

EASTLEIGH BOROUGH COUNCIL

**Town and Country Planning Act 1990 (As Amended by the
Planning and Compensation Act 1991) – Section 78**

LOCAL PLANNING AUTHORITY'S STATEMENT OF CASE

**Planning appeal against refusal of full planning.
Application for the erection of two-bedroom detached
dwelling in garden of existing property.**

49 Bishopstoke Road, Bishopstoke, Eastleigh, SO50 6BF

**Appeal by: Mr Andrew Burgess of Andrew Burgess
Planning, on behalf of: Ms Jane Bray**

**Planning Inspectorate Reference:
APP/W1715/W/23/3320124**

Eastleigh Borough Council Reference: F/22/94046

June 2023

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1.0 Introduction

- 1.1 The Council's Statement of Case should be read in conjunction with the Delegated Officers Report, decision issued 20 January 2023. Both documents should be taken as forming the Council's Case in relation to this appeal.
- 1.2 This statement focusses on the matters pertaining to the Council's reasons for refusal of planning permission as set out below and in order to provide further details and justification in relation to these. Where necessary and relevant to the reasons for refusal, matters raised within the Appellants statement of case will also be responded to within this statement.

2.0 Description of Appeal Application

- 2.1 The appeal application was received by the Council on 21 October 2022 and registered as valid on the 26 October 2022. It was given a reference number of F/22/94046. The proposed development was described as follows:
Erection of two-bedroom detached dwelling in garden of existing property.
- 2.2 The decision was issued 20 January 2023 whereby 6 reasons for refusal were listed:
 - 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 comprising a buffer to protected trees and the designated River Itchen (SAC). 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 (2021) and Biodiversity (2009) SPDs and the provisions of the National Planning Policy Framework (2021).
 - 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.

- 2.3 A copy of the Council's Decision Notice was sent to the Planning Inspectorate with the Council's Appeal Questionnaire.

3.0 Site and Surroundings

- 3.1 The appeal site is located to the north of Bishopstoke Road, situated on the south-western corner of the Bishopstoke Conservation Area overlooking the adjoining Itchen Navigation to the west with the boundary of the conservation area on the other side of the River Itchen. Further north are the

fishponds within the grounds of Grade II Listed Bishopstoke Manor with the B3037 main road through Bishopstoke to the south.

- 3.2 The 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 appeal site at the western end. The buildings are of various ages with this closest neighbouring building the most modern and marking the entrance to Bishopstoke when leaving Eastleigh. The appeal site is therefore important as the gateway to Bishopstoke.
- 3.3 The appeal site specifically comprises a piece of land to the west of the existing building which consists of a two-storey semi-detached dwelling, approved in the 1980s. This building has a variety of roof forms; part hipped and some gabled elements and is finished in brick work with white fenestration. The building is served by a driveway and is bound by low level brick wall and railings above to the southern boundary (fronting Bishopstoke Road). The attached neighbour comprises of flats which also shared the same access. To the west of the application site is the River Itchen (SAC), there is no formal boundary treatment, albeit noted that there are some trees (covered by a TPO). Due to the location, these trees have a high level of amenity.

4.0 Relevant Planning History

- 4.1 Z/27504/001/00
Erection of semi-detached house and garage
Permitted (October 1985)
This application relates to the existing 'Braeside House, 49 Bishopstoke Road', the appeal site. Within the decision notice (Appendix 1) several conditions were attached, these included tree protection during construction, tree and hedge retention, removal of permitted development rights (so as to restrict and have controls over any future development within the appeal site), details of foul and storm water drains (to avoid damage between them and adjacent trees), and minimum floor levels of the dwelling to be 900mm.
- 4.2 Z/27504/000/00
Erection of a detached house and garage
Refused (May 1984)
- 4.3 C/04544/005/00
Alterations and extensions to create 5no. 2 bed flats on three storeys with car parking at front and rear.
Withdrawn

5.0 Development Plan Policy

- 5.1 Town and Country Planning Act 1990
Sections 70(2) and 79(4) of the Town and Country Planning Act 1990 set out that this Appeal must be determined in accordance with the Development Plan unless material considerations indicate otherwise.

5.2 Planning and Compulsory Purchase Act 2004

Section 38(6) of the Planning and Compulsory Purchase Act states as follows: *“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”*.

