

Our Ref: 21/504028/FULL

Helen Skinner,
Inquiries & Major Casework Team,
The Planning Inspectorate.

Appeal ref: Unknown
Date: 07/12/2022

Dear Ms Skinner,

Site: Land At School Lane, Newington, Kent, ME9 7JU
Proposal: **Erection of 25no. residential dwellings and the provision of a 20-space staff car park and 20 space pupil pick-up/drop-off area for Newington C of E Primary School, together with associated access, landscaping, drainage and infrastructure works.**

Thank you for your email in respect of the above appeal. This letter sets out the Local Planning Authority's response to the request for the appeal to be heard at an inquiry.

As you are aware, the application was refused for the following reasons:

1. The proposed development would represent unjustified and unnecessary residential development within the countryside resulting in an urbanising impact, outside of the defined built-up area boundary, in a manner which is significantly and demonstrably harmful to the character, appearance, and intrinsic amenity value of the countryside. The proposal is therefore contrary to policies ST1, ST3, ST5, CP4, DM14, DM24, and DM26 of Bearing Fruits 2031 - The Swale Borough Local Plan 2017; and the National Planning Policy Framework.
2. In the absence of a completed S106 agreement to secure relevant contributions and obligations, the development fails to mitigate the impacts of the additional residential units on local services and infrastructure, fails to secure the provision of affordable housing, and fails to mitigate ecological impacts on the Swale and Medway Estuary Special Protection Areas and Ramsar sites, contrary to policies DM6, DM8, CP5, CP6, CP7, DM17 and DM28 of "Bearing Fruits" - The Swale Borough Local Plan 2017. Such contributions being required towards the following infrastructure - Highways, Air Quality, Primary Education, Secondary Education, Special Education Needs, Community Learning, Youth Services, Library Bookstock, Social Care, Waste, refuse bin provision, healthcare (NHS), Swale SPA and Ramsar Sites, open space and off-site sport and recreation.

Annex K of the Planning Appeals Procedural Guide sets out the situations whereby an inquiry would be appropriate, which are as follows:

- there is a clearly explained need for the evidence to be tested through formal questioning by an advocate (this does not preclude an appellant representing themselves as an advocate); or
- the issues are complex (for example, where large amounts of highly technical data are likely to be provided in evidence); or
- the appeal has generated substantial local interest to warrant an inquiry as opposed to dealing with the case by a hearing (where the proposal has generated significant local

interest a hearing or inquiry may need to be considered. In such circumstances the local planning authority should indicate which procedure it considers would be most appropriate taking account of the number of people likely to attend and participate at the event. We will take that advice into account in reaching the decision as to the appropriate procedure.);

The last two guidance points relate to enforcement appeals which would not be relevant to this case.

Response:

(a) Need for evidence to be tested through formal questioning by advocate.

The appellant has argued that the current position of the Council's 5 Year Housing Supply forms part of the reason for the appeal to be heard as a Public Inquiry. The appellant has argued that the extent of the Council's shortfall differs from the Councils established (and published) position of 4.8 years and this requires questioning.

The Council's view is that this is a point which does not require questioning as the Officer Report clearly accepts that the Council does not have a 5-year housing supply and the titled balance was engaged (which was considered by members and officers) irrespective of the level of shortfall in the 5-year housing land supply.

The Council's view is that in referring to the different perceived levels of a 5-year housing supply provision, a clearly identified need for evidence to be tested by way of formal questioning has not been demonstrated. Fundamentally there is no difference of opinion about the fact that the authority does not have a 5-year housing land supply that the presumption in favour of sustainable development has been triggered. The key planning issue is whether material planning harm brought about by the development would significantly and demonstrably outweigh the benefits of the proposal. The Council's view is that the harm would outweigh the benefits even if it had a significantly lower level of housing land supply than 4.8 years.

Moreover, details of the Council's 5-year housing supply provision could be outlined sufficiently through evidence provided to the Inspector through Written Representations. Questions to both parties on this matter could be raised by the Inspector through Written Representations should further clarity be required.

