

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-storey dwelling to rear
garden of 39 Fair Oak Road and insertion of new first-floor
bay window to rear elevation of 39 Fair Oak Road.**

39 Fair Oak Road, Bishopstoke, Eastleigh, SO50 6LF

Appeal by: Mr Mark Pople

**Planning Inspectorate Reference:
APP/W1715/W/23/3323461**

Eastleigh Borough Council Reference: F/23/94642

October 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 26 April 2023. Both documents should be taken as forming the Council's Case in relation to this appeal.
- 1.2 This statement focuses on the matters pertaining to the Council's reasons for refusal of planning permission as set out below, 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 31 January 2023 and registered as valid on the 6 March 2023. It was given a reference number of F/23/94642. The proposed development was described as follows:
Erection of two-storey dwelling to rear garden of 39 Fair Oak Road and insertion of new first-floor bay window to rear elevation of 39 Fair Oak Road.
- 2.2 The decision was issued 26 April 2023 whereby 2 reasons for refusal were listed:
 - 1) *The proposed development would reduce the sense of openness on this side of Sayers Road resulting in a negative impact on the streetscene. The resultant plot size for the existing and proposed would be much smaller than others in the locality, not in keeping with the existing pattern of development. It therefore fails to take proper account of the context of the site contrary to Policy DM1 of the Eastleigh Borough Local Plan 2016-2036 and The National Planning Policy Framework.*
 - 2) *The application fails to provide for the required mitigation to offset the impacts of the development on the European protected sites (i.e., River Itchen Special Area of Conservation, Solent and Southampton Water Special Protection Area & Ramsar Site, Solent Maritime Special Area of Conservation) from nutrient loading and recreational disturbance generated by the population increase resulting from the development. The application is therefore contrary to Policies S1, DM10 and DM11 of the Submitted Eastleigh Borough Local Plan 2016-2036, provision within the National Planning Policy Framework 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 comprises an extended detached dwelling appearing to date from the earlier part of the 20th century. There is hardstanding to the front, rear and side of the existing dwelling on site. To the southern boundary (fronting Fair Oak Road) and part of the western boundary (fronting Sayers Road), the appeal site is bound by a low level brick wall, with the remainder of the boundary treatment along Sayers Road comprising 1.8m close board fencing. It was noted that there were a number of outbuildings in the rear garden of the property which have been demolished and the area is laid to hard standing.

4.0 Relevant Planning History

- 4.1 No relevant planning history.

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 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)
- DM1 (General Criteria for New Development)
- DM2 (Environmentally Sustainable Development)
- DM3 (Adaption to Climate Change)
- DM6 (Surface water management)
- DM10 (Water and Waste Water)
- DM11 (Nature Conservation)
- DM13 (General Development Criteria – Transport)
- DM14 (Parking)
- DM23 (Residential Development in Urban Areas)
- DM29 (Dwellings with Higher Access Standards)
- DM30 (Internal Space Standards for New Residential Development)

5.5 Policies S1, DM1, DM10, 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:

- Bishopstoke, Fair Oak and Horton Heath Character Area Appraisal (2008)
- Residential Parking Standards (2009)
- Quality Places (2011)

6.0 National Planning Policy

6.1 The National Planning Policy Framework (NPPF) 2023 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 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.”*

6.7 Decision-Making

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

6.8 Determining Applications

Paragraph 47 of the NPPF reiterates Paragraph 2, stating that *“Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise”*.

6.9 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”*.

- 6.10 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.”

