

Andrew Burgess Planning

Planning and
Development
Consultant

Section 78 TOWN & COUNTRY PLANNING ACT 1990

STATEMENT OF CASE

LAND AT 49 BISHOPSTOKE ROAD, EASTLEIGH, HAMPSHIRE,
SO50 6BF.

Appellant: Mrs. Jane Bray

LPA Ref: F/22/94046

PINS/Ref: TBC

5th April 2023

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Appendices

Appendix 1 - Delegated Officer Report. F/22/94046 (undated)

Appendix 2. - House of Lords Judgment
House of Lords judgment *Opinions of the Lords of Appeal for Judgment In The Cause South Bucks District Council and another (Respondents) Porter (FC) Appellant* 1 July 2004

1.0 Introduction

1.1 This Statement of Case (SoC) sets out Mrs. Jane Bray's (the 'Appellant') case in respect of an appeal made against Eastleigh Borough Council (the Council) in respect of the refusal of planning permission for residential development, (the 'Appeal Development').

1.2 The Appellant requests that this appeal is determined through the Informal Hearing procedure.

1.3

1.4 This SoC is structured as follows:

- **Section 2 – Appeal Development:** Provides a description of the Appeal Development
- **Section 3 – Appeal Site and Surrounding Area:** Provides a description of the Appeal Site and surrounding area
- **Section 4 – Reasons for Refusal:** Describes the Reasons for Refusal
- **Section 5 – Relevant Policy Framework:** Sets out the relevant policy framework
- **Section 6 – The Appellants Case:** Sets out the Appellants case with specific regard to the reasons for refusal, the officers' delegated report, the development plan policy conflicts and the planning balance.
- **Section 7 – Other Matters:** Including Planning Conditions, Statement of Common Ground and s106 Agreement.

2.0 Appeal Proposal

- 2.1 The Appeal Proposal is described on the decision notice dated January 2022 as follows:
- 2.2 Full planning permission was sought for the erection of a two bedroomed detached dwelling in the garden of 49 Bishopstoke Road.
- 2.3 The application was accompanied by the following supporting documents
- Design and Access Statement by Temple Ford Design
 - Heritage Statement by Temple Ford Design
 - Flood Risk Assessment by Unda Consulting Ltd
 - Arboricultural Impact Appraisal Assessment and Method Statement by Barrell Tree Consultancy
 - Ecological Impact Assessment by Lowans Ecology and Associates
- 2.4. The relevant appeal drawings are detailed in the list submitted as part of the appeal.

3.0 Appeal Site and Surroundings

- 3.1 The 'Appeal Site' comprises the land edged-red on the submitted Site Location Plan.
- 3.2 The Appeal site is located within the existing garden of 49 Bishopstoke Road which is to the north of Bishopstoke Road.
- 3.3 The site comprises a parcel of land to the west of the existing house which is a two storey end of terrace house. The house is accessed from a driveway leading to Bishopstoke Road. To the west of the site is the River Itchen (SAC) and there is no enclosed boundary treatment along the bank of the river.
- 3.4 The site is in the built up area and within the settlement boundary. It is situated on the southwest corner of the Bishopstoke Conservation Area adjacent to the Itchen Navigation to the west with the boundary of the conservation area on the other side of the River Itchen.
- 3.5 The appeal proposal is for a modest two bedroomed two storey dwelling with a maximum height of 7.7m with a barn hipped style roof form. The proposed house measures 4.1 metres to the eaves. The footprint of the proposed house is 56 sq metres. There is a small balcony at first floor level at the rear measuring 2.8 sq metres. The materials proposed are a facing brick with dentil course below eaves, a clay tiled roof, aluminum windows and bi fold doors (colour to be agreed) and solid painted hardwood doors. The exact detail of the materials can be agreed through a planning condition.

4.0 Reasons for Refusal

Delegated Decision

- 4.1 The planning application (LPA ref. F/22/94046) was subject of an officer delegated report which is attached as Appendix 1. The officer refused planning permission under delegated powers on 20th January 2022

Reasons for Refusal

- 4.2 The decision of the Local Planning Authority to refuse planning permission was issued on 20th January 2022. The reasons for refusal are listed in the Decision Notice and copied below for ease of reference:

- 1) The proposed dwelling, by reason of its inappropriate siting, lack of buffer and close proximity to the existing TPO'd trees and River Itchen (SAC) to the west, would result in an unacceptably cramped layout and would undermine the positive contribution that the site presently makes to the character of the area, currently
- 2) The proposed two-storey dwelling, by reason of its scale, siting and close proximity to the eastern boundary, would result in a sense of enclosure creating an unacceptable and overbearing impact and loss of privacy, as a result of the balcony, upon the amenities of the occupier of 49 Bishopstoke Road. The proposal is therefore contrary to Policy DM1 of the Eastleigh Borough Local Plan (2016-2036), Quality Places SPD (2011), and the contents of the National Planning Policy Framework (2021).
- 3) The proposed dwelling, due to its close proximity to the TPO'd trees along the western boundary, being situated within the RPAs, and in combination with the excessive proposed pruning works, would have an adverse impact upon the protected trees in terms of their health and longevity, as well as the positive contribution they make towards the visual amenity. The proposals are therefore contrary to Policy DM1 of the Eastleigh Borough Local Plan (2016-2036), the Council's adopted Trees and Development SPD (2021), and the provisions of the National Planning Policy Framework (2021).
- 4) The proposed development, owing to the close proximity to the TPO'd trees on the site, would fail to provide an acceptable level of amenity for the future residents of the development as a result of dominance and overshadowing to the property, thereby placing unacceptable pressure for future pruning or potential removal of these trees. The application is therefore considered to have failed to demonstrate that the proposed development would not have an adverse and unacceptable impact upon the future health, stability and retention of protected trees that are an important feature which contribute positively to the amenity of the locality. The proposals are therefore contrary to the requirements of Policy DM1 of the Eastleigh Borough Local Plan (2016-2036), the Council's adopted Trees and Development SPD (2021), and the provisions of Section 12 of the National Planning Policy Framework (2021).
- 5) Insufficient information has been provided with regard to flood risk and surface water drainage to ensure that there would be no adverse pollutants released into the adjacent River Itchen (SAC). This is as a result of the close proximity and lack of buffer of the proposed dwelling to the designated River Itchen (SAC) to the west. The proposals are therefore contrary

to the requirements of DM1, DM3, DM6, DM8 and DM11 of the Eastleigh Borough Local Plan (2016-2036), and the provisions of the National Planning Policy Framework (2021).

6) The application fails to provide the required mitigation to offset the impacts of the development upon the European protected Solent Complex (SPA, SAC and Ramsar sites), River Itchen (SAC), and New Forest National Park (SPA, SAC and Ramsar sites) from additional recreational pressure and nitrogen and phosphate loading generated by the population increase and additional sewage resulting from the development. The proposal is therefore contrary to the requirements of Policy DM11 of the Eastleigh Borough Local Plan (2016-2036), the provisions of the National Planning Policy Framework (2021) and the Conservation of Habitats and Species Regulations 2017.

4.3 A note on the decision notice read as follows:

Note to Applicant: The application was refused following the assessment of the following plans: Locality and Block Plan As Existing 2078 900, Block Plan As Proposed 2078 D01 Rev A, South and East Elevations As Proposed 2078 D04A, Elevations As Proposed 2078 D03 Rev A, Plans As Proposed 2078 D02 Rev A, Elevations As existing 2078 903, Plans As existing 2078 902, and Elevations As existing 2078 904. In accordance with paragraph 38 of the National Planning Policy Framework (2021), Eastleigh Borough Council takes a positive approach to the handling of development proposals so as to achieve, whenever possible, a positive outcome and to ensure all proposals are dealt with in a timely manner.

5.0 Relevant Policy Framework

- 5.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires local planning authorities to determine applications for planning permission in accordance with the provisions of the development plan unless material considerations indicate otherwise. This Section of the SoC sets out the relevant planning policy framework for the consideration of this appeal.
- 5.2. The policies detailed within the Council's reasons for refusal (RfR) are detailed within this Section.

National Planning Policy

5.3 The LPA refer to Framework in very broad terms using the phrase

'and the contents of the National Planning policy Framework' or

'and the provisions of the National Planning Policy Framework'

Only in the fourth reason for refusal is Section 12 of the Framework referred to but no specific paragraphs.

- 5.4 It would be helpful if the LPA could identify particular paragraphs of the Framework which they rely on in to oppose the appeal proposal and where they consider there is a conflict or harm with the Framework, It wrong to take a blanket approach referring to the entire document or a whole section with not one paragraph highlighted or any analysis of the degree of harm in the reasons for refusal.
- 5.5 The officer's delegated report does refer to some Framework paragraphs however the report does not have paragraph numbers or page numbers. I have given the report page numbers and refer to page seven and the first three paragraphs referring to paragraphs 11, 14 and 60.
- 5.6 The Officer's report incorrectly interprets Paragraph 11 which relates to the 'tilted balance'. The fact that the Council can currently demonstrate a Five Year Housing Land supply does lessen the weight that should be given to the appeal proposal and it is wrong to state that only limited weight should be given to the appeal proposal. The appellants argue that significant weight should be given to the appeal proposal which provides a custom designed dwelling for an older person to downsize to.

- 5.7 In addition the housing land supply is not capped and the LPA can exceed their housing targets and deliver more housing especially from unidentified windfall sites such as this one.
- 5.8 On page 8 second full paragraph reference is made to paragraph 134 however this paragraph has been quoted selectively and does not state,
- 5.9 Paragraph 174 is referred to on page 10, paragraph 5 but does explain the harm with quoted part of the paragraph 174.
- 5.10 Page 12 of the delegated report paragraph confirms there is no conflict with Framework paragraph 167.
- 5.11 No other Framework paragraphs are expressly referred to however reference is made to the Framework addressing climate change and developments being sustainable in respect of resource use, climate change and energy use but no harm or conflict is alleged with the Framework in this regard.
- 5.12 It should also be noted that the 5 Year Housing Land supply position is not overwhelming and is on the margins of acceptability at 5.1 years. The appellants will be monitoring the position in case the 'tilted balance' is subsequently engaged.