5.3 Town and Country Planning (Listed Building and Conservation Areas) Act 1990

Section 72 of the same Act requires the local planning authority, or as the case may be, the Secretary of State, *to pay special attention to the desirability of preserving or enhancing the character or appearance of a Conservation Area*.

5.4 Development Plan

The Development Plan comprises the Eastleigh Borough Local Plan (2016-2036). The relevant policies to the determination of the planning application and current appeal comprise Policies:

- S1 (Delivering Sustainable Development)
- S2 (Approach to New Development)
- S3 (Location of New Housing)
- S8 (Historic Environment)
- DM1 (General Criteria for New Development)
- DM2 (Environmentally Sustainable Development)
- DM3 (Adaption to Climate Change)
- DM6 (Surface water management)
- DM8 (Pollution)
- DM11 (Nature Conservation)
- DM12 (Heritage)
- DM13 (General Development Criteria – Transport)
- DM14 (Parking)
- DM23 (Residential Development in Urban Areas)
- DM30 (Internal Space Standards for New Residential Development)
- DM38 (Funding infrastructure)

5.5 Policies DM1, DM3, DM6, DM8 and DM11 are of specific relevance to the reasons for refusal. Copies of these policies were provided to the Planning Inspectorate as part of the Councils Appeal Questionnaire.

5.6 Supplementary Planning Documents (SPDs)

The following SPDs are of relevance to the planning merits of the appeal proposals:

- Biodiversity (2009)
- Residential Parking Standards (2009)
- Quality Places (2011)
- Trees and Development (2021)

6.0 **National Planning Policy**

- 6.1 The National Planning Policy Framework (NPPF) 2021 sets the Government's planning policies for England and how it expects them to be applied. The NPPF is a significant material consideration for the purposes of making planning decisions. However, it is just one of the material planning considerations which must be taken into account, and it does not negate or undermine the primacy of the Development Plan laid out in statute, nor any other material planning considerations. Indeed, Paragraph 2 of the NPPF states:

"Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the development plan and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements."

6.2 Sustainable Development

Paragraph 7 notes that *"the purpose of the planning system is to contribute to the achievement of sustainable development"*. Paragraph 8 explains that this entails three overarching objectives: an economic objective; a social objective; and an environmental objective.

- 6.3 Paragraph 9 notes that:

"These objectives should be delivered through the preparation and implementation of plans and the application of the policies in this Framework; they are not criteria against which every decision can or should be judged. Planning policies and decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area."

- 6.4 Paragraphs 10 and 11 note that at the heart of the NPPF is the "presumption in favour of sustainable development", stating that:

"For decision-taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole."

- 6.5 Paragraph 12 reiterates the point made in Paragraph 2 that the presumption does not change the statutory status of the development plan as the starting point for decision making:

“Where a planning application conflicts with an up-to-date development plan ... permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.”

- 6.6 Paragraph 14 builds upon Paragraph 11(d), stating that where the application involves the provision of housing, the adverse impact of allowing development would be assessed against further criteria laid out:
- “a) the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made;*
 - b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement;*
 - c) the local planning authority has at least a three year supply of deliverable housing sites (against its five year housing supply requirement, including the appropriate buffer as set out in paragraph 74); and*
 - d) the local planning authority’s housing delivery was at least 45% of that required over the previous three years.”*

6.7 Plan-Making

Section 3 of the NPPF relates to “plan-making”, and notes at the outset (Paragraph 15) that: *“the planning system should be genuinely plan-led.”*

6.8 Decision-Making

Paragraph 38 requires Councils to *“approach decision on proposed development in a positive and creative way”* and states that decision-makers at every level should *“seek to approve application for sustainable development where possible”* (but not unsustainable development).

6.9 Determining Applications

Paragraph 48 of the NPPF establishes that planning authorities may give weight to relevant policies in emerging plans according to:

- “a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);*
- b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and*
- c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).”*

6.10 Housing

Paragraph 60 of the NPPF requires that to support the Government’s objective of significantly boosting the supply of homes, it is important that sufficient amount and variety of land can come forward where it is needed. Paragraph 68 goes on to note that planning policies should identify *“a) deliverable sites for years one to five of the plan period”*.

- 6.11 Paragraph 71 of the NPPF states:

“Where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply. Any allowance should be realistic having regard to the strategic housing land availability assessment, historic windfall delivery rates and expected future trends. Plans should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.”

