

EASTLEIGH BOROUGH COUNCIL

Town and Country Planning Act 1990 – Section 78

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

PROOF OF EVIDENCE

of

Pete Errington BSc (Hons), Dip TP, MRTPI

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

OCTOBER 2020

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1. INTRODUCTION

- 1.1 My name is Pete Errington. I am a Chartered Town Planner with 30 years' experience as a planning policy practitioner across the south of England and south Hampshire in particular. For the past four years I have been employed as an Associate with Adams Hendry Consulting Limited in Winchester. During this time, I have worked almost exclusively at Eastleigh Borough Council ("the Council") helping to prepare the Eastleigh Borough Local Plan 2016-2036 ("the Emerging Local Plan") [CD4].
- 1.2 Prior to working at Adams Hendry / Eastleigh I was a Planning Policy Manager at Hampshire County Council for 8 years. Before that I worked for 8 years as Regional Planner / Regional Policy Manager for the Home Builders Federation, working across the wider South, East and London regions. Prior to that I performed various junior planning policy roles at New Forest District Council and Eastleigh Borough Council.
- 1.3 I hold a BSc (Hons) in Geography from Huddersfield Polytechnic and a Postgraduate Diploma in Town Planning from the University of Westminster. I have been a Member of the Royal Town Planning Institute since 1994.
- 1.4 I have considerable experience of participation in a wide range of local plan examinations and inquiries.
- 1.5 The evidence I provide in this Proof of Evidence is true and has been prepared in accordance with the guidance of my professional institution and I can confirm that the opinions expressed are my true and professional opinions.
- 1.6 I am familiar with the location of the appeal proposal and the planning background to the proposal.
- 1.7 My Proof of Evidence will cover the site and its surroundings together with the background to the appeal application. I will then discuss the policy context for the appeal, the harms and benefits of the proposal, and the reasons for refusal, setting out why the proposed development is overall inappropriate, the overall harm it causes and why it fails to comply with the Saved Policies of the Adopted Eastleigh Borough Local Plan Review (2001-2011) ("the Adopted Local Plan") [CD3], the Emerging Local Plan [CD4] and the National Planning Policy Framework (2019) ("the NPPF") [CD1]. I will explain the current situation on the Emerging Local Plan and the relative degree of weight to be afforded the policies of the respective Local Plans. In doing so I will refer to relevant planning appeal decisions and case law.
- 1.8 Finally, I will explain the requirements for the completion of a Section 106 Planning Obligation, should the appeal be successful, to secure the provision for on and off-site provision of facilities and infrastructure.

- 1.9 My Proof should be read in conjunction with that of Mr Whitney of the consultancy Arup which deals with access, highways and traffic matters, and with those of Councillors House, Craig and Manning.
- 1.10 Subject to the completion of a satisfactory Section 106 Planning Obligation, reasons for refusal 4, 5 & 6 are likely to be withdrawn and the Council's case will largely turn on the principle of the development in the context of adopted and emerging policy, the impacts of the proposed development on the countryside and landscape, access issues, and the effects on the local highway network.

2. DESCRIPTION OF THE APPEAL APPLICATION AND RELATED APPLICATIONS

Appeal Application

- 2.1 The appeal application was submitted to the Council on 8th October 2018 and was registered as valid on the 26th October 2018. It was given reference number O/18/84191. The application was described as follows:

“Outline consent, with all matters reserved expect means of access, for the relocation of cricket pitch off-site and improvements to existing bowls and football facilities on site to enable the erection of up to 148 residential dwellings (Use Class C3) with new vehicular access, work to highways, landscaping and other associated works. The application also seeks the demolition of non-original extensions to Sydney Lodge and redundant factory buildings”

- 2.2 The appeal application and its evolution from pre-application stage onwards are addressed in section 4 of the Statement of Common Ground.
- 2.3 Various changes were made to the application while it was before the Council. For example, the scheme originally proposed no affordable housing, but this was subsequently changed to 35% affordable housing with a 50% split between affordable rented and shared ownership.
- 2.4 The appeal application was first reported to the Bursledon, Hamble-Le-Rice and Hound Local Area Committee (“BHHLAC”) on the 25th July 2019. The Committee resolved to defer the application to allow outstanding matters to be resolved.
- 2.5 The appeal application was reported for a second time to the BHHLAC on 19th December 2019. The Committee resolved to refuse planning permission for the reasons addressed in Section 10 of this Proof. The decision notice was dated 16th January 2020.

Related Applications

- 2.6 The appellant has also made two related applications in respect of works to Sydney Lodge within the appeal application site (F/18/86421 and L/19/85126). These were also considered at that 25th July BHHLAC. On both of those applications, the Committee resolved that, subject

to consideration of Historic England comments in consultation with the Chair and Vice Chair, the decision to permit would be delegated to the Head of Housing and Development.

- 2.7 Historic England confirmed to the Council that they had no objection to either application on 21st August 2019. The Council are currently working with the appellant to finalise the conditions for these applications and it is anticipated that decisions will be issued prior to the Inquiry commencing.
- 2.8 If conditions can be agreed for these applications and the appeal application, the Council hopes that the issue identified in paragraph 3.6 to 3.8 of its Statement of Case (concerning the lack of provision in the appeal application for making good post-demolition and the lack of an associated Listed Building Consent application) can be overcome.

3. APPEAL SITE AND SURROUNDINGS

- 3.1 The appeal site was helpfully described in paragraphs 11 to 14 to the July officer's committee report (paragraphs 12-15 of the December report) [CD64]. Further details are provided in section 2 of the Statement of Common Ground.
- 3.2 In both officer's reports the site area is given as 8.83ha, a figure taken from the application form. The Council queried this in its Statement of Case (paragraph 5.5) and it is now agreed with the Appellant that the correct site area is 9.45ha (paragraph 2.1 of the Statement of Common Ground) [CD63] and that 55% of the site lies outside of the defined urban edge and so is subject to countryside policy while 45% lies within the urban edge (paragraph 6.5 of the Statement of Common Ground).
- 3.3 Also of relevance is that a public footpath runs in a belt of trees along the northern boundary of the site. This footpath (Hamble-le-Rice Footpath 13) runs broadly east-west linking Hamble Lane to the Royal Victoria Country Park.

4. PLANNING HISTORY

- 4.1 As a large employment site there have been numerous planning applications related to the aerospace operation but none material to this appeal application. The two current listed building applications are addressed in Section 2 above.

5. THE POLICY & DEVELOPMENT PLAN CONTEXT

- 5.1 The Council listed the relevant policies from both the Adopted Local Plan [CD3] and the Emerging Local Plan [CD4] in Section 5 of its Statement of Case. In terms of reason for refusal number 1, which is the main focus of this planning proof of evidence, the key policies are Saved Policies 1.CO, 18.CO, and 59.BE(i) of the Adopted Local Plan Review (2001-2011) and emerging policies S1(ix), S7, DM1 i(a) of the submitted Eastleigh Borough Local Plan (2016 – 2036).

5.2 The three adopted Local Plan policies are set out at paragraphs 5.6 to 5.10 of the Council's Statement of Case. The three equivalent policies from the emerging Local Plan as submitted are summarised in paragraph 5.35 of the Council's Statement of Case.

