Eastleigh Borough Council

Town and Country Planning Act 1990

Statement of Local Planning Authority

Planning Inspectorate Reference No: APP/W1715/W/16/3150918

Local Planning Authority Reference No: O/15/77009

Appeal Site:

Land north of Boyatt Lane
Eastleigh
SO50 4LJ

Name of Appellant:

Pembury Developments Ltd

1.0 Particulars of the Application/Appeal

1.1 This appeal relates to planning application O/15/77009 which was made valid on 17 August 2016 and sought Outline permission for the erection of two, three bedroom dwellings with associated carports and access. The matters for consideration were access, layout, and scale.

1.2 Appearance and Landscaping forming the applications reserved matters.

2.0 Local Planning Authority's Decision

2.1 The application was determined under delegated powers on the 25 November 2015. The application was refused on the following grounds:

(1) The proposal represents an inappropriate and unjustified form of development beyond the built up area which will cause an urbanising impact on the designated countryside, will physically and visually diminish the Local Gap between Boyatt Wood, Otterbourne Hill, and Allbrook and will irreversibly alter the intrinsic character of the landscape. As such the proposal is contrary to saved policies 3.CO, 18.CO, and 59.BE of the Eastleigh Borough Local Plan Review (2001-2011) and emerging policies S9 and DM1 of the Submitted Eastleigh Borough Local Plan (2011-2029).

(2) The proposed development due to its nature, siting, design, massing, scale and materials would represent an undesirable intrusion into an area of countryside and 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], and Policy DM1 of the Submitted Eastleigh Borough Local Plan 2011-2029 (July 2014).

(3) The application site and its surroundings is considered to have the potential to be suitable habitat for protected species. Insufficient evidence has been provided to demonstrate that the proposed development will not have any adverse impact upon protected species or local biodiversity. As such the application is considered to be contrary to saved Policy 25.NC of the Eastleigh Borough Local Plan Review (2011-2011), Policy DM9 of the Submitted Eastleigh Borough Local Plan 2011-2029 and paragraph 118 of the National Planning Policy Framework.

(4) Insufficient evidence has been provided to demonstrate that the proposed development will not have any adverse impact on the River Itchen SAC or the SINC network . As such the application is considered to be contrary to saved Policy 25.NC of the Eastleigh Borough Local Plan Review (2011-2011), Policy DM9 of the Submitted Eastleigh Borough Local Plan 2011-2029 and paragraph 118 of the National Planning Policy Framework.

(5) The proposal fails to make contributions towards the provision of essential off-site open space works, community infrastructure or sustainable transport, the need for which will increase as a direct result of the development proposed. The proposals are therefore contrary to Saved Policies 101.T, 147.OS & 191.IN of Eastleigh Borough Local Plan Review [2001-2011], emerging policies DM23, DM32, DM35, and DM37 of the Submitted Eastleigh Borough Local Plan [2011-2029], and Planning Obligations: Supplementary Planning Guidance [adopted July 2008].

3.0 Site & Surroundings

3.1 The application site forms a rectangular plot on the north side of Boyatt Lane. The site frontage runs for approximately 50m along the adjacent highway and directly abuts the vehicular highway. The site is currently undeveloped, a greenfield site.

3.2 The site is located with an area designated as countryside and the verdant character of the site contributes to that character. The site is also in close proximity to the ancient woodlands Pitmore Copse Gully SINC (to the north) and Lincolns Copse SINC (to the south). These areas are connected via a woodland belt around the site that is predominately formed of Goat Willow.

3.3 There is evidence of an informal footpath towards the northeast boundary of the site. However, this footpath does not form part of a right of way.

3.4 To the east and southeast of the site are residential dwellings situated on generous plots. These properties form part of an estate style development. The buildings are both bungalows and two story dwellings, detached and semi-detached. Due to the estate style development, whilst the properties may be of individual designs there is strong sense of character due to similar age, style and palette of materials incorporated within the dwellings.