- 6.12 As noted within the Officer’s report, the LPA can demonstrate a 5.1 year housing supply. Paragraph 5.6 of the Appellant statement of case states that *the Council can currently demonstrate a Five Year Housing Land supply does lessen the weight that should be given to the appeal proposal.* However, the Appellant then argues that significant weight should be given to the appeal proposal. This is not supported by any evidence that the Borough is in need of this type of housing, nor does it substantiate that the appeal site is the most appropriate site for this type of development. Therefore, the LPA would conclude that only a limited degree of weight as a benefit can be given to the scheme proposing the addition of 1no. residential dwelling.
- 6.13 Paragraph 124 of the NPPF states:
*“Planning policies and decisions should support development that makes efficient use of land, taking into account:
d) the desirability of maintaining an area’s prevailing character and setting (including residential gardens), or of promoting regeneration and change”.*
- 6.14 Achieving well-designed places
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.”
- 6.15 Planning and Flood Risk
Paragraph 159 of the NPPF states:
“Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.”
- 6.16 Paragraph 163 of the NPPF states:
“The need for the exception test will depend on the potential vulnerability of the site and of the development proposed, in line with the Flood Risk Vulnerability Classification set out in Annex 3.” The appeal proposals have been assessed against the vulnerability classification whereby they are considered ‘more vulnerable’. However, within the compatibility table, the proposed development is deemed appropriate.
- 6.17 Paragraph 167 of the NPPF states:

“When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessments. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:

- a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;*
- b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment;*
- c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;*
- d) any residual risk can be safely managed; and*
- e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.”*

6.18 Conserving and Enhancing the Natural Environment

Paragraph 174 of the NPPF states:

“Planning policies and decisions should contribute to and enhance the natural and local environment by:

- 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;*
- c) maintaining the character of the undeveloped coast, while improving public access to it where appropriate;*
- 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; and*
- f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.”*

6.19 Habitats and Biodiversity

Paragraph 180 of the NPPF states:

“When determining planning applications, local planning authorities should apply the following principles:

- a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning*

*permission should be refused;
(b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted.”*

6.20 Paragraph 181 of the NPPF states:

“The following should be given the same protection as habitats sites:

- a) potential Special Protection Areas and possible Special Areas of Conservation;*
- b) listed or proposed Ramsar sites; and*
- c) sites identified, or required, as compensatory measures for adverse effects on habitats sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.”*

6.21 Paragraph 182 of the NPPF states:

“The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.”

6.22 It is the Council’s position that the Policies contained within the Eastleigh Borough Local Plan (2016-2036) are pertinent to the decision making of the appeal and are considered to be consistent with the NPPF and therefore should be given full weight.

7.0 Reasons for Refusal

7.1 This section addresses the reasons for refusal, including conflict with the Local Plan Policies, Adopted SPDs and the NPPF.

7.2 Paragraph 6.1 of the Appellants statement of case raises concern with the approach taken by the LPA with regard to design, ecology and trees. This then specifically goes on to note that the Council’s Ecologist originally provided comments raising no objection, however they then revisited the application and raised an objection. The LPA considers that the application was under consideration throughout the assessment process and, until a decision is reached in relation to the development proposal, the conclusions on relevant planning matters are not fixed and positions can change. The LPA is entitled to continue the assessment process up to and until a decision is reached and individual consultees could alter their position based upon the evidence before them. The final ecology objections informed the LPA’s decision to refuse planning permission, and this is considered a reasonable approach to be taken by the LPA.

7.3 Further, it should be noted that the Appellant was made aware prior to the decision being issued that the proposals would not be acceptable on the relevant grounds. The LPA also allowed the submission of additional information with regard to trees and ecology for the Council’s specialists to

review, despite advising that the proposals would not be acceptable in all other regards. Evidently, the additional information submitted was unable to address the objections raised.

7.4 Reason 1

Inappropriate siting, lack of buffer and close proximity to existing TPO'd trees and River Itchen (SAC) which would result in an unacceptably cramped layout