5.3 I would also draw attention to paragraph 4.47 of the supporting text to Strategic Policy S7, which provides an explanation of the reason for including the policy in the Local Plan. It states:

"4.47 The Borough's countryside is an important and diminishing resource. It is valued for many reasons, including agriculture and community food production, its landscape qualities and biodiversity value. Habitats of value include the special characteristics of the valleys of the rivers Itchen and Hamble and the networks of ancient woodlands, streams and wetlands throughout the Borough. The countryside is also important for the setting it provides for towns and villages, and the opportunities it provides for recreation. The Council is keen to protect and enhance the countryside within the Borough and maximise its opportunities for people and wildlife, from the urbanising impacts of development."

Draft Modifications to Emerging Policy

5.4 The Council is currently considering a suite of modifications to the emerging Local Plan in the light of representations received, discussions at the examination hearings (which took place between November 2019 and January 2020), and post-hearing correspondence with the Inspector. A schedule of modifications has been submitted to the Inspector for her consideration and will be published for consultation towards the end of the year.

5.5 In terms of the three policies referred to above, no change is proposed to either Strategic Policy S1, criterion ix or Policy DM1i(a).

5.6 In Strategic Policy S7 it is proposed to delete the introductory sentence of text and make a few other minor changes, the most significant of which regarding this appeal may be the addition of a reference to heritage assets as can be seen in a track change version of the policy as proposed to be modified below (all modifications shown in bold and underlined with text proposed for deletion struck-through):

~~**"There is a presumption against new development in the countryside, subject to other policies of this Local Plan. Countryside is defined as all the areas outside the urban edge as defined on the policies map, including river valleys, ancient woodland and the undeveloped coast.**~~

1. Planning permission will be granted for new development in the countryside provided it is related to:

a. the provision of employment through agricultural development (policy DM17), the extension and replacement of existing employment uses (policy DM18) and the re-use of existing buildings (policy DM19);

- b. residential extensions and replacement buildings (policies DM18 and 27), limited residential conversions (policy DM19), rural workers' dwellings (policy DM29) and accommodation for Gypsies, Travellers and travelling showpeople (policy DM33);
- c. community, tourist, or visitor uses through the re-use of buildings including facilities for the interpretation of heritage assets (policies DM12);
- d. outdoor recreation and open space (policies DM34 and DM35);
- e. allotments and community farms (policy DM34);
- f. cemeteries (policy DM39); and
- g. essential public utilities (policy DM9).

2. In permitting new development in the countryside the Borough Council will seek to:

- a. avoid adverse impacts on the rural, woodland, riparian or coastal character, the intrinsic character of the landscape including the avoidance of adverse landscape impacts on areas adjoining national parks and their settings, **the significance of heritage assets** and on the biodiversity of the area;
- b. secure long-term beneficial management practices that will enhance the landscape and biodiversity of the countryside and coast; and
- c. avoid sterilisation of mineral resources, in accordance with the Hampshire Minerals and Waste Plan;
- d. **safeguard the best and most versatile agricultural land unless the benefit of the development clearly outweighs the loss; and**
- e. **protect soils during construction wherever possible in line with the 'Defra code of practice for the sustainable use of soils on construction sites'.**

5.7 There is a minor modification proposed to paragraph 4.47 of the supporting text to Strategic Policy S7 but that is only to add reference to the fact that the term 'countryside' is now defined in the glossary to the Emerging Local Plan (which, itself, was a recommendation made by the Local Plan examination Inspector). Thus. Paragraph 4.47 now starts as follows:

*"The Borough's countryside **(as defined in the glossary)** is an important and diminishing resource. It is valued....."*

5.8 It is the Council's view that none of these modifications materially affect the way in which the submitted policies should be interpreted or applied in respect of the appeal proposal. The thrust of the relevant policies has remained broadly consistent over an extended period of time as has the designation of the urban edge / countryside boundary in the vicinity of the appeal site.

6. CONSISTENCY OF ADOPTED AND EMERGING DEVELOPMENT PLAN POLICY WITH THE NATIONAL PLANNING POLICY FRAMEWORK

6.1 The sections and paragraphs of the NPPF which the Council considers are relevant to this appeal are set out in Section 6 of the Council's Statement of Case. The three key policies relevant to the Council's planning case in rejecting the appeal proposals are 1.CO, 18.CO and 59.BE of the adopted local plan (and their equivalent emerging policies S1ix, S7 and DM1ia of the emerging local plan).

Adopted Development Plan Policy

6.2 Taking these policies in turn, saved Policy 1.CO is consistent with paragraph 20 of the NPPF in that it is a strategic policy that forms a key part of the overall strategy for the pattern of development and seeks to conserve and enhance the natural environment. It is also consistent with paragraph 170 in that it recognises the intrinsic character and beauty of the countryside.

6.3 Saved Policy 1.CO is part of the Countryside chapter of the adopted Local Plan [CD3]. The introduction to that chapter notes that:

"The countryside in this Borough contributes to meeting the needs of a wide population, including residents of Southampton. Consequently its protection is a key objective. However, allowance must be made for appropriate changes to take place in order to ensure that genuine development needs can be accommodated."

6.4 Paragraph 1.1 explains that the Council aims to:

- *"Protect the countryside from inappropriate development, whilst accommodating genuine development needs.*
- *Improve opportunities for access to the countryside and to other appropriate outdoor recreational facilities, particularly by means other than the car.*
- *Facilitate more positive management of those areas in which agricultural activity may be in decline."*

6.5 Paragraph 1.2 recognises that the countryside is important for many reasons and is a diminishing resource meaning there is a need to be particularly vigilant about its future use. Those reasons include:

- Agricultural production;
- Landscape value;
- Providing a setting for the Borough's towns and villages;
- Recreational provision;
- Nature conservation; and,
- Its intrinsic value.

- 6.6 The context for the consideration and application of saved Policy 1.CO is, therefore, set out very clearly in the wording of Policy 1.CO in itself and in the supporting text. This context is consistent with the thrust of the approach to conserving and enhancing the natural environment set out in the NPPF (paragraph 170) and the principle of achieving sustainable development (paragraphs 7 & 8).
- 6.7 While the policy itself does not contain a ‘balancing exercise’ for determining sustainable development, nor does it constitute a blanket ban on development in the countryside. This is because of the presence of the word “or” at the end of criterion iii. If it was an “and” at the end of criterion iii it is accepted that this would make 1.CO an extremely restrictive policy. But it is not. The use of “or” provides the flexibility for the Council to permit development in the countryside where it meets other criteria in other policies of the plan. This is how the policy has been applied in practice. As always, in considering a planning application, there is a balance to be struck between positive and harmful aspects of development, between different policies in a local plan, and between potentially competing material planning considerations. Policy 1.CO does not prevent this balance being struck.
- 6.8 Turning to whether the policy is out of date, the starting point is set out at paragraph 213 in Annex 1 of the NPPF which states:

“.....existing policies should not be considered out of date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given them in accordance 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)”.

- 6.9 It is the Council’s position that saved Policy 1.CO is not inconsistent with the NPPF for the reasons given above.
- 6.10 The only other way the policy might be considered out-of-date is in the context of footnote 7 of the NPPF which relates to the ability to demonstrate a 5-year supply of land for housing.
- 6.11 Paragraph 11 of the NPPF establishes the ‘presumption in favour of sustainable development’. The second half-of the presumption relates to decision-taking. Criterion d states that:

“where there are no relevant development plan policies, or the policies which are the most important for determining the application are out-of-date⁷, 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; 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.”*

6.12 Footnote 7 notes:

“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.”

