

# **EASTLEIGH BOROUGH COUNCIL**

## **Town and Country Planning Act 1990 – Section 78**

### **Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2020**

## **STATEMENT OF CASE**

### **ON BEHALF OF EASTLEIGH BOROUGH COUNCIL**

**Planning appeal against refusal to grant outline planning permission for the construction of up to 148 residential dwellings (Use Class C3) with new vehicular access to Hamble Lane, alterations to Kings Avenue and Coronation Parade, new car parking for existing sports facilities, employment use and residential properties, landscaping, improvements to existing bowls and football facilities on site and other associated works and demolition of non-original extensions to Sydney Lodge (Grade II\* Listed Building) and redundant factory buildings with all matters reserved except for means of access.**

**Land at GE Aviation, Kings Avenue, Hamble-Le-Rice, Southampton, SO31 4NF**

**Appeal by GE Aviation**

**Planning Inspectorate Reference: APP/W1715/W/20/3255559**

**Eastleigh Borough Council Reference O/18/84191**

**SEPTEMBER 2020**

## **1. INTRODUCTION**

- 1.1 This Statement of Case is provided by Eastleigh Borough Council (“the Council”) in the above appeal proceedings in accordance with Annexe J of the PINS Procedural Guide (July 2020).
- 1.2 Having considered the application at two Committee hearings (in July and December 2019) the Council refused planning permission for the 6 reasons set out in its decision notice of 16 January 2020 (see Section 12 below). This Statement of Case sets out the Council’s position in respect of each of these reasons. However, it is hoped that, between the submission of this Statement of Case and the commencement of the Inquiry, agreement may have been reached on the fourth, fifth and sixth of those reasons. The key areas outstanding are likely to relate to the principle of the proposed development in relation to the development plan, emerging plan and Government policy (reason 1) and impacts on the highway network / access (reasons 2 and 3).

## **2. DESCRIPTION OF APPEAL SITE AND SURROUNDING AREA AND APPEAL PROPOSALS**

- 2.1 A description of the appeal site is provided at paragraphs 12-15 of the Officer’s December 2019 committee report. A description of the appeal proposals is given at paragraphs 1-7 of the same report.

## **3. HISTORY OF THE APPEAL SITE AND ADJOINING SITES**

- 3.1 Paragraph 16 of the Officer’s December 2019 committee report refers to the fact that the site has been subject to numerous industrial development proposals, as would be expected with an employment site of this magnitude.
- 3.2 Paragraph 16 also refers to the separate planning application (reference F/18/84621) and Listed Building Consent application (reference L/19/85126) for works to Sydney Lodge submitted alongside this appeal application. F/18/84621 seeks full planning permission for the ‘demolition of single storey former extensions and warehouse building and construction of a single storey rear extension, formation of a flat-roofed glazed atrium extension, new external wrought iron staircase with railings, new raised terrace, low level wall and rebuild historic wall to raise garden with landscape frontage and alterations to openings and windows. Removal of internal non-original partition walls and formation of spiral staircase, changing cubicles and false ceiling over toilet block.’ The application identifies a red line site boundary around the listed building and grounds, and identifies the rest of the GE Aviation Campus in blue.

- 3.3 Listed Building Consent application L/19/85126 sought 'Listed Building Consent for the demolition of single storey former extensions and warehouse building and construction of single storey rear extension; formation of flat roofed glazed atrium extension, new external wrought iron staircase with railings, new raised terrace, low level wall and rebuild historic wall to raise garden with landscape frontage and alterations to openings and windows. Removal of internal non-original partition walls and formation of spiral staircase, changing cubicles and false ceiling over toilet block.' As above, the red line application boundary is drawn around the curtilage of the Listed Building with the remainder of the GE Aviation campus shown in blue.
- 3.4 Both applications were considered by the Bursledon, Hamble-le-Rice and Hound (BHH) Local Area Committee on 25<sup>th</sup> July 2019. The committee resolved, subject to consideration of Historic England comments in consultation with the Chair & Vice Chair, to delegate the decision to grant planning permission and Listed Building Consent to the Head of Housing and Development.
- 3.5 Historic England subsequently confirmed that they did not wish to offer any comments and advised that the Council seek the views of its own specialist conservation and archaeological advisers as relevant for both applications. Accordingly, the Council is seeking to resolve this matter to enable decisions to be issued and will update the Appellant and Inspector in due course.
- 3.6 It is noted that the description for the outline application the subject of this appeal provides for '...Demolition of non-original extensions to Sydney Lodge (Grade II\* Listed Building) and redundant factory buildings'. However, no LBC application has been received in conjunction with this application. Section 5.1 of the Heritage Statement accompanying the outline application refers to the submission of an LBC application in conjunction with the outline application, to secure the removal of harmful extensions which would be demolished as part of the ongoing repair and consolidation works. Further, the appellant's Statement of Case at para. 7.51 makes reference to the proposals including 'the demolition of the modern extensions to Sydney Lodge (Grade II\*) and the making good of these elements'. The paragraph continues, 'Separate planning and listed building applications were submitted for other works to the building (*to*) bring the building back to a standard whereby it can be occupied again, and EHC resolved to grant consent at the 19 July 2019 Committee.' (NB. For clarity, BHH Local Area Committee resolved to grant consent at the 25 July 2019 committee.)

- 3.7 A difficulty currently exists due to the lack of provision in the outline application for making good post-demolition and the lack of an associated LBC application, firstly, because LBC has not been secured for the demolition of the extensions, as required; and secondly, because the description does not provide for the making good of the building following the removal of the extensions, which may, in itself, require planning permission. The demolition without making good would clearly not be an acceptable outcome.
- 3.8 While the granting of consent for the existing LBC and full planning application could go some way to resolving this issue, those applications do not include the works that would be required to 'make good' if the proposed extensions and other alterations were not to be carried out (i.e. if only the demolitions under the outline application were carried out). Notwithstanding the fact that these applications remain to be consented, it is apparent that they do not breach the gap between the outline application and the requirement for LBC to demolish and make good, and for planning permission to make good, thereby delivering the heritage benefits identified by the appellant. The Council believes it should be possible to resolve this matter and will work with the appellant to do so prior to the commencement of the Inquiry.

#### **4. STATUTORY REQUIREMENTS**

- 4.1 In accordance with Sections 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 this Appeal must be determined in accordance with the Development Plan unless material considerations indicate otherwise.
- 4.2 Since the proposal affects Sydney Lodge (a Grade II\* listed building), section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 is also relevant. It requires that *"in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses"*. This section creates a *"strong presumption"* against proposals which would harm a listed building or its setting: *Barnwell v East Northamptonshire DC* [2014] EWCA Civ 137.

#### **5. DEVELOPMENT PLAN POLICY AND EMERGING POLICY**

- 5.1 The Development Plan in this case comprises the Eastleigh Borough Local Plan Review 2001-2011 and the Hampshire Minerals and Waste Plan 2013.

## Eastleigh Borough Local Plan Review 2001-2011

- 5.2 The Eastleigh Borough Local Plan Review was adopted in May 2006. In November 2008, the Council submitted a list of proposed Saved Policies to the Secretary of State with a request that these be saved until they could be replaced by the new Local Development Framework.
- 5.3 This list comprised the majority of the policies in the adopted Local Plan including Policy 1.CO and all of the other adopted Local Plan policies referred to in the Council's decision notice. The listed policies were formally saved in May 2009.
- 5.4 The relevant saved policies of the adopted Local Plan to this Appeal are:
- 1.CO - seeks to limit development in the countryside to a range of appropriate uses;
  - 18.CO – seeks to limit development which has an adverse effect on the character of the landscape;
  - 25.NC – promotion of biodiversity;
  - 45.ES – Sustainable Drainage requirements;
  - 59.BE - seeks to ensure high quality and appropriate design;
  - 92.T – Hamble Lane / Portsmouth Road junction improvements, Eastleigh Quality Bus Partnership and Eastleigh Cycle Route Network;
  - 100.T – requirement for development to be well served by sustainable forms of transport;
  - 101.T - contributions towards sustainable transport;
  - 102.T - safe accesses to adoptable standards;
  - 145.OS – loss of open space;
  - 147.OS – open space requirements for new developments;
  - 165.TA – percent for art;
  - 191.IN – developer contributions.
- 5.5 The appeal site lies partly within and partly outside the urban edge as defined within the adopted Local Plan. The delineation of the urban edge boundary has remained consistently defined in the vicinity of the appeal site since before the adoption of the Local Plan in May 2006. The area currently used as sports pitches, bowling green and associated parking lies outside the urban edge, with the existing employment buildings, Sydney Lodge Grade II\* listed building and area of staff car parking lying within the urban edge. The Appellant states that the total site area is 8.83ha. However, in preparing this Statement of Case the Council

has measured the site on the GIS, and it appears to be 9.9ha, of which 4.6ha lies within the urban edge and 5.3ha lies outside.

