Below are sections taken from the LPA submission and a couple from the comments from the neighbours' responses.

I have pasted in paragraph by paragraph and added comments under each. Not all 40 pages have been commented on! In general the LPA have not addressed directly the key appeal points made. In particular they have not addressed 'massing' and there is a shift away from this to the development being 'incongruous and visually dominant' to somebody passing down Nightingale Avenue. This opinion is expressed in the same document that says the justification of the unsymetric modification to 37 Nightingale Avenue was that is could not be seen because of the trees and bushes of 39 Nightingale Avenue!

5.13 Revised Draft Eastleigh Borough Local Plan (2011-2029):

5.14 At the time of the determination of the planning application the document intended as the current Local Plan's replacement, the Eastleigh Borough Local Plan 2011-2029, had reached pre-submission consultation stage. The relevant policies to this application essentially replicated the requirements of those of the current plan and were not considered to affect the decision made. These policies were DM1 (General criteria for new development), DM2 (Environmentally sustainable development), DM23 (General development criteria – transport), DM24 (Parking), DM25 (Residential development in urban areas), DM29 (Internal space standards for residential development), DM32 (Provision of recreation and open space facilities with new development), DM35 (Community, leisure and cultural facilities), and DM37 (Funding infrastructure).

5.15 This document has, since the determination of the planning application, been replaced by a Revised Pre-Submission Eastleigh Borough Local Plan (2011-2029). The consultation period on the revised pre-submission plan concluded on 24th March 2014 and the Council is currently considering the representations received. The aforementioned policies essentially remain unchanged from the pre-submission consultation document, both in terms of their content as well as their respective reference numbers. Whilst it is acknowledged that this document due to its status can be afforded only very limited weight, it is still considered to be of relevance as it is intended as the current Local Plan's replacement, with its adoption being scheduled for 2015.

Appellant's comments on the above: Irrelevant.

6.4 The site is located in close proximity to local shops, on a bus route and within reasonable walking distance of community facilities. The proposed dwelling would achieve Code for Sustainable Homes Level 4 and would contribute to the area's housing stock. The LPA does not dispute that the proposed dwelling would be sustainable.

6.5 The principle of development is generally considered acceptable subject to compliance with the relevant local planning policies and guidance and the National Planning Policy Framework (NPPF). The proposal must therefore be acceptable in nature, scale, form and design and must not detrimentally affect the character and appearance of this Special Policy Area.

Appellant's comments on the above: Agreed and in compliance.

7.2 The locality contains many pairs of symmetrically designed brick/rendered houses which, although some have been altered, retain a reasonable degree of uniformity. It is this uniformity and set spacing between properties that give the area its distinctive character.

Appellant's comments on the above: The second sentence is not true and if it was it does not apply to this corner plot. Can't understand the thinking here.

7.3 It is the view of the LPA that the new dwelling has been sited inappropriately, creating a terrace of houses. Whilst terraced houses can be seen throughout the estate the terraces retain a balanced and symmetrical appearance with forward projecting 'book ends' with a continuous build line between. This proposal appears to have tried to replicate the designs of houses in the area however it relates poorly to the existing pair of houses to which it is attached. It is acknowledged that the new property has a forward projection, a hipped roof, and that the ridge is set below that of the existing properties however it the forward projection at No.39 prevent a symmetrical appearance being achieved.

Appellant's comments on the above: The application that is the subject of this appeal is not as symmetrical as it could be but it is the **direct result of LPA advice**; the first application was better in this regard but LPA advised to alter it.

7.4 It is acknowledged that, as a result of permission in 1982, No.37 has constructed a two storey front extension which has compromised the symmetry of the semi-detached pair of houses however this is not evident in the street scene because of the substantial screening to the front of No.39. The proposed new house will further unbalance this pair of houses and the culmination of the 3 houses when viewed together will result in an unbalanced and out of keeping rows of terraces in the area.

Appellant's comments on the above: it is wrong to use the trees in the garden of 39 as a reason to grant the extension of 37. The development of 29 Nightingale Avenue that was approved gives a far more 'unbalanced' front and side elevation than that of the proposal for 39a/39/37 and there are no trees just 3 properties in an uneven and unattractive block. As many trees and mature bushes as possible will be retained.

7.5 The inappropriate design and detailing of the proposed property further accentuates the unacceptable nature of the development. The relationship between existing and proposed properties appears awkward with a slight set back and a fully hipped roof which slopes away from No.39. As a result of the plot width being constrained it is difficult to achieve the setting needed for a detached house. Instead the design of the proposal is such that it appears to be a separate house awkwardly attached to the existing semi-detached houses instead of an appropriately designed terrace of houses.

Appellant's comments on the above: this is the most surprising paragraph of the LPA submission. It seems that the author is unaware of the advice given by planning officer to our architect. I would be delighted if the design of the first application was preferred. It is surprising that this is part of a submission to support the refusal.

7.6 In this elevated large corner plot location the inappropriate nature of the proposal is accentuated and will be highly visible on what is the key route through the Aviary Estate.