Further, the Council recently defended appeal (APP/V2255/W/22/329859 Land West of Elm Lane) for a larger development (100 houses) which was heard by means of an Informal Hearing and not through a Public Inquiry. In the decision letter, the Inspector commented that despite the difference in opinion in relation to the level of 5-year housing land supply (nb: the appellant has argued it was 3.46 year provision and the Council maintained its position of 4.8 years), they would still be taken to paragraph 11 of the National Planning Policy Framework. For ease of reference, I have attached the Inspector's decision to the email that accompanies this letter.

While two reasons for refusal have been listed, one relates to securing a Section 106 Agreement which is currently underway with the appellant, and it is anticipated that a signed S106 Agreement will be presented to the Inspector before the date of determination. Therefore, the crux of the appeal relates to the urbanisation of the countryside. As the council does not dispute the engagement of the Tilted Balance due to the temporary shortfall 5-year housing land supply issues, it is not considered that evidence needs to be tested through formal questioning in this regard.

(b) the issues are complex (for example, where large amounts of highly technical data are likely to be provided in evidence); or

The reasons for refusal relate to the proposed harm to the countryside through the introduction of residential development. The other matters relate to the securing a Section 106. The technical matters including highways, drainage, ecology and other matters do not form reasons for refusal. The impact to the countryside is to a degree a matter that is subjective, and it is not considered an interrogation of any technical data would be required in order to reach a balanced judgment on this matter. Written representations would be considered sufficient to allow both parties to illustrate the case in full.

It is considered relevant to reference a recent appeal decision the Council received for Jubilee Fields (PINS ref; APP/V2255/W/20/3246265, SBC ref 19/501773/OUT). The appeal sought for the Jubilee Fields site was for the development of 41 dwellings. The appellants had requested that it be dealt with as a Public Inquiry. However, the appeal start letter set out that the written representations procedure was the most suitable for this appeal. Similarly, it is considered that the written representations procedure would also be most suitable for Land at School Lane which contains 2 reasons for refusal and involves just 25 residential units not 41.

(c) the appeal has generated substantial local interest to warrant an inquiry as opposed to dealing with the case by a hearing:

As referenced in the appellants Statement of Case and Justification Statement a number of letters of objection were received to the Local Authority regarding the application. The Officer Report to Planning Committee did indicate this to be 62 letters. However, the proposal does only relate to 25 residential units and written representations, or an Informal Hearing would provide ample opportunity for the views of residents to be heard. A response of 62 letters (which includes representations from members of the same household) shows there is a strong level of concern.

I note that Annex K does identify that a Hearing can be appropriate where there is a level of local interest to warrant a Hearing. Given the proposed number of units and the number of representations as a proportion of Swale Borough it is considered that a written representation or, at most, an Informal Hearing would be the most effective way of determining this appeal. The Council's view is that because of the size of the development and level of local interest an Inquiry is not warranted in this instance.

Summary:

Two reasons for refusal were applied by the Local Planning Authority to the decision notice for Land Off School Lane. The second reason for refusal is seeking to ensure a Section 106 agreement would be secured if an appeal were successful. The primary reason relates to the urbanising impact of the proposed development outside of the defined built-up area boundary. These issues are not technical in nature and to a degree subjective. These matters are considered by the Council to be capable of being thoroughly considered through the submission of Written Representations.

Given the proposed scale of the scheme (25 units) and the clear identification of issues as set out by the decision notice, which are not considered technical in nature, it is not clear to the Local Planning Authority, why these matters could not be dealt with by Written Representations or at most a Hearing.

The Council does not believe that the criteria for a Public Inquiry, as set out in Annex K, have been met. It is considered that it would be inappropriate for the appeal to be determined by way of Inquiry

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in this instance. The Council respectfully considers that Written Representations procedure would be the most suitable.

If a Public Inquiry is determined to be appropriate, I would suggest that no more than one day would be necessary.

I hope this helpful, but should you have any queries please do not hesitate to contact the Local Authority.