- 5.6 The significant area of the site which lies outside the urban edge (53.5% on the Council's calculation) is classified under Policy 1.CO as countryside. Policy 1.CO of the adopted Local Plan states:

*“Planning permission will not be granted for development outside the urban edge unless:*

- i. it is necessary for agricultural, forestry or horticultural purposes and a countryside location is required; or*
- ii. it is for an outdoor recreational use or is genuinely required as ancillary to such a use and does not require the provision of buildings, hardstanding or structures which, are of a form, scale or design which would demonstrably harm the character of the locality; or*
- iii. it is essential for the provision of a public utility service or the appropriate extension of an existing education or health facility and it cannot be located within the urban edge; or*
- iv. it meets the criteria in the other policies of this Plan.*

*The extension of private gardens into the countryside will not be permitted.”*

- 5.7 It is the Council's position that the Appeal proposals are contrary to Policy 1.CO as they do not fall into any of the exceptions specified above whereby permission might be granted for development in the countryside. The Appellant accepts this at paragraph 7.1 of its Statement of Case, though it (inconsistently) suggests that the appeal proposal accords with Policy 1.CO at paragraph 7.10.
- 5.8 The supporting text to Policy 1.CO provides explanation of the context for its interpretation and implementation. Paragraph 1.1 notes that the Council aims to protect the countryside from inappropriate development whilst still accommodating genuine development needs. Paragraph 1.2 notes that:

*“The Council recognises that the countryside is important for many reasons including agricultural production, landscape value, providing a setting for our towns and*

*villages, recreational provision, nature conservation interest and for its own sake. However, countryside is a diminishing resource and there is a need to be particularly vigilant about its future use.”*

5.9 Policy 18.CO of the adopted Local Plan states:

*“Development which fails to respect, or has an adverse impact on the intrinsic character of the landscape, will be refused.”*

5.10 Policy 59.BE states that development proposals which accord with other policies in the plan will be permitted provided each of ten criteria are met. Criterion i of the policy requires that development proposals:

*“take full and proper account of the context of the site including the character and appearance of the locality or neighbourhood and are appropriate in mass, scale, materials, layout, density, design and siting, both in themselves and in relation to adjoining buildings, spaces and views, natural features and trees worthy of retention;”*

5.11 The Council will argue that the appeal proposals would represent an inappropriate, unnecessary and unjustified form of development which would result in the loss of countryside and have an unacceptably urbanising impact to the detriment of the character, visual amenity and intrinsic landscape quality of the site and its surroundings, contrary to Policies 18.CO and 59.BE(i).

5.12 Policy 92.T of the adopted Local Plan identifies a list of Local Transport Plan proposals from which developer contributions will be sought to support their implementation. Of particular relevance to this Appeal are the following:

- Hamble Lane/Portsmouth Road - corridor/junction improvements;
- Windhover Roundabout – full signalisation; and
- A27 Bursledon to Romsey bus priority/pedestrian/cycle access scheme.

5.13 Policy 102.T deals with access arrangements for new development proposals. It states that:

*“Development requiring new or improved access will be permitted provided it does not:*

*i. interfere with the safety, function and standard of service of the road network; or*

*ii. have adverse environmental implications and is to the adopted standard of the highway authority.”*

5.14 As already noted, Policy 59.BE seeks to promote good design in all new development and sets out that development proposals which are in accordance with other policies in the Local Plan will be permitted provided they meet all of a list of ten criteria. Criterion v requires proposals to:

*“...have a satisfactory means of access and layout for vehicles, cyclists and pedestrians including appropriate links to surrounding footpaths, cycleways and public transport services;”*

5.15 The Council contends that the appellant has failed to demonstrate that an appropriate means of access can be provided to serve the development without unacceptable impact on the footpath and cycleway infrastructure to the detriment and ease of use and safety of pedestrians and cyclists, contrary to the provisions of the above policies.

5.16 Policy 100.T of the adopted Local Plan requires that:

*“Development which accords with other relevant policies of this Plan will be permitted provided it meets all the following criteria:*

- i. it is, or could be well served by public transport, cycling and walking;*
- ii. it includes measures that minimize its impact on the existing transport network;*
- iii. that where a large number of journeys are likely to be generated, the development is located to minimize travel demand and provide a choice of transport mode; and*
- iv. that where appropriate a Transport Assessment in accordance with the thresholds set out in Table B of the Hampshire Parking Strategy and Standards is included with the proposals.”*

5.17 Policy 101.T states that:

*“Development which results in additional traffic on the local road network greater than the levels of growth permitted by the RTRA targets for the Borough of Eastleigh will:*

- i. only be permitted if the Council is satisfied that there is a proven need for the development in the location proposed and;*
- ii. be subject to the provision of contributions towards the implementation of the Local Transport Plan and/or other*

*transport proposals set out in this local plan. Any such contributions will be set at a level appropriate to the scale and impact of the development.”*

5.18 The Council contends that the significant increase in traffic movements generated by the appeal proposals, when considered cumulatively with a potential for a growth in traffic associated with the retained commercial activities on site, would result in a severe impact on the road safety and operation of the local transport network. It has not been demonstrated that the mitigation measures proposed within the Appellant’s Transport Statement – which derive from the Local Transport Plan - will be sufficient to offset the impacts of the proposed development and that as such their severity is materially reduced. Furthermore, while the Appellant has committed to making contributions towards such measures, the timing and form of their delivery is unclear. The Council has not been provided with evidence or information which indicates that the mitigation measures will be delivered and as such it is reasonable to conclude that the traffic impacts of the proposed development would go largely unmitigated.

5.19 Policy 145.OS of the adopted Local Plan states:

*“The Borough Council will refuse any proposals that would result in the loss of land currently used for children’s play, sports pitches, open space or outdoor sports, whether in public or private ownership unless:*

- i. the proposed development is ancillary to the principal use of the site and does not adversely affect the quality and quantity of pitches and their use; or*
- ii. the proposed development only affects land which is incapable of forming, or forming part of, a playing pitch; or*
- iii. the open space that would be lost as a result of the proposed development would be replaced by open space of equivalent or better quality and quantity in a suitable location, prior to the commencement of the development; or*
- iv. the proposed development is for an outdoor or indoor sports facility of sufficient benefit to the development of sport to outweigh the detriment caused by the loss of the playing field; or*
- v. in the case of school playing fields, the land is surplus to educational requirements and there is no local shortage of open space in the locality, for which the land could reasonably be used.”*

5.20 It is the Council’s current position that the appellant has failed to provide sufficient information to demonstrate that the loss of land currently used as football pitches and a cricket wicket can be adequately mitigated within the Parish of Hamble-Le-Rice. However, it

hopes that it will be possible to reach agreement with the Appellant on this point in advance of the Inquiry.

5.21 Policy 25.NC of the adopted Local Plan states:

*“Development which will adversely affect a habitat or feature of importance for wild fauna and flora will not be permitted, unless it can be demonstrated to the satisfaction of the Council that:*

- (i) the benefits of the development outweigh the adverse impacts;*
- (ii) the adverse impacts are unavoidable, and*
- (iii) appropriate measures are taken which would mitigate or compensate for any adverse impact.”*

5.22 Policy 45.ES of the adopted Local Plan states:

*“Development proposals must incorporate adequate measures for the disposal of surface water from the development including, where practicable, source control techniques and sustainable drainage systems, incorporating defined arrangements for the future maintenance of the system.”*

5.23 It is the Council’s current position that the appeal proposals are contrary to the provisions of these policies in that they fail to secure the required mitigation to offset the impacts of the proposed development on a European protected site (SPA, SAC and pSPA) from nitrogen loading generated by the population increase arising from the development. However, it hopes that it will be possible to resolve this matter with the Appellant in advance of the Inquiry.