6.13 As noted in Section 8 of this Proof, the Council is able to demonstrate a 5-year supply of housing and this is a position agreed with the Appellant (see paragraph 6.3 of the Statement of Common Ground) [CD63]. Nor has the Council failed the Housing Delivery Test; indeed, performance in the Housing Delivery Test is significantly in excess of the 75% target. In the 2019 measurement (published in February 2020) Eastleigh scores 145% with delivery of 2,572 completions in the three years 2016/17 to 2018/19 against a target of 1,775.

6.14 Therefore, Saved Policy 1.CO is not out of date by virtue of inconsistency with the principles of the Framework as a whole and it is not out-of-date by virtue of an inability to demonstrate 5-year supply or failing the Housing Delivery Test. Accordingly, there is no reason to afford 1.CO anything other than considerable weight. Indeed, it is agreed at paragraph 6.7 of the Statement of Common Ground that the Adopted Local Plan is not out of date because of its age or because it is time expired or because of a lack of 5-year housing land supply. It is also agreed that the Plan, if not all of the policies, is broadly consistent with the NPPF.

6.15 This matter has been discussed in a number of appeal decisions in Eastleigh Borough over the past few years, albeit some of them against the earlier 2012 version of the NPPF.

6.16 The most recent appeal decision was at Satchell Lane (Land at Satchell Lane, Hamble-Le-Rice, Appeal Reference APP/W1715/W/18/3194846, planning application reference O/17/80319 appeal determined 20th December 2018, High Court decision issued 17th July 2019) [CD11]. Here the Inspector attached Policy 1.CO “reduced” weight (para 16) and “limited” weight to the countryside policies (para 19) on the basis that, even though they do not apply a blanket prohibition on development in the countryside, they are “out of step” with national policy.

6.17 Prior to the Satchell Lane appeal was the appeal in August 2018 in respect of land adjacent to the Roll Call PH, Woolston Road, Netley Abbey SO31 5FJ (Appeal Ref: APP/W1715/W/18/3194697) [CD10]. Here, the Inspector provides a concise summary of the situation thus:

“9. Taking all these matters into account, even though the Council’s housing policies are not saved, I find that Policy 1.CO is relevant as a saved policy which has aims broadly consistent with part 16 of the Framework in recognising the intrinsic character and beauty of the countryside. It seeks to prevent residential development beyond the urban edge but does not apply blanket protection of the countryside allowing for certain forms of development where there is a genuine need for a countryside location. I therefore attribute significant weight to it.”

6.18 In the appeal in respect of land to the south of Mallards Road, Bursledon (Appeal Reference APP/W1715/W/16/3156702, planning application reference O/15/76491) determined 2nd August 2017 [CD7] the Inspector did not consider Policy 1.CO to be out-of-date and afforded “full” weight to it (para 44).

6.19 In the Mazels appeal, albeit in respect of land in the north of the Borough and not on the Hamble peninsula, (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 11th January 2018) [CD9] the Inspector came to a slightly different view again. Here he found that Policy 1.CO was out-of-date but nonetheless decided that any conflict with it should nevertheless still carry “considerable” weight (para 20).

6.20 Finally, in the Bubb Lane appeal (Land at Bubb Lane, Hedge End, Appeal Reference APP/W1715/W/16/3153928, planning application reference O/15/77112 determined 13th September 2017) [CD8] although the Inspector accepted that Policy 1.CO was consistent with the relevant provisions of the NPPF and did not establish a blanket protection of the countryside, it lacked the flexibility of approach favoured by the NPPF (para 14). Accordingly, he considered the policy was not up to date (para 17). Despite this he attached considerable weight to the conflict of the appeal proposals with the policy and, ultimately, the appeal was dismissed.

6.21 In the light of these decisions, it is the Council’s view that:

- The Adopted Local Plan is not out of date simply because it is time expired;
- Policy 1.CO is broadly consistent with the provisions of the NPPF. It does not create a blanket presumption against development in the countryside, and although it does not contain the full degree of flexibility now sought by the NPPF, it does allow a degree of ‘balancing’ to be undertaken;
- As a result, Policy 1.CO is not out of date and both the policy and any conflict with it should be afforded significant/considerable to full weight.

6.22 Turning to Policy 18.CO this develops the themes identified in 1.CO further in terms of the specific impact of development on the intrinsic character of the landscape. It states that:

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

6.23 Such an approach is consistent with paragraph 20 (d), 127 (c) and 170 (a) of the NPPF.

6.24 The same applies to Policy 59BE (i) which 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;”

6.25 This is aligned with Chapter 12 of the NPPF which seeks to achieve well-designed places, and in particular, paragraph 127.

6.26 Policies 18.CO and 59.BE were both considered in the Bubb Lane decision letter [CD8] at para 18, where the Inspector noted that:

“The fifth core planning principle provides general support for policies 18.CO and 59.BE. As I read it, NPPF paragraph 113 is framed to encourage the use of criteria-based landscape policies which are of general application, since it is in that context that the guidance concerning protection being commensurate with status makes sense. Although policy 18.CO is framed in simple terms it, too, should be read in the context of a plan which seeks to protect the countryside whilst also meeting development needs. Even though it offers no guidance as to how effects should be weighed, it does not necessarily represent a blanket level of protection. Likewise, NPPF continues to give strong support to policies for good design, as embodied in policy 59.BE, albeit that this policy also lacks guidance as to how effects should be weighed. There is some lack of consistency with NPPF, which would warrant substantial rather than full weight being attached to any conflict with these policies, but this is not to such an extent that they should be regarded as out of date.”

6.27 The Council agrees that Policies 18.CO and 59.BE are up to date and that at least substantial weight should be afforded to the policies and any conflict with them.

6.28 Turning to the Policies referred to in the other reasons for refusal, Policies 59.BE(v) and 102.T both require that development proposals are served by a satisfactory means of access, a principle which accords with Chapter 9 of the NPPF; in particular paragraph 108(b) which requires that a safe and suitable access is provided for all users. Policy 100.T, and its requirements that development should be well served by non-car modes, provide a choice of transport modes, and minimise the impact of the development on the existing transport network and travel demand, is also consistent with the principles set out in Chapter 9 of the NPPF, in particular paragraphs 102 and 103 which seek to ensure that developments are accessible via sustainable travel modes and that impacts on the transport network and highway safety are appropriately mitigated.

6.29 Policy 145.OS seeks to prevent the loss of land currently used for children’s play, sports pitches, open space or outdoor sports save in certain specified circumstances. This is consistent with Chapter 8 of the NPPF and in particular paragraphs 91(c), 92(c), 96 and 97, which seek to avoid the unnecessary loss of such facilities which are important to support healthy lifestyles, active communities and health and well-being.

6.30 Policy 25.NC aims to protect habitats and features of importance for wild fauna and flora. As such it is consistent with the provisions of paragraph 28 and Chapter 15 (in particular paragraphs 170 and 175) of the NPPF.

6.31 Policy 45.ES seeks to ensure developments include adequate proposals for surface water drainage, with reference to sustainable drainage systems, and this is consistent with paragraphs 163, 165 and 170 of the NPPF, which seek to ensure both that there is no increase in flood risk from new developments and that they include sustainable drainage systems and preserve water quality in the local area.

6.32 Policies 101.T, 147.OS, 165.TA and 191.IN all seek provision of, or contributions towards, on and off-site facilities and infrastructure required to mitigate the impacts of new development. This is aligned with the requirements of paragraphs 34, 54-57 and 81 of the NPPF in relation to securing appropriate mitigation measures by planning obligation.