Yours Sincerely,

Emma Gore

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Appeal Decision

Hearing held on 14 September 2022

Site visit made on 14 September 2022

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05/10/2022

Appeal Ref: APP/V2255/W/22/3298959

Land West of Elm Lane, Minster on Sea

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
 - The appeal is made by Land Allocation Ltd against Swale Borough Council.
 - The application Ref 20/504408/OUT, is dated 9 September 2020.
 - The development proposed is described as 'outline planning application for residential development for up to 100 dwellings, including access, with all matters reserved.'
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Decision

1. The appeal is dismissed, and outline planning permission is refused.

Preliminary Matters

2. I have taken the above description from the appeal form since it reflects the development for which planning permission is sought. That being for the erection of 100 dwellings as opposed to 150 which was the subject of the application as it was originally made to the Council. The appeal scheme seeks outline planning permission with all matters reserved for future consideration save for access. Whilst the Council did not issue a decision, their evidence explains that had they done so, they would have refused planning permission. The reasons therefore have informed the main issue of the appeal.
3. The second putative reason for refusal offered by the Council related to the absence of a completed planning obligation to secure a number of developer contributions required by both the development plan and the scale of the appeal scheme. I shall return in more detail to the substance thereof later in my decision but a signed and completed obligation, in the form of a Unilateral Undertaking (UU) is before me. The Council, whilst not signatories to the obligation, have had sight of a copy of the final draft and have indicated that they are content with the provisions, schedules and effects contained therein. This, therefore, and for my purposes in identifying the main issue of the appeal, has addressed the Council's objections to the proposed development in regard to developer contributions.

Main Issue

4. With the above in mind, the main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

5. The appeal site is an open and undeveloped field laid to grass. It is located on the edge, but outside of the settlement boundary for Minster (on Sea). The land slopes steeply in a northerly direction across the site, abutting gardens to dwellings that front Nelson Avenue to the south. The proposed access, which is fixed for consideration at this stage, would be taken from Elm Lane, at the site's eastern boundary. A public footpath, ZS8, runs diagonally across the site for some of its length, from the northeast to the southwest, linking Chapel Street/Back Lane, with Elm Lane. Minster Abbey (Church of St Mary and St Sexburga) and its associated gatehouse, located at the northeastern end of ZS8, are grade I listed and a scheduled monument.
6. Policy ST3 of the Local Plan¹ sets out the Council's settlement strategy. Minster is identified in tier 1-3 and as a local centre, as part of the West Sheppey Triangle. Development should be, according to ST3, directed to previously developed land within built up area boundaries. Since the appeal site falls outside of the settlement boundary and thus, by definition, is in the countryside, its development would not sit squarely with its aims. ST3 does go on to say that development will not be permitted at locations in the open countryside unless supported by national planning policy and able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities.
7. The LCA² identifies the appeal site as falling within character area 16 – the Minster and Warden Farmlands. This area is defined by the exposed, prominent hills and cliffs situated above alluvial marshes along the north coast of the island, with arable farming prevalent to the south of the B2008 and caravan parks to the north of it. The landscape retains a rural character despite modern developments with a degraded landscape condition in places. The area is relatively open with little tree cover and there are some public rights of way running through. In terms of the appeal site itself, the appellant's LVIA³ explains that it is defined primarily by the undulating open pasture which surrounds it with thicket hedgerows and some trees, the residential areas to the south and west, and by the expansive views across the southern part of the island. Tree cover is limited and dense housing to the south and west is prominent.
8. Whilst the LCA sets out that area 16 is of poor condition in landscape terms generally, the open and undeveloped character of the appeal site as a land parcel contributes positively to what is a prevailing rural feel to this edge of settlement location. One could legitimately argue that the appeal site is within an area identified as 'urban fringe' but in character and appearance terms, it relates clearly and positively to the distinct rural appearance of the larger fields to the east, on the other side of Elm Lane. Something of a 'green wedge' of open and undeveloped land that brings the open countryside around and into part into the settlement.
9. It is a highly accessible land parcel, with footpath ZS8 running, for most of its southern part, diagonally across the appeal site from Elm Lane. Whilst the

¹ Bearing Fruits 2031: The Swale Borough Local Plan 2017

² Swale Landscape Character and Biodiversity Appraisal 2011

³ Landscape and Visual Impact Assessment July 2020

majority of the northern section of the footpath is obscured by trees and hedges, it opens up into the land forming the appeal site and around it. The route appears to be well used as a link between Elm Lane/Nelson Avenue and the uphill parts of the settlement. There is a definite tranquil feel to the experience of land in the immediate area from the footpath. It is a location where, due to the elevation of the land, one can appreciate more the quality of the site against the rural backdrop of the fields to the east and down towards the southern edge of the island. You garner a strong sense of place and individual identity from this point, being able to appreciate the context of the island and the quality of its visual and landscape relationship to the mainland.