The Development Plan

- 5.13. The development plan relevant to the consideration of this appeal comprises the following documents:

Eastleigh Borough Local Plan (2016-2036)

Eastleigh Borough Local Plan Adopted 4th August 2011

- 5.14. The following policies were listed in the Reasons for Refusal and are relevant to the determination of this appeal:
- Policy DM1
 - Policy DM3
 - Policy DM6
 - Policy DM8
 - Policy DM11
- 5.15 The relevant policies are not repeated in detail in this statement as they are in the appeal documents.

6.0 The Case for the Appellant

- 6.1 The Delegated Officer Report is included as Appendix 1. In response to the Officer's Delegated report the appellant refutes the concerns reason for refusal and raises concerns and queries in the approach taken by the LPA especially in relation to Design, Ecology and Trees. It is a particular concern that the Consolation response from the Council's Ecologist initially raising no objection was revised subsequently and the same person then raised an objection.
- 6.2 The following section responds to the particular topics in the Delegated Report. A separate appeal Statement has been produced by Jeremy Barrell of Barrell Tree Consultancy. The other advisers and authors of the application statement will be available to speak to issues and assist the Inspector with further detailed clarification.

6.3 Design & Impact upon Conservation Area

The appellant disagree with these design comments.
There is No Objection from the Conservation Officer who compliments the proposal in the consultation response stating,

' 49 Bishopstoke Road, Bishopstoke, SO50 6BF.

Context.

The site is situated on the south-western corner of the Bishopstoke Conservation Area overlooking the Itchen Navigation to the west with the boundary of the conservation area on the other side. To the northern rear are the fishponds in the grounds of the Grade II listed Bishopstoke Manor with the B3037 main road through Bishopstoke to the south.

This northern side of the main road consists of a row of some twelve buildings which used to end with the corn mill at the eastern end and has this site at the western end. The buildings are of various ages with this host building the most modern and marking the entrance to Bishopstoke as one enters from Eastleigh. This site is therefore important as the gateway to Bishopstoke.

The Proposal.

The existing No. 49 is two storey, faces west, is attached to and subservient to the three storey No. 51 which is an apartment block. The road frontage of No.49 is set back from that of No.51 and the proposal for No.49A is again both lower and set very well back albeit primarily to avoid the tree roots presumably.

The main live elevations are those to the north and west with that to the east virtually blank save for one high level window to avoid overlooking of the garden to the existing No 49 and that to the south facing the road, very low key with just one ground floor window to give a little life helped by an eaves dentil course and some other brick detailing shared with all elevations.

The entrance front faces west with a restrained amount of fenestration as it overlooks the footpath on the other side of the navigation with the garden elevation facing north having the major glazing. The materials are to match the existing, which look local like Michelmersh dark multi bricks and brown clay roof tiles.

Conclusion.

The form and massing of this proposal are entirely appropriate for the setting, forming a subservient bookend to this line of buildings, helping it to merge more gracefully into the countryside while presenting a low key road elevation, so it will hardly notice from the front and a live elevation toward the countryside gap facing those who approach from Eastleigh, giving a wrap-around finish to this block of built form. No objection.

08.11.2022.

Tim J S Dyer, B.Sc.,Dip.Arch.(Birm), Grad.Dip.Conservation(AA), RIBA.

Built Heritage Consultant.

- 6.4. This consultation response was not uploaded to application documents on the Council's website.
- 6.5. The comments that the proposed house could be seen from the adjacent footpath and other viewpoints which have not been identified in detail are the appellant is considers that this is an ill-considered concerned especially when the actual harm has not been identified. The appellant consider that the LPA need to explain their complaint better.

The appellant responds stating,

'So what?

'How does it matter that the proposed house might be seen or glimpsed from certain viewpoints ?'

'Where is the harm?'

Policy DM1 of the Eastleigh Borough Local Plan (2016-2036) stipulates that all new development should respect the character and appearance of urban areas, take full and proper account of the context of the site including the character, appearance and land uses of the locality or neighbouring, and be compatible in terms of mass, scale, layout density, design and siting. Policy DM12 stipulates that development of a heritage asset would only be permitted where the proposals do not harm or detract from the significance or special interest of the asset.

The application site also falls within the “Bishopstoke” Conservation Area. Thus, triggering Section 72 of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended), which requires the local planning authority, or as the case may be, the Secretary of State, pay special attention to the desirability of preserving or enhancing the character or appearance of a Conservation Area.