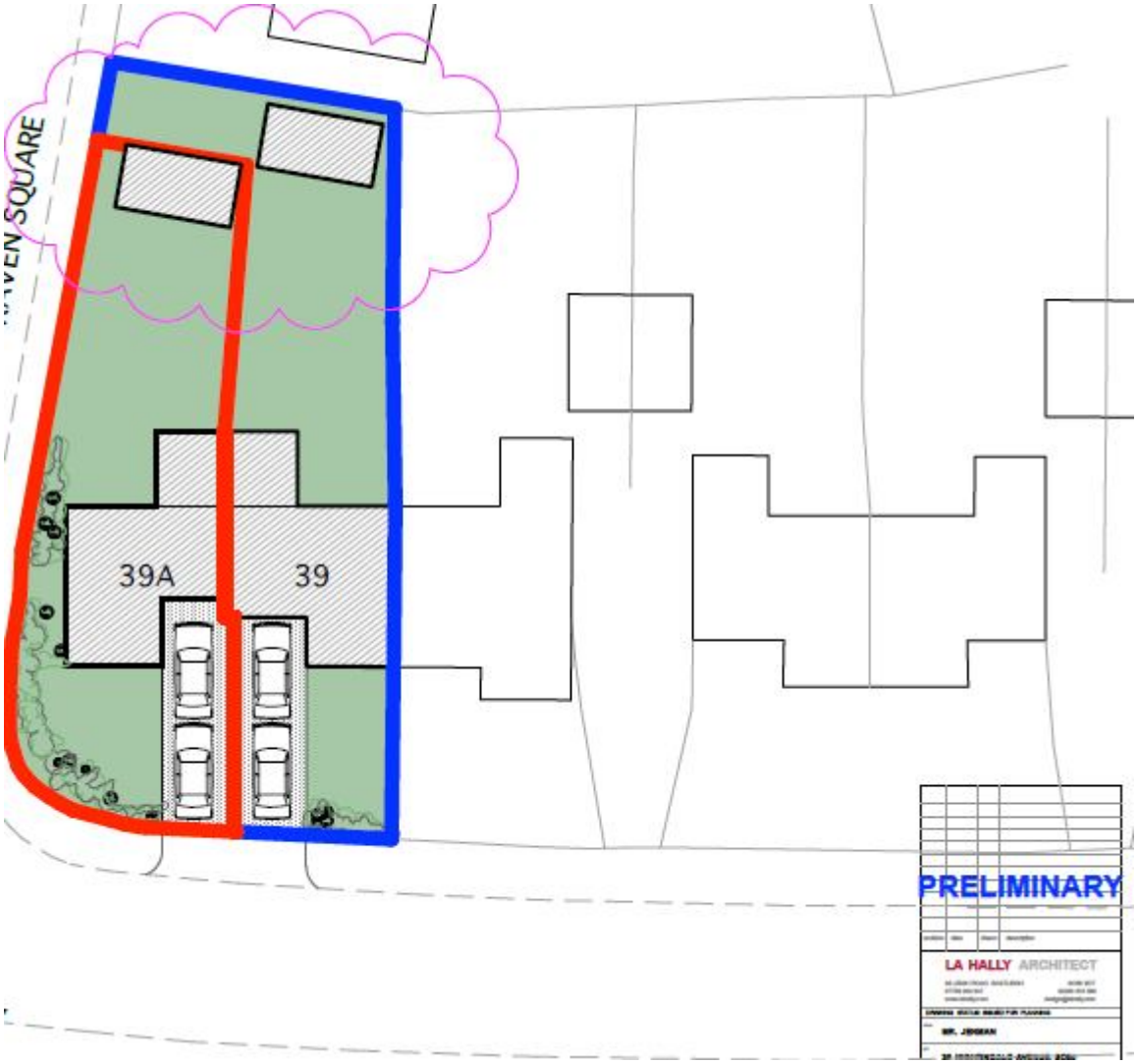
Applicant's comments on the above: gobbledegook.

7.7 Overall the proposal is considered to create an unwelcome, incongruous and visually dominant built form that fails to respect the uniform pattern of development in the area thus having a detrimental impact on the character and appearance of the Aviary Estate Special Policy Area.

Appellant's comments on the above: this seems to be a shift from the massing argument principally used for the refusal. Perhaps they realise that the 'mass' argument is weak as outlined clearly in the D&A document of the application.

7.8 The second reason for refusal relates to the lack of information submitted as part of the application to demonstrate that bin and cycle storage can be provided for the existing property (No.39 Nightingale Avenue). Whilst No.39 is not included within the defined application site, as identified by a red line on the site plan, No.39 is within the ownership of the applicant and the effects of the proposed new dwelling on No.39 are a material consideration. The LPA was concerned that the plans didn't identify adequate means of access to the rear of No.39 and did not detail how the bin and cycle storage arrangements would work. In view of this there was risk that the bin and cycle store would be provided on the frontage which would potentially have an adverse visual impact on the street scene.