Emerging Development Plan Policy

6.33 As paragraph 48 of the NPPF notes, weight can be given to policies in emerging plans depending on:

- The stage in the process of preparation of the emerging plan;
- The extent to which there are unresolved objections to it; and
- The degree of consistency of the relevant policies in the emerging plan to the NPPF.

6.34 The Emerging Local Plan is a long way down the path towards adoption. The Council submitted the Plan to Government for examination in October 2018. The examination hearings opened on the 21st November 2019 and ran for a period of 6 weeks to the 29th January 2020. The Council received an initial view from the Inspector on some of the key matters forming the basis of the strategy of the Local Plan on 1st April 2020 [CD6]. Officers are working on a number of actions to address the matters raised in the Inspector's letter and subsequent correspondence. A draft suite of Main Modifications has been provided to the Inspector and she is currently giving them further consideration.

6.35 The key strategic issue raised in the Inspector's letter of 1st April 2020 related to the proposed 5,500 house Strategic Growth Option (SGO) and associated infrastructure which the Inspector recommended be removed from the Plan. Opposition to the SGO has constituted the vast majority of objection, in both number and substance, to the Emerging Local Plan. The Council resolved at a meeting of its Cabinet on 25th June 2020 to accept the Inspector's recommended course of action and is currently working to provide the information necessary for the Plan to continue towards adoption. This information will be provided to the Inspector by the 16th October 2020 and it is anticipated that public consultation on Main Modifications will take place in early 2021.

- 6.36 The three key policies of relevance to the Council's planning case in response to these appeals mirror the three policies of the Adopted Local Plan described above. These emerging policies, as proposed to be modified, are dealt with in Section 5 of this Proof.
- 6.37 In terms of consistency with the NPPF, draft Policy S1 is aligned with paragraph 20 of the NPPF and the overall aims of delivering sustainable development. Draft Policy S7 seeks to achieve the same outcomes as saved Policy 1.CO and is aligned with paragraphs 20 and 170 of the NPPF. Draft Policy DM1 is consistent with paragraphs 20 and 170 of the NPPF in that it seeks to conserve and enhance the character and appearance of the countryside.
- 6.38 Draft Policy DM13 seeks to ensure that all new development must have a safe and convenient access to the highway network and must make provision for access by sustainable transport modes. As such it is consistent with the provisions of Chapter 9 of the NPPF; in particular paragraph 108 which seeks to achieve these same outcomes.
- 6.39 Draft Policy DM34 seeks to prevent the loss of land currently used for children's play, sports pitches, open space or outdoor sports save in certain specified circumstances. This is consistent with Chapter 8 of the NPPF and paragraphs 91(c), 92(c), 96 and 97 of the NPPF, which seek to avoid the unnecessary loss of such facilities which are important to support healthy lifestyles, active communities and health and well-being.
- 6.40 Draft Policy DM10 seeks to ensure the delivery of waste-water infrastructure is delivered in a timely fashion so as to avoid adverse impacts on protected water bodies and so is consistent with Chapter 15 of the NPPF, in particular paragraphs 170, 171 and 180.
- 6.41 Draft Policy DM11 seeks to protect and enhance areas subject to international, national and local nature designations and, as such, it is consistent with the provisions of paragraphs 28 and Chapter 15 (in particular paragraphs 170 and 175) of the NPPF.
- 6.42 Draft Policy DM40 requires that new development is supported by the infrastructure, facilities and services necessary to serve it, and as such is consistent with paragraphs 34, 54-47 and 81 of the NPPF.
- 6.43 It was noted in paragraph 72 of the December 2019 Officer Committee Report [CD64] that policies contained in the Emerging Local Plan could be afforded 'moderate' weight. However, given that:
- the Emerging Local Plan is at a more advanced stage in its preparation now than at the time that report was written;
 - the vast majority of objection to the Plan concerned the Strategic Growth Option, which is now proposed to be deleted from the Plan, and the Plan is now clearly moving towards successfully completing its examination with limited proposed modifications to the policies at issue in this appeal; and
 - the key planning policies relevant to the determination of this appeal are consistent with the provisions of the NPPF (and with equivalent adopted Local Plan policies)

it is considered that these policies can and should be afforded 'considerable' weight. At the very least they should be afforded no less than 'moderate' weight. This is a matter identified in Section 7 of the Statement of Common Ground as a matter not in agreement between the parties.

- 6.44 Two other matters in respect of the emerging Local Plan were highlighted in the Council's Statement of Case; namely the Development Distribution Strategy & Principles and the Settlement Hierarchy.

Local Plan Examination Inspector's Letter of 1st April 2020 and the Development Distribution Strategy & Principles

- 6.45 The Development Distribution Strategy & Principles ("DDSP") document (Local Plan Examination Library Document ORD012) [CD16] summarised the key principles which the Council would use in developing the strategy for distributing new housing in the Emerging Local Plan. It identified the housing target, the key sources of supply and the principles to be applied to the spatial distribution of the residual target including establishing the principle of a 'Strategic Growth Option'. Of relevance to this appeal is the final point which states that:

"There should be no significant additional development in the Hamble peninsula because of transport constraints, minerals safeguarding and the vulnerability of the open and undeveloped countryside gaps between settlements in this area and Southampton, the outer borders of which are clearly visible from many parts of the peninsula."

- 6.46 This 'principle' was underpinned by a high-level analysis of the highways, traffic, air quality, minerals and countryside gap constraints which resulted in the conclusion above.

- 6.47 The Inspector's 1st April letter [CD6] notes that this approach, which effectively ruled out strategic scale growth on the Hamble Peninsula, was based on only a limited analysis of the transportation issues related to the Hamble peninsula. The Eastleigh Strategic Transport Study on which the Plan was based did form some initial conclusions about traffic issues on the Hamble peninsula but noted that further work was required in order to fully understand the impacts of the proposed development options on the Hamble Lane corridor. However, no such work was undertaken and this resulted in one potential option for strategic growth (Hamble Airfield) being discounted without a proper evidential basis.

- 6.48 The Council does not accept the Inspector's conclusion that the decision to exclude strategic scale growth on the Hamble Peninsula was discounted without "any" evidential basis. It does, however, accept that the evidence was limited. Nonetheless, the Council has accepted the Inspector's ultimate conclusion that the spatial strategy of the Local Plan, insofar as the selection of strategic sites is concerned, is not justified and is proposing to follow her recommendation to remove the SGO (which arose from the application of the DDSP). Decisions about future strategic scale growth will, as also recommended by the Inspector, be addressed through an early review of the Local Plan.

- 6.49 While this issue is of tangential relevance, it doesn't have a direct bearing on the appeal as the appeal site was never under consideration for 'strategic scale growth'. That is because, while it is a large site in the context of Hamble-le-Rice village, it does not constitute 'strategic scale growth' in the wider Eastleigh Borough context and in the context described in the DDSP, which defined 'strategic scale growth' as developments of at least 1,500 dwellings in size; a scale sufficient to enable a degree of self-containment and sufficient critical mass to deliver new infrastructure such as new road links to the strategic highway network.
- 6.50 The matter of strategic scale growth, and if and where it might be located in the Borough, will need to be addressed through an early review of the Emerging Local Plan to which the Council has committed (and which is required by legislation in any event). The Inspector has not commented one way or the other as to whether the various locations proposed as possible alternatives for strategic scale growth through the process of preparing the Emerging Local Plan are suitable locations for such growth. Rather she has commented on the lack of evidence to support some of the conclusions arrived at and the process of selecting sites. The Inspector has accepted that there is a sufficient supply of housing sites in the pipeline to meet identified housing needs for the medium term (indeed for the majority of the Plan period) which will allow the Council sufficient time to undertake an early review of the Local Plan without impacting on overall housing supply. That is because the shortfalls the Inspector identified will only manifest themselves towards the end of the Plan period. On this basis the Council considers that it is appropriate to address future longer-term housing supply through the Local Plan review where the relative merits of locations for strategic scale growth and for individual sites can be considered in the round. There is no need, in the context of the current stage of the Local Plan, to allow smaller scale development out-with the Local Plan process on sites which have an intrinsic value as countryside, which are not needed in order to meet five-year supply and which have a number of other adverse impacts on infrastructure provision and the highway network in order to address any of the Inspector's points in her letter of 1st April 2020.