Starting with the layout, the proposed dwelling would be situated to the immediate north-west of the existing end of terrace dwelling. The proposal is considered to appear discordant in this location as it is set back, almost behind the rear of the neighbouring dwelling, creating a significant staggered relationship, not reflective of the established building line along the northern boundary of Bishopstoke Road. Further and as will be expanded upon within the ecology and trees section of this report, there is concern with regard to the layout, whereby the proposed dwelling would be situated within close proximity to a number of trees (covered by a TPO) as well as being (less than) 8m from the River Itchen. The Trees and Development SPD make clear that development layouts must be designed to ensure that retained trees are able to grow and mature in the space provided. The layout proposed does not appear to consider the trees, as development either abuts or partly falls within the denoted RPAs. Further, works are proposed to be undertaken to the TPO'd trees, thus it would be considered that the proposals have given little consideration for these protected trees and their positive visual contribution towards the amenity of the area. Ultimately, the proposals would result in a cramped arrangement along the western boundary, encroaching unacceptably towards the existing TPO'd trees and also the River Itchen.

Turning to the dwelling itself, it is acknowledged that the Conservation Officer raised no objection, noting that the form and massing of this proposal are entirely appropriate for the setting. Whilst the LPA would not entirely agree with this statement, it is acknowledged that the design of the proposed dwelling would seek to reflect existing built development within the immediate vicinity and therefore in isolation could be appropriate. However, the proposal must be read within the wider context, taking into account the close proximity of the TPO'd trees and

River Itchen, thus and given the lack of buffer, the proposals are not considered to be acceptable.

As a result of the location and siting, the proposed dwelling would be visible from public vantage points, namely from the public footpath along the River Itchen (to the west), however would also be visible from other wider public vantage points to the south. As such, and during the site visit, the Officer walked part of the public footpath along the River Itchen, obtaining clear views into the application site. It was noted that there was an existing single storey garage which provided a transition from built development to amenity land and then the River Itchen. The proposed dwelling would encroach further towards the River Itchen than the existing garage, as well as the proposal being two-storey in nature, which is considered to result in a harmful lineation within an unacceptably close proximity to the River Itchen.

Paragraph 134 of the NPPF states 'development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents'. As assessed above, due to the inappropriate siting of the development, lack of buffers and its close proximity to protected trees and the River Itchen, the proposal is considered to result in an incongruous addition, creating a cramped layout, detracting from the established grain of development, thus would have an adversely harmful impact upon the street scene.

6.6 Internal & External Amenity for Future Occupiers

No objection and the proposal is policy and design standard compliant.

To ensure adequate internal living standards are met the Local Planning Authority assess the measurements of space against the 'Nationally Described Space Standards' (NDSS) (March 2015). Policy DM30 of the Eastleigh Borough Local Plan (2016-2036) requires that all new dwellings meet the NDSS as a minimum. In addition to internal arrangements, the Quality Places SPD requires all new residential development to provide a garden area of 60% of the host dwellinghouse.

The NDSS sets out the minimum space required for new dwellinghouses, which is dependent upon the number of bedrooms, people who would reside there and storeys.

There are also standards relating to sizes of bedrooms; a single occupancy bedroom should measure 7.5m², and a double occupancy bedroom should measure 11.5m².

The application proposes a 2no. bedroom two-storey dwelling, whereby the NDSS requires between 70m² – 79m² for a property of this size. From the submitted plans the ground floor would measure approx. 56m² and the first floor would measure approx. 54m², thus would cumulate to an overall footprint of 110m². Further to this, bedroom 1 would measure approx. 17.3m² and bedroom 2 would measure approx. 10.7m². As such, bedroom 1 would exceed double person occupancy and bedroom 2 would exceed single person occupancy but would fall short of double occupancy. Further, from the submitted floor plans and elevations, it appears that each habitable room would be served by a window, thus would provide adequate natural light.

In addition, and as set out within the Council's Quality Places SPD, the garden size for new residential development must be at least 60% of the floor space of the host dwellinghouse. Further and in this instance, the 60% amenity space would also be applied to the retained dwelling. From the submitted plans it is difficult to calculate these measurements. However, it appears that the proposed dwelling and neighbouring property would have a policy compliant amount of external amenity space.

Further, due to the nature of the proposals, the Council's Environmental Health (EH) Team have been consulted. They have advised that providing a condition in relation to cumulative noise impact and fenestration and roof sound insulation is imposed to comply with the LPAs noise limits for road traffic, aircraft and other ambient noise they would not raise an objection. In

terms of vehicular emissions, EH are satisfied that there is enough set back from the main road. Further, they noted a CEMP would be required, whereby other consultees comments should be included, as well as pollution control in proportionate detail for protection of dwelling not in the applicant's ownership or occupation. Had the proposals have been acceptable in other regards this information could have been sought or secured via appropriately worded conditions.

6.6 Impact upon Neighbouring Amenities

The Appellant disagrees with these comments. The balcony can be removed if required and a substitute plan provided or be the subject to a planning condition. The Design Issues were addressed in the Design and Access Statement and subsequent correspondence and updated plans.

Policy DM1 of the Eastleigh Borough Local Plan (2016-2036) amongst other matters, stipulates that all new development should not have an unacceptable impact upon residential amenities of both new and existing residents.

The addition of further residential development within an area characterised by residential is considered to be acceptable in this regard.