5.24 Policy 191.IN of the adopted Local Plan states that:

*“Appropriate proposals for development will be permitted provided that the developer has made arrangements for the provision of the infrastructure, services, facilities and amenities directly made necessary by the development or has made arrangements to contribute towards the early improvement of existing infrastructure, services, facilities and amenities, the need for which will increase as a direct result of the development proposed.”*

5.25 Policy 147.OS of the adopted Local Plan states:

*“The Borough Council will require, in connection with new residential developments, the minimum provision of 2.85 hectares of public open space per 1,000 population. In practice;*

- i. where the development involves the net increase of between 1 and 24 residential units, the Council will seek agreements for a contribution towards open space provision or towards improving equipment/facilities on sites in the locality;
- ii. where the development involves a net increase of between 25 and 44 residential units, open space provision will be sought on-site, unless the open space requirement arising can be accommodated by enhancing existing public open space within a 300 metre walking distance of the development, in which case a financial contribution will be sought towards offsite improvements;
- iii. where the development involves a net increase of 45 residential units or more, appropriate open space provision will be sought on-site to meet the open space needs arising from the development.”

5.26 Policy 165.TA of the adopted Local Plan states:

*“The Borough Council recognises the contribution of the arts to the quality of life of its residents and will promote the commissioning of appropriate public art in new development. The Council will encourage developers to set aside 1% of the cost of new development for commissioning art work.”*

5.27 The Council currently considers that the appeal proposals are contrary to the provisions of Policies 147.OS, 165.TA and 191.IN (and also 101.T quoted above) in that they fail to secure provision of, or developer contributions towards, on and off-site provision of facilities and infrastructure made necessary by the development or to mitigate against any increased need or pressure on existing facilities. However, the Council will seek to work with the Appellant to resolve this matter prior to the commencement of the Inquiry.

#### Hampshire Minerals and Waste Plan 2013

5.28 The appeal site lies within a mineral safeguarding area as defined in Policy 15 of the adopted Hampshire Minerals and Waste Plan (2013). Hampshire County Council, as the Minerals & Waste Planning Authority has raised no objection to the proposal, noting that incidental extraction (rather than full prior extraction) is a viable possibility whereby small quantities of material are extracted during the normal construction process. A condition is proposed to be attached to any permission which may be granted to satisfactorily address this.

### The Submitted Eastleigh Borough Local Plan 2011-2029

- 5.29 The Eastleigh Borough Local Plan 2011-2029 was submitted for examination in July 2014 but was subsequently declared unsound, largely in respect of the plan's provision for housing and affordable housing.
- 5.30 Whilst the 2011-2029 Local Plan has not been formally withdrawn and while it contained many equivalent policies to those quoted above from the adopted Local Plan, with the more recent submission and examination of the Submitted 2016-2036 Eastleigh Borough Local Plan, it is considered to carry very little, if any, weight for the purposes of this appeal.

### The Submitted 2016-2036 Eastleigh Borough Local Plan

- 5.31 The Council is preparing a new borough-wide Local Plan to replace the 2011-2029 plan and the adopted Local Plan. The 2016-2036 Eastleigh Borough Local Plan was submitted to Government on 31<sup>st</sup> October 2018. The Public Examination hearings commenced on 21<sup>st</sup> November 2019 and ran until the 29<sup>th</sup> January 2020. The Council is currently responding to various requests for further information and changes to the Local Plan and preparing Main Modifications which will be subject to public consultation at the end of 2020.
- 5.32 The degree of weight to be attached to this Local Plan has increased during the course of the consideration of the appeal proposal as it has progressed towards adoption. Equally the degree of weight to be attached to the 2011-2029 plan has decreased accordingly.
- 5.33 The 2016-2036 Local Plan contains equivalent policies to those quoted above which are contained in the adopted Local Plan and were relied upon in the consideration and determination of the planning application which is now the subject of this appeal.

- 5.34 The key policies referred to in the reasons for refusal are as follows:

- Strategic Policy S1(ix) – Delivering Sustainable Development
- Strategic Policy S7 – New Development in the Countryside
- DM1i(a) – General Criteria for New Development
- DM13 – General Development Criteria - Transport
- DM34 – Protection of Recreation and Open Space Facilities
- DM10 – Water and Waste Water
- DM11 – Nature Conservation
- DM40 – Funding Infrastructure

5.35 Strategic Policy S1(ix) seeks to both maintain and avoid damage to existing valued environments and heritage assets. Strategic Policy S7 applies a presumption against new development in the countryside unless it is for certain prescribed uses listed in criteria i to vii of the Policy. Policy DM1 sets out general criteria for all new development and criterion i(a) sets out to protect and enhance residential amenity and the character and appearance of urban areas, the countryside and the coast. Policy DM13 sets out general development management requirements for the transport and highway aspects of new development including requirements that all development should have a safe and convenient access to the highway and should not have a detrimental impact on the operation or safety of the highway network. Policy DM34 sets out to resist the loss of existing or allocated recreation or open space facilities unless certain specified exceptional circumstances exist. Policy DM10 aims to protect and enhance protected water bodies and ensure that major new development is phased alongside proposed improvements to the borough's water and waste supply infrastructure. Policy DM11 aims to protect, conserve and enhance areas subject to nature conservation designations, protected habitats and biodiversity and requires that, where development does create adverse impacts, these are mitigated to an acceptable degree. Finally, Policy DM40 requires that new development is supported by the infrastructure, facilities and services necessary to serve it.

5.36 The Council will explain its current position in respect of proposed modification to these submitted policies as necessary.

5.37 Given the stage the emerging Local Plan had reached in the process towards adoption, the Council noted at paragraph 72 of the December 2019 Officer Committee Report that the policies contained in the submitted Local Plan could be afforded moderate weight. Given the stage now reached in the preparation of the emerging Local Plan, the Council considers they can be afforded at least moderate if not considerable weight.

5.38 The Council will explain, in full, in evidence what has happened to the Local Plan following the close of the examination hearings in January 2020. In brief, the Inspector wrote to the Council on the 1<sup>st</sup> April 2020 setting out a number of matters on which she sought further information and recommending actions the Council might take to resolve a number of issues she identified in the Local Plan in order that the Plan might progress towards adoption. The Council resolved at a meeting of its Cabinet on 25<sup>th</sup> June 2020 to accept the Inspector's

recommended actions and to provide the information necessary for the plan to continue towards adoption and officers are working on that at present.

5.39 One specific matter raised in the Inspector's 1<sup>st</sup> April letter which has some relevance to this Appeal is the Council's Development Distribution Strategy & Principles ("DDSP") document which the Council used to help inform its strategy for selecting locations for strategic scale growth. In short, this document sought to direct strategic scale growth away from the Hamble peninsula in view of the impacts it would have on traffic, erosion of countryside gaps and land safeguarded for minerals extraction. The Inspector's view was that the Council was wrong to place such reliance on this document to identify locations for strategic scale growth given that it was drawn up without sufficient evidence to underpin elements of it (particularly transport issues) such that the Inspector considered the spatial strategy of the emerging Local Plan was not justified in this respect. For this and other reasons, the Inspector recommended the Local Plan's Strategic Growth Option (SGO) be deleted from the emerging Local Plan and that this matter should be addressed through an early review of the Plan to which the Council has committed. The Council's view, therefore, is that future decisions about strategic scale growth on the Hamble peninsula (and across the borough as a whole) should be taken through the early review of the Local Plan.

5.40 The Council will also explain in evidence that the emerging Local Plan introduces a settlement hierarchy under Strategic Policy S1. The Plan notes, at paragraph 4.6, that:

*"The Borough's settlement hierarchy as set out in table 1 is the main consideration when considering the overall spatial distribution of new development and the appropriate scale of development. The settlement hierarchy is based on the facilities that already exist in local communities. It identifies both the most sustainable locations i.e. those which have the most employment, local services and amenities and where the need to travel is therefore reduced; and highlights areas where such facilities are needed, and could be provided through allowing sufficient development."*

5.41 The plan identifies a 4-level hierarchy with Eastleigh town itself the only settlement in level 1. Chandlers Ford and Hedge End comprise level 2, with Hamble falling in level 3 alongside Bishopstoke, Botley, Bursledon, Fair Oak, Netley Abbey and West End. Level 4 comprises the smaller settlements of Allbrook, Boorley Green, Butlocks Heath and Horton Heath.

5.42 The relevance of this is not that the Council considers the Appeal proposal to be in an unsustainable location when viewed in its own right in terms of the facilities and amenities nearby in Hamble in general and Coronation Parade in particular. Rather it is to highlight the point that, when viewed in the wider context of the borough as a whole, there are other locations considered more sustainable. As we operate under a plan-led system, decisions on large developments such as the appeal proposal (in the context of a village the size of Hamble-le-Rice) are best made through the Local Plan process.

5.43 The Council did consider the Appeal site as one of over 200 sites put forward for consideration for allocation in the Local Plan but it was not selected for allocation as it was considered less sustainable than other sites also under consideration.