10. Being on public footpath, I would consider views therefrom to be of a high sensitivity given routes would be mostly used for recreational purposes. As well as the feel for the character of the area from ZS8, there is a clear distinction between the edge of the built up parts of the settlement and the appeal site noticeable from footpath ZS5 to the east, a route that runs east and south from Elm Lane and down the hill towards Lower Road and across a former railway.
11. The dwellings along Nelson Avenue and Drake Avenue do exude an urban quality and due to the linear nature of the roads, they protrude noticeably into this area. They are however linear, frontage units which are set into the slope of the land and thus, in wider views such as from footpath ZS5 from the east of the settlement (LVIA Viewpoint 05) and from the central part of footpath ZS8 (LVIA Viewpoint 01C) they have a recessive appearance. They are also visible at viewpoint 4 which is to the southern end of footpath ZS7 where it meets Low Road.
12. From the east specifically, development on the appeal site would be less read against urban features in the backdrop sense, and more as a protrusion from the settlement and something of an awkward bolt on thereto. Whilst layout is a reserved matter, it is difficult to see how (as a back land development site) the appeal scheme would not appear as an obvious and distinct urban estate layout that would fail to relate positively to the linear and frontage grain of development at this point of the settlement. The built edge of the settlement is, as I have explained above, very clear, and terminates distinctly with street scene frontages, defining what is urban and what is rural. From the south and travelling north along ZS7, buildings would appear draped on the hillside, and thus noticeably more prominent, unacceptably interrupting the quality of the sites rural feel and how it relates positively to the undeveloped edges of the settlement. It would exist as a self-contained new estate of high density housing, unrelated to the existing evolved urban grain.
13. The adverse effect on the quality of the edge of the settlement at the point of the appeal site would be most noticeably felt along the route of ZS8. The southern section specifically. The route at this point is already affected by urban features in the shape of the dwellings fronting Nelson Avenue. They are not, for want of a better way of putting it, a million miles away. However, they present rear elevations and thus verdant gardens to the land around the appeal site which reinforces its rural qualities. The proposals would bring built development of a not insignificant scale up to the boundary of and potentially (taking into account the diverted route of ZS8 is not yet known) enveloping the southern section. This would unacceptably reduce the quality of the experience of the section, to the detriment of its role in reinforcing the high quality of the

character of the immediate area, and its own individual landscape characteristics.

14. Planting areas to the boundaries of the appeal site and landscaped buffers between new dwellings and those that sit along Nelson Avenue could go some way to softening the overall appearance of the proposed development. That said, the wider landscape character area is not known for density of tree cover and thus I would have reservations that such measures would lean more towards seeking to obscure an unacceptable development rather than successfully integrating it into the landscape. In addition, any surrounding of the appeal site with new planting could have the effect of reinforcing the degree of visual distinction that it would have from the existing settlement and thus add to the harm I have identified.
15. The wider findings of the appellant's LVIA are noted and indeed I do not dispute that they are based on detailed background assessments of landscape character and quality, drawing on undebated baseline evidence. For all intents and purpose, I do agree that the field, as an open field on the edge of the settlement, is simply that. However, it does not automatically follow that development on it would be acceptable. As I have set out above, there are a number of factors that would, together, result in harm to the character and appearance of the area. Due to the wider prominence of the site in landscape terms, such an effect would extend to being more than local.
16. The harm that would be caused to the character and appearance of the area, in the manner I have described it above, would result in conflict with the development plan. Specifically, Policies ST1, ST3, CP3, CP4, DM14 and DM24 of the Local Plan and paragraphs 8, 20, 130 and 174 of the Framework⁴.
17. Together, amongst other things and as specified above, these policies seek to ensure that development should accord with the settlement strategy, be steered to appropriate locations, retain and enhance features which contribute to local character and distinctiveness, be both well sited and of a scale, design, appearance and detail that is sympathetic and appropriate to the location and value the character of the landscape. In terms of the Framework, paragraphs 8 c) and 20 d) set out the commitment to protect and enhance the natural environment; paragraph 130 seeks to ensure that development adds to the quality of an area, is visually attractive, sympathetic to local character and maintains a strong sense of place and paragraph 174 recognises the intrinsic character and beauty of the countryside.
18. The Council's evidence also refers to Policy DM9 which, since it is concerned with rural exceptions housing and development proposed for affordable housing sites specifically, is not directly relevant to the main issue of the case.

