
From: [REDACTED]
Sent: 12 November 2023 22:07
To: NEW East 1
Subject: Planning Inspectorate APP/W1715/W/23/3323461: 39 Fair Oak Road, SO50 6LF
Attachments: CTP - Cross Copy - Mark Pople - 02 Nov 2023.pdf; Appellants Final Comments in respect of 39 Fair Oak Road.docx

Dear Sirs,

Further to your letter and attachments received on the 2nd November, please find attached the appellant's final comments on the LPA's Statement of Case and third party representations.

Yours faithfully,

Mr M Pople

From: east1@planninginspectorate.gov.uk <east1@planninginspectorate.gov.uk>
Sent: 02 November 2023 10:29
[REDACTED]
Subject: Planning Inspectorate APP/W1715/W/23/3323461: 39 Fair Oak Road, SO50 6LF

The Planning Inspectorate (England)
Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN

The Planning Inspectorate (Wales)
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Your Ref:

Our Ref: APP/W1715/W/23/3323461

Mr Mark Pople
A & M pole Ltd
Oak Hill Cottage Lordswood
Highbridge
EASTLEIGH
SO50 6HR

02 November 2023

Dear Mr Mark Pople,

Town and Country Planning Act 1990
Appeal by A & M pole Ltd
Site Address: 39 Fair Oak Road, Bishopstoke, EASTLEIGH, SO50 6LF

I enclose both a statement and third party representations relating to the above appeal(s).

If you have any comments on the points raised, please send them to me no later than 13 November 2023.

You should comment solely on the representations enclosed with this letter.

You cannot introduce new material or put forward arguments that should have been included in your earlier full statement of case. If you do, your comments will not be accepted and will be returned to you.

Comments submitted after the above deadline will not be seen by the Inspector unless there are extraordinary circumstances for the late submission.

Yours sincerely,

Simon Dunn
Simon Dunn

<https://www.gov.uk/government/publications/planning-inspectorate-privacy-notice>

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Planning Inspectorate reference: APP/W1715/W/23/3323461

Appellant's final comments on the Council's Statement of Case and third party representations received in respect of the erection of two-storey dwelling to rear of 39 Fair Oak Road and insertion of new first floor bay window to rear elevation of 39 Fair Oak Road

The appellant has considered the Local Planning Authority's Statement of Case and the third party representations received and would like to make the following comments.

Local Planning Authority's Statement of Case (LPASC)

As a broad observation, the appellant notes that the LPASC continues to give no regard to the material benefits the proposal would deliver as previously set out by the appellant.

The appellant acknowledges at paragraph 6.11 of the LPASC that *'the last published housing land supply figure for Eastleigh Borough Council was 5.1 years in July 2022.'* Furthermore, *'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.'*

A 5.1-year housing land supply represents a very marginal five-year housing land supply position. Paragraph 69 of the NPPF emphasises that 'Small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly.' In the appellant's view, delivering a family dwelling in this sustainable location would help to improve the Council's marginal 5 year housing land supply position, further weighing in favour of granting planning permission for the scheme.

The planning appeals highlighted at paragraphs 7.11-7.16 of the LPASC were both received before the planning application for 39 Fair Oak Road was decided by the LPA. Neither appeal was referenced in the Officer's report nor appeared to factor in the decision making.

The appellant has looked at both of the appeal schemes referred to by the LPA. Whilst the appeals related to new dwellings in the gardens of existing dwellings, the circumstances of the two cases are materially different from the current appeal proposals. The appellant sees little relevance of these appeal decisions to the current proposal.

The appellant has previously made substantial submissions on the character of the area and the impact the slight reduction in the space at the rear of 39 Fair Oak Road would have upon that character. It is a matter that the appellant and the LPA fundamentally disagree on. The appellant does not believe there are any further submissions that he can usefully make on this point.

In terms of the impact upon habitat sites, the appellant made several efforts to engage with the LPA to address this important aspect. The LPA has advised that the issues that could lead to a likely significant effect upon habitat sites are the effects of

nitrates and phosphates (particularly carried in waste water) and the recreational impacts arising from future residents upon the New Forest.

With regard to nitrates and phosphates, the appellant has completed and submitted an Itchen Catchment Nutrient Budget Calculation (using the Natural England Calculator version 2 issued in October 2022) to identify the amount of mitigation which would be required for nitrates and phosphates. The LPA has not indicated within its Statement of Case that it disputes the level of mitigation the appellant believes is needed nor the approach for securing it. The appellant further notes that the LPA has put forward a suggested planning condition (condition number 15) to address this issue.

In advance of submitting this appeal, the appellant sought the LPA's confirmation as to what other likely significant effects might arise. These exchanges between the appellant and LPA form Appendix A of the appellant's Statement of Case. The LPA helpfully confirmed that the recreational impact upon The New Forest Special Protection Area (SPA) was the only matter (in addition to nutrients) which needed mitigating.