5.44 These matters will be elaborated on in evidence.

## **6. NATIONAL PLANNING POLICY**

6.1 The National Planning Policy Framework (2019) (NPPF) sets the Government's planning policies for England and how it expects them to be applied. The NPPF is an important material consideration for the purposes of making planning decisions.

### Sustainable Development

6.2 Paragraph 2 of the NPPF notes that *"planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise"* and that the NPPF is a material consideration in planning decisions.

6.3 Paragraph 7 notes that *"the purpose of the planning system is to contribute to the achievement of sustainable development"* of which there are three overarching objectives; an economic objective, a social objective and an environmental objective (paragraph 8).

6.4 Paragraph 9 notes that:

*"These objectives should be delivered through the preparation and implementation of plans and the application of the policies in this Framework; they are not criteria against which every decision can or should be judged. Planning policies and decisions should play an active role in guiding development towards sustainable solutions, but*

*in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area”*

6.5 Paragraphs 10 & 11 note that, at the heart of the NPPF is the “*presumption in favour of sustainable development*” which means that, in terms of decision-taking:

*c) approving development proposals that accord with an up-to-date development plan without delay; or*

*d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date<sup>7</sup>, granting permission unless:*

*i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed<sup>6</sup>; or*

*ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

6.6 Footnote 6 defines the policies referred to in paragraph 11(c)(d)(i).

6.7 Footnote 7 elaborates on what constitutes ‘out-of-date’ policies thus:

*“7 This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. Transitional arrangements for the Housing Delivery Test are set out in Annex 1.”*

6.8 Paragraph 12 reiterates the point made in paragraph 2 that the presumption does not change the statutory status of the development plan as the starting point for decision making.

*“Where a planning application conflicts with an up-to-date development plan ..... permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.”*

6.9 The Council will argue that the appeal proposal does not accord with the development plan and that the development plan policies are not out-of-date (as they are broadly consistent

with the provisions of the NPPF as a whole and because the Council is able to demonstrate both a five year supply of deliverable housing sites and that the delivery of housing was not less than 75% of the housing requirement over the previous three years – indeed, if required, the Council will provide evidence that housing delivery in the borough has reached unprecedented levels in recent years).

6.10 Furthermore, the Council will argue that there are no other material considerations to justify a departure from the development plan and that, the adverse effects of granting permission significantly and demonstrably outweigh the benefits in this context.

6.11 It is the Council’s view that the scale of development proposed in the appeal proposal, in relation to the size and nature of the settlement of Hamble-Le-Rice as a whole, is such that it should be more properly determined in the round through the local plan process rather than in isolation. The current situation with regard to the emerging 2016-2036 Local Plan is such that the Council is already committed to an early review of that plan.

#### Plan-Making

6.12 Chapter 3 of the NPPF deals with plan-making, noting at the outset (paragraph 15) that *“the planning system should be genuinely plan-led”*.

#### Decision-Making

6.13 Paragraph 38 requires Councils to *“approach decisions on proposed development in a positive and creative way”* and that decision-makers at every level should *“seek to approve applications for sustainable development where possible”* (but not unsustainable development).

#### Determining Applications

6.14 Paragraph 48 of the Framework establishes that planning authorities may give weight to relevant policies in emerging plans according to:

*“a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);*

*b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and  
c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)."*

6.15 The Council will argue that:

- the emerging Local Plan is at an advanced stage in its preparation;
- to the extent that there are unresolved objections to the emerging plan, the vast majority of those unresolved objections related to a proposal for a Strategic Growth Option proposing over 5,000 new dwellings in the north of the borough; a proposal which, in the light of the Local Plan Examination Inspector's letter of 1<sup>st</sup> April 2020, is proposed to be removed from the Local Plan;
- the policies in that plan are broadly consistent with the Framework albeit that, under the 2019 NPPF transitional arrangements (paragraph 214 of the 2019 NPPF), the emerging Local Plan is being assessed against the 2012 NPPF;
- accordingly, at least moderate if not considerable weight should be accorded to the emerging Local Plan.

#### Delivering a Sufficient Supply of Homes

6.16 Chapter 5 of the NPPF sets out Government's policies to support its objective of significantly boosting the supply of homes (paragraph 59). Paragraphs 67 to 72 deal with identifying land for homes and require planning policies to identify specific deliverable and developable sites for the length of the plan period. Paragraphs 73 to 76 set out the requirement for local planning authorities to *"provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies or against their local housing need where the strategic policies are more than five years old"* including an appropriate buffer (paragraph 73).

6.17 The Council will explain that it is able to demonstrate a 5-year supply of deliverable housing sites and will seek to reach agreement on this issue with the appellant. The Council notes that the existence of a 5YHLS has been accepted by Inspectors at a number of recent appeals, including:

- Land to the south of Mallards Road, Bursledon (Appeal Reference APP/W1715/W/16/3156702, planning application reference O/15/76491) determined 2<sup>nd</sup> August 2017

- Land at Bubb Lane, Hedge End (Appeal Reference APP/W1715/W/16/3153928, planning application reference O/15/77112) determined 13<sup>th</sup> September 2017
- Land adjacent to ‘The Mazels’, Knowle Lane, Horton Heath, (Appeal Reference APP/W1715/W/17/3173253 and APP/W1715/W/17/3178540, planning application reference O/15/77465 and O/17/79795) determined 11<sup>th</sup> January 2018
- Land at Satchell Lane, Hamble-Le-Rice (Appeal Reference APP/W1715/W/18/3194846, planning application reference O/17/80319) appeal determined 20<sup>th</sup> December 2018, High Court decision issued 17<sup>th</sup> July 2019

#### Building a Strong, Competitive Economy

6.18 Chapter 6 of the NPPF sets out the policies which should be applied to support economic growth and productivity, factors the NPPF affords “*significant weight*”. “*Policies and decisions should help create the conditions in which businesses can invest, expand and adapt*” (paragraph 80).

#### Promoting Healthy and Safe Communities

6.19 Chapter 8 addresses the need for planning policies and decisions to create healthy, inclusive and safe places (paragraph 91) which:

*“a) promote social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other – for example through mixed-use developments, strong neighbourhood centres, street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods, and active street frontages;*

*b) are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion – for example through the use of clear and legible pedestrian routes, and high-quality public space, which encourage the active and continual use of public areas; and*

*c) enable and support healthy lifestyles, especially where this would address identified local health and well-being needs – for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling.”*

6.20 Paragraph 92 espouses that planning policies and decisions should:

*“.....c) guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community’s ability to meet its day-to-day needs;”*

6.21 Chapter 8 also deals with open space and recreation provision. Paragraph 96 notes that:

*“access to a network of high-quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities”.*

6.22 Paragraph 97 states that:

*“Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:*

*a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or*

*b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or*

*c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.”*

#### Promoting Sustainable Transport

6.23 Chapter 9 of the NPPF addresses the issue of promoting sustainable transport, paragraph 103 noting that:

*“Significant development should be focused on locations which are or can be made sustainable through limiting the need to travel and offering a genuine choice of transport modes.”*

6.24 In considering development proposals it should be ensured that (paragraph 108):

*“a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;*

*b) safe and suitable access to the site can be achieved for all users; and*

*c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.”*

6.25 Paragraph 109 makes it clear that:

*“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”*

6.26 This does not mean that impacts that are less than severe should be ignored in the planning balance: they are still material considerations pointing against the grant of permission, and the weight to be given to such harm is a matter for the decision-maker: **Redhill Aerodrome Ltd v SSCLG** [2014] EWCA Civ 1386 at [32].

6.27 Paragraph 110 requires that applications for development should:

*“a) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use;*  
*b) address the needs of people with disabilities and reduced mobility in relation to all modes of transport;*  
*c) create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards;*  
*d) allow for the efficient delivery of goods, and access by service and emergency vehicles; and*  
*e) be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations.”*

6.28 Paragraph 111 requires that:

*“All developments that will generate significant amounts of movement should be required to provide a travel plan, and the application should be supported by a transport statement or transport assessment so that the likely impacts of the proposal can be assessed.”*

#### Making Effective Use of Land

6.29 Chapter 11 of the NPPF seeks to ensure that the most effective use is made of land in meeting the need for homes and other uses but that this should not come at the expense of improving the environment and ensuring safe and healthy living conditions (paragraph 117). Criteria c) and d) of paragraph 118 require planning policies and decisions to:

*“c) give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land;*

*d) promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively (for example converting space above shops, and building on or above service yards, car parks, lock-ups and railway infrastructure) ...”*

6.30 Local authorities are urged to regularly review the status and likely deliverability of land allocated for development in plans and to de-allocate or re-allocate sites for alternative uses if there is no realistic prospect of the anticipated use being forthcoming (paragraph 120). They are also urged to take a positive approach to the alternative use of land which is currently developed but not allocated for a specific purpose in local plans if this would help meet development needs. Specifically mentioned is the use of employment land for homes in areas of high housing demand provided this would not undermine local economic objectives and would be compatible with other policies in the Framework (para 121).