Other Matters

19. Whilst concluding that the public benefits associated with the provision of housing would outweigh, in the Council's own words, harm at the lower end of less than substantial, to nearby heritage assets, I am required to have special regard to the desirability of preserving a given listed building or its setting or any features of special architectural or historic interest which it possesses when considering whether to grant planning permission which affects a listed building

⁴ The National Planning Policy Framework 2021

- or its setting. This duty is set out by Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
20. The appellant's heritage assessment identifies listed buildings at a number of locations around the edges of Minster. These include the Abbey Church of St Mary and St Sexburga and its associated gatehouse (grade I listed and a scheduled monument), Mill House and 49 Chapel Road (both grade II listed).
 21. Being on a high point in the landscape and something of a community focal point both in status and social terms, the setting of the gatehouse and the Abbey is wide and its influence on the settlement significant both architecturally and historically. It is located some distance from the appeal site and its curtilage is contained by trees and landscaping. Whilst views of the Abbey will be possible from the appeal site when the surrounding trees are not in leaf, it does find itself in a built up context with modern housing and some of the older village core in and around it. The setting of the Abbey is not therefore devoid of development, nor indeed does it count a wide and uninterrupted rural hinterland as being significant thereto. Its significance in social and historical terms would be retained in terms of its close links to the settlement and built development more generally. As well as, for the majority of the year, it would be somewhat obscured by boundary planting.
 22. The remaining listed buildings identified are individual and on established built up street frontages and their significance seems to lie in their architectural detail which would not, given the distance between the appeal site and their immediate surroundings, be impinged upon by the proposed development.
 23. I am therefore satisfied that the proposed development would not have an unduly harmful effect on the setting of listed buildings. It would thus in this regard comply with section 16 of the Framework and Policy CP8 of the Local Plan which states, amongst other things, that development sustains and enhances the significance of Swale's designated and non-designated heritage assets and their settings in a manner appropriate to their significance.
 24. Whilst there is a debate as to the precise extent thereof, it is common ground that the Council are unable to demonstrate the supply of housing sites as required by the Framework. The Council calculate it to be 4.8 years, the appellant suggests it is in the region of 3.44 to 3.7 years. Either way, I would still be taken to the circumstances of paragraph 11 of the Framework where I would consider the most important policies out of date and grant a planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
 25. Whilst the action of paragraph 11 has the effect of reducing the weight I may ascribe to conflict with out of date policies, any identified harm would remain. In this case, it would be irreversible, wide ranging and long term harm to the character and appearance of the area. I would attach significant weight to this harm. As well as how it would conflict with the Framework. Specifically paragraphs 8 c) and 20 d) in the commitment to protect and enhance the natural environment; paragraph 130 in ensuring that development adds to the quality of an area, is visually attractive, sympathetic to local character and maintains a strong sense of place and paragraph 174 in how it recognises the intrinsic character and beauty of the countryside.

