

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 the refusal of planning permission for the proposed construction of a first floor extension and 4-bedroom, two storey end-of-terrace dwelling with associated parking provision.

**63 Underwood Road, Bishopstoke, Eastleigh,
Hampshire, SO50 6FX**

Appeal by: Dr Gary Chaffey

Planning Inspectorate Reference: APP/W1715/W/23/3329598

Eastleigh Borough Council Reference: F/22/94422

December 2023

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Appendix A – Suggested Conditions

1.0 Introduction

- 1.1 The following statement sets out the Local Planning Authority's (LPA) reasons for refusal of planning application F/22/94422 and provides more detailed justification for those reasons. Where relevant to the reasons for refusal, responses to any matters raised within the Appellant's statement of case are also provided.
- 1.2 The appeal application was received on 21st December 2022 and made valid on 5th January 2023. It was given a reference number of F/22/94422 and described as *"First floor extension and proposed 4-bedroom, two storey end-of-terrace dwelling with associated parking provision"*.
- 1.3 The application was heard at the Bishopstoke, Fair Oak and Horton Heath Local Area Committee on 28th June 2023. Whilst recommended for approval by the case officer, the Committee resolved to refuse the application for the reasons set out below. The formal decision notice was issued on 6th July 2023. The reasons for refusal were as follows:
 - 1) *The proposed development would have a detrimental impact on integrity of adjacent Stoke Park Woods SINC and ancient woodland due to the proximity from the woodland boundary resulting in the increase in physical disturbance, the blocking of a linear feature used by protected species, light pollution and shading all contributing to a significant loss of important biodiversity which is contrary to policy DM11 of the Local Plan.*
 - 2) *The level of garden provision for the proposed new dwelling would be out of keeping with the existing pattern of development and, due to the awkward shape and resultant overshadowing by adjacent trees, would have a harmful impact on the amenity of future occupiers contrary to policy DM1 of the Local Plan and the guidance set out in Quality Places SPD.*
- 1.4 A copy of the LPA's decision notice was sent to the Planning Inspectorate with the LPA's Appeal Questionnaire.

2.0 Description of Appeal Application

- 2.1 The appeal application sought consent for the construction of a first floor side and rear extension to the existing dwelling, resulting in a five bedroom property, together with the construction of an attached two-storey, four bedroom dwelling, with associated amenity space and parking for both dwellings.

3.0 Site & Surroundings

- 3.1 The site is located on the north-east side of Underwood Road, and forms part of the eastern edge of Bishopstoke, with a large area of woodland known as Stoke Park Woods to the east. To the north, south and west is further residential development consisting predominantly of two storey semi-detached and terraced former local authority housing, laid out in the spacious form typical of the inter-war/immediate post-war period. Stoke Park Woods to the east, is designated as a Site of Importance for Nature Conservation (SINC), as well as Ancient Woodland, which gives it a further degree of protection from inappropriate development.
- 3.2 No.63 Underwood Road is a three bedroom, two storey, red brick, end of terrace dwelling, dating from around the 1930s-40s. Its simple design is typical of local authority housing of the inter-war/immediate post-war period. It sits within a roughly triangular plot, which is slightly larger than the majority in the immediate locality due to its corner position within the general street layout. To the north-west is the adjoining neighbouring terraced property – No.61 – which is of the same design and appearance as the appeal property. To the south is No.65, a two storey semi-detached dwelling which lies forward of the appeal property.
- 3.3 The site frontage is used entirely as garden and has not been converted into off-street parking, as has been undertaken by the vast majority of immediate neighbouring properties. It is bound by a 1.0 metre high close board timber fence and gate. The garden to the side and rear is bound by a 1.8 metre high close board timber fence and gates which separate the southern half of the site from the remainder of the garden to the rear. This southern portion of the

existing garden would form the appeal site, which currently contains a mobile home structure which houses chickens/ducks. It lies parallel with the rear garden to no. 65 Underwood Road.

4.0 Relevant Planning History

- 4.1 The appeal site has had a number of planning applications refused for subdivision of the plot to provide a new dwelling, most recently application F/23/96175 for the “*Construction of five bedroom end-of-terrace dwelling, incorporating existing ground floor addition, with associated parking and external amenity space*”. This application was very similar to the appeal proposals, albeit this was for a larger attached dwelling in a slightly different position and was refused under delegated powers on 30th November 2023 on the same grounds as the current appeal application, but with the inclusion of an additional reason for refusal relating to failure to secure appropriate mitigation towards water quality impact of the development. This most recent refusal has also been appealed by the Appellant (Appeal Reference: APP/W1715/W/23/3334365) although no formal start date has yet been received from the Inspectorate.
- 4.2 Prior to the current appeal application an application for a two storey detached dwelling was refused under delegated powers (LPA Reference: F/22/93394) on 11th October 2022. This was refused on three grounds: overdevelopment of the plot and the resulting adverse impact upon the amenity of neighbouring properties and the amenity of their occupiers; the position of the proposed dwelling being out of keeping with the prevailing pattern of development in the locality; and failure to secure mitigation to offset the impact of the development upon European protected sites from nutrient loading.
- 4.3 In addition to the three applications relating to subdivision of the plot to create an additional dwelling, there are also a number of relatively recent householder application for extensions to the existing dwelling.

5.0 Development Plan & Legislative Background

5.1 Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 require a Local Planning Authority determining an application to do so in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan comprises the policies of the Eastleigh Borough Local Plan 2016-2036 and the Hampshire Minerals and Waste Plan 2013 (which is not applicable in this case). The NPPF and the Planning Practice Guidance constitute material considerations of significant weight.

5.2 The policies of the Eastleigh Borough Local Plan 2016-2036 which apply to the appeal development are:

Strategic Policies:

- S1 (Delivering sustainable development);
- S2 (Approach to new development);
- S8 (Historic Environment);

Development Management Policies:

- DM1 (General criteria for new development);
- DM2 (Environmentally sustainable development);
- DM6 (Sustainable surface water management and watercourse management);
- DM11 (Nature conservation);
- DM13 (General development criteria - Transport);
- DM14 (Parking);
- DM23 (Residential development in urban areas);
- DM29 (Dwellings with higher access standards); and
- DM30 (Internal space standards for new residential development).

5.3 For the purposes of this appeal, the most relevant policies are considered to be: DM1 and DM11.

5.4 The relevant Supplementary Planning Documents are:

- Trees and Development (April 2022)
- Quality Places (November 2011)
- Biodiversity (December 2009)
- Residential Parking Standards (January 2009);
- Character Area Appraisal for Bishopstoke, Fair Oak and Horton Heath (December 2007)

6.0 National Policy

6.1 At national level, the National Planning Policy Framework (NPPF) is a material consideration of significant weight in the determination of planning applications. It states that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise and sets out a general presumption in favour of sustainable development. A deliverable