- 7.5 The appeal proposals would be situated to the immediate north-west of the existing semi-detached dwelling (49 Bishopstoke Road). The proposed dwelling is considered to appear discordant in this location as it is set back, almost behind the rear of this neighbouring dwelling, creating a significant staggered relationship, not reflective of the established building line along this northern stretch of Bishopstoke Road.
- 7.6 As noted within the history section of the Council's Statement of Case, planning application referenced "Z/27504/001/00" was permitted in the mid-1980's. These proposals would have been determined against a former version of the Eastleigh Borough Local Plan and would have been prior to the introduction of the National Planning Policy Framework (NPPF) in 2012. The NPPF places more weight upon design and also conservation of both heritage and biodiversity. Further, it should be noted that there were no Special Areas of Conservation (SACs) nor the level of protection, which is afforded nowadays, when the previous application was determined. It should also be noted that these proposals were only considered acceptable subject to conditions, which included tree protection during construction, tree and hedge retention, removal of permitted development rights (so as to restrict and have controls over any future development within the appeal site), details of foul and storm water drains (to avoid damage between them and adjacent trees), and minimum floor levels of the dwelling to be 900mm. These issues have also been identified with the appeal proposals which add additional and excessive built mass closer to the sensitive boundaries of the site; however, these have not been overcome, primarily due to the lack of buffer and close proximity to existing TPO'd trees and River Itchen (SAC) as a result of proposed further encroachment.
- 7.7 This reason for refusal predominantly relates to the cramped form of development in close proximity to environmentally sensitive boundaries of the site in the form of the TPO'd trees and River Itchen (SAC). There are detailed technical concerns, as listed within the 5 other reasons for refusal, with regard to the impact the appeal proposals would have upon the TPO'd trees and potential pollution to the River Itchen (SAC) which will be expanded upon within the Council's Statement of Case. However, this section will specifically examine the harm resulting from the cramped layout.
- 7.8 The relevant Local Plan Policies have been sent to the Inspector, including Policy DM11. Within this Policy a useful guide to the purpose of 'Buffers' are addressed, stating that *buffers free from development will be provided to designated sites to avoid/ mitigate impacts*. It is recognised the proposed

dwelling would be situated within 8m of an internationally designated SAC, the River Itchen. The proposals would therefore result in development within the riparian corridor. Due to the sensitivity of this corridor, which also includes several TPO trees, the siting of a two-storey dwelling in such close proximity is considered to visually encroach and undermine the environmental status of the space.

- 7.9 It is acknowledged that the existing appeal site does benefit from a spacious amenity area (predominantly to the west), which provides separation from built development to the protected trees and River Itchen (SAC). Further, it is noted that there is a cohesive pattern of dwellings, with regular plot widths, albeit the existing 49 Bishopstoke Road does appear as a slight anomaly. Whilst acknowledging that the appeal site does have a large plot, this has been established and contributes towards the spacious streetscene. As a result of the location of the site, and siting of the appeal proposals, they would be visible from the public footpath along the River Itchen (to the west), whereby the existing single storey garage and amenity land currently provide a gentle transition and buffer from built development to protected trees and River. The appeal proposals would encroach further towards the River Itchen and protected trees than the existing garage, as well as being two-storey in nature, which is considered to result in a harmful lineation within an unacceptably close proximity to the River Itchen and TPO'd trees. The addition of a dwelling in this location, despite the appearance seeking to resemble no.49 Bishopstoke Road, would introduce additional built mass not following the established building line, which would have a harmful impact upon the existing streetscene and pattern of development. As well as resulting in a cramped layout, which would have a harmful impact visually when viewed from the public footpath to the west.

7.10 Appeals

Further to the above, and whilst it is acknowledged that each application is determined on its own merits, the Council would like to draw the Inspectors attention to other dismissed appeals which relate to the subdivision of residential curtilages and support the stance of the resistance to these inappropriate subdivisions.

- 7.11 Within appeal Decision APP/W1715/W/19/3228563 (August 2019) at 17 Sherborne Way (Appendix 2) it was also noted that there was consistency in the streetscene, whereby the Inspector noted *the surrounding area has a residential character and contains semi-detached, detached and terraced properties with a generally similar scale and appearance. It appears to be laid out in a varied but coherent, planned, development pattern.*

...

Experienced as forming part of the areas planned layout and providing a sense of spaciousness and relief between surrounding built form, the combined open space, which includes part of the site, contributes positively to the character and appearance of the surrounding area.

...

The proposal would project into the open area... significantly reducing this space, the development would be experienced as a dominating feature that

erodes the sense of openness in the surrounding area and disrupts and detracts from its development pattern.

- 7.12 In this appeal decision, the Inspector predominantly focussed on the inappropriate siting placing more weight upon this compared to the overall design and appearance of the proposed dwelling. The weight applied to the siting of the previous proposals should be similar to that of the current appeal proposals, given that this would disrupt the existing established grain of development along the northern part of Bishopstoke Road.