Due to the siting of the proposed dwelling, the only neighbouring residential property which is likely to be impacted upon is no.49 Bishopstoke Road to the immediate east of the application site. The proposed dwelling would be located to the north-west of 49 Bishopstoke Road, and as a result of this siting, the proposal would form the majority of the western boundary of no.49s rear garden. The proposal would span a length of approx. 8.6m along the western boundary with a maximum height of 7.7m and eaves of approx. 4.1m. This eastern elevation of the proposed dwelling is predominantly blank but has 1no. high level window at ground floor level (approx. 2m above ground level) and a small balcony at first floor level.

The proposed dwelling would therefore represent a harsh and overbearing form of development forming a large part of the western boundary of no.49s rear garden. The Council's Quality Places SPD sets out the importance of external amenity areas, and notes that proposals should not have an adverse impact upon the enjoyment of neighbouring properties external amenity.

The proposed two-storey dwelling would introduce a significant amount of bulk/ massing tight to the shared boundary and is therefore considered to result in a detrimentally harmful impact upon the amenities of the neighbouring properties to the east by way of being overbearing and creating a sense of enclosure. Furthermore, the proposed balcony at first floor level would offer clear views into the neighbouring properties rear garden thus also resulting in a loss of privacy. Ultimately, the proposed dwelling is considered to result in an adverse impact upon the amenities of 49 Bishopstoke Road and would therefore be recommended for refusal.

6.7 Highway Safety, Parking & Refuse Storage

No objection, all matters that could be subject to planning conditions.

Policy DM13 of the Eastleigh Borough Local Plan (2016-2036) requires that development is or could be well served by public transport, cycling and walking and it includes measures which minimise its impact on the existing highway network. Policy DM14 of the same Plan requires that an appropriate level of car parking be provided in accordance with the Council's adopted standards. The policy provisions are consistent with the requirements of the NPPF and in particular those of paragraphs 107 and 108.

Due to the nature of the proposals, the Local Highway Authority (LHA) have been consulted. The LHA raised no objection in principle, however, noted that the proposed driveway parking for the required two vehicles is relatively long and will require an elongated reverse into the

existing shared parking area where it is assumed vehicles can turn accordingly. Whilst the parking accords with the Council's Parking SPD, the LHA have raised slight concern with regard to the layout. Had the proposals have been acceptable in all other regards, an amended parking plan could have been requested

With regard to bin and cycle storage, this has not been identified on the proposed block plan, however it is noted that there is space available to provide this. Had the application have been acceptable in other regards further details of the bin and cycle storage, and their retention in perpetuity, could have been secured via condition.

*Ultimately, and to conclude, should the proposals have been acceptable in all other regards **additional information could have been requested and secured via condition.***

6.8 Ecology & Trees

The Barrell Tree Consultancy statement address matter related to trees.

The Ecological Appraisal and subsequent correspondence addressed ecology and bio-diversity issues.

Policy DM11 of the Eastleigh Borough Local Plan (2016-2036) stipulates that the Borough Council will work with statutory and voluntary agencies and developers to; protect, conserve and enhance areas subject to international, national and local nature conservation designations, and promote the net gain of biodiversity on all sites through the protection, enhancement and connection of existing provisions and new habitats and features compatible with the native biodiversity characteristics of the Borough.

This Policy is broken into 8 subsections, the above outlines subsection 1 explaining the 'general approach'. Subsections 2 and 3 relate to 'international designations' specifying that proposals preserve the water quality and flows within the Itchen and Hamble, Southampton Water and Solent. Subsection 5 relates to 'priority habitats, protected and priority species and the local ecological network', this specifically sets out that development will not be permitted unless it can be demonstrated (amongst other matters) measures are taken to mitigate or compensate for the adverse effects, there is an overall biodiversity net gain, and any residual adverse effects of the development clearly outweigh the adverse effects. Subsection 7 relates to 'buffers' noting that these should be provided to designated sites to avoid/ mitigate impacts.

Paragraph 174 of the NPPF also relates to the natural environment, whereby this states that planning policies and decisions should contribute towards and enhance the natural and local environment by a number of ways, the following points from this paragraph have been identified as being relevant to this specific planning application:

a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);

b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;

d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;

e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans.

Due to the nature of development, the Council's Arboriculturist and Ecologist have been consulted.

The Council's Arboriculturist raised an objection to the proposals. They noted that extensive tree work is proposed to the trees on site, and also honed in on the harm arising with regard to T13, as the proposed dwelling would be situated within its RPA. Whilst it is acknowledged that *Ganoderma* fungal fruiting bodies on the main stem of this tree has been identified, this has not been quantified in terms of the extent of strength loss. The Council's Arboriculturist therefore concludes that the proposed pruning works would be excessive leaving a significant pruning wound, whereby these works could impact the longevity of the tree and its short-term amenity value. Further, the mitigation for the encroachment into the RPA of T13 is dependent on pruning works. As noted, the Council's Arboriculturist would not be agreeable to the pruning works, as no evidence has been provided to demonstrate these works are appropriate, nor has it been evidenced that the proposal can be constructed without harm to T13.