3.5 There is only one residential dwelling that abuts the site to the east. The remaining three boundaries form part of the countryside and a hedge lined vehicular highway that narrows to form a pedestrian under pass that is located beneath Allbrook Way. The neighbouring property is of single storey only and forms a particularly spacious plot. The application site is located to the south west of the neighouring property (No.1) adjacent to the large and relatively open amenity space serving the unit.

3.6 The highway Allbrook Way although elevated from the ground level of the site is predominately screened from the proposal site by the verdant countryside character that separates the two.

4.0 Application History

4.1 An outline application (6051/11/1 and 605/1/2) was made in 1994 for residential development. The application sought to erect dwellings and garages on both the current application site and land on the southern side of Boyatt Lane. The application was refused by Eastleigh Borough Council.

4.2 The application was later dismissed at appeal (referenced T/APP/W1715/A/94/236214 and T/APP/W1715/A/94/237022/P8). The appeal was dismissed and the Inspector concluded:

> '*I am satisfied that planning permission should not be granted for housing development on either of these sites. They would be harmful to the character of this area at the edge of the settlement.'*

5.0 Policy Context

5.1 The appeal site and its surroundings have numerous planning policy and nature conservation designations which are applicable to the proposed development:

- Outside Built-up Area Boundary
- Adjacent to Established Residential Area ELAC1
- Within close proximity to two Sites of Importance for Nature Conservation (SINC) – 'Pitmore Copse Gully and Lincolns Copse
- Adjacent to Ancient Woodland – Pitmore Copse Gully SINC (to the north) and Lincolns Copse SINC (to the south).
- In close proximity to Special Area of Conservation (SAC) – 'River Itchen'

6.0 Development Plan Saved Policies and Supplementary Planning Documents

6.1 Given the various designations of the appeal site and its surroundings there are a considerable number of adopted Local Plan and Submitted Local Plan policies which relate to the proposed development.

6.2 **Eastleigh Borough Local Plan Review (2001-2011)**, saved Policies:

- 1.CO – Protection of the countryside
- 3.CO – Local gaps
- 18.CO – Protection of Landscape
- 25.NC – Biodiversity
- 26.NC – Biodiversity enhancement
- 28.ES – Waste collection and recycling
- 32.ES – Pollution control
- 34.ES – Energy and climate change
- 45.ES – Sustainable drainage
- 59.BE – Promoting good design
- 72.H – Density
- 75.H - Density
- 100.T – Sustainable transport
- 101.T – Transport contributions
- 102.T – Site access
- 104.T – Parking
- 147.OS – Public open space provision
- 191.IN – Community infrastructure provision

6.3 **Submitted Eastleigh Borough Local Plan 2011 - 2029, July 2014**, (the Submitted Local Plan) Policies:

- S1 – Sustainable development
- S2 – New development
- S3 – Location of new housing
- S9 – Countryside and countryside gaps
- S11 – Nature conservation
- DM1 – General criteria for new development
- DM2 – Environmentally sustainable development
- DM3 – Zero or low carbon energy
- DM5 – Sustainable surface water management and watercourse management
- DM7 – Pollution
- DM9 – Nature conservation
- DM23 – General development criteria - transport
- DM24 – Parking
- DM29 – Internal space standards for residential development

- DM32 – Provision of recreation and open space facilities with new development
- DM35 – Community, leisure and cultural facilities
- DM37 – Funding Infrastructure

6.4 With reference to the Submitted Eastleigh Borough Local Plan 2011 - 2029, July 2014, which comprises the Revised Pre-submission Eastleigh Borough Local Plan 2011 - 2029, published February 2014; and Schedule of Proposed Minor Changes, submitted to the Secretary of State in July 2014, the majority of policies are consistent with the equivalent Saved policies of the Eastleigh Borough Local Plan Review 2001-2011.