Settlement Hierarchy

- 6.51 Related to the above point is the settlement hierarchy which was introduced in the Emerging Local Plan (having earlier been included in the abandoned 2011-2029 Local Plan). This was explained in paragraphs 5.40 to 5.42 of the Council's Statement of Case.
- 6.52 The evidence to justify the categorisations within the settlement hierarchy was explained in the Council's evidence to the Local Plan examination under Matter 3 [CD21] – in particular the Council's responses to the Inspector's questions under Matter 3.3 (in terms of the categorisations within the hierarchy itself – pages 7-12) and Matter 3.4 (in terms of how the hierarchy influenced the spatial distribution of new development – pages 13-17).
- 6.53 This evidence explained that Hamble-le-Rice is categorised as a Level 3 settlement in the hierarchy below Eastleigh (Level 1) and Chandlers Ford and Hedge End (level 2). It sits in Level 3 alongside Bishopstoke, Botley, Bursledon, Fair Oak, Netley Abbey and West End. In

terms of population size Hamble-le-Rice sits towards the lower end of the ranking of other Level 3 settlements with a population of 5,616 compared to 11,519 for Bishopstoke, 10,951 for West End, 8,448 for Fair Oak and 7,321 for Bursledon. Only Netley and Botley have smaller populations, at 5,319 and 4,838 respectively. As recognised in paragraph 17a of the Council's Matter 3.3 response, however, it is a major employment location and benefits from a railway station outside the village.

6.54 Looking at the non-strategic greenfield housing allocations in the Emerging Local Plan (Evidence Base document HOU021 (Table 16, page 123)) [CD15], the majority of the allocations are smaller than 50 dwellings in size. Only one site is greater than 100 dwellings (HE2) and that site reflects the capacity of a planning consent which was going through the process at the time (and is now permitted). This appeal proposal comprises 148 dwellings which, compared to the other allocated sites, would be the largest allocation by a considerable margin and is proposed to be added to one of the smaller settlements. In order to properly reflect the settlement hierarchy approach and in order for local communities to have confidence in the primacy of the development plan, it is the Council's view that a development of the magnitude of the appeal proposal should more properly be considered through a comparative site selection approach of the local plan preparation process rather than on an ad hoc basis. Not least as, in the light of the Local Plan Examination Inspector's letter of 1st April [CD6], the Council is committed to an early review of the Local Plan in any event, and will be able to maintain housing supply in the meantime (the deletion of the SGO would only cause difficulties maintaining supply in the latter part of the Plan period, at which point a review will have addressed the issue).

7. TREATMENT OF THE APPEAL SITE THROUGH THE EMERGING LOCAL PLAN PROCESS

7.1 The appeal site was put forward by representatives of the site owners for consideration for allocation in the Local Plan through the Strategic Land Availability Assessment (SLAA) process. It appears as site SLAA-8-11-C in Local Plan Examination Document HOU010i [CD17]. The SLAA pro forma for the site is contained at pages 18-20 of the document.

7.2 214 sites were put forward for consideration in the SLAA. The methodology used to assess the sites is set out in the main SLAA report (Examination Document HOU010a). It is a 'policy-off' assessment which follows the methodology set out in the NPPG. The SLAA was carried out during 2016/2017.

7.3 The assessment of the appeal site notes:

***"Suitability:** The majority of the site is currently used as playing fields. The loss of this facility would only be acceptable if it could be demonstrated that it was surplus to requirements or a replacement facility of equivalent or better standard in terms of quantity and quality in a suitable location could be provided. Notwithstanding this issue, the northern portion of the site is relatively well screened by tree cover on its northern and western boundaries and with suitable reinforced planting on the boundaries it may be suitable for development in landscaping terms. To the south and*

west of the road, the site comprises existing employment uses and a car park. The proximity to the listed building will need careful consideration in any redevelopment of the site, which could provide the opportunity to improve the setting of the listed building. The assessment assumes that 0.3ha of the site is unavailable as a result of Sydney Lodge Historic Park and Garden. The highway implications of additional traffic on Hamble Lane would need careful consideration and access to the employment site beyond would need to be maintained. Further consideration would need to be given to potential ecological impacts of development on parts of the site and the SINC network and buffers should be provided as appropriate. It is considered that the site meets the definition of a brownfield site within the Town and Country Planning (Brownfield Land Register) Regulations 2017.

Availability: *The agent has indicated that the site could become available within five years to 31st March 2021. Given the need for a change in planning policy and the potential requirement for replacement facilities, a 5-10-year timescale is considered appropriate. The safeguarding of part of the site for sharp sand and gravel extraction may delay development coming forward.*

Achievability: *The potential need to find an alternative location for the sports facilities may be costly. A change in planning policy would be required to address the countryside and existing employment designations. The property market is robust within Hamble and as such there are unlikely to be any notable viability issues affecting development on this site should the constraints identified above be satisfactorily addressed.”*

7.4 The site was given a net residential yield in the SLAA of 127 dwellings.

7.5 Of the 214 sites assessed in the SLAA, 82 were ruled out as either unsuitable or unavailable in the SLAA assessment, leaving 132 sites to be carried forward to the next stage in the assessment process. This process is described in the Small and Medium Sites Background Paper (Examination Document HOU011a) [CD19]:

- An additional 15 sites were not considered further because they were being proposed for employment related uses.
- 20 other sites were not considered further as they were urban / brownfield sites to which the presumption in favour of development applied so they required no further assessment.
- An additional 18 sites were granted planning permission since the base date so, again, there was no need to assess these further.
- This left 79 of the original 214 sites remaining.
- A further 10 were removed because they formed parts of larger areas being considered for strategic scale growth and a further 5 were ruled out as they were considered not to comply with the DDSP [CD16].

- 7.6 This left 64 sites which were taken forward into the more comprehensive greenfield site assessment described in the Small / Medium Preferred Greenfield Sites - Development Capacity Assessment (Examination Document HOU012a) [CD20]. Some of the 64 individual sites were adjacent to each other. Where this was the case and where there was good planning reason to do so, adjacent sites were merged to form a larger site for assessment. The 64 sites became 41 numbered sites for more detailed assessment.
- 7.7 The Appeal site made it through these initial 'sieves' and, accordingly the site was taken forward as part of the site selection process as site 39 "Land north and south of Kings Avenue, Hamble". The assessment pro forma for the site begins on page 112 of the Development Capacity Assessment report [CD20]. However, it was subsequently ruled out in the stage 2 sieve largely on the basis of the loss of employment and playing fields.