The Council's Arboriculturist also went on to note that there are other trees on site which also represent constraints which need to be fully considered. In terms of the existing driveway, whilst it is acknowledged that cellular confinement can work, evidence would need to be provided to demonstrate that the use of cellular confinement could work in this specific instance. Furthermore, there were also concerns raised with regard to post-occupancy dominance in terms of shading from the existing trees, due to their close proximity to the proposed dwelling. They noted that the trees would dominate the site and shade a significant proportion of any recreational space, thus could create pruning pressures in the future. The site has a significant liner tree feature along the western boundary adjacent to the River Itchen. The trees are subject to a TPO and provide high levels of amenity and are considered critical in this landscape. The proposed works fail to take into account the importance of the TPO'd trees. This approach is completely contrary to the guidance set out within the Council's Trees and Development SPD which states that layouts must be designed to ensure that retained trees are able to grow and mature in the space provided (i.e. without the requirement for pruning), this is also contrary to BS5837:2012 and is in conflict with the aims and objectives of Policy DM1.

The Council's Ecologist originally advised that the recommendations in the Ecological Impact Assessment could be conditioned, however further information was requested in relation to surface water drainage. Following further review and assessment, the Council's Ecologist has raised an objection to the proposals as a result of the close proximity of the application site to the River Itchen.

Firstly, the Council's Ecologist noted that the proposals show no biodiversity net gain. As a result of the building footprint and impact upon the trees, the proposals would result in a biodiversity net loss. There would also be a significant and unacceptable impact upon the trees from proposed pruning, (as also noted by the Council's Arboriculturist) as the trees (including dead and decaying wood), are good for biodiversity as it provides habitat and food for wildlife. Further, the River Itchen is a designated SAC (Special Area of Conservation) (chalk river BAP habitat) whereby it is essential to maintain water quality and integrity of the riparian habitat. An

8m buffer is shown on the proposed plans, however concern has been raised as to where this has been measured from. Irrespective of this, it is not considered that this spacing between the proposed dwelling and the River Itchen SAC provides a sufficient buffer.

In addition, the distance from the rear of the proposed dwelling would be approx. 6m from the woodland edge to the north. The lowland mixed deciduous woodland is priority habitat and development must not be allowed so close to this woodland. Again, as noted within the design section, the cramped layout is not appropriate in either design terms or ecologically as there are a lack of buffers separating the proposed development and, in this instance deciduous woodland.

Ultimately, both consultees raised an objection concluding that the proposals would be contrary to DM1 of the Local Plan. The agent then provided additional information in response to the Council's Arboriculturist and Ecologist. The additional information comprised a letter in relation to trees referenced (22113-Let1-151222-JB) (dated 15 December 2022), and a letter dated 17 December 2022, in relation to ecology matters.

The Council's Arboriculturist's commented on the submitted tree letter noting that it failed to demonstrate that a 6m crown reduction is necessary, as a result of the lack of information provided in terms of the extent of decay. The ecology letter states that there is biodiversity net gain in the form of: integrated bird, bat and bee boxes, and an area for hedgehogs. However, from the Council's Ecologists original comments, it is not considered that the addition of these elements would result in biodiversity net gain. The letter also advised that the closest point of the driveway to the river would be 5.4m and that measures have been proposed within the working methodology to ensure the River Itchen is protected. The Council's Ecologist reviewed this information and reiterated that the proposed development was too close to the River Itchen riparian zone. Ultimately, the Council's consultees stance (set out in full in the publicity section of this report) remained unchanged and both maintain their objection, despite this additional information.

As such, the proposals are considered to result in adverse harm upon TPO'd trees and the River Itchen (SAC), thus would be recommended for refusal.

6.9 Flood Risk & Drainage

There is no objection in respect of Flooding. The Environment Agency proposed a Planning Condition.

The details of surface Water Drainage can be addressed in Planning Conditions.

Policies DM3 and DM6 of the Eastleigh Borough Local Plan (2016-2036) stipulate that new development must provide sustainable drainage systems (SuDs) wherever feasible, naturalised filtration should also be included. DM8 of the same Plan stipulates that development will not be permitted if it is likely to cause loss of amenity of impact upon public health or other unacceptable environmental impacts; including pollution of surface, underground, coastal waters or other watercourses.

The Town and Country Planning (Development Management Procedure) (England) Order 2015 states there is no requirement to consult the Environment Agency for minor development within Flood Zone 2 or 3, however, paragraph 167 of the National Planning Policy Framework (NPPF) (2021) states all applications should be supported by a site-specific flood-risk assessment but in this instance a sequential or exception test is not required. In this instance the Environment Agency has been consulted and a Flood Risk Assessment has been submitted as part of this application.

*This application relates to the erection of 1no. detached dwelling, which is classified as being 'more vulnerable' in the flood risk vulnerability classification set out in the National Planning Practice Guidance. However, and having regard to the flood risk vulnerability and flood zone compatibility set out in Table 3 of the National Planning Practice Guidance, **the development is deemed appropriate. (my emphasis)***

The Council's Ecologist provided comments upon the Flood Risk Assessment. They noted that pollutants from the house, driveway and garden could get washed into protected waters (River Itchen (SAC)) during a flood. The likelihood of flooding will increase due to climate change. They raised concern and noted that there was a lack of justification for the additional residential development. Furthermore, limited information was provided with regard to surface water drainage and the potential impact this could have upon the River Itchen (SAC).