- 6.11 It should be noted that the last published housing land supply figure for Eastleigh Borough Council was 5.1 years in July 2022 and the current local plan is very recent, having only been adopted in April 2022. Therefore, the LPA would conclude that only a limited degree of weight can be given to the contribution of one additional dwelling to the land supply.
- 6.12 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”.*
- 6.13 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.”
- 6.14 Habitats and Biodiversity
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.”*
- 6.15 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 **Reason 1**
Reduced sense of openness along Sayers Road resulting in a negative impact on the streetscene, and the resultant plot size for the existing and proposed being much smaller than others in the locality, not in keeping with the existing pattern of development.
- 7.3 The appeal proposals would be situated to the north of the existing detached dwelling (39 Fair Oak Road) within its rear garden. The proposed

dwelling is considered to appear discordant in this location as it would fail to reflect the existing openness / spacious and well planned layout of the Sayers Road streetscene, thus resulting in a cramped relationship, not reflective of the established surroundings.

- 7.4 Within the Appellants Statement of Case they have highlighted 3 main elements of design concern: *i) the proposal would not be in keeping with the existing pattern of development, ii) the resulting plot sizes for the existing and proposed property would be much smaller than others in the locality, and iii) there would be an unacceptable reduction in openness on the east side of Sayers Road.* They have also undertaken an in-depth assessment of the surrounding development.
- 7.5 The Appellant makes comments about several nearby roads, however the LPA would highlight that the main road for consideration is Sayers Road, which the appeal proposals would have a direct and harmful impact upon.
- 7.6 Sayers Road is characterised by open and spacious corner plots, including those adjoining Fair Oak Road, the subject of this appeal, and also the point at which Sayers Road adjoins Hamilton Road. Development is also set back within the plots along the streetscene, allowing dwellings to benefit from front gardens which add to the open character, as well as creating an established building line and cohesive frontages, albeit the design of dwellings vary.
- 7.7 The appeal site and no.37 Fair Oak Road frame the entrance to Sayers Road, when travelling north. Both dwellings are corner plots with low level boundary treatment along the frontage (Fair Oak Road) and for the first portion around the corner, fronting Sayers Road. This creates the first impression of a spacious and well-planned streetscene. It is noted that the appeal site, appears to have new boundary treatment (1.8m fencing), which extends further than the previous fencing. It should be noted that given its siting and height this would require planning permission. From a history search, this does not appear to have been either sought or granted.
- 7.8 The Appellants Statement of Case also makes an assessment of Sayers Road, noting that it is varied in character. The Officers Report previously set out that there is a variety of two-storey and single storey, and a combination of detached and semi-detached dwellings, on linear plots. It was noted that properties along Sayers Road benefit from front and rear amenity provisions, with the appeal site following suit. It was also noted that, as a result of the corner plot location of the appeal site, it benefits from a long garden providing a sense of space and openness fronting Sayers Road.
- 7.9 The introduction of the appeal proposals would significantly reduce the sense of openness along this eastern side of Sayers Road. This is considered to also unbalance the entrance to Sayers Road, given the long and spacious garden of no.37 Fair Oak Road opposite the appeal site. This reduction of openness would result in a negative impact and would be out of character with the locality.

7.10 The appeal proposal would appear similar to no.4 Sayers Road in terms of its scale, and it is also acknowledged that the existing and proposed dwelling would be able to comply with the NDSS and Council's Quality Places 60% external amenity space. However, the layout and format of the dwelling is considered to adversely impact upon the spacious and well planned streetscene, resulting in a cramped and visually intrusive form of development along Sayers Road.

7.11 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.

7.12 Within appeal Decision APP/W1715/W/20/3260432 (February 2021) at 9 Westfield Road (Appendix 1), 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.

7.13 The current appeal site is similar in that it is a corner plot, whereby the proposed development would be readily visible within the streetscene of Sayers Road. The regularity of the surrounding dwellings siting and layout contribute positively towards the character of Sayers Road, whereas the appeal proposals would diminish and disrupt this by introducing an additional dwelling within the rear garden of 39 Fair Oak Road resulting in a cramped layout.