6.31 Paragraphs 122 and 123 set out the importance of achieving appropriate densities which optimise the development potential of sites, particularly where there is a shortage of land to meet identified needs.

#### Achieving well-designed places

6.32 Chapter 12 of the NPPF emphasises the importance of creating high quality buildings and places.

#### Conserving and Enhancing the Natural Environment

6.33 Paragraph 170 emphasises the need for decisions to contribute to and enhance the natural and local environment by, among other things (criterion b):

*“.....recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;”*

6.34 Paragraph 175 urges authorities to apply the following principle at criterion a):

*“a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;”*

6.35 Paragraph 177 states:

*“The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.”*

6.36 Paragraph 180 sets out that new development should be appropriate for its location taking into account the likely effects of pollution on health, living conditions and the natural environment. Paragraph 181 identifies the importance of compliance with relevant limits and national objectives for pollutants taking into account the presence of Air Quality Management Areas.

#### Conserving and Enhancing the Historic Environment

6.37 Chapter 16 recognises the importance of heritage assets as an irreplaceable resource which should be conserved in a manner appropriate to their significance (paragraph 184). Paragraphs 189 to 192 deal with planning applications affecting heritage assets and require authorities and applicants for planning permission to fully assess the significance of development proposals on those assets to minimise the impacts of proposals on heritage assets.

6.38 Paragraphs 193 to 202 then address how to consider potential impacts. Authorities are obliged to give great weight to the conservation of the asset with the level of weight increasing in accordance with the importance of the asset (paragraph 193). Paragraph 194 requires that any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification. Paragraphs 195 and 196 then provide tests to apply depending on the nature of any harm.

## Facilitating the Sustainable Use of Minerals

6.39 Chapter 17 addresses the sustainable use of minerals, recognising at paragraph 203 that they are finite resources which can only be worked where they are found.

6.40 Paragraph 205 requires authorities, when determining planning applications, to place great weight on the benefits of mineral extraction. Paragraph 206 obliges local planning authorities to:

*“...not normally permit other development proposals in Mineral Safeguarding Areas if it might constrain potential future use for mineral working.”*

### Annex 1: Implementation

6.41 Paragraph 212 notes that policies in the Framework are material considerations which should be taken into account in dealing with applications from the day of its publication. However, paragraph 213 clarifies that this does not mean that existing policies should automatically be considered out of date simply because they were adopted prior to the publication of the Framework. Importantly, it points out that:

*“Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).”*

6.42 As noted above, paragraph 214 provides that the NPPF 2012 will apply for the purpose of examining plans that were submitted for examination on or before 24 January 2019 (as was the case for the emerging Local Plan in Eastleigh).

## **7. CONSISTENCY OF DEVELOPMENT PLAN AND EMERGING POLICIES WITH THE NPPF**

7.1 The Council will explain how saved policies 1.CO, 18.CO, 25.NC, 45.ES, 59.BE, 92.T, 100.T, 101.T, 102.T, 145.OS, 147.OS, 165.TA, and 190.IN of the adopted 2001-2011 and policies S1(ix), S7, DM1i(a), DM13, DM34, DM10, DM11 and DM40 of the emerging 2016-2036 Local Plan are broadly aligned with the NPPF. In particular the Council will stress the importance of determining proposals in accordance with the development plan and that other material considerations do not in this case warrant a departure from this fundamental legal principle.

7.2 So far as the policies in the adopted Local Plan relevant to this Appeal are concerned, the Council will contend that:

- the adopted Local Plan is not out of date in the context set by paragraph 11 of the NPPF simply because of its age (see paragraph 213 of the NPPF) or because it is time expired;
- the policies are not rendered out-of-date by the absence of a 5YHLS, since the Council can demonstrate a robust 5YHLS;
- the policies are not rendered out of date by inconsistency with the NPPF, since they are broadly consistent with the NPPF; and
- accordingly, considerable/significant to full weight should be afforded to the policies.

7.3 The Council considers its position to be consistent with the consensus of decisions in Eastleigh, although it recognises that different Inspectors have taken different views. The Council will address the relevant appeal decisions, including:

- Land to the south of Mallards Road, Bursledon (Appeal Reference APP/W1715/W/16/3156702, planning application reference O/15/76491) determined 2<sup>nd</sup> August 2017
- Land at Bubb Lane, Hedge End (Appeal Reference APP/W1715/W/16/3153928, planning application reference O/15/77112) determined 13<sup>th</sup> September 2017
- Land adjacent to 'The Mazels', Knowle Lane, Horton Heath, (Appeal Reference APP/W1715/W/17/3173253 and APP/W1715/W/17/3178540, planning application reference O/15/77465 and O/17/79795) determined 11<sup>th</sup> January 2018
- Land adjacent to The Roll Call, Woolston Road, Netley Abbey, SO31 5FJ, (Appeal Reference APP/W1715/W/18/3194697) determined 31<sup>st</sup> August 2018
- Land at Satchell Lane, Hamble-Le-Rice (Appeal Reference APP/W1715/W/18/3194846, planning application reference O/17/80319) appeal determined 20<sup>th</sup> December 2018, High Court decision issued 17<sup>th</sup> July 2019

7.4 The Council will also address relevant Court judgments, including:

- ***Phides Estates (Overseas) Ltd v Secretary of State for Communities and Local Government*** [2015] EWHC 827 (Admin);
- ***Secretary of State for Communities and Local Government v Hopkins Homes Ltd*** [2016] EWCA Civ 168;
- ***Secretary of State for Communities and Local Government v Hopkins Homes Ltd*** [2017] UKSC 37;
- ***Hallam Land Management Ltd v Secretary of State for Communities and Local Government*** [2018] EWCA Civ 1808;
- ***Monkhill Ltd v Secretary of State for Housing, Communities and Local Government*** [2019] EWHC 1993 (Admin);
- ***Eastleigh Borough Council v Secretary of State for Housing, Communities and Local Government*** [2019] EWHC 1862;
- ***Oxton Farm v Harrogate Borough Council*** [2020] EWCA Civ 805.

## **8. A SPORTING FUTURE FOR THE PLAYING FIELDS OF ENGLAND – SPORT ENGLAND’S PLAYING FIELDS POLICY**

8.1 In March 2018 Sport England published its policy and associated guidance on planning applications affecting playing fields. Sport England’s starting position is that it will:

*“...oppose the granting of planning permission for any development which would lead to the loss of, or would prejudice the use of:*

- *all or any part of a playing field, or*
- *land which has been used as a playing field and remains undeveloped, or*
- *land allocated for use as a playing field unless, in the judgement of Sport England, the development as a whole meets with one or more of five specific exceptions.”*

8.2 Exception 4 is that:

*“The area of playing field to be lost as a result of the proposed development will be replaced, prior to the commencement of development, by a new area of playing field:*

- *of equivalent or better quality, and*
- *of equivalent or greater quantity, and*
- *in a suitable location, and*
- *subject to equivalent or better accessibility and management arrangements.”*

8.3 It is the Council's current position that the Appellant has not demonstrated to its satisfaction that the proposed mitigation for the loss of the existing sports pitches complies with this Exception. However, it hopes that it will be possible to reach agreement with the Appellant on this point in advance of the Inquiry.

## **9. SPORTS FACILITY NEEDS ASSESSMENT & PLAYING PITCH STRATEGY UPDATE 2017**

9.1 The overall aim of this Eastleigh Borough Council study was to update previous work to provide an up to date and in-depth assessment of the new for sports pitches and provide robust evidence on needs and deficiencies in the various typologies of open space to inform the preparation of the emerging Local Plan.

9.2 Section 5.2.1 which provides conclusions / recommendations in respect of the Sports Pitches element of the assessment identifies that:

*"The firm conclusion is that there is an identified need to retain all existing sports grounds and other active recreation areas that are currently in use or temporarily closed pending completion of committed sports facility enhancement proposals to meet either current or future needs for playing pitch sports to 2036. Therefore, Policy 145.OS of the current adopted Local Plan 2001-2011 should continue to be applied. Accordingly, proposals for loss of land used for sports pitches should continue to be rejected unless the proposed development meets at least one of the five exceptions set out in the policy."*

## **10. PLANNING OBLIGATIONS SUPPLEMENTARY PLANNING DOCUMENT**

10.1 The Council's Planning Obligations SPD helps elaborate on the interpretation and implementation of Policy 191.IN of the adopted Local Plan. It is supported by a background paper which provides further guidance on the calculation of specific financial contributions and other matters. Although both documents were adopted by the Council in July 2008, they remain relevant to the determination of planning applications. Both documents are supported by an index-linking update which sets out the current rates for financial contributions. The most recent charges document index-links the charges to 1<sup>st</sup> April 2019.