The Environment Agency were also consulted as part of this application. They advised that the proposed development would only be acceptable subject to a specific condition (as laid out above).

This additional information has not been requested. It should be noted that had the application have been acceptable in other regards this information would have been requested. However, in the absence of this information, this will form a reason for refusal.

6.10 Sustainability

The water Consumption can be addressed through planning conditions and are also covered by the Building Regulations. The Inspector is the competent person for HRA. Sufficient Information was submitted with the application and an updated Nutrient Budget can be submitted if required and one in respect of Phosphates if circumstances have changed.

Policy DM2 of the Eastleigh Borough Local Plan (2016-2036) requires new development to provide a 19% improvement in predicted carbon emissions, and water consumption standards of 110L per person per day.

Other than being situated within a suitable location, the proposals do not provide any sustainability measures. It should be noted, however, that had the proposals have been acceptable in other regards, these requirements would have been secured via condition.
SPA Mitigations

The Council, as the responsible body for Habitats Regulations Assessment (HRA), must ensure as part of a planning application that development will not have an adverse impact upon any European protected sites, and specifically in this case, the European protected Solent Complex (SPA, SAC and Ramsar sites), River Itchen (SAC) and New Forest National Park (SPA, SAC and Ramsar sites). It is recognised that the addition of residential development would have an adverse impact upon the surrounding designated European protected sites. In this instance, given that the proposal was unacceptable in other regards no Appropriate Assessment has been undertaken, however an assessment of the impact has been completed below.

The Solent & Southampton Water Special Protection Area is an internationally designated conservation site and is protected for its overwintering birds. It is recognised that new house building (within a 5.6km buffer of the designated area) is placing increased pressure on these overwintering birds from more people visiting the coastline. As such the Council requires all housing developments within the buffer to make a financial contribution towards the Solent

Recreation Mitigation Strategy, which aims to limit recreational disturbance to our coastline through careful management. The application site does not appear to fall within this zone. In terms of water quality, Natural England have advised that new housing development should achieve nutrient neutrality in order to mitigate the impacts of additional nitrogen arising from the sewage generated by the future residents. This wastewater then feeds into the Solent Complex via Waste Water Treatment Works, which discharges into the river network and so causes eutrophication affecting the features for which it is designated. The Council has adopted its own strategy for achieving nutrient neutrality whereby it identifies areas of agricultural land and remove these from a nitrate intensive use, thus reducing the nitrogen input into the protected sites, with the level of reduction then being used as a means of offsetting the impacts of development proposals within the Borough. This ensures no overall net increase in nitrates within the Solent and thereby allow a development to achieve nutrient neutrality. In order to do this, the Council calculates the level of nitrate mitigation this land provides (measured in kg) and makes 'nitrate credits' available to developers to buy, with funding being secured during the planning application. The agent advised that they would be looking to purchase 'nitrate credits'.

In addition to additional nitrogen output, Natural England have also highlighted that residential development within a certain catchment of the River Itchen (SAC) can result in phosphate loading resulting from additional sewage generated from future residents. Due to the close proximity to the River Itchen, mitigations would also be required to offset the development, none of which have been provided.

Furthermore, Natural England has also recently raised concern with regard to additional residential development within 13.8km radius of the New Forest. This is considered to have an adverse impact upon the New Forest by way of additional trips resulting in further recreational disturbance. No mitigation to offset this impact has been provided.

The Local Planning Authority acknowledge that these matters could be overcome, subject to the correct monies and mitigations being implemented. However, the proposal was not considered acceptable in other regards, therefore this was not sought. As stands the application does not provide the required mitigations to offset the adverse impact upon the protected areas and therefore these matters would contribute towards a reason for refusal.

(my emphasis)

6.11

Equalities Act:

Section 149 of the Equalities Act 2021 created the public sector equality duty. Section 149 states:

- A public authority must, in the exercise of its functions, have due regard to the need to:
 - a. Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - b. Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - c. Foster good relations between persons who share a relevant protected characteristic and persons who do not share it

When making policy decisions, the Council must take account of the equality duty and in particular any potential impact on protected groups. It is considered that this application does not raise any equality implications.

The appellant disagrees and considers that the LPA have failed to address the PSE Duty and take into consideration the appellants particular circumstances. In particular reference is made to the House of Lords judgment *Opinions of the Lords of Appeal for Judgment In The Cause South Bucks District Council and another (Respondents) Porter (FC) Appellant* 1 July 2004 which is included in full at appendix 2.

6.12 In particular the judgment states at paragraph 39

'39. That personal circumstances are themselves capable of being a material consideration in a planning case is well established—see *Westminster* at p 670F ("the human factor . . . can . . . and sometimes should, be given direct effect as an exceptional special circumstance"—per Lord Scarman), and *South Bucks* at p 580, para 31, ("the Secretary of State was entitled to have regard to the personal circumstances of the gipsies"—per Lord Bingham). Indeed Lord Clyde in *South Bucks* at p 593C-D, para 75 described Mrs Porter's (and Mr Berry's) circumstances as "quite special": in part because they owned the land in question and in part because, although the land lies within the Green Belt, "it is not suggested that there is any urgent environmental problem".'