- 7.13 Turning to appeal Decision APP/W1715/W/20/3260432 (February 2021) at 9 Westfield Road (Appendix 3), the Inspector noted that *the appeal site is an irregularly shaped corner plot located within an established residential area ... characterised by a cohesive pattern of semi-detached and terraced dwellings consistently set back from the highway.*

...
Whilst there has been significant new development in the surrounding area, the immediate context of the site remains that of a planned estate where this is a regularity of dwelling design and layout... The regularity of dwelling design and layout, in combination with the significant areas of both public and private open green space, gives a cohesive and spacious character to the area. The appeal site contributes positively to this character through the dwelling's congruent design, spacious side garden area and set back from the highway.

...
The proposed detached dwelling has taken design cues from the surrounding dwellings in terms of its roof form, facing materials and window details. Nevertheless, the proposal would not reflect the cohesive pattern of development of semi-detached and terraced dwellings within which it would be predominantly viewed.

- 7.14 The current appeal site is similar in that it has an irregularly shaped plot, set in an area where the wider surroundings are characterised by cohesive pattern of properties, albeit no.49 Bishopstoke Road appears as a slight anomaly. The regularity of dwellings design and layout contributes positively towards this northern stretch of Bishopstoke Road, whereby the appeal proposal would diminish and disrupt this by introducing an additional dwelling. Due to the siting of the appeal proposals and the layout of the streetscene, the proposals would be readily visible from the public realm (public footpath) and would adversely impact upon the established grain and would be an overtly dominant feature especially when viewed from the public footpath (west).

- 7.15 The abovementioned appeals are considered to have parallels with the current appeal proposals, with the key and underlining principle being the resistance to the inappropriate subdivision of curtilages of residential properties for additional residential dwellings. The above appeals conclude that the Inspectors have placed more weight on the subdivision of sites than the overall design/ appearance of the proposed dwellings. This being an issue of contention of this appeal.

7.16 For these reasons, the appeal proposal is considered to be unacceptable in terms of its inappropriate siting, lack of buffer and close proximity to TPO'd trees and the River Itchen (SAC) as it would result in an unacceptably cramped layout, contrary to Policy DM1 of the Eastleigh Borough Local Plan, the Council's Trees and Development, and Biodiversity SPDs.

7.17 Reason 2

Scale, siting and close proximity to the eastern boundary, which would result in a sense of enclosure creating an unacceptable and overbearing impact and loss of privacy, as a result of the balcony of the amenities of the occupier of 49 Bishopstoke Road

7.18 This second reason for refusal relates specifically to the impact the appeal proposals are considered to have upon the neighbouring amenities of no.49 Bishopstoke Road. As set out in the Officer's report, due to the siting of the appeal proposals this is the only neighbouring property which would be adversely affected. This reason comprises two parts, one being the close proximity to the shared boundary combined with the dimensions of the proposed dwelling. The second part relates to the proposed balcony.

7.19 Paragraph 6.6 of the Appellants statement of case states that 'the Appellant disagrees with these comments'. However, no substantiating information has been provided as to why they disagree or to counter the LPAs stance.

7.20 It is also noted that Appellant states *the balcony can be removed if required*. The LPA would firstly note that the appeal process should not be used to provide alternatives to a scheme which has been refused. Further, the LPA consider that the Appellant has failed to understand the adverse impact of the proposed development. It is a combination of the scale, siting and close proximity of the proposed dwelling itself to the shared eastern boundary, which in itself would result in a sense of enclosure creating and unacceptable and overbearing impact. As noted within the Officer's report the proposed dwelling would *span a length of 8.6m along the western boundary with a maximum height of 7.7m and eaves of approx. 4.1m*. Thus resulting in excessive dimensions along the shared boundary which would have an adverse impact upon this neighbour.

7.21 The secondary part to this reason for refusal relates to the balcony and the loss of privacy for the neighbouring property. Omitting the balcony would address part of this reason for refusal but would not completely address it, as there is still concern with regard to the scale, siting and close proximity to the neighbouring dwelling and the sense of enclosure that would be created.

7.22 As noted, the LPA do not consider the appeal process the most appropriate way to deal with alternative schemes. If, however, the Inspector was minded to accept any amendments omitting the balcony, the LPA would still maintain this reason for refusal as the proposed dwelling by reason of its scale/ dimensions and siting close to the shared eastern boundary would

result in a sense of enclosure which would have adverse overbearing impact upon no.49 Bishopstoke Road.