26. The provision 100 new dwellings would be a key benefit of the proposed development and contribute not insignificantly to the Council's shortfall even if I take it to be the Council's figure. There would be the obvious social and economic benefits associated with said housing, including the construction and occupation phases. The housing would be provided in close proximity to a range of local services that could be accessed via sustainable means, but this would be expected of a suitable housing site and as such less a benefit.
27. The appellant's UU also commits to provide affordable housing in excess of the development plan requirement. Worthy of weight though this would be in light of the evidenced need therefore across not only the island but Swale as a district, I have no compelling evidence before me that the costs of the proposed development could stand the amount of provision offered given the range and cost of other committed contributions. There was discussion at the hearing not only of the need for affordable housing but also the development plan position of a nil provision from development on the island precisely for viability reasons. Any weight I therefore attach to the provision of affordable housing would have to be tempered slightly.
28. There are other contributions secured through the appellant's UU. These include those towards the NHS, recycling and waste (wheelie bins), library and education services, youth and social care, public open space and public right of way improvements. Positive though these aspects would be, I see them more as geared towards responding to the effects of the proposed development and the requirements of the development plan rather than being tangible benefits. I therefore afford these other developer contributions limited weight.
29. The proposed development has the potential, both in isolation and in conjunction with other projects, to affect the integrity of the Swale Special Protection Area (SPA) and Ramsar and the Medway Estuary and Marshes SPA and Ramsar and how they act as supportive habitat for, amongst other things, a number of designated species of birds. This would be through greater recreational pressures brought about by their increased use through an enlarged local population.
30. I note that the appellant's UU has sought to provide mitigation in the shape of contributions towards a Strategic Access Management and Monitoring Strategy (SAMMS) as adopted by Council's across North Kent. The Council do not object to this approach and, on the face of what I have seen, I have no reason to disagree. In the same vein as my earlier comments on developer contributions however, I would consider this mitigation as a means to address an impact rather than a benefit that would attract weight as such. I have not conducted a full appropriate assessment under the Habitat Regulations since I am dismissing the appeal on other grounds.
31. There would be biodiversity and landscape gains according to the appellant, but these would again be dependent on a development scheme that would be environmentally harmful. The appeal site is in flood zone 1 which would be expected for a major development site and means to drain adequately to prevent flooding elsewhere seeks to address a potential impact rather than be a benefit. Laudable though an energy efficient approach to construction would be, compliance with modern building regulations would have to be the case for the scheme to be acceptable under separately enforceable legislation.

32. The appeal scheme would be acceptable in some respects, and I have no sufficiently compelling reason to disagree. These matters include areas of common ground between the main parties such as neighbours' living conditions and highway safety. In these cases, there would be compliance with the development plan. As a lack of harm however, these issues would be incapable of either being a benefit or weighing against harm.
33. I appreciate that the Framework commits to boosting, significantly, the supply of housing, but this does not mean development at all costs. The housing and affordable housing this scheme would deliver would no doubt be beneficial and there are other associated social and economic benefits that come with a general increase in population. But to my mind it should still be delivered in the right place and for the reasons I have set out, the appeal site would not be it. In this case therefore, and on the basis of the evidence before me, the adverse impacts of granting a planning permission for the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a consequence, the appeal scheme would not be sustainable development for which the presumption in favour applies.

Conclusion

34. For the reasons I have set out in my findings on the main issue, the appeal scheme would conflict with the development plan. There are no material considerations, including the Framework and worthy of sufficient weight, that would indicate a decision other than in accordance therewith. The appeal should therefore be dismissed.

John Morrison

INSPECTOR

APPEARANCES:

FOR THE APPELLANT:

- Mr Oliver Brown Landscape Consultant
- Mr Joe O’Sullivan AAH Planning Consultants

FOR THE LOCAL PLANNING AUTHORITY:

- Mrs Jill Peet Swale Borough Council
- Mr Tom Webster Swale Borough Council

THIRD PARTIES:

- Mr Stephen Baker Local Resident
- Mrs Julie Clarke Local Resident
- Miss Cheryl Fenton Local Resident
- Mr Andy Fisher Local Resident
- Miss Trish Hamilton Minster on Sea Parish Council
- Mr Paul Holbrook Local Resident
- Mr Elliott Jayes Local Ward Member
- Mr Peter MacDonald Local Ward Member
- Mrs Deborah Mayes Local Resident
- Mr Steve Silk Local Resident
- Mr John Stanford Minster on Sea Parish Council
- Mrs Jill Stimson Minster on Sea Parish Council
- Mrs Jackie Taylor Local Resident
- Mr John Twiselton Local Resident
- Mrs Dolly Wooster Minster on Sea Parish Council

DOCUMENTS SUBMITTED AT THE HEARING:

- Final draft of planning obligation from the appellant