EASTLEIGH BOROUGH COUNCIL

STATEMENT OF LOCAL PLANNING AUTHORITY

TOWN AND COUNTRY PLANNING ACT 1990

Planning Inspectorate Reference APP/W1715/16/3145446

Local Planning Authority Reference F/15/76762

Appeal by Mr and Mrs C Humphrey

Site Address 6 Wellbrooke Gardens

Chandler's Ford

Eastleigh

SO53 1TN

STATEMENT OF CASE

1.0 Particulars of the application/appeal

1.1 The appeal relates to planning application F/15/76762 which was made valid on the 23rd June 2015 seeking part retrospective planning permission for change of use of land to private garden.

2.0 Reason for refusal

2.1 The application was refused by the Chandler's Ford and Hiltingbury Local Area Committee at their meeting on the 23rd November 2015. The appeal application was refused for the following reasons:

2.2 *The change of use to domestic curtilage would result in the loss of a publicly accessible route which would reduce the permeability of the South Millers Dale estate, to the detriment of the amenity and public enjoyment of local residents. The proposal is therefore contrary to saved policy 59.BE of the Eastleigh Borough Local Plan Review 200-2011, and policy DM1 of the Submitted Eastleigh Borough Local Plan 2011 - 2029, July 2014, comprising:*

- *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*

3.0 The Appeal Site and Surroundings

3.1 The application site contains a two storey detached dwelling. There is parking for three to four vehicles, and the house has been extended as outlined in section 4.0 (planning history). Wellbrook Gardens is accessed from Sutherlands Way off of Hursley Road and backs onto woodland. The estate was redeveloped on South Millers Dale land as part of a smaller development of six dwellings with garages. The encompassing area includes developments of various phases, which includes North Millers Dale.

3.2 The significant element of the redevelopment of the area was that whilst providing much needed housing for the borough, development proposals took into account the character and context of the area by ensuring that green space was prevalent. This was aided greatly by the already established woodland which is an important background to the South Millers Dale estate. Not only was there provision made of green space but it was also undertaken with local residents in mind in terms of ensuring that the green space was accessible to pedestrians and cyclists. Thus a network of paths were established to allow for permeability throughout the estate, and in particular provide for access to the rear woodland.

3.3 This path which is subject to this appeal provided access to the rear, although there are other paths approximately 100 yards away. The trees and hedges have been removed, (they were not tpo'd), the boundary treatment consists of a fence around the perimeter of the garden.

3.4 Since the submission of the planning application and subsequent appeal, the current site circumstances are such that the applicant has erected a fence and undertaken substantial hardstanding and soft landscaping.

4.0 Planning History

The following application relate to the appeal site

4.1 One and two storey side and single storey rear extensions (amended description), F/12/70789, granted 1/6/2012

4.2 Single storey rear extension, Z/27856/000/00, granted 26/9/1984

4.3 The following application is pertinent to this appeal - Erection of six detached houses with garages and construction of accesses, Z/16743/006/00, granted 28/4/1980 (appendix 1)

5.0 Relevant Planning Policies

5.1 The National Planning Policy Framework (NPPF) states that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Para 35 states that Plans should protect and exploit opportunities for the use of sustainable transport modes for the movement of goods or people. Therefore, developments should be located and designed where practical to… give priority to pedestrian and cycle movements, create safe and secure layouts which minimise conflicts between traffic and cyclists or pedestrians

5.2 Eastleigh Borough Council Local Plan Review (2001-2011)

5.3 Selected policies of the Eastleigh Borough Council Local Plan Review 2001-2011 (adopted May 2006) have been saved until such a time as they are replaced by policies with a subsequent Local Plan. The relevant policy in the determination of this appeal is saved policy 59.BE.V (new development).

5.4 Submitted Eastleigh Borough Local Plan (2011-2029)

5.5 Reference needs to be made to the submitted Eastleigh Borough Local plan 2011-2029 July 2014. However, very little weight can be given to these policies as, although the Submission Local Plan has not been formally withdrawn, the Council has confirmed that it has decided to prepare a new local plan which will cover the period up to 2036. With regard to this application, the new policies essentially echo those of the current plan and are not considered to affect the recommendation put forward.

6.0 Background

6.1 The appeal site is part of an overall comprehensive development known as South Millers Dale and was constructed as a small development of six houses with garages in the early 1980's known as Crandale B Millers Dale.

6.2 South Millers Dale as outlined was a comprehensive housing development constructed in conjunction with North Millers Dale estate, which comprised of a main loop road, various junctions, footpaths and verges, with the woodland serving as a backdrop to the estate which is accessed by the footpaths and verges.

6.3 The area which has been enclosed was left undeveloped during the construction of the six houses as there is a sewer which runs parallel with 6 Wellbrooke Gardens. Owing to the sewer, the function of the land was kept as a sewer easement corridor for foul and surface water drainage, as illustrated on the attached plan (appendix 1). Taking into account the nature of South Millers Dale estate, the sewer easement and the land had become part of the dedicated walking network of the area. The land has

thus been used as an informal path for over 20 years by the residents without any interruption allowing for permeability throughout the estate.