6.5 It is, however, acknowledged that whilst still a material consideration, the policies of the Submitted Local Plan can be afforded very little weight in the determination of this appeal as, although it has not been formally withdrawn, the Council has decided to prepare a new local plan which will cover the period up to 2036.

6.6 **Supplementary Planning Documents**

- Supplementary Planning Document: Quality Places (November 2011)
- Supplementary Planning Document: Residential Parking Standards (January 2009)
- Supplementary Planning Document: Environmentally Sustainable Development (March 2009)
- Supplementary Planning Document: Planning Obligations (July 2008)
- Supplementary Planning Document: Biodiversity (December 2009)

7.0 National Planning Policy Framework

7.1 The National Planning Policy Framework (NPPF) supports and encourages sustainable development which is considered to have three roles, economic, social and environmental. Paragraph 8 of the NPPF states that “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.”

7.2 The NPPF also states that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Para 14 sets out a general presumption in favour of sustainable development and states that development proposals which accord with the development plan should be approved without delay. Where the development plan is absent, silent, or relevant policies are out-of-date planning permission should be granted unless the adverse impacts of the development would outweigh the benefits; or specific policies in the Framework indicate development should be restricted (paragraph 14). Local

plan policies that do not accord with the NPPF are now deemed to be "out-of-date". The NPPF requires that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. In other words the closer the policies in the plan accord to the policies in the Framework, the greater the weight that may be given.

7.3 Paragraph 61 of the NPPF states that "securing high quality inclusive design goes beyond aesthetic considerations. Therefore, planning policies and decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment."

7.4 Paragraph 118 states that "local planning authorities should aim to conserve and enhance biodiversity".

8.0 LPA's Statement of Case

8.1 Reason For Refusal 1

8.2 The application site lies outside the urban edge within designated countryside. Here the basic principle of development is not usually considered acceptable unless for justifiable agricultural, horticultural or recreational purposes as set out by saved Policy 1.CO of the adopted Local Plan.

8.3 The site also lies within a Local Gap to which saved Policy 3.CO applies. This policy states that planning permission will only be granted for appropriate development which cannot be acceptably located elsewhere and which would not physically or visually diminish a local gap. In simple principle terms therefore, the proposed private dwellings, which is not intended as part of any current or proposed agricultural use would fail to meet the requirements of Policy 1.CO. The proposal would result in new built development within the local gap which would physically diminish the gap.

8.4 The first reason for refusal relates to the loss of this gap. In its present undeveloped form the site helps define the clear boundary between the countryside and the residential development to the east.

8.5 The verdant character of the site and its established boundaries make a significant contribution to the country side setting. The boundary that abuts Boyatt Lane is thickly vegetated and unbroken. The proposal would erode this characteristic and remove the currently clarity of the countryside boundary.

8.6 On page 17 of the appellants appeal statement an indicative street scene is provided. Whilst appearance does not form part of the considerations for this application it does indicate the significant impact the proposal will have within this green setting. The site layout does form part of the considerations for the application and drawing BRS.5528_02-2D provides the layout of the site. It demonstrates that the rear elevations of the proposed dwelling will be in close proximity to the north boundary. As such the amenity areas of the dwelling

are located to the west and east of the units. It would not be unreasonable to expected that the occupants of these properties wanting to make the most of the natural light from the south. This places further pressure on any trees or vegetation that may form the southern boundary and a hard and relatively open frontage to the developed site can be expected, as demonstrated within the indicative drawing.

8.7 The submitted layout plan also demonstrates significant areas of hardstanding to the front of the property. Such hardstanding will be required in order to facilitate the manoeuvring and parking of vehicles on site. Such a harsh feature 4.5m deep into the site, with an opening onto the highway of 6.5m would detract from this woodland setting and increase urban feel of the area.

8.8 This impact will also be readily visible from within the estate development. At present when approaching the site from the east, the vehicle highway thins to form a pedestrian highway to an underpass. As the highway narrows so does the gap between the vegetated boundaries either side of the highway.

