TOWN & COUNTRY PLANNING ACT 1990

APPEAL BY: **MR AND MRS BURKE**

LOCATION: **PEAR TREE FARM, WINCHESTER ROAD, FAIR OAK, HAMPSHIRE, SO50 7HD**

PROPOSAL: **ERECTION OF 4NO. 4 BED DETACHED DWELLINGS WITH DETACHED CARPORTS FOLLOWING DEMOLITION OF EXISTING STORAGE BUILDING**

COUNCIL REF. NO: F/13/73697

STATEMENT OF CASE

1.0 Introduction

1.1 This appeal is made following Eastleigh Borough Council's decision to refuse planning application F/13/73697 for the above development.

1.2 The planning application was refused for two reasons as detailed below:

Reason 1:

"No justification has been provided to demonstrate the proposed new dwellings would be acceptable within a countryside location, contrary to saved policy 1.CO and 6.CO of the Eastleigh Borough Local Plan Review [2001-2011]."

Reason 2:

"The proposed dwellings would have a significant urbanising impact visually and physically, on the character and appearance of the immediate locality, diminishing the open character of the land, contrary to saved policy 59.BE of the Eastleigh Borough Local Plan Review [2001-2011]. The lack of a sustainable location and the adverse

impact of the proposed dwellings is therefore considered contrary to the National Planning Policy Framework."

1.3 This appeal statement will demonstrate that the Council's reasons do not accord with the current policy objectives of the NPPF and seek to restrict the Council's ability to deliver a five year supply of housing. The local planning authority has also failed to account for the sustainability of the site and wider characteristics of the area. The proposed development would offer an integrated form of development that respects the prevailing pattern of development whist contributing towards the housing supply of the area.

1.4 This document will also show that the weight afforded to the NPPF's requirements, where local plan policy is out of date and where there is not a five year housing land supply, is further supported by a recent High Court decision (Appendix 1) all of which has not been properly assessed by the local planning authority.

1.5 This statement should be read in conjunction with the supporting Planning and Design and Access Statement, submitted with the planning application, which provides the context for the development proposed.

2.0 Site Description

2.1 The appeal site is located along the west side of the B3354, Winchester Road, approximately 1 mile from the village of Fair Oak, with its variety of services and facilities.

2.2 Pear Tree Farm contains a two storey detached dwelling, formally known as Hicks Bungalow, with a large detached storage building adjacent to the dwelling, but (outside of the residential curtilage). There is a large area of grass land to the side (south) and woodland to the rear (west) of the site that is all within the appellants ownership.

2.3 The application site is made up by the area covered by the storage building, which is brownfield in nature and the grassed area to the side and rear. The storage building has a height, bulk and mass comparable to a two storey dwelling and is visually prominent from the Winchester Road streetscene. The site is accessed via a drive and large vehicular access onto Winchester Road that also serves the existing dwelling

known as Pear Tree Farm, which is in the same ownership as that of the application site.

2.4 Although the site is within designated countryside the site is close to the settlement policy boundary of Fair Oak. The immediate area is residential in nature and characterised by large detached dwellings in generous sized verdant plots. The site is within 1 mile of Fair Oak, which is a large village with a variety of services and facilities including a doctor's surgery, shops, banks and schools. There is also a direct bus route to Eastleigh, Winchester and Southampton. The route from the appeal site to Fair Oak benefits from an adopted footpath with several bus stops along the route in both directions.

3.0 Proposal

3.1 Planning permission is sought for the demolition of an existing non-agricultural or employment storage building (which is comparable in height and scale to a large detached two storey dwelling). The building would then be replaced by a two storey detached, four bedroom dwellinghouse with associated parking, with a further three dwellings being sited to the side.

3.2 The dwellings, with hipped roofs and dormer windows would be similar in scale, design and layout to those found on the opposite side of the road. The new dwellings would be accessed via the existing vehicular access for the site leading on to the B3354 Winchester Road.

4.0 Relevant Planning Policy

4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, in determination of planning applications decisions are made in accordance with the development plan unless material considerations indicate otherwise.