The appellant has been clear throughout the planning process that they were keen to ensure that any impacts upon habitat sites were appropriately mitigated. The appellant asked the LPA to draft a unilateral undertaking to address their concerns under reason for refusal number 2 (excluding the nutrient impact which the LPA was satisfied could be appropriately addressed through a planning condition). The LPA produced a draft Unilateral Undertaking which has been signed and executed by the appellant.

The appellant believes that the completed unilateral undertaking along with the proposed planning condition (15) in respect of nutrients, will ensure that there are no significant effects upon habitat sites and that the LPA's second reason for refusal is fully addressed. The LPA confirm in their note to the Inspector at the foot of their Appendix 4 that 'the unilateral undertaking together with the suggested conditions above would in combination secure the necessary mitigations.'

The appellant notes that the LPA believes that building works have been undertaken at 39 Fair Oak Road which need planning permission, along with some additional fencing erected alongside Sayers Road. This is the first time the LPA have raised this matter- the appellant has not received any previous contact from the LPA suggesting this was the case. All of the works referred to by the LPA as being potentially unauthorised, were in place at the time the LPA visited the site to assess the planning application earlier this year.

The LPA is welcome to discuss their concerns with the appellant outside the planning appeal process and to explain what work they believe requires planning permission and why.

In order to secure the privacy of the existing rear garden area of number 39, there has been a tall fence (at least 6 feet high) immediately adjoining Sayers Road for a substantial number of years (no less than 14 years using Google Street View as a

reference source). The extensions recently undertaken to the dwelling are believed by the appellant to be permitted development.

Lastly, the appellant will comment on the LPA's draft list of conditions. The appellant is broadly satisfied with the conditions proposed, subject to the following detailed comments:

A lot of the proposed conditions prevent any development taking place on site until details have been submitted and approved by the LPA. Paragraph: 007 Reference ID: 21a-007-20180615 of the Planning Practice Guidance states that:

“Care should be taken when considering using pre-commencement conditions that prevent any development authorised by the planning permission from beginning until the condition has been complied with. This includes conditions stating that ‘no development shall take place until...’ or ‘prior to any works starting on site...’

Such pre-commencement conditions should only be used where there is a clear justification, which is likely to mean that the requirements of the condition (including the timing of compliance) are so fundamental to the development permitted that it would otherwise be necessary to refuse the whole permission.

A pre-commencement condition that does not meet the legal and policy tests may be found to be unlawful by the courts and therefore cannot be enforced by the local planning authority if it is breached. Development carried out without having complied with a pre-commencement condition would be unlawful and may be the subject of enforcement action.”

The appellant would question whether full pre-commencement conditions are needed on matters like bricks, tiles, landscaping, bin and cycle stores and boundary treatments. The appellant would appreciate the Inspector exercising their judgement on which conditions require pre-development triggers.

Condition 5: the reference to unauthorised fencing does not appear necessary, nor is it clear which section of fencing this relates to. The need to get the LPA's approval for boundary treatments would give the Council control of these matters.

Condition 9: the use of the word maintained suggests there is some form of ongoing action required by the appellant but it is not explained what this action is. Suggest replacing the word maintained with retained.

Condition 15: Habitat sites may be a more appropriate term than European sites

Condition 16: This appears to be a duplicate of Condition 13.

Representations from third parties

No representations were received during the consideration of the planning application. The appellants acknowledge that three representations (from two

different households) have been received in response to publicity undertaken in conjunction with the current appeal.

The first representation is from Deborah Wingrove of 47 Fair Oak Road. Number 47 Fair Oak Road is separated from the planning appeal site by the three separate rear gardens associated with 41, 43 and 45 Fair Oak Road. The proposed house is situated approximately 30 metres away from the closest part of the rear garden of 47 Fair Oak Road.

In light of the separation distance between the proposed house and number 47; the size of the garden associated with number 47; and the trees and other planting on the land between the proposed house and number 47; the appellant is entirely satisfied that there would be no material harm caused to the light entering the rear garden of 47 Fair Oak Road.

The two other representations are from Mr Jonathan Osmond of 41 Fair Oak Road, which is located immediately to the east of the site.

The appellant undertook an assessment of the impact upon Mr Osmond's property at the planning application stage. The appellant judged that there would be no material overlooking of Mr Osmond's property nor material loss of outlook or sunlight to the dwelling or garden. The LPA independently assessed the current proposals and concluded that there would not be material harm to the privacy, sunlight or outlook of number 41 Fair Oak Road. Impact upon number 41 Fair Oak Road is not one of the reasons for the LPA refusing the application.

The appellant acknowledges that Mr Osmond also comments on the effects of the extensions undertaken at 39 Fair Oak Road upon his property; these extensions do not form part of the planning application/ current planning appeal.

Summary

For the reasons set out above (read in conjunction with the appellant's earlier Appeal Statement and Planning Statement), the appellant considers the proposal to fully accord with the council's adopted planning policies and all relevant national planning policy and guidance. The development of this site would deliver additional material planning benefits as previously set out and the appellant would therefore respectfully request that the Inspector allow the appeal and grant planning permission subject to the imposition of appropriate conditions.

11th November 2023