ramsar

Recent analysis shows that new residential development within a 13.8km buffer zone of the New Forest designated sites is likely to have a significant effect on the sites via recreational impacts (including disturbance, trampling, eutrophication amongst others), alone and/or in combination with other plans or projects. Larger developments (e.g. EIA development) beyond this zone but within 15km may also contribute to recreational impacts on the designated sites.

For applications situated within 13.8km zone, and therefore Natural England advise your Habitats Regulations Assessment includes this potential impact pathway for consideration, alone and in combination with other plans/projects, proceeding to appropriate assessment stage where likely significant effects cannot be ruled out. It will need to set out in detail any mitigation measures that will be secured in this case, along with the necessary justification of their likely efficacy so as to ensure there is no adverse effect on the integrity of the site(s) in accordance with the Conservation of Habitats and Species Regulations 2017 (as amended). Natural England will be happy to advise your Council and/or the applicant further on this aspect via our Discretionary Advice Service.