7.14 Turning to appeal decision APP/W1715/W/22/3298585 (January 2023) at 11 Whalesmead Close (Appendix 2), the Inspector noted that *the appeal site forms part of a small cul-de-sac predominantly characterised by chalet bungalows of a similar style and scale, set within proportionately sized plots. The arrangement of the properties, which are typically set back from the*

road frontage, and the front gardens give the area a pleasant open, spacious and suburban feel.

...

Whilst a reasonably sized garden would be created within the southern part of the plot, I find that the proposed dwelling would lead to the creation of a cramped and incongruous built form which, due to its siting, would detract from the prevailing pattern of development in the locality. Consequently the appeal scheme would erode the contribution which the site presently makes to the open and spacious nature of its surroundings, and appear intrusive within the street scene.

- 7.15 The appeal proposals are similar to the above proposal in that they would directly impact the character and appearance of the established streetscene, reducing the sense of spaciousness and open plots, as per the abovementioned appeal. The Inspector predominantly focused on the inappropriate siting placing more weight upon this compared to the overall design and appearance of the proposed dwelling itself. The weight applied to the siting of the above appeal proposals should be similar to that of the current appeal proposals, given that this would disrupt the existing established grain of Sayers Road.
- 7.16 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 resulting in cramped and awkward plots for new and existing dwellings. The above appeals conclude that the Inspectors have placed more weight on the subdivision of plots than the overall design/ appearance of the proposed dwellings, which is the main issue of contention of this appeal.
- 7.17 **Reason 2**
Failure to secure appropriate mitigations to off-set the impact upon the European Protected Solent Complex
- 7.18 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 as part of this appeal which calculated the amount of nitrogen (2.81kgTN/year) and phosphate (0.06kgTN/year post 2025 and 0.1kgTN/year pre 2025) 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).
- 7.20 As well as the impact on 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 to mitigate impacts of increased recreational pressure. The appeal site falls within this radius, whereby a draft Unilateral Undertaking has been prepared by the LPA (Appendix 3).

7.21 An Appropriate Assessment was not submitted to Natural England as part of the planning application process as the LPA did not consider the proposals to be acceptable. Within the Appellants Statement of Case, it is noted that a *unilateral undertaking is now being prepared in consultation with the Council to address this matter and will be presented to the LPA and Planning Inspectorate within 7 weeks of the appeal start date*. The LPA has prepared a draft Unilateral Undertaking, which could be used to secure the mitigations, however the mitigations have not yet been formally secured. Whilst mitigations can be secured via this agreement, no shadow AA has been submitted by the appellant to demonstrate the harm arising from the appeal proposals and how these would be offset to the satisfaction of Natural England and the Inspector, who is the competent determining body.

7.22 Other Matters

7.23 Suggested conditions will be provided (Appendix 4), however there are a couple of additional matters the LPA wish to bring to the Inspectors attention.

7.24 The first point relates to the boundary treatment. As mentioned above, there appears to be some unlawful fencing along the western boundary fronting Sayers Road. Should the Inspector be minded to grant the appeal, the LPA have recommended a condition for boundary treatment details to be submitted to and approved in writing by the LPA as part of a separate discharge of condition application. The LPA have not assessed the merits of the fencing under this application nor appeal, and therefore this condition would allow flexibility to assess and amended (if required) boundary treatment.

7.25 Secondly, the submitted plan titled 'Block Plans 001 A' appears to show a wrap around extension to the existing dwelling. Further, the Officer site visit photos show there to be a single and two-storey extension to the north and east of the existing dwelling. As noted above, there is no planning history at the site and therefore these elements would require planning permission in their own right. This has not been considered as part of this planning application or current appeal. Therefore, if the Inspector is minded to grant the appeal, the LPA would request that amended plans be sought removing the wrap around extension. These extension proposals can then subsequently be pursued via the submission of a new planning application, and will need to be considered separately outside of this appeal.

7.26 Lastly, the bay window element of the proposal is considered to be acceptable in terms of its design and impact upon neighbouring amenities, albeit limited information has been provided in this regard (Proposed Elevations 009 a).

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.