## 11. HOUSING LAND SUPPLY

- 11.1 The Council's most recent assessment of land supply, published in April 2020 and covering the five-year period 1<sup>st</sup> January 2020 to 31<sup>st</sup> December 2024, calculated using the latest Standard Housing Method base data and including the requisite 5% buffer, totals 6.1 years of supply.
- 11.2 The appellant prays in aid the Council's decision to grant permission for 166 dwellings in the countryside on land at Berry Farm (F/15/76582) further north from the appeal site on Hamble Lane, suggesting that it lends support to the appellant's argument that planning permission should be granted for the appeal proposal. The Council will argue that the key difference between that decision to grant permission is that, at the time the Berry Farm decision was made, the Council was only able to demonstrate 4.5 years supply of housing. The Council accepted that it needed to deliver more land for housing and this was considered of such importance that it was appropriate to override the policy objection to the development of housing in the countryside in this case. This situation does not pertain to this appeal.
- 11.3 The Council will seek to agree matters of housing need and housing land supply in a Statement of Common Ground with the appellant where possible. Evidence may need to be presented on these matters if there is no agreement reached between the parties.

## 12. REASONS FOR REFUSAL

- 12.1 Following the Bursledon, Hamble-le-Rice and Hound Local Area Committee resolution on 19<sup>th</sup> December 2019 to refuse outline planning permission, the Planning Application was refused on 16<sup>th</sup> January 2020 for six reasons. These are addressed in turn below.

### **Reason 1 – inappropriate and unjustified residential development beyond the urban edge**

*“The proposals represent an inappropriate and unjustified form of development beyond the urban edge which would result in the loss of countryside and have an unacceptably urbanising impact to the detriment of the character, visual amenity and quality of the landscape of the locality. The application is therefore contrary to Saved Policies 1.CO, 18.CO and 59.BE(i) of the adopted Eastleigh Borough Local Plan Review (2001-2011), emerging policies S1(ix), S7, DM1(a) of the submitted Eastleigh Borough Local Plan (2016-2036) and the provisions of the National Planning Policy Framework.”*

12.2 The majority of the Appeal Site lies outside the defined urban edge and within an area designated as countryside within the adopted Local Plan, which is protected from the type of development proposed by Saved Policy 1.CO. It is also protected in the emerging Local Plan by Strategic Policy S7.

12.3 The extension of built development into the countryside is intrinsically harmful (see paragraph 17 of the decision of Inspector Dignan in Land to the east of Grange Road, Netley Abbey - Appeal Reference APP/W1715/W/15/3005761, planning application reference O/14/75435). The Council will contend that the principle of placing substantial built development on an area which is currently largely open and undeveloped will have a fundamental and adverse impact on the designated countryside and the intrinsic character of the landscape with specific reference to the Landscape Character Assessment of Eastleigh Borough (December 2011). It will also suggest that the Appeal proposals are contrary to the requirements of the NPPF, Saved Policies 1.CO, 18.CO and 59.BE(i) and emerging Policies S1, S7 and DM1 due to their adverse impact on the countryside, the landscape and the character and appearance of the locality.

12.4 The Council will set out how the saved and emerging policies are broadly consistent with the NPPF and so should be given considerable/significant to full weight and that there are no other material considerations which would override the statutory presumption in favour of the development plan, particularly in a plan-led system in which the Council has a robust 5YHLS and an emerging Local Plan at an advanced stage of preparation.

**Reason 2 – Unacceptable Means of Access and Impacts on Footpath / Cycleway Infrastructure**

*“The application fails to demonstrate that an appropriate means of access can be provided to serve the development without unacceptable impact and interference on the footpath and cycleway infrastructure to the detriment of the ease of use and safety of pedestrians and cyclists. The proposals are therefore contrary to the requirements of Saved Policies 59.BE(v), 92.T and 102.T of the adopted Eastleigh Borough Local Plan Review 2001-2011, emerging Policy DM13 of the submitted Eastleigh Borough Local Plan (2016-2036) and the provisions of the National Planning Policy Framework”*

12.5 The Council will contend that the proposed access junction represents a loss of amenity and safety risk for pedestrians and cyclists, and that as such it is not compliant with the policies

listed above. The proposed access junction would increase journey times and journey distances for some pedestrians and cyclists. With desire lines for both users negatively affected, the proposals may encourage pedestrians to cross at inappropriate locations. Furthermore, the reallocation of footway (on the eastern side of The Parade) to provide greater space for car parking does not comply with local and national transport policy. The Council will progress arguments relating to the following subjects, which are described further in the following paragraphs:

- Alignment and desire lines
- Hierarchy of users

**12.6 Alignment and Desire Lines** - The present arrangement of the junction allows pedestrians to follow a desire line which follows the western side of Hamble Lane. In a southerly direction, pedestrians can follow Hamble Lane by crossing Kings Avenue and onto an island (with Coronation Avenue to its west and Hamble Lane to its east), before then crossing Coach Road and continuing south east on Hamble Lane. For northbound pedestrians, the route is reversed. These desire lines are removed by the proposed access junction arrangement.

**12.7** The Council will refer to the pedestrian surveys undertaken by the appellant and contend that the data comprised within illustrates that the proposed arrangement is dis-beneficial to the majority of pedestrians and cycles crossing Kings Avenue. The council will describe the increase in journey distances associated with the proposals, and further demonstrate that those increases represent non-compliance with local and national policy, including the recently published LTN 1/20.

**12.8 Hierarchy of Users** - The dis-beneficial impacts associated with the realignment of the junction will be set out as per the description above. The Council will contend that the realignment of the pedestrian / cycle path is caused by design elements which prioritise motor vehicles. Specifically, it is the orientation of the junction, and the provision of car parking within the parade, that are the factors which cause the realignment and associated dis-benefits. The Council will argue, with reference to the NPPF and the policies listed within the reason for refusal, that the prioritisation of motor traffic considerations above pedestrian and cycle amenity and safety is not compliant with local and national policy.

12.9 The Council will contend that the proposed access junction represents a loss of amenity and safety risk for pedestrians and cyclists, and that as such it is not compliant with the policies listed above. The proposed access junction would increase journey times and journey distances for some pedestrians and cyclists. Desire lines for both user groups are negatively affected by the proposals which require pedestrians and cyclists to take a less direct route than the present arrangement. As such, the proposals may encourage pedestrians to cross at inappropriate locations. Furthermore, the reallocation of footway (on the eastern side of The Parade) to provide greater space for car parking does not comply with local and national transport policy.

12.10 The Council notes updated guidance on cycle infrastructure has been published in recent months (LTN 1/20) which further supports the above considerations.

### **Reason 3 – Serious Adverse Traffic Impacts on the Local Highway Network**

*“The proposal involves development that cannot be reconciled with the National Planning Policy Framework in that the significant movements generated by the proposed residential development, when considered cumulatively with the potential for a growth in traffic associated with the retained commercial activities on site, could not be accommodated adequately on Hamble Lane and its junctions with adjoining roads. This would result in a severe impact on the road safety and operation of the local transport network contrary to the provisions of the National Planning Policy Framework and saved policies 100.T, 101.T and 201.T of the adopted Eastleigh Borough Local Plan and emerging Policy DM13 of the submitted Eastleigh Borough Local Plan (2016-2036).”*

12.11 The Council will contend that the impacts of the proposed development on the existing highway network in the vicinity of the site, and in particular on Hamble Lane, will be severe in operational terms.

12.12 The Council notes that the materials provided with the planning application (for example the Transport Statement dated August 2018) characterise the operational impacts of the proposed development on the operation of the highway network as ‘a minor impact’. The Council will challenge the materials submitted with the planning application, as well as the interpretation of the findings comprised within them. Arguments will be developed in relation to the following matters;

- ‘Methodology’,
- ‘Severe Impacts’, and;
- ‘Mitigation’

Each of these topics is detailed below.

12.13 **Methodology** - the Council will contend that the findings of the Transport Statement, and other materials included with the planning application, understate the impact of the proposed development. The Council will describe how the methodology undertaken in assessing the proposed development was insufficiently robust, and that as a result the findings that have been described within the Transport Statement are not a fair representation of highways impact.