8.9 This characteristic is fully appreciable from the public realm and provides a visual separation between developed land and the countryside. This relationship is also evident when viewing the site across No.1. The single storey dwelling of No.1 is located towards its northern boundary. As such the generous amenity area to the south allows view across the site to the green backdrop behind.

8.10 Scale has been listed as a consideration of this outline application. Although indicative, the submitted drawings indicated that the proposed properties will be of two storey. This built form will be visible within the street scene when viewed from the south and materially harm the country side character of the setting and the local gap.

8.11 <u>Reason For Refusal 2</u>

8.12 Also of importance to this appeal is saved Policy 59.BE of the adopted Local Plan which requires development to take full and proper account of the context of the site including the character and appearance of the locality and be appropriate in mass, scale, materials, layout, design and siting. It also requires a high standard of landscape design, a satisfactory means of access and layout for vehicles, cyclists and pedestrians, to make provision for refuse and cycle storage and avoid unduly impacting on neighbouring uses through overlooking, loss of light, loss of outlook, and noise and fumes. Policy DM1 of the Submitted Eastleigh Borough Local Plan 2011-2029, July 2014, essentially reiterates the above requirements.

8.13 Drawing BRS.5528_02-2D provides the layout of the site. It identifies that the properties will be detached, with a larger hipped roof garage/carport providing car parking between the properties. The drawing states that the buildings will be of 2 storey and located in close proximity to the rear (north) boundary of the site.

8.14 The location of three sizeable buildings, that have their widest elevations facing the street scene would result in a mass of development that would not be in keeping with the country side character of this area.

8.15 Additionally the two storey development will be of a scale out of keeping with the single storey properties on the north side of Boyatt Lane. This scale of development will increase the prominence of this urban form within the countryside appearing as an incongruous addition to this green setting.

8.16 The hard surfacing and the construction materials used in the external surfaces of the elevation will be an uncomfortable contrast to the organic backdrop that this setting provides.

8.17 Additionally the layout of the proposal will result in the properties being sited to the rear of the plots. The predominate character for the area is properties sited towards the front of the plot with spacious amenity areas to the rear. The proposed layout will result in plots of a shallow depth and wide frontage due to the amenity areas and parking/turning being located to the side and front of the properties. Such layout and siting does not confirm with the established character of the estate development that the application seeks to extend. Furthermore the layout emphasises the compromises that have had to be contrived in order to accommodate this urban form in this countryside and environmentally sensitive location.

8.18 Five Year Land Supply

8.19 The shortfall in housing land is only a material consideration. It does not have the same weight as Development Plan policy.

8.20 The appeal statement advises that policy 3.CO is considered out of date as it is considered to be a housing policy and as the Authority Is unable to demonstrate a five year housing supply the policy is considered to be out of date as advised by paragraph 49 of the NPPF.

8.21 The immediate context of paragraph 49 suggests that the Minister intended to refer to policies for the supply of housing rather than to any policy which may have the indirect effect of restricting housing development. In particular, policies which restrict development in the countryside necessarily restrict housing development in those areas, but the need for housing was not the only consideration in national planning policy – the protection and enhancement of the natural environment was identified as a key dimension of sustainable development which the planning system is intended to achieve as made clear in paragraphs 156-157 of the NPPF. It was therefore unlikely that the Minister intended local policies identifying areas where development would be inappropriate to be treated as out-of-date solely on the ground that their indirect effect was to restrict the supply of housing in those areas, and without consideration of their wider planning purpose and value.

8.22 Moreover, and when considering whether a policy is one for the supply of housing or not, policies could not simultaneously be out-of-date and up-to-

date, and they could not simultaneously be policies for the supply of housing and policies not for the supply of housing. They must be one thing or the other.