8. UPDATE ON HOUSING SUPPLY / DELIVERY

- 8.1 Paragraph 73 of the NPPF requires that local authorities should be able to demonstrate that they have, as a minimum, a five-year supply of deliverable sites for housing when measured against targets in adopted local plans or, where those plans are more than five years old, measured against the Standard Housing Method (SHM). That five-year supply should include an appropriate buffer to ensure choice and competition in the market and depending on past under-delivery.
- 8.2 It is common ground that the Council can demonstrate a five-year supply with the requisite buffer (see paragraph 6.3 of the Statement of Common Ground) [CD63].
- 8.3 At the time the appeal application was determined by Committee in December 2019 the Council was able to demonstrate 7.1-year supply, as set out in the Council's Five-Year Land Supply Position Statement dated September 2019 covering the period 1st April 2019 to 31st March 2024 [CD14]. This included the requisite 5% buffer.
- 8.4 In the latest version of the Position Statement (dated August 2020 and covering the period 1st April 2020 to 31st March 2025) [CD13], again including a 5% buffer, the Council is able to demonstrate 5.6-year supply i.e. significantly above the requisite five-year level.
- 8.5 Moreover, the Emerging Local Plan will ensure that housing supply is maintained. As the Local Plan Inspector noted in her letter of 1st April 2020 [CD6], while the deletion of the SGO would introduce a "degree of uncertainty" to housing supply in the last 4 to 5 years of the Plan period (which runs to 2036), there is sufficient supply likely to be forthcoming through non-SGO sources (including existing commitments, windfall allowances and the smaller greenfield allocations proposed in the Plan which the Inspector found to be acceptable) to "meet both the need and requirement for housing for the majority of the plan period". Any uncertainty over provision towards the end of the Plan period can, of course, be addressed and remedied in a review of the Plan, which legislation requires to be undertaken within 5 years of adoption. The future supply of housing in the Borough is therefore secure.

9. THE POTENTIAL LANDSCAPE AND COUNTRYSIDE IMPACTS OF THE DEVELOPMENT

9.1 Under the first reason for refusal, permission was refused on the basis that 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 the quality of the landscape of the locality.

9.2 In preparing for this appeal Council officers have been in discussion with the appellant over a number of matters including landscape impacts. It is an agreed position on landscape impacts (see paragraph 6.18 of the Statement of Common Ground) [CD63] that:

- i. The Landscape and Visual Appraisal is based on an appropriate methodology;
- ii. The levels of landscape and visual magnitude of change and significance of effect defined within the Landscape and Visual Appraisal are appropriate for the Appeal Scheme;
- iii. The Appeal Site does not form part of a valued landscape in terms of NPPF paragraph 170;
- iv. The indicative masterplan illustrates that the scheme could be accommodated without unacceptable harm to the amenities of neighbouring residents;
- v. The indicative masterplan illustrates that the scheme could be accommodated without significant adverse effects on townscape character;
- vi. The development would have a minor adverse impact on the wider landscape and negligible impact on the Country Park;
- vii. There would be a major adverse visual effect to areas of public footpath 13 adjacent to the cricket ground during winter; and
- viii. The construction of residential development with associated infrastructure on an open sportsground would reduce the sense of openness and would result in an obvious change to its character at a site-based level.

9.3 Matters remaining not agreed, therefore, relate to (paragraphs 7.4 to 7.6 of the Statement of Common Ground) [CD63]:

- The weight to be afforded to the adverse visual impact experienced by users of the footpath which runs along the northern boundary of the site;
- The weight to be afforded to the adverse impact to the landscape character and visual effect at a site level; and
- The weight to be afforded to the harm caused by the loss of open countryside, protected by Policy 1.CO.

9.4 In that regard, paragraph 4.16 of the appellant's LVIA notes that, in view of the relatively narrow belt of vegetation bordering the public footpath which runs along the northern boundary of the site (Footpath 13), the proposed development would be visible in views from the north. And, as acknowledged in paragraph 4.17, there are filtered views to the easternmost parts of the application site and, even though there is denser vegetation as one passes west along the footpath, there remain glimpsed views through to the application site. Those views are acknowledged to be likely to become more extensive during the winter months. This is also stated at paragraph 5.8 which specifically deals with views from Footpath 13.

9.5 The crux of the Council’s position on site-based landscape impact is acknowledged in the appellant’s LVIA at paragraph 5.6 where it is noted that:

“The proposed development would, however, change part of the application site from an open sportsground (cricket ground) to residential development with internal roads, public open space, grasslands and areas of new plantings. Its sense of openness would be reduced and clearly there would be an obvious change to its landscape character at a site-based level.”

9.6 In the same paragraph the LVIA considers that this would equate to a “Small magnitude of impact on a landscape receptor of Medium sensitivity”. It is the Council’s view that, while the landscape impacts may be as described, the visual impacts are more pronounced as noted in paragraphs 6.5 of the LVIA. Ultimately, these impacts on views to the north lead the Council to disagree with the conclusions of the LVIA that:

- The vegetated treeline bordering the north of Footpath 13 is a “densely vegetated treeline” which would provide a “suitable new settlement edge” (paragraph 6.10).
 - In the Council’s view it is not as strong, clear or defensible a boundary as the existing boundary formed by Kings Avenue
- The retention of the football pitch and bowling green would mean that the proposed development would have little effect upon the existing urban area of Hamble-le-Rice and that the reduced area of industrial buildings within the GE Aviation Campus would be offset by improvements to the local setting of Sydney Lodge (paragraph 6.10).
 - It is the Council’s view that, while the retention of the football pitch and bowling green clearly help reduce the visual impacts, the appeal proposal still results in the built development of 148 houses on what is currently an open area of cricket pitch which will be more visible and more discordant from Footpath 13 than the status quo.
- The application site could accommodate the appeal development with “relatively little effect upon landscape character and views from the locally surrounding area” (paragraph 6.12).
 - It is the Council’s view that these effects are greater than “relatively little” in view of the comments set out above.

9.7 It is also the Council’s view that that there is considerable merit in seeking to protect the value of the countryside for its own sake in accordance with paragraph 170(b) of the NPPF and that proposals which seek to build in countryside on what is currently not built on, by definition, are intrinsically harmful. There is, of course, a question of the degree of harm and whether that harm is mitigated or outweighed by other considerations. But the starting point for the Council is that harm is intrinsically caused. This was a matter raised by the planning Inspector at the s78 appeal into the Council’s refusal of planning permission for up to 230 dwellings on Land to the east of Grange Road, Netley Abbey (APP/W1715/W/15/3005761,

planning application reference O/14/75435) [CD12]. The Inspector noted at paragraphs 13 and 17 of his decision letter that:

“13. The proposed development would also materially enlarge the settlement and extend the urban edge to the north-east, where it would merge with the existing strip of development beyond the site, effectively further extending the urban envelope. The resulting urban edge would be far less clear than at present, and the perception of open countryside beyond the settlement would be significantly diminished, particularly from the public domain within the settlement itself. The extensive landscaping proposed around the site edges would not compensate for, or even significantly mitigate, the loss of the open semi-rural outlook.

17. The extension of built development into ordinary farmland is intrinsically harmful, in terms of the character of the area, due to, at the very least, the diminution of the countryside.”

- 9.8 These comments are relevant in this appeal. It is also notable that, in the Grange Road Appeal, even though the Council was unable at that time to demonstrate a five-year supply of land for housing, the social benefits of the proposal were accorded substantial weight and the site was considered sustainable in terms of access to services and employment, the appeal was still dismissed.