6.13 Therefore, it clear that personal circumstances are a Material Planning consideration and can be assessed in the determination of this application.

6.14 Public Sector Equality Duty

The Public Sector Equality Duty contained in the Equality Act 2010 places a requirement on the Local Planning Authority and the Planning Inspector to have due regard to the need to minimise disadvantages and discrimination suffered due to age to persons and the need to take steps to meet the needs of such individuals. Such a duty does not necessarily override other considerations, but it is a factor to be weighed in the planning balance. The evidence in this case is compelling and demonstrates that there are grounds to attach significant weight to Mrs Bray's personal circumstances in light of her desire to downsize in later life. Should the proposed development go ahead, this would have a direct and adverse effect on Mrs Bray's physical and mental wellbeing. As such, her human rights, as recognised by the provisions of Article 8 of the Human Rights Act 1998, would be materially compromised. This is a factor of considerable importance and weight in the planning balance.

6.15

Climate Change:

In July 2019, the Council declared a Climate Change and Environmental Emergency. In doing so it agreed, among other this, to: (a) put in place measures to ensure the Council's own operations and functions achieve carbon neutrality by 2025; (b) work with partners to aim for all projects and services delivered in the Borough to achieve carbon neutrality by 2030; (c) ensure that the Councils procurement policy recognises carbon neutrality as one of its primary considerations; and (d) recognise the urgency of action to mitigate and adapt to climate change in every decision taken by the Council. This is underpinned by the Climate and Environment Emergency Strategy 2020-2030 and the supporting Climate and Environmental Emergency Action Plan – Update June 2020. The declaration of the Climate Change and Environmental Emergency demonstrates a strong commitment from the Council to achieve net zero. The NPPF and development plan do not set this as a specific target, but it is a material consideration to be considered alongside all other material considerations. In any case addressing climate change is a core part of the NPPF and Local Plan policy. The need to support the economy is part of the Strategic Environmental Assessment for the Local Plan, as is an assessment of climate impacts.

The NPPF aims for the need for housing to be met, and policy S2 of the Local Plan sets a target for 14,580 dwellings to be provided by 2036. The NPPF and Policies, S1, DM2, and DM3 of the Local Plan and energy and water elements of the adopted Environmentally Sustainable Development SPD require development to be sustainable in terms of resource use, climate change and energy use. When considering the impact of climate change, the proposed development is expected to be resilient to the potential effects of climate change and is expected to limit impacts on climate emissions as a result of the development or its use.

This is a factual Statement and there is no conflict with issues relating to Climate Change and these matters are covered in the main by other legislation and the Building Regulations.

It is not a reason for refusal.

Other Material Policy Considerations

6.16 Other material policy considerations relevant to the determination of this planning appeal include the following documents:

- National Planning Policy Framework (2021)
- National Planning Practice Guidance (PPG)
- Quality Places Supplementary Planning Document (2011)
- Trees and Development Supplementary Planning Document (2021)

and referred to in the Planning Statement that accompanied the application.

6.17 On balance, taking account of the site being an addition to the existing developed residential frontage, absence of harm to the Conservation Area, Ecology and Trees and no issues in respect of Flooding and Drainage as well as a valuable contribution to housing delivery, and lack of any other significant planning impacts; Jane Bray asserts that this is an application that Eastleigh Borough Council should support through the planning approval process.

6.18 The proposed new house is an entirely acceptable form of development. This planning application has thoroughly assessed the relevant issues.

6.19 The key issues that have been addressed are;

- i) the design and external appearance of the building
- ii) heritage and conservation issues
- iii) flood risk and drainage
- iv) biodiversity and impact on wildlife
- v) compliance with National and Local Planning Policies

6.20 The proposed house is eminently suitably located within this location. There is no reason not to grant planning permission subject to suitably worded planning conditions.

Therefore, it is respectfully requested that in accordance with paragraph 11 of the NPPF that the appeal is allowed and approved without delay .

7.0 Other Matters

Conditions

7.1 The Appellant will seek to agree a list of planning conditions with the Council.

Statement of Common Ground

7.2 The Appellant will seek to agree a Statement of Common Ground with the aim of narrowing the issues and reducing time at the Hearing.

Section 106 Agreement

7.3 The Council and the Appellant will seek to agree a draft unilateral undertaking in advance of the hearing taking account of the information on the Decision Notice relating to Nutrient Neutrality. Alternatively as agreed in other cases a 'Grampian' condition could address this issue.

Hearing Appearances

7.4. The appellant expects to call upon the following consultants/advisers to address the following matters at the Inquiry:

- Design - Duncan McKellar - Temple Ford Design
- Trees and Arboricultural issues - Jeremy Barrell - Barrell Tree Consultancy
- Drainage - Jackie Stone - UNDA
- Ecology - Louise Lowans - Lowans Ecology and Associates
- Planning Policy and the Planning Balance - Andrew Burgess - Andrew Burgess Planning