8.23 It is therefore concluded that Policy 3.CO is not a housing policy and this has been already tested at appeal.

8.24 Appeal referenced APP/W/1715/A/14/2219572 sought a residential development within a local gap as defined by Policy 3.CO. The Inspector advised that Policy 3.CO did not frustrate the housing supply beyond the current urban edge and is therefore not to be treated as a counterpart housing supply policy. The inspector concluded 'For that reason I consider Policy 3.CO to be a current development plan policy to which due weight should be accorded'. The Council consider this appeal to more relevant to the current proposals that those suggested by the Appellant. The scheme above is more related to the proposal in terms of location and minor scale of development. The examples provided by the Appellant are materially different both in terms of scale of their major development scale and location.

8.25 Policy 3.CO does not provide for mitigation measures to compensate for the loss of the gap. That is because a gap is by definition an open area or space, and building an urban estate in a gap permanently erodes that gap. No amount of landscaping can mitigate that loss. Once lost, openness is gone forever; and the damage done to the function of separation it affords will be permanent and irreversible.

8.26 The terms of Policy 1.CO make it clear that it would be used to resist not only housing, but inappropriate retail or commercial development in the countryside also. Likewise, it would be used to support outdoor recreational proposals such as golf courses in the countryside. Policy 1.CO appears in the Countryside Chapter of the adopted Local Plan (rather than the Housing Chapter), which starts with an introductory clearly explaining that its sole objective is the protection of the countryside. The aims of Policy 1.CO are set out in the supporting text in paragraph 1.2 and, again, this clearly refers to the protection of the countryside. For all of the above reasons, it is quite plain that Policy 1.CO goes far beyond restricting where housing can or cannot go and is not to be treated as a housing supply policy.

8.27 Appeal Referenced APP/W1715/A/14/2219572 sought the erection of 4 dwellings in an area designated as countryside as define by saved policy 1.CO. the Inspector found : '*I see no reason to disagree with the position that the site currently lies within an area that has the character of a countryside location'.* This dismissed appeal shares a number of similarities with the current appeal. As such a copy is enclosed as appendix 1 for reference.

8.28 Section 38(6) of the Planning and Compulsory Purchase Act 2004 ("PCPA 2004") applies to Policies 1.CO and 3.CO with full force. It is, accordingly, a statutory imperative to refuse permission unless material considerations indicate otherwise. Irrespective of whether there is or is not a five year supply of housing land. The proposal still fails to comply with the relevant saved

polices which relate to character and appearance. There is no debate that these polices are out of date.

8.29 Sustainability

8.30 Paragraph 14 of the NPPF provides a presumption in favour of sustainable development. The proposal would provide a very modest benefit in terms of the housing supply.

8.31 In March 2015 the Department for Communities and Local Government issued a letter, entitled "Planning Update Prior to the General Election", which gives pertinent advice in such circumstances, stating as follows under the sub-heading "Appeal Decisions":

> "*Ministers would like to draw attention to some appeal decisions which demonstrate the careful balance of considerations required by the presumption in favour of sustainable development in the absence of a 5 year housing supply. These can be found on the PAS website."*

8.32 The corresponding PAS statement included as follows:

> *"There has been some media attention on the perceived implications of making decisions without having an up-to-date Local Plan, particularly if the authority also can't demonstrate a five year land supply of specific deliverable sites against objectively assessed housing needs (as required by paragraph 47 of the Framework). Some have suggested that any development, whatever the impacts, is acceptable in the absence of an up-to-date Local Plan because of para 49 of the Framework – sometimes referred to as "the presumption". Some people effectively say "there's no point in refusing this housing scheme as without a housing supply and plan, we don't stand a chance on appeal".* ***However, national policy and the objective of pursuing sustainable development is a material consideration in planning decisions irrespective of the status of an area's development plan****. And levels of planning appeals upheld against an authority's original determination remain constant at only one per cent of all planning decisions in England.* ***There are several recent cases where development has been refused permission in the absence of an up-to-date Local Plan or five-year supply because it would conflict with national policy objectives."*** **(Emphasis added)**

8.33 This is one such case. Allowing this appeal now, on the basis of a temporary housing shortfall which the Council are addressing with vigour, and in a vulnerable local gap which has repeatedly been affirmed by independent examination with all of the attendant harms which would be caused, is not the right solution.