12.14 The Council will develop arguments relating to the following methodological matters:

- Trip Estimation – it is considered that the method of estimating trip generation, and the distribution / assignment of trips onto the highway network is suboptimal and misrepresents the impact of the proposed development.
- Baseline – it is considered that the method of establishing baseline traffic flows, both with and without committed development, is incomplete and / or contrary to national guidance and precedent within Eastleigh Borough.
- Modelling – It is considered that the modelling methodology employed by the Transport Statement was not the appropriate methodology and that as such it is not an accurate forecast of traffic impact.

12.15 **Severe Impacts** – The findings presented within the Transport Statement are considered severe. A number of the junctions that have been assessed are found to exceed what is conventionally determined to be practical capacity, leading to operational issues such as increased queueing and journey times.

12.16 The Council will further contend that, since the Transport Statement understates the impacts of the development proposals, their severity would be even more acute than set out in the Transport Statement.

12.17 **Mitigation** – The Council notes that Paragraph 111 of the December 2019 Committee report states that, since the Hamble Lane Corridor Study was prepared following the

commencement of pre-application discussions with the appellant, an objection was not raised in relation to the findings of the report, which states that “no further development will be supported along Hamble Lane until highway improvements are delivered”. The Council will contend as part of the current process, that the determination of the appeal should be made in the public interest and on the basis of all relevant information – this includes the findings of the Hamble Lane Corridor Study. As such, notwithstanding the position expressed by the Highways Authority, the Hamble Lane Corridor Study and its statement that “no further development will be supported” should form an important material consideration in the determination of this appeal.

12.18 Nevertheless, the appellant has committed to offsetting operational dis-benefits at a number of junctions. The mitigation takes the form of a financial contribution to the Hamble Lane Corridor Study improvements.

12.19 The Council will contend that it has not been demonstrated that the implementation of the improvement scheme would offset the operational dis-benefits identified by the Transport Statement.

12.20 It is considered that the lack of such evidence further supports the Council’s view that the Transport Statement methodology is not sound, and that it thus underestimates or – by omission – obscures the extent of operational dis-benefits associated with the scheme.

12.21 The Council will further contend that the improvements to Hamble Lane, as described in the Corridor Study or elsewhere, are not reasonably foreseeable. While it may be possible to secure the proposed financial contribution towards the identified improvements through a legal agreement, there does not appear to be any evidence to suggest that the local highways authority will have implemented such mitigation measures prior to the construction or operation of the proposed development.

#### **Reason 4 – Loss of Sports Pitches – Inadequate Information**

*“Insufficient information has been submitted to demonstrate that the loss of the cricket wicket and its outfield, which also provides for two grass football pitches and training area, can be adequately mitigated within the Parish of Hamble-Le-Rice. The proposal is therefore contrary to Saved Policy 145.OS of the adopted Eastleigh Borough Local Plan Review 2001-2011, emerging Policy DM34 of the submitted*

*Eastleigh Borough Local Plan (2016-2036) and the provisions of the National Planning Policy Framework, the adopted Sport Facility Needs Assessment & Playing Pitch Strategy Update 2017 and Exception Policy E4 of Sport England's Playing Fields Policy – 'A sporting Future for the Playing Fields of England'.*

12.22 The Council's position in refusing permission for the Appeal proposal was that, while the Appellant proposes to make some provision for the loss of playing fields, that provision is not adequate to fully mitigate the impact of the pitches being lost in terms of extent and location. However, it hopes that it will be possible to reach agreement with the Appellant on this point in advance of the Inquiry.

#### **Reason 5 – Adverse Impacts on Protected Species and Habitats**

*"The application fails to provide for the required mitigation to offset the impacts of the development on the European protected site (SPA, SAC and sSPA) from nitrogen loading generated by the population increase resulting from the development. The application is therefore contrary to the requirements of Saved Policies 25.NC and 45.ES of the adopted Eastleigh Borough Local Plan review 2001-2011, Policies DM10 and DM11 of the submitted Eastleigh Borough Local Plan (2016-2036), Paragraphs 170, 175 and 176 of the National Planning Policy Framework and the provisions of The Conservation of Habitats and Species Regulations 2017."*

12.23 The Appeal site lies within 5.6km of the Solent and Southampton Water SPA and Ramsar site where Natural England have identified high levels of nitrogen and phosphorus in the Solent. These nutrients are causing eutrophication at these designated sites. Natural England advise that the resulting effects arising from this eutrophication cause dense green mats of algae which are impacting on the Solent's protected habitats and bird species and that wastewater from housing development has been identified as contributing to these nutrient inputs. There is the potential for future housing developments involving a net increase in dwellings to further exacerbate these impacts and thereby create a risk to the future conservation status of the Solent Complex and the features for which it is designated, therefore acting against the stated conservation objectives of the European sites.

**12.24** Discussions are ongoing between the Council, the Appellant and Natural England regarding the mitigation of impacts of the proposed development on protected species and habitats. It is hoped that, in advance of the Inquiry, the Council can be satisfied that the Solent and Southampton Water SPA will not be adversely impacted by nitrates as a result of the

development, such that it will no longer need to pursue this reason for refusal.

### **Reason 6 – Adverse Impacts on Infrastructure**

*“The application fails to secure provision for developer contributions for on and off-site provision of facilities and infrastructure (including affordable housing, air quality monitoring, education, the Solent Disturbance Mitigation project, sustainable transport measures, improvements to Hamble Lane Corridor, improvements and enhancements to the local footpath network, community infrastructure, on-site public open space, enhanced and replacement sports pitch and facilities, public art) made necessary by the development or to mitigate against any increased need or pressure on existing facilities. As such, the application is contrary to policies 101.T, 147.OS, 165.TA, 191.IN of the Eastleigh Borough Local Plan Review 2001-2011, Eastleigh Borough’s Planning Obligations Supplementary Planning Document and Paragraphs 17, 201 and 204 of the National Planning Policy Framework.”*

12.25 The Council will demonstrate the need for an appropriate S106 planning obligation to secure the provision of, or contributions towards, infrastructure, facilities and mitigation measures. The Council will contend that the proposed development necessitates these requirements and contributions and that these accord with the CIL Regulations. However, the Council will work with the Appellant to agree a satisfactory S106 planning obligation in advance of the inquiry. Subject to agreement being reached, the Council will not pursue this reason for refusal.

### **13. PLANNING CONDITIONS AND OBLIGATION AND STATEMENT OF COMMON GROUND**

13.1 The Council will work with the Appellant to seek to agree a list of suggested conditions and, where possible, these will be agreed prior to the start of the Inquiry.

13.2 The Appellant has indicated that it will prepare a section 106 planning obligation as part of the Appeal, and the Council will seek to reach agreement with the Appellant on this prior to the start of the Inquiry if possible.

13.3 The Appellant has submitted a draft Statement of Common Ground alongside its Statement of Case. The Council will work with the Appellant in the coming weeks to identify the totality of matters which are and are not agreed between us and submit a joint final Statement of Common Ground in advance of the Inquiry.

## 14. RELEVANT DOCUMENTS

14.1 The Council may refer to and rely upon the following documents:

- National Planning Policy Framework;
- National Planning Policy Guidance;
- White Paper Planning for the Future (August 2020);
- MHCLG / ONS 2014-based, 2016-based & 2018-based Household Projections;
- Sport England Playing Fields Policy & Guidance (March 2018);
- Partnership for Urban South Hampshire Spatial Position Statement (June 2016);
- PFSH Strategic Housing Market Assessment (January 2014) and OAHN Update (June 2016);
- Eastleigh Borough Local Plan Review (2001-2011) – adopted May 2006;
- Submitted Eastleigh Borough Local Plan (2016-2036) – submitted October 2018;
- Statements, evidence, representations and background papers for the submitted Local Plan and correspondence with the Local Plan examination Inspector – may include:
  - Strategic Land Availability Assessment (May 2017);
  - Local Plan Small & Medium Sites Background Papers (July 2018, November 2017, July 2018 & October 2018);
  - Local Plan Housing Site Development Capacity Assessments (July 2017);
  - Local Plan Housing Trajectory (June 2018 and June 2019);
  - Local Plan Employment Background Paper / Trajectory (June 2018) and Update (June 2019);
  - Letters to the Council from the Inspector dated 1<sup>st</sup> April 2020 (and the Council's response dated 6<sup>th</sup> July 2020) 18<sup>th</sup> May 2020 and 4<sup>th</sup> August 2020;
  - Development Distribution Strategy & Principles (December 2017);
- EBC 5-Year Housing Land Supply Statement – most recent update dated April 2020 and historical series as required;
- EBC Affordable Housing Needs Assessment (ORS) – July 2017 and August 2020 update;
- Landscape Character Assessment of Eastleigh Borough (December 2011);
- Solent Recreation Mitigation Strategy;
- Eastleigh's Public Art Strategy (2015-2019);