10. REASONS FOR REFUSAL

- 10.1 This section addresses the reasons for refusal, including conflict with adopted and emerging policy and the NPPF.

Reason 1 - Inappropriate and unjustified form of development, loss of countryside and impact on the countryside and landscape character

- 10.2 The adopted Local Plan Proposals Map [CD5] shows the majority of the appeal site lying outside the defined urban edge and within land classified as countryside and protected from inappropriate development by Saved Policy 1.CO. The appeal proposal is for the erection of up to 148 dwellings with associated facilities the majority of which would be developed on land outside the urban edge and in countryside covered by Saved Policy 1.CO. The policy sets out the types of development that might be acceptable within the countryside; residential development of the size and scale of the Appeal proposal is not a form of development that the Policy supports. As such the appeal proposal is contrary to Saved Policy 1.CO and its equivalent Policy S1(ix) in the Emerging Local Plan and also fails to accord with the provisions of paragraphs 11, 20 and 170 of the NPPF.
- 10.3 Given the Council’s housing land supply / 5-year supply situation described in Section 8 of this Proof (which is a matter agreed with the Appellant – see paragraph 6.3 of the Statement of Common Ground) [CD63], it is not considered that there is sufficient justification to warrant allowing the development of such a large number of dwellings in an area of countryside contrary to the aims of Saved Policy 1.CO.

10.4 In addition to the lack of justification for the proposed development, it is considered that it would, as a matter of principle, have an unacceptably urbanising and visually intrusive impact on the countryside to the detriment of the character, visual amenity and public appreciation of the quality of the local landscape in the vicinity of the site. The Appeal proposals would involve the construction of built development on an area that is currently open and undeveloped, which is considered to be intrinsically harmful and would impact adversely on open views to the south by users of Footpath 13 which runs along the northern boundary of the Appeal site and, to a lesser degree, by users of the Mount Pleasant Recreation Ground beyond.

10.5 For these reasons, not only is the Appeal proposal unacceptable in principle, but it would also have a detrimental impact on the local area contrary to the aims of Saved Policies 18.CO and 59.BE(i) the equivalent policy (S7) in the Emerging Local Plan and paragraphs 20(d), 127(c) and 170(b) of the NPPF.

Reason 2 & 3 - Access & Highways Impacts

10.6 These reasons for refusal are covered in detail in the Proof of Evidence of Mr Whitney. In brief, however, Reason 2 concerns the adequacy of the proposed access. The Council considers the proposed access to be inadequate as it fails to make appropriate provision for pedestrians and cyclists which is contrary to Saved Local Plan Policies 59.BE(v), 92.T and 102.T, as well as Policy DM13 of the draft Local Plan and paragraphs 91 and 108 of the NPPF.

10.7 Reason 3 concerns the impacts of the traffic likely to be generated by the Appeal proposal on the local highway network. It is demonstrated in the evidence of Mr Whitney that the impact assessments undertaken by the appellant underestimate the true impacts such that those impacts would be severe if left unmitigated. Furthermore, the Council considers that the Appellant has not adequately demonstrated that the measures proposed in an attempt to mitigate the impacts are sufficient; nor have they demonstrated that they are reasonably foreseeable. Accordingly, the proposals are contrary to Policies 100.T, 101.T and 102.T of the Adopted Local Plan, Policy DM13 of the Emerging Local Plan and paragraphs 91 and 108 of the NPPF.

Reason 4 – Loss of Sports Pitches and Inadequate Mitigation

10.8 The Council has been working positively with the Appellant to seek to overcome Reason for Refusal 4 (and also 5 & 6). Despite the best endeavours of both parties this has not yet been achieved. However, the Council will continue to work with the Appellant with the involvement of the Parish Council (whose land may form part of a potential solution) and Sport England to ensure that, by the time of the Inquiry, these matters are fully overcome or there is an agreed way forward to address these matters through condition or planning obligation. This will be explained in a separate agreed note to the Inspector in advance of the Inquiry.

10.9 In the meantime, it is the Council's position that the Appellant still needs to provide further information to demonstrate that the loss of the cricket wicket and sports pitches can be adequately mitigated within the Parish of Hamble-le-Rice. Accordingly, the Appeal proposal is contrary to Policy 145.OS of the Adopted Local Plan, its equivalent Policy (DM34) in the Emerging Local Plan and paragraphs 91(c), 92(c), 96 and 97 of the NPPF. However, the Appellant has indicated that further information on this will be provided in its evidence to the Inquiry which should help the parties arrive at an agreed position on appropriate wording for a planning obligation / condition to address this in advance of the Inquiry.

Reason 5 – SPA Impacts / Nitrogen Neutrality

10.10 All new housing development within 5.6km of the Solent SPA is considered to contribute towards an in-combination impact on the integrity of the SPA as a result of increased recreational disturbance. The Appeal site lies within the 5.6km zone of influence and the proposed development of up to 148 dwellings will increase the human population in the vicinity of the coast and so has the potential to increase the level of recreational disturbance of protected bird species and habitats.

10.11 There is the potential for future housing developments (which involve a net increase in dwellings) across the Solent region to further exacerbate these impacts and thereby create a risk to the potential 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.

10.12 Eastleigh Borough Council, along with a number of other authorities in South Hampshire, formally adopted the Solent Recreation Mitigation Strategy (SRMS) [CD82] in March 2018. The SRMS provides a strategic solution to ensure the requirements of the Habitats Regulations are met with regard to the in-combination effects of increased recreational pressure on the Solent SPAs arising from new residential development. This strategy represents a partnership approach to the issue which has been endorsed by Natural England. As set out in the SRMS, an appropriate scale of mitigation for the Appeal development would be a financial contribution based on the number and size of the residential units proposed.

10.13 While the Adopted Local Plan predates the emergence of this issue, Policy DM11 of the Emerging Local Plan implements the Council's Cabinet decision to endorse the SRMS and sets out the Council's approach to securing the appropriate mitigation measures to address the in-combination impact of the increased recreational disturbance arising from increased residential development. It states:

“The Council will work with PUSH, Natural England, the Environment Agency and other wildlife organisations to develop and implement a strategic approach to the protection of European sites from the direct and indirect effects of development including recreational disturbance. Within Eastleigh Borough this will include:

- a. *implementing the Solent Recreation Mitigation Strategy and contributions to recreation mitigation for the New Forest or alternative agreed approaches if required;*
- c. *protection of the River Itchen SAC including water quality and the southern damselfly from the impacts of nitrogen deposition;*

10.14 In addition to the SRMS impacts, there is evidence of high levels of nitrogen and phosphorus input into the Solent complex which are causing problems of eutrophication at these designated sites. Natural England, through its published document 'Advice on achieving nutrient neutrality for new development in the Solent region for local planning authorities' [CD83], has advised 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.

10.15 The Appeal proposal would result in a net increase of up to 148 dwellings which would be served by the Peel Common Wastewater Treatment Works which ultimately feed into the Solent. A nutrient budget for the scheme was produced in line with Natural England's published guidance with this demonstrating a net change in nitrogen load from the development. The Natural England methodology has been amended since this planning application was refused and the appellant is currently updating the nutrient budget to confirm the current position. Upon receipt of this information, the Council will prepare a note on this matter that will be submitted to the Planning Inspectorate prior to the Inquiry, to inform the Inspector's appropriate assessment.