8.34 Paragraphs 7.25 to 7.47 of the Appellants statement outline the Economic, Social and Environmental benefits they believe the application will bring.

8.35 However, the proposal will be very little in terms of the housing mix for the area. The houses will be sold at, market rate and there is no requirement for any provision towards market housing.

8.36 Furthermore as the day to day facilities are not within the immediate facility and will require some element of travel. Residents of the dwelling are unlikely to find travelling to these facilities either by foot or cycle attractive.

8.37 The appellant would not be able to ensure that this minor development of two units would be able to benefit from the accessible local services or make the contribution to the locality that the appeal statement suggests.

8.38 The Council maintain that the irreversible adverse effects of the scheme in relation to the character and appearance of the area, together with the urbanisation of the local gap, demonstrably outweigh the suggested benefits.

8.39 Reason For Refusal 3 and 4 Biodiversity and Nature Conservation

8.40 As has been set out above, the appeal site is not only in proximity to a SINC but is also immediately adjacent to other important locally, nationally and internationally designated nature conservation sites. In addition to its proximity, the appeal site also has a direct impact on these designated areas because the water which flows through the lake is then discharged into the River Hamble. Therefore the impact of the proposal on water quality both during and after construction is of great importance.

8.41 Reasons for refusal 3 and 4 sought to protect these environmentally sensitive areas. Following the refusal of the application, and as part of the appeal process, the applicant has supplied additional information to the Inspectorate and the Council in order to try and overcome these reasons.

8.42 This additional information has been reviewed by the Council's Biodiversity Officer and their comments are included as appendix 2 and 3 of this document. The Officer has found that a number of questions remain unanswered. The Officer also advises that there are areas which need further investigation before a reasonable indication of the appeal proposal's impact upon local habitat and biodiversity can be adequately assessed. The Biodiversity Officer has highlighted the lack of evidence submitted and various conditions are recommended. These conditions are also included within appendix 4

8.43 At the time of the determination of the application contributions towards the provision of essential off-site open space works, community infrastructure or sustainable transport were required.

8.44 However following the allowed appeal on the ruling on the 11 May 2016 (Secretary of State for Communities and Local Government V West Berkshire District Council and Reading Borough Council). The Ministerial Statement of 28 November 2014 issued by the Government stands. As such for sites of ten units or less, and which have a maximum combined gross floor space of

1000 square metres, affordable housing and tariff style contributions should not be sought.

8.45 The application seeks consent for two residential dwellings, this falls under the ten unit threshold. On this basis the Council no longer seek the contributions that formed the reason for refusal 5.

9.0 Conclusion

9.1 The Council acknowledges that it is currently unable to demonstrate a full five year land supply but it is able to demonstrate a land supply of approximately four and a half years.

9.2 As the two dwelling proposed will not make such a significant contribution to overcome that shortfall.

9.3 Furthermore the development within the local gap (as defined by policy 3.CO) will physically and visually diminish that gap. These gaps are imposed to preserve the countryside and maintain the separation between settlements.

9.4 The proposed development would have a visually intrusive impact on the countryside and the local gap. The layout, mass and scale of the proposal would result in a urbanisation of the country side in a form of development that fails to reflect the character of the area as required by Policy 59.BE

9.5 Whilst relevant at the time of determining the application. Following the ruling on the 11 May 2016 at the court of appeal (Secretary of State for Communities and Local Government V West Berkshire District Council and Reading Borough Council). The Ministerial Statement of 28 November 2014 issued by the Government stands.

9.6 On this basis the Council no longer seek the contribution that formed the reason for refusal 5.

9.7 It is therefore respectfully requested that the Inspector refuses to grant outline planning approval for the construction of the proposed detached dwellings. However, if the Inspector is minded to approve the development, it is asked that the suggested conditions contained in appendix 4 be included as part of that planning approval.