- EBC Planning Obligations SPD and Background Paper (July 2008);
- EBC Sports Facility Needs Assessment & Playing Pitch Strategy Update & Appendices (Continuum Sport & Leisure) (March 2017);
- Eastleigh Transport Statement 2012;
- Hampshire Local Transport Plan 2014-2017;
- All materials relating to transport and highways for the appellant's scheme. In particular, the Transport Statement, and the technical note submitted on pedestrian desire lines;
- Transport Assessments for the following applications as referred to within the appellant's Transport Statement:
  - Berry Farm F/17/79863;
  - Land West of Hamble Lane O/12/71828;
  - Mallards Road O/15/76491;
  - Cranbury Gardens O/15/76883;
  - Land South of Bursledon Road O/15/77121;
- Transport Assessments for the following developments may also be referred to by the Council:
  - North Whiteley Urban Extension 15/00485/OUT;
  - Uplands Farm O/18/83634; O/18/83698;
  - Pylands Lane O/12/71522;
  - Land off St Johns Road, South of Ford Road F/15/76804;
  - West of Waylands Place and north of Peewit Hill Close F/17/80651;
  - Boorley Green and Boorley Gardens (O/15/75953); O/12/71514;
- HCC Hamble Lane Improvements - Second Public Consultation – Information Pack;
- Hamble Lane Improvements Consultation Findings Report May 2018;
- HCC – Sub Regional Transport Model; Road Traffic Model: Model Development & Validation Report;
- Eastleigh Strategic Transport Study; Interim Report - Issues and Options; December 2015;
- DfT WebTAG - TAG UNIT M1.2;
- DfT Cycle infrastructure design (LTN 1/20);
- DfT Design of Pedestrian Crossings (LTN 2/95);
- DfT Manual for Streets 1, DfT Manual for Streets 2;
- TfL Traffic Modelling Guidelines version 3.0;

- LinSig - User Guide;
- TrL Junctions - User Guide;
- Email 1 : From: Tipler, Jason [Jason.Tipler@hants.gov.uk](mailto:Jason.Tipler@hants.gov.uk) Sent: 17 August 2020 12:20  
To: Tuck, Graham [Graham.Tuck@eastleigh.gov.uk](mailto:Graham.Tuck@eastleigh.gov.uk) Subject: RE: Hamble Lane;
- Email 2 : From: Gammer, Nick [Nick.Gammer@hants.gov.uk](mailto:Nick.Gammer@hants.gov.uk) Sent: 14 August 2020  
16:53 To: Grandfield, Andy [Andy.Grandfield@eastleigh.gov.uk](mailto:Andy.Grandfield@eastleigh.gov.uk) Subject: GE Aviation;
- Other relevant Planning Applications & Appeals in the vicinity of the Appeal site;
- Relevant case law.

14.2 The Council reserves the right to also introduce reference to other documents in support of its case. The Council will seek to agree a list of Core Documents with the Appellant.

14.3 The Appeal documents can be viewed at Eastleigh House, Upper Market Street, Eastleigh SO50 9YN (currently closed due to the CV19 pandemic) or on the Council's website at [www.eastleigh.gov.uk](http://www.eastleigh.gov.uk)

## **15. CONCLUSIONS AND THE PLANNING BALANCE**

15.1 As noted above, Sections 70(2) and 79(4) of the Town & Country Planning Act 1990 and Section 38(6) of the Planning & Compulsory Purchase Act 2004 require this Appeal to be determined in accordance with the Development Plan unless material considerations indicate otherwise.

15.2 The Appeal proposal does not accord with the Eastleigh Borough Local Plan Review 2001-2011. As explained above, the relevant policies in the adopted Local Plan are broadly consistent with the provisions of the NPPF and are not out-of-date.

15.3 The question, then is whether there are other material considerations of sufficient weight to indicate that the Appeal ought to be determined other than in accordance with the Development Plan. The Council does not consider that there are. Indeed, the appeal proposal is contrary to policies in the NPPF and emerging policies of the Submitted Eastleigh Borough Local Plan (2016-2036), which is at an advanced stage of preparation and should be afforded at least moderate if not considerable weight.

15.4 The Council considers that the appeal proposals represent an inappropriate, unnecessary and unjustified form of development which would result in the loss of countryside and have an unacceptably urbanising impact to the detriment of the character, visual amenity and intrinsic landscape quality of the site and its surroundings. They have an inappropriate means of access, and would generate a level of traffic which would have a serious adverse impact on the operation of the local highway network.

15.5 As it currently stands, the Council considers that insufficient information and/or surety is provided in terms of the impacts on sports pitch provision in the locality and the means of addressing adverse impacts on infrastructure and protected species & habitats. However, the Council will work with the Appellant to seek to overcome these latter reasons for refusal.

15.6 The Council accepts that the proposal would give rise to certain benefits, notably in terms of housing provision, including affordable housing. However, it considers such benefits could also arise from other schemes in more suitable and sustainable locations in the borough. Moreover, although still a benefit, the benefit of housing provision is reduced since the Council can demonstrate a robust five-year supply of housing (and this position has been accepted by a number of Inspectors at recent s78 appeals).

15.7 In paragraph 10.7 of the Appellant's Statement of Case the following benefits of the Appeal proposal are suggested:

"The Appellant considers that the Appeal Scheme is a sustainable development, which would give rise to the following benefits:

- Delivery of new homes, including the provision of affordable housing;
- Increase in public open space provision and additional landscaping;
- Enhanced sports facilities both on and off site;
- Restoration and enhancement of a Grade II\* listed building;
- Economic benefits due to construction, an increase in local population in respect of spending, New Homes Bonuses and CIL contributions; and
- Financial contributions towards infrastructure."

15.8 The Council addresses these briefly in turn below.

15.9 Firstly, in terms of the delivery of new homes including the provision of affordable housing, the Council accepts that this is a benefit of the Appeal proposal. However, it is a benefit

which would apply to any residential development proposal anywhere in the country. In the Council's view the significance of this benefit is reduced by virtue of the following:

- The Council is able to demonstrate a 5-year supply of housing;
- Housing delivery rates across the borough have been at unprecedentedly high rates in recent years;
- The Local Plan Examination Inspector accepted that, even with the proposed deletion of the SGO from the emerging Local Plan there was a sufficiency of supply in the housing pipeline to ensure the local plan housing target was met until the latter years of the plan period. Accordingly, she recommended that the means of remedying that shortfall in the latter years of the Plan period was through an early Plan review;
- In order to realise the benefit, the scheme involves development of a site outside of the defined urban edge and so compromising countryside policy.

15.10 Secondly, given that the existing facility is privately owned with a short-term, insecure lease arrangement, the Council accepts that provision of a more secure and longer-term package of sports facilities does provide some recreational benefit. However, any additional landscaping would not be necessary were it not to help screen the proposed development from countryside.

15.11 Thirdly, the Council contends that the same applies to the enhanced sports facilities on and off-site. These would not be necessary were it not for the impacts of the proposed development on existing facilities.

15.12 Fourthly, in terms of the restoration and enhancements of a Grade II\* listed building, there currently exists a difficulty with regards to the lack of provision in the outline proposal for making good post-demolition and the lack of an associated listed building consent application, which calls into question the presence of heritage benefits at this time. Further, there is no evidence that the Appeal proposals are necessary to deliver improvements to the listed building, nor that they could not be achieved with a lesser scale of development which would not involve compromising adopted countryside policy.

15.13 Fifthly in terms of the economic benefits arising through construction, New Homes Bonus and additional local spending, again, these are recognised, but they would apply to any

development anywhere in the country including development within the defined urban edge. Eastleigh Borough Council does not operate the CIL.

15.14 Finally, with regard to financial contributions towards infrastructure, again, these would not be necessary were they not needed to meet the cost of providing the infrastructure which is made necessary by the Appeal proposal.

15.15 For all these reasons, therefore, while the Appeal development would give rise to certain benefits, the Council does not consider they are of sufficient importance to outweigh the harms.

15.16 Since the most important policies for determining the appeal are not out-of-date, the tilted balance does not apply, but even if it did, the Council will contend that the adverse impacts significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. Moreover, the proposal is contrary to the development plan and material considerations reinforce the view that permission should be refused.

15.17 For all of these reasons, the Council will contend that the Appeal should be dismissed.