4.2 With respect to the proposed development it is considered that the Council's Local Plan is out of date in respect of its housing policies and as such when considering new residential development full regard must be given to the objectives and requirements of the National Planning Policy Framework, 2012 (NPPF).

4.3 The Council's recent assessment (July 2012) of its five year housing land supply position confirms that the Council only has a 2.6 year supply assessed against the Pre-Submission Local Plan requirements.

4.4 **National Planning Policy Framework 2012:**

The National Planning Policy Framework (NPPF) establishes a presumption in favour of sustainable development. The National Planning Policy Framework begins by identifying that:

"There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:

● *an economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;*

● *a social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being; and*

● *an environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy."* (Paragraph 7, NPPF, 2012).

4.5 Paragraph 8 goes on to say:

"These roles should not be undertaken in isolation, because they are mutually dependent. Economic growth can secure higher social and environmental standards, and well-designed buildings and places can improve the lives of people and communities. Therefore, to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system. The planning system should play an active role in guiding development to sustainable solutions."

4.6 Paragraph 6 makes clear that regard must be had to the document as a whole in determining what the Government's view of sustainable development means in

practice. It promotes the effective use of land through the re-use of previously developed land.

4.7 Paragraph 14 of the Framework stipulates that there *"is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan making and decision taking.*

4.8 Paragraph 49 goes on to say that *"Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites."*

4.9 Paragraph 50 of the Framework goes on to require that a wide choice of home is offered and to widen opportunities for home ownership. Housing should be based on current demographic and market trends in order to meet local need as well as providing a wide range of dwelling type.

4.10 When paragraph 50 is considered against the Council's housing needs document (Appendix 2); particularly chapter 7, it is evident that in Eastleigh family dwellings are needed. The document also clarifies that there is a desire for detached properties.

4.11 There is clear evidence of the government's commitment to deliver housing of all types and tenures throughout the Framework. The Framework also clearly supports the provision of housing within areas of the country that are under delivering. These significant material considerations have not been afforded due weight with the local planning authority instead opting to resist the need to meet its housing need relying on reasons that are unsubstantiated and do not take account of the sites sustainable location or existing site characteristics and prevailing pattern of development.

4.12 Chapter 7 of the National Planning Policy Framework deals specifically with good design. Paragraph 56 makes it abundantly clear that *"Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people."*

4.13 Paragraph 59 seeks to ensure the sustainable construction of the dwellings, whilst paragraphs 60 and 61 seek to ensure the development is designed well accounting for local context, without being prescriptive to architectural style and stifling innovation.

4.14 It is considered that the proposed housing development would see a creative, sustainable scheme located in a well accessed, established residential area close to the settlement policy boundary. Further the new dwellings would be of a good design and would make a positive contribution to the area, whilst respecting the residential amenities of neighbouring properties. The development would also contribute to the shortfall in family housing within the area as well as contributing towards the five year housing provision within the Borough of Eastleigh. The proposal would therefore accord with the objectives of the NPPF, 2012.

4.15 **Eastleigh Borough 2001-2011 Local Plan:**

Although the following policies of the Eastleigh Borough Local Plan have been considered it is recognised that the local plan and the policies contained within it are out of date. Further the draft local plan only carries limited weight due to its current un-adopted status. The development should therefore be determined with full regard to the requirements and advice contained within the National Planning Policy Framework.

4.16 The following policies of the adopted Eastleigh Borough Local Plan Review (2001-2011) have been considered against the proposed development:

28.ES (Waste Collection and Recycling), 34.ES (Energy and Climate Change), 45.ES (Drainage), 59.BE (Design), 1.CO, 6.CO, 100.T (Transport), 101.T (Highway Infrastructure), 104.T (Parking), 147.OS (Open Space Infrastructure), 190.IN (Community Infrastructure) & 191.IN (Developer Contributions).

4.17 In addition, the following Supplementary Planning Documents (SPDs) have been considered, although some are dated and supported by out-of-date and obsolete development plan policy.

- Quality Places 2011
- Environmentally Sustainable Development 2009
- Residential Parking Standards 2009
- Planning Obligations 2008.

4.18 It is considered that policy 59.BE is most relevant to the proposal and provides a list of criteria that development of this nature has to account for. This policy is largely carried forward in emerging policy DM1 of the new local plan.