10.16 It is the Council's / Natural England's view that the impacts of this increase in nitrogen load are such that the development would have a likely significant effect on the Solent designated sites and (if unmitigated) an adverse effect on integrity due to the increase in wastewater. In order to be lawfully permitted, therefore, a package of avoidance and mitigation measures are required.

10.17 It is the package of SRMS and nitrogen deposition mitigation measures, which the Council continues to work with the Appellant to address. If agreement can be reached on the mitigation required, this reason for refusal will not be pursued and will be addressed as necessary by condition and planning obligation (as appropriate). If not, the Council considers the Appeal proposals to be contrary to Policy 25.NC of the Adopted Local Plan, its equivalent Policy (DM11) in the Emerging Local Plan, paragraphs 28, 170 and 175 of the NPPF, and the requirements of the Habitats Regulations.

Reason 6 – Need for a s106 Planning Obligation

10.18 There is a requirement for developer contributions and obligations to ensure on and off-site provision of facilities and infrastructure including:

- affordable housing;
- primary & secondary education;

- the SRMP and nitrates mitigation;
- provision of access works and off-site highway junction improvements;
- street tree maintenance;
- provision of on-site pedestrian links to Footpath 13;
- community infrastructure;
- health provision;
- public art;
- footpath improvements;
- air quality monitoring;
- on-site and off-site public open space and sports and recreation provision including commuted sums for management & maintenance;
- play area provision, including commuted sums for management and maintenance; and
- street tree maintenance.

10.19 These are required to mitigate against any increased need for, or pressure on, existing facilities. The requirement for them is set out and justified in Saved Local Plan Policies 33.ES, 74.H, 101.T, 147.OS, 165.TA, 191.IN, the equivalent policy in the Emerging Local Plan (DM40), paragraphs 54-57 & 81 of the NPPF, the Council's adopted Planning Obligations Supplementary Planning Document and the Council's Public Art Strategy. It is considered conflict with these policies can be overcome through a s106 Planning Obligation. Discussions between the Council and the Appellant are on-going and it is anticipated that a suitably worded agreement will be presented to the Inquiry such that this reason for refusal would be overcome.

11. BENEFITS OF THE APPEAL PROPOSAL

11.1 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."*

11.2 I address each of these in turn.

11.3 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 with over 1,000 net housing completions delivered in each of the past two years (1,162 in 2018/19 [CD15, HOU020, para 49] and 1,223 in 2019/29 [CD13, para iii, Executive Summary] compared to an annualised draft Local Plan target of 729 per year);
- As set out above, in her letter of 1st April 2020 [CD6], 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; and
- In order to realise the benefit, the scheme involves development of a site outside of the defined urban edge and so compromising countryside policy (as well as having other harms).

11.4 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.

11.5 Thirdly, 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.

11.6 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. Assuming a mechanism is found to link the heritage benefits to the appeal scheme, I accept that the restoration and enhancements of a Grade II* listed building would be a benefit of great weight (in accordance with paragraph 193 of the NPPF). However, 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 and giving rise to other harms.

11.7 Fifthly in terms of the economic benefits arising through construction, New Homes Bonus and additional local spending, again, I recognise these, 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.

11.8 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.

12. PLANNING BALANCE

12.1 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.

12.2 The NPPF is an important material consideration but, as Lord Carnwath made clear in *Suffolk Coastal DC v Hopkins Homes* [2017] UKSC 37 at paragraph 21, the NPPF

“...cannot, and does not purport to, displace the primacy given by the statute and policy to the statutory development plan. It must be exercised consistently with, and not so as to displace or distort, the statutory scheme.”

12.3 Hence, the presumption in favour of development set out in paragraph 11 of the NPPF sits within, and does not modify or dis-apply, this statutory framework as is made clear in paragraphs 2, 12 and 47 of the NPPF

12.4 The Appeal proposal is for the development of up to 148 dwellings with associated access, infrastructure and facilities on a site, the majority of which lies outside the defined urban edge and within an area designated as Countryside within the Council’s adopted Local Plan. As such the appeal proposal is contrary to Saved Policy 1.CO of the adopted Local Plan

12.5 As set out above, the Appeal proposal does not accord with the Adopted Local Plan, the relevant policies of which are broadly consistent with the provisions of the NPPF and are not out-of-date. Neither is it consistent with the Emerging Local Plan or the NPPF.

12.6 In particular, Policy 1.CO is not out of date by virtue of being contained within a time-expired Local Plan as the provisions of the Policy broadly accord with the requirements of the NPPF. Neither is Policy 1.CO out of date by virtue of the failure of the Council to be able to demonstrate a five-year supply of deliverable housing sites or because the Council has failed the Housing Delivery Test. The Council is able to demonstrate a five-year supply of housing, a position which is agreed by the Appellant, and it has not failed the Housing Delivery Test. There is, therefore, no need for the additional dwellings proposed. There is also a healthy supply of development sites in the pipeline to maintain this position over the medium-term. There is, therefore, no housing need case for this Appeal proposal to be determined other than in accordance with the development plan.

12.7 The Appeal proposal would have an unacceptably urbanising and visually intrusive impact upon the countryside to the detriment of the character, visual amenity and quality of the local landscape. The introduction of built development to an area which is currently open and undeveloped is intrinsically harmful. The Appeal proposals are therefore contrary to the

provisions of Saved Policies 18.CO and 59.BE(i). They are also contrary to Policies S1(ix) and S7 in the Emerging Local Plan and paragraphs 11, 20, 127 and 170 of the NPPF.

12.8 It is demonstrated in the Proof of Evidence of Mr Whitney that the Appeal scheme:

- has an inappropriate means of access which is detrimental to pedestrians and cyclists;
- does not properly promote sustainable transport modes;
- underestimates the level of traffic generated by the proposed development, which the Council considers will have a severe adverse impact on the operation of the local highway network if left unmitigated; and
- is not supported by a proper assessment of the impact of what mitigation is proposed and whether this is sufficient to address the impacts identified.

12.9 All of these reasons, which are elaborated in the evidence of Mr Whitney, result in the Appeal proposal being contrary to the provisions of Saved Local Plan Policies 100.T and 102.T, draft Local Plan Policy DM13 and paragraph 108 of the NPPF.

12.10 It has not been demonstrated that the Appellant can adequately mitigate the adverse impacts of the development in terms of the loss of sports pitches, in-combination impacts on protected species and habitats and the delivery of planning obligations needed to make the development acceptable in planning terms and the development is therefore contrary to a range of Saved and Emerging Policies and provisions of the NPPF, as set out in section 10 above. It is hoped, however, that these matters can be agreed prior to the commencement of the Inquiry.

12.11 In considering any development proposal it is necessary to consider whether there are any material considerations that warrant allowing the development contrary to the development plan.

12.12 As set out in section 11 above, it is acknowledged that there would be benefits associated with the development in the form of delivery of market and affordable housing (though the benefit of the former is reduced due to the Council being able to demonstrate five-years supply of land for housing), restoration and enhancement of a Grade II* listed building, economic benefits in the form of construction jobs, New Homes Bonus and an increased local population which could generate an increase in local spending.

12.13 However, most of these benefits are not unique to this site and could accrue from any development in a location not contrary to adopted countryside and landscape policy and without the same access and highways problems.

12.14 Accordingly, the Council does not consider that these other material considerations are sufficient to outweigh the substantial, permanent and irreversible harm caused by the development when assessed against the policies in the Local Plan and the NPPF taken as a whole.

12.15 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 considers 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.

12.16 For these reasons the Inspector is respectfully requested to dismiss the appeal.