6.4 There appears to be some dispute over who maintained the land, the Local Authority carried out sporadic maintenance by cutting back the tree and hedges, the appellant has also stated that he maintained the land.

6.5 The appeal site was under the ownership of the original three landowners and was purchased by the appellant in April 2015, with full knowledge of the sewer easement. The appellant carried out significant works to the land and enclosed it to form part of his curtilage. During this time the Local Planning Authority's enforcement team visited the site and informed the appellant that planning permission is required.

6.6 Southern Water as the relevant water authority were consulted as part of the planning process and raised no objection with the caveat that no development shall take place within three metres either side of the central line of the foul and surface water sewer.

6.7 The application was taken to the Chandler's Ford and Hiltingbury Local Area Committee in September 2015 and deferred as officers considered that further legal investigation was required to identify the legal status of the path. After thorough investigation by the Council's legal department and development management it was found that the path was not adopted.

7.0 Statement of Case

8.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that "...if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise." This application must, therefore, be assessed against the policies contained within the development plan.

7.2 The starting point for considering and determining planning applications is the development plan, which comprises of the Saved Policies of the Eastleigh Borough Local Plan Review (2001-2011) adopted in May 2006.

7.3 Saved Policy 59.BE of the Eastleigh Borough Local Plan Review (2001-2011) requires development to take full and proper account of the context of the site including the character and appearance of the locality. This need for proposed development to take appropriate account of its surrounding context is reiterated within the guidance contained within the Council's adopted Quality Places Supplementary Planning Document.

7.4 It is considered that the proposed development fails to take account of its surrounding context, and in particular the requirement of saved policy 59.BE.V*,* which requires development proposals to have a satisfactory means of access and layout for vehicles, cyclists and pedestrians including appropriate links to surrounding footpaths, cycleways and public transport services.

7.5 The subsequent severance of the path has hindered local resident's connection to the rear woodland which is a crucial characteristic of South Millers Dale estate. Thus the development has severed an important cycle and pedestrian link, contrary to saved policy 59.BE (v)

7.6 The Quality Places SPD (2011) when discussing permeability, states that it describes how well a site is connected and new development should needs to allow for good connection both within the site and within the surrounding area. Even more importantly pedestrian and cycle permeability is even more important and routes may need to be more direct.

7.7 The Local Planning Authority whilst acknowledging the fact that the path had not right of way status, it is the loss of the path which has raised concern. For over twenty years local residents have relied upon the path as an integral part of their amenity. There are other paths which lead to the woodland but for many residents this particular path provided for ease of access, the fact that it had become a dedicated part of the network which was one of the defining characteristics of South Millers Dale estate. Whilst accessibility provides for access to places, permeability allows for the free flow and connection at different points which is the basis of the refusal of the application. Local residents in particular have lost that connection to a vital aspect of their amenity which has interfered with their use of the rear woodland.

8.0 Appellant's grounds for appeal

8.1 The Local Planning Authority refutes the appellants claim as outlined in section 5.1. Whilst the submitted Local Plan had a caveat that it carried little weight, it essentially reiterates saved policy 5.9BE which is pertinent in this case as the criteria V requires development proposals to have a satisfactory means of access and layout for vehicles, cyclists and pedestrians including appropriate links to surrounding footpaths, cycleways and public transport services.

8.2 The appellant questions the Local Planning Authority for not relying upon the adopted supplementary planning documents as stated in section 5.18. The Local Planning Authority considered that saved policy 59.BE as the overarching development plan policy in this instance, succinctly addressed the reason for refusal in particular criteria V. The Quality Places SPD provides additional guidance and expands upon the adopted local plan policies. Saved policy 59.BE (v) states that

development proposals are required to have a satisfactory means of access and layout for vehicles, cyclists and pedestrians including appropriate links to surrounding footpaths, cycleways and public transport services.

8.3 Section 4.3 of the appellant's statement makes reference to the November 2015 Chandler's Ford and Hiltingbury Local Area Committee and that whilst officers recommended approval of the application, Members overturned the recommendations. To reiterate, the Local Planning Authority acknowledges that the path was not formally adopted, however Members debated the application with specific concerns regarding the loss of the path and the impact it has had to local residents.

8.4 Notwithstanding that officers made a positive recommendation, Members of the planning committee decision to overturn the recommendation, does not undermine the reason for refusal. In this instance Members considered that the loss of the path has impacted upon the accessibility to the detriment of the amenity and public enjoyment of local residents.

9.0 Conclusion

9.1 The Local Planning Authority considers the loss and severance of the land has had an impact upon the permeability of the local area which was enjoyed by the public by means of an informal right of way. The development is contrary to saved policy 59.BE of the Eastleigh Borough Local Plan Review 200-2011, and policy DM1 of the Submitted Eastleigh Borough Local Plan 2011 - 2029, July 2014, comprising:

- 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 Inspector is respectfully asked to uphold the reason for refusal and dismiss the appeal. However should the inspector be minded to all the appeal then it is requested that the conditions in appendix 2 are considered.