7.23 Reason 3

Close proximity to the TPO'd trees along the western boundary, being situated within the RPAs and in combination with excessive proposed pruning works would have an adverse impact upon the protected trees in terms of their health and longevity, as well as their positive contribution they make towards the visual amenity

- 7.24 The Appellant has provided additional information in this regard, which the Council's Arboriculturalist has reviewed. They noted that four points had been made in the Summary section within the "Statement of Case (Trees)" (reference 22113-Proof-Draft1-240323-JB), therefore these will be responded to below.
- 7.25 The Appellant raises the issue of whether the tree needs to be pruned, and by how much, is irrelevant to this appeal because no pruning is required to construct the building. The Council's Arboriculturalist notes that, whilst the argument that no pruning of the crown is required to construct the proposed structure in relation to the above ground portions of the tree (i.e. branches do not have to be pruned to fit the dwelling into the above ground space provided), the issue of whether T13 (as one example) requires pruning is relevant to this appeal, as it was the basis for the proposed use of traditional foundations within the indicated RPA.
- 7.26 Further, the AIA report (reference 22113-AA-LF, dated 12th August 2022) submitted as part of the original planning application, clearly states that:
"...the most encroachment will be in the RPA of T13, however, due to its structural condition, it will need to be heavily pruned if it is to be retained in the short term, which is discussed at 1.4 below. This means that once these works are completed, the initial BS RPA calculated will not be reliable, and we believe that it can be reasonably reduced such that the encroachment from the proposed building will not be significant, and therefore no special precautions are considered necessary."
- 7.27 This statement also noted that there was decay within T13. Whilst the Council's Arboriculturalist does agree that there is a decay fungus present within T13, the Appellant has not suitably demonstrated that a 6m crown reduction is necessary. Further, it is common for risk mitigation tree work to be based on quantified strength loss, which has not been provided.
- 7.28 Therefore, whilst the Appellant's claim (stated within the arboricultural appeal statement) that the approach regarding the proposed use of traditional foundations was one of proportionality and to keep construction costs to a minimum, is understandable, the information provided within the planning application was directly related to the proposal to prune the tree significantly. The Appellant now proposes the use of piled foundation which demonstrates an acknowledgement that without the significant pruning, special, low-impact foundations (e.g. piles) are required.

- 7.29 The Appellant notes it would be feasible and within the guidance set out in BS 5837 to construct this building on piles with no significant adverse impact on the RPAs of adjacent trees, and it would be reasonable for the detail of this approach to be conditioned as part of a planning consent. The Council's Arboriculturalist agrees that the use of piles could theoretically work, however this was not the suggestion at planning application stage.
- 7.30 However, whilst the principle of low-impact foundations is agreeable, if taken in isolation, no formal, detailed proposal has been submitted. It would not be "reasonable" for this information to be conditioned as the Council's Arboriculturalist would require the Appellant to demonstrate that this could be applied in this specific site. The use of piles, whilst could be acceptable with specific regard to the trees, could impact other matters, for example; it could alter/ increase the overall ridge height, and could have an adverse impact upon amenities in terms of noise during construction. None of these details have been provided and therefore cannot be fully assessed. It would, again, be reiterated that the appeal process should not be used to provide alternatives to a scheme which has been refused.
- 7.31 The Appellant states that it would be feasible and within the guidance set out in BS 5837 to upgrade the surfacing within the RPAs of retained trees on this site with no significant adverse impact on them, and it would be both reasonable for the detail of this approach to be conditioned as part of a planning consent. The Council's Arboriculturalist notes that, similarly with the use of piles, it is agreed that theoretically it can be possible to use a cellular confinement system in order to avoid significant harm to tree roots within RPAs. However, the Appellant must first demonstrate that it can be applied to this specific site. Further, paragraph 17.2 of the Council's Trees and Development SPD states: *"Where hard surfacing is to be installed within an RPA, applicants will need to demonstrate that this is unavoidable and show how adverse effects will be minimised."*
- 7.32 The Council's Arboriculturalist notes that this can be achieved through a topographical survey and evidence demonstrating certain elements and potential impacts have at least been considered (this includes encroachment in the RPAs which should be non-significant, and drainage and hydrology impacts to be mitigated). It is acknowledged that levels around the proposed structure have been provided (drawing reference 2078-902), but these do not include the entire driveway, which would be needed. Section 1.7 of the AIA report does not provide the necessary evidence that these fundamental elements have been considered. Whilst it is acknowledged that finer details, such as final wearing course specification and how the elevated cellular system can be tied-in to existing hardstanding, can be dealt with under condition, sufficient information is initially required to ensure that these measures can be implemented without resulting in adverse harm to the trees.
- 7.33 The Appellant states that unless the LPA can produce evidence that it is losing tree amenity because of successful appeals for severe pruning or