Appellant's comments on the above: this is relatively minor and as stated a rear access was planned by the applicant but the Architect advised against submitting this because EBC LPA would use the loss of amenity space as a reason for refusal. Below is an earlier drawing, this is not placed herein as new information but merely as evidence to substantiate the applicants statement that he was thinking about rear access but was advised against this course of action.



7.9 It is acknowledged that this issue could easily be overcome through the provision of additional information/amended plans however none were forthcoming. As an alternative, had the proposal been considered acceptable in all other respects a condition would have been applied requiring the provision of rear access.

Appellant's comments on the above: the submission of more plans might have removed this from the refusal but it would also cost and the expenditure on planning has already reached over £9,000! So much for a pre-app saving costs. It seems I have been led a merry dance!

7.4 For this proposal, contributions were sought towards community infrastructure, sustainable integrated transport works and off-site public open space. Full details of the councils approach to developer contributions, the exact level of contributions required as a direct result of this development, and appropriate schemes for which these monies would be used are included within Appendix Two.

7.5 Despite the appellant/agent being advised of this requirement for planning obligations these were not secured as part of the planning application and therefore formed a reason for refusal.

7.6 The LPA is not aware of any Unilateral Undertaking having been submitted to address this reason for refusal.

Appellant's comments on the above: the above paragraphs are numbered as shown but they should be 7.10 – 7.12 because there are two sets of paragraphs with the same numbers!

As noted in planning officer's report I offered to pay by bank transfer just before the letter concerning the application was posted. This was refused (because the application was refused although I didn't know it at the time) when I asked for the sort code and account number to transfer the money. This contribution is insignificant in comparison to the cost of delay.

8.6 As detailed within section 4 of this statement pre-application advice has been provided and a planning application considered however each time the nature of the proposal has altered. As the nature and built form have altered our advice has changed to address the concerns or constraints raised by the proposal. The councils position has always remained that the principle of development is considered acceptable however due to the size and location of the site within the Aviary Estate Special Policy Area the scale, form, design, and its impacts on the character and appearance of the area is always going to carry considerable weight in the determination of any application.

8.7 To date the appellant is not considered to have provided the right design solution to enable the development of the appeal site.

Appellant's comments on the above: these two paragraphs give the impression that my Architects have ignored the input from the LPA case officer; this is misleading. (The son of the first architect was LPA planner in another authority and my action was influenced by his input). The architect for this application was told that flats would never be approved and from another uninvolved contact she was told that EBC planning didn't want to approve the development because others would want to do the same with corner plots and ruin the Estate.

5. Conclusion

If the Inspector is minded to accept the principle of the development, but agrees that contributions towards local infrastructure are required, as outlined above, the Council respectfully requests that the Inspector dismisses the appeal on the grounds of failure to provide the necessary, reasonable and proportionate planning obligations as supported by planning policy and the CIL Regulations. It would be possible to make clear in the decision letter the reasons for so doing and would indicate to the Planning Authority the acceptance of the development principle and confirm that the need to make appropriate planning obligations before permission could be granted.

Although no undertakings or contributions have yet been concluded in respect of the development, any unilateral undertaking must be provided at least 21 days before the appeal is to be determined.

Appellant's comments on the above: I find this difficult to understand; it seems to mean because I have not made a binding agreement to make section 106 contributions the appeal has to be refused and handed back to the LPA. Once again all I need is the account in which the contribution has to be paid……

If it is within your power I would like you to find that no such payment should be made because of the expenditure the Appellant has had to go through when a pre-app is supposed to save avoidable costs.

Appendix 2

It is assumed that most of the points are standard for major developments; they seem a bit over the top for this minor development. Nevertheless provided there are no delays in LPA approval most are OK. I would ask you to say something with regard to approval time scale especially items 5, 6 and 7. If we have to wait 8 weeks and then silly points of detail are raised and we suffer another 8 weeks delay the project cost will escalate even more.

The point 10 is not applicable to this application, there is no garage. Please make this clear to them; I think it is just a standard document that they have modified poorly.

Point 11 is also contentious; I plan to keep as many trees and bushes as is reasonably possible; we have spent money already doing already when there are no preservation orders on any of it. Please ask for this to be deleted. I see it as just a source of aggravation if they choose to be difficult.

Point 12 is also a problem. We have had the occasional controlled burn in the back garden and on one occasion a neighbour called the fire brigade. The fire brigade came and noted that the burn was controlled and attended with a water hose ready. We were advised to inform them if and when we have another and they will not respond. Please ask this to be deleted as well.

The submissions from the neighbours are little different to what they have already stated but the following from Mr Heath is worthy of a comment.

The main drainage run for properties in Raven square runs directly through the rear garden of 39 Nightingale Avenue and has been frequently blocked with the usage it already has and has to be maintained and unblocked via this properties garden I am anxious that adding the additional property will add to this problem

No evidence of a drain or sewer has been found in the rear garden on 39 Nightingale Avenue.