4.19 **Policy 59.BE:**

"Development proposals which are in accordance with the other policies in this plan will be permitted provided they meet all the following criteria:

(i) they 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;

(ii) they make the most efficient use of the land;

(iii) they incorporate an appropriate mix of dwelling type and land-use where appropriate;

(iv) they provide a high standard of landscape design and appropriate planting where required. Development should use native plants in landscape schemes to benefit biodiversity. Development adjacent to or within the urban edge must not have an adverse impact on the setting of the settlement in the surrounding countryside;

(v) they have a satisfactory means of access and layout for vehicles, cyclists and pedestrians including appropriate links to surrounding footpaths, cycle ways and public transport services;

(vi) include, where appropriate, provision for the secure storage of bicycles;

(vii) they are an appropriate use for the locality and avoid unduly interfering, disturbing or conflicting with adjoining or nearby uses, especially in terms of noise, fumes, dust, overlooking, loss of daylight, loss of outlook, vibration, or from floodlighting or security lighting;

(viii) they make adequate provision for the storage and collection of refuse and where appropriate include facilities for the collection of recyclable materials;

(ix) they include, where appropriate, measures which provide shade and protection from the sun; and

(x) new development should reduce the potential for criminal activity and anti-social behaviour by the use of appropriate design."

4.20 **Policy 1.CO**

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

i. it is necessary for agricultural, forestry or horticultural purposes and a countryside location is required; or

ii. it is for an outdoor recreational use or is genuinely required as ancillary to such a use and does not require the provision of buildings, hardstanding or structures which,

are of a form, scale or design which would demonstrably harm the character of the locality; or

iii. it is essential for the provision of a public utility service or the appropriate extension of an existing education or health facility and it cannot be located within the urban edge; or

iv. it meets the criteria in the other policies of this Plan.

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

4.21 **Policy 6.CO**

"Proposals for new dwellings for agricultural, horticultural or forestry workers will only be permitted where all the following criteria are met:

(i) the size, design and layout of the proposed dwelling is appropriate to the landscape characteristics of the locality and the scale and nature of the enterprise and the identified operational need;

(ii) It has been demonstrated to the satisfaction of the Borough Council that the activity is currently viable and likely to remain so, and that a dwelling is essential to the continued viability of the holding;

(iii) there are no suitable redundant buildings on or adjoining the holding which are capable of being converted to residential accommodation;

(iv) there are no existing suitable dwellings available within a reasonable distance; and

(v) a dwelling serving or closely connected with the holding has not recently been sold separately or recently alienated in some way from the holding."

4.22 **Revised Draft Eastleigh Borough Local Plan 2011-2029:**

Policy DM1 establishes a list of general criteria for all new development, requiring that, amongst other things, developments; make the most efficient use of sites; are appropriately designed, taking full and proper account of the context of the site; should not involve the damage or loss of woodland or trees; include a landscaping scheme; and, should achieve a net increase in green infrastructure. This policy further requires that all development proposals be supported by a planning statement, which should explain the basis for the design of the scheme and identify how the proposal accords with the local plan, supplementary planning documents and with the NPPF.

4.23 Policy DM2 pertains to environmentally sustainable development and requires that all residential development should achieve Level 4 of the Code for Sustainable Homes (Level 5 as of January 2016 and Level 6 from January 2020). In addition it is required that developments should seek to, amongst other things; incorporate energy-efficient

passive solar design principles; provide a significant proportion of its energy requirements from on-site low or zero carbon sources; and, use recycled, low embodied carbon, low environmental impact and locally sourced materials in construction.

4.24 Policy DM6 sets out the Councils favoured approach for the sustainable management of surface water. This policy establishes a requirement that developers, where possible, should reduce surface water run off by providing sustainable drainage systems (SuDS), which should be designed in accordance with the CIRIA C697 SuDs Manual or equivalent local guidance developed by the SuDs Approval Body (SAB).

4.25 The general development criteria pertaining to transport is covered by Policy DM23, which requires that all new development has safe and convenient access to the road network and makes provision for access to, and by, other transport modes including public transport and cycle and pedestrian routes. Parking is dealt with under Policy DM24, which is supplemented by Eastleigh Borough Council's Residential Parking Standards SPD and establishes a minimum requirement in residential developments.

4.26 The development as proposed has had specific regard to the policy requirements, both locally and nationally. The development has proper regard to the character and appearance of the area, the residential amenities of adjoining properties and the landscape characteristics of the area; providing additional soft landscaping to further reduce the impact of the development and maintain the verdant characteristics of the site. Further the development makes provision for secure cycle and refuse storage.

4.27 The development therefore would make efficient use of a brownfield site, albeit outside of the urban edge, providing additional family accommodation which is in high demand in the area. It is therefore contended that there is no overriding policy objection to the development as proposed.

5.0 Assessment of Case

5.1 Although the site is within designated countryside, the immediate area is residential in nature, characterised by large detached dwellings in generous sized verdant plots. The site is also within 1 mile of Fair Oak, which is a large village with a variety of services and facilities including doctor's surgery, shops and schools. There is also a direct bus route to Eastleigh, Winchester and Southampton.

5.2 The development would see part of an existing brownfield site and adjacent land developed to create four, family sized detached dwellings. The new dwellings would be comparable in size to neighbouring residential dwellings and reflective of the architectural style and design of dwellings found in the immediate area also. The development provides amenity space, on-site parking and turning in line with the Council's adopted standards for each dwelling. Further the development is reflective of the pattern of development found within the immediate area and respects the building line along this side of Winchester Road.

5.3 Consideration has been given to the verdant open characteristics of the site, much of which will be retained as existing. Additional planting and landscaping will be incorporated where necessary and this could be agreed by planning condition.

5.4 Due regard has also been given to the relationship and impact the dwellings would have on neighbouring dwellings. It is contended that the separation distances, layout, existing landscaping and built relationship combine to ensure neighbour amenity is not unacceptably harmed.

6.0 <u>Response to Refusal Reason 1:</u>

6.1 Refusal reason one claims that no justification has been provided to demonstrate the proposed new dwellings would be acceptable within a countryside location, contrary to saved policies 1.CO and 6.CO of the Local Plan.

6.2 It is considered that the fundamental error with this refusal reason is that it relies on policies which seek to resist and restrict housing development.

6.3 Paragraph 14 of the Framework stipulates that there *"is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan making and decision taking.*

For plan-making this means that:

• Local planning authorities should positively seek opportunities to meet the development needs of their area;

• Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, 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; or
- Specific policies in this Framework indicate development should be restricted.

For decision-taking this means:
• Approving development proposals that accord with the development plan without delay; and
• Where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
- 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; or
- Specific policies in this Framework indicate development should be restricted."

6.4 Paragraph 49 goes on to say that *"Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites."*

6.5 The policy context provided within paragraphs 14 and 49 of the Framework is significant in the determination of this appeal as Eastleigh Borough Council has an accepted shortfall in its housing provision. The in principle support for sustainable development; particularly housing therefore applies. This approach is supported in a recent High Court decision between Cotswold District Council and Secretary of State for Communities and Local Government, dated 27/11/2013 (see Appendix 1). Of particular note is paragraph 72 of this decision, detailed below, which specifically emphasises the significance of the NPPF when considering housing development in areas with a housing shortfall. It also clarifies the priority of weight to be given to the NPPF over policies that seek to prevent housing development in such locations.

6.6 *"The second sentence of paragraph 49 of the Framework says that relevant policies for the supply of housing should not be considered to be up to date if the local planning authority cannot demonstrate a five year supply. Miss Sheikh submits that Local Plan 19 restricts development, including housing development, and so is not a housing policy for the purposes of paragraph 49 of the Framework. The short answer is that Local Plan Policy 19 is a policy relating to the supply of housing (amongst other developments). It restricts development, including housing, development. As the inspector correctly held, applying the Framework, Local Plan Policy 19 should be*

disapplied "to the extent" that it "seeks to restrict the supply of housing": see paragraph 14.44 of the report in the Highfields appeal" (Paragraph 72 of High Court Decision).

6.7 This is a significant determination as it provides a legal precedence in how local authorities must attribute weight to paragraph 49 of the Framework. Further, it provides a clear position on how local planning authorities consider their own policies when they are unable to demonstrate a five year supply of housing; particularly in respect of those policies that are designed to restrict housing provision.

6.8 The above CO policies provide a dated local plan context for new residential development within the countryside. When these policies are considered against the fact that the Council only has a 2.6 year housing supply, as assessed against the Pre-Submission Local Plan requirements, the significance of the NPPF as informed by the High Court Decision (Appendix 1) is considerable. It is therefore clear that there is no support for the application of the CO policies of the local plan as they would seek to prevent housing development in an area with an under supply of housing delivery. The core principles of the NPPF that seek to encourage sustainable development should therefore be applied, without being restricted by land classification.

6.9 Despite the sites countryside location the development site comprises a large section of previously developed land, as defined in the NPPF, and sits within a long established residential area. The site is also close to the settlement policy boundary and within 1 mile of the main village centre of Fair Oak with its large variety of services and facilities. Fair Oak can be accessed from the appeal site by public footpath and bus, relinquishing the dependence on the private motor vehicle. The appeal site would therefore accord with the presumption in favour of sustainable development as required by the NPPF, 2012 an overriding consideration in the determination of the proposal.

6.10 Therefore paragraphs 14 and 49 of the NPPF must be the starting point for the determination of this appeal. The failure of the local planning authority to do so has resulted in an unsubstantiated reason for refusal.

7.0 Response to Refusal Reason 2:

7.1 Refusal reason 2 states that the proposed dwellings would have a significant urbanising impact visually and physically, on the character and appearance of the

immediate locality. It is contended that this is a narrow minded view of the proposal and fails to look beyond that of the immediate site. Further the assessment has not been made with regard to wider policy objectives that encourage housing provision.

7.2 The existing large storage building is of a size and scale that is similar in scale to a large detached dwelling. When considering the requirements of Chapter 11 of the NPPF – Conserving and enhancing the natural environment, paragraph 111 clearly encourages the effective re-use of previously developed land, such as this. The demolition of the unsightly barn and replacement with a detached dwelling, with three additional dwellings adjacent to it, all set within soft landscaped plots, would see the sites efficiency increased whilst paying full regard to the sites rural setting. The landscaping requirements could be controlled by planning condition.

7.3 The development as proposed has had specific regard to the policy requirements, both locally and nationally. It is contended that the development of the application site meets the wider aims and objectives of national plan policy with the proposed development providing an efficient use of an existing brownfield site providing much needed housing accommodation in an area with a noted housing shortfall. The proposed dwellings have been designed with due consideration to the prevailing character and appearance of the area, the residential amenities of adjoining properties and the landscape characteristics of the area. Further, the development makes appropriate provision for private amenity space, as well as cycle and refuse storage, and on-site parking. This was clearly demonstrated in the planning and design and access statement submitted with the application.

7.4 Therefore contrary to the local planning authority's claims in this refusal reason the development can offer significant visual, landscape and character benefits as well as increasing the efficiency of the site in a sympathetic and appropriate manner.

8.0 Conclusion

8.1 The statement has clearly shown that the proposal has been designed and developed around the parameters and requirements of relevant development plan policy. The proposed development would see the provision of four family dwellings with associated gardens and parking provision. Access would be as existing (onto Winchester Road) and shared with Hicks bungalow. Further the site would be sustainably located within one mile of the many services and facilities provided in Fair Oak and accessible by foot and bus.

8.2 The development makes efficient use of an existing brownfield site close to the settlement policy boundary and provides much needed family accommodation in an authority with an established shortfall in housing provision. Further the development would reflect the established character and pattern of development whilst protecting neighbour amenity.

8.3 It is therefore contended that the Council has failed to recognise the positive contribution the development would make to the immediate area as well as its responsibility to ensure that it meets its required housing provision. The local planning authority's decision runs contrary to current national plan policy requirements and the government's commitment to support additional housing and the presumption in favour of sustainable development.

8.4 Having regard to the above information it is considered that the appellant has suitably addressed the reasons for refusal provided in the Council's decision notice. The Inspector is therefore respectfully requested to allow the appeal proposal.