felling, and it has not done so to date, then it is difficult to see how any significant weight can be placed on this reason for refusal, especially in the context that no such pressures on trees have come to bear as a result of the existing building, which has an almost identical juxtaposition as the proposed new building to the same row of trees. Paragraph 15.3 of the Council's Trees and Development SPD states that: "*The Council will consider space and post-development pressure when considering applications.*" Section 1.8 of the Appellants AIA report does conclude that the trees are "...unlikely to interfere with the normal use of the building..." but only once the "required pruning works" have been completed. As the Appellant's statement argues that pruning is irrelevant and the building can be constructed without pruning the trees, Section 1.8 becomes invalid, and the Appellant has then failed to consider future pressures and dominance over the occupied dwelling and the residential amenity space.

- 7.34 Ultimately, and whilst providing new information for the Council's Arboriculturalist to review, the proposals have not fully addressed the reason for refusal. Whilst other building methods could be used, these would have impacts upon other material planning considerations. The lack of information provided gives no certainty that the measures suggested can suitably be implemented in this specific case and therefore the Council would maintain this reason for refusal.

7.35 Reason 4

Close proximity to the TPO'd trees 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 pruning or potential removal of these trees

- 7.36 The wording of Policies has already been sent to the Inspector, however, for the purposes of this reason for refusal, the Council will reiterate some content of Policy DM1. This Policy states that development should *not have an unacceptable impact upon biodiversity, and not involve the loss of or damage to trees*, amongst other considerations. The Council's Trees and Development SPD seeks to echo and support Policy DM1 and states that layouts must be designed to ensure that retained trees are able to grow and mature in the space provided.
- 7.37 The appeal proposals would, in the case of T13, encroach into the RPA, and as a result would be situated underneath the tree canopy thus resulting in shading. Reason for refusal 3 (above) focuses more on the unacceptable pruning works. However, there is some overlap with this reason for refusal, as the pressure of pruning works is likely to arise because of the nature and siting of the proposed development.
- 7.38 There are TPO'd trees surrounding the northern and western boundaries, which are within close proximity to the appeal proposals. Due to the nature of the appeal proposals, being a residential dwelling, the Council's SPD requires a 60% external amenity area. This would be situated to the north and west of the proposed dwelling.

7.39 Due to the nature and siting of the trees in relation to the appeal proposals, the tree canopies will overhang the external amenity area. It is considered that this overhang would adversely impact upon the quality of the external amenity area of the future occupiers of the dwelling. This would in turn be likely to result in additional pressure to prune the trees. As elaborated upon above (RFR 3) the appeal proposals already requested excessive pruning which was not considered acceptable.

7.40 The appeal proposals resulting in a dwelling in this location would result in a continual pressure to keep pruning the trees which is not considered appropriate. Especially as the appeal proposals have not adopted the correct approach as stated within the Trees and Development SPD in that the trees are the primary and the development should be well considered not a secondary matter.

7.41 Reason 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)

7.42 Within paragraph 6.9 of the Appellants statement of case, emphasis has been put on '*the development is deemed appropriate*'. This paragraph within the Officer's report explains the classification of development within the flood risk vulnerability, whereby dwellings are classified as 'more vulnerable'. This is then assessed against the compatibility of development within certain Flood Zones. The siting of dwellings within Flood Zones 2 can be deemed appropriate but would be subject to sufficient information addressing the practicalities, ensuring that future development is 'flood proof'.

7.43 The Appellant has not provided any additional information to address this reason for refusal, stating that the concerns can be addressed via condition. The suggested conditions (Appendix 4) have sought to provide conditions to cover these matters however it is not considered that this information can be secured with conditions, and the information is fundamental to the acceptability of the proposals.

7.44 The appeal proposals would be situated within 8m to the east of the River Itchen (SAC). The Council's Ecologist has raised concern with regard to the potential of flooding, which is likely to increase due to climate change, and the potential for pollutants from the dwelling, driveway and garden to be washed into the protected waters of the River Itchen (SAC) to the immediate west in the event of a flood.

7.45 No additional information has been submitted as part of this appeal to provide any reassurances or measures which would be in place to prevent pollutants from being washed into the River Itchen (SAC). In the absence of this information, the LPA therefore maintains this reason for refusal whereby

the proposals are considered to have an adverse impact upon the protected River Itchen (SAC), and could not be acceptable.

7.46 Reason 6

Failure to secure appropriate mitigations to off-set the impact upon the European Protected Solent Complex

- 7.47 Due to the location and type of development proposed, this would result in the requirement of mitigation upon the Solent Complex and New Forest.
- 7.48 Natural England have advised that residential development results in the addition of nitrogen and in this instance phosphate output into the Solent, thus having an adverse impact upon the water quality. A nutrient budget was submitted which calculated the amount of nitrogen and phosphate output. Whilst it is acknowledged that the Inspectorate is now the competent determining body, Natural England would need to review the nutrient budget and any subsequent Appropriate Assessment (AA).
- 7.49 As well as the impact of water quality, Natural England have advised that any residential development falling within 13.8km radius of the New Forest would need to contribute towards mitigation projects. It was noted within the Delegated Officer's Report that the proposal would fall within this radius, however no mitigation was submitted as part of the original application, nor as part of this subsequent appeal.
- 7.50 No AA was submitted as part of the planning application as the LPA did not consider the proposals to be acceptable. Within the Appellants statement it is noted that they would be willing to address the impacts, however no Shadow AA has been submitted, nor have any measures been undertaken to directly or indirectly mitigate against the identified impacts upon the Solent. Further, the Council's Ecologist has raised concern as to whether any AA could adequately address the harm arising because of the lack of buffer from the appeal proposals to the River Itchen (SAC). As a result, the above matters remain pertinent.
- 7.51 Within the Appellants statement of case emphasis was made with regard to the LPA noting these matters could have been overcome. Had the proposals have been acceptable in all other regards the impacts upon the Solent Complex and New Forest could have been conditioned or secured via a S106. However, as the appeal proposals were not considered acceptable there were no mitigation measures to offset the development. Therefore, the appeal proposals would result in unacceptable demonstrable harm to the European Protected Solent Complex.

7.52 Other Matters

Public Sector Equality Duty

The Appellant has submitted an appendix which relates to a House of Lords Judgement. As the LPA understand, this relates to a Romany Gypsy who owned and lived within the South Bucks Green Belt and was seeking

retrospective permission to be able to continue living on the site, despite the Council concluding that the development was inappropriate. The submitted appeal, before the Inspector, relates to a proposed dwellinghouse within the urban edge. There are therefore limited comparisons between the 2 schemes. Should the Appellant be inferring their character has been misrepresented, additional information would be required to demonstrate their heritage.

- 7.54 No information, to date, has been submitted with regard to the Appellant's character to demonstrate there would be any factors that could outweigh the material planning considerations laid out above.

8.0 Conclusions

- 8.1 As set out within this Statement, there is a clear conflict between the proposed development, Local Plan Policies and the contents of the NPPF. As a result, it is clear that the proposals do not accord with the Development Plan for the purposes of Sections 70(2) and 79(4) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004. Planning Permission should therefore be refused unless material considerations indicate otherwise.

- 8.2 The Local Planning Authority consider that there are no such material considerations in this case and, accordingly, respectfully request that the Inspector dismisses this appeal.

- 8.3 Should the Inspector, however, be minded to grant permission, the Local Planning Authority would request that the conditions attached in Appendix 4 be included as part of any approval.

- 8.4 As part of this appeal, the LPA re-consulted the relevant consultees. The Council's Ecologist advised that the following condition be imposed:
No vegetation clearance shall occur on site during the bird nesting season (between 1st March and 31st August (this may change with climate change)) unless supervised by an appropriately qualified ecologist. If nesting birds are found, the nest must remain undisturbed with a suitable 5m buffer and demolition/clearance cannot take place until the young have fledged. This information would need to be submitted to and approved by the Local Planning Authority. The development can then proceed in accordance with the approved details. Reason: To prevent harm to breeding birds.

Had the LPA been recommending approval, they would have included the above as a note/ informative to the applicant. The LPA would therefore request the Inspector consider something similar, should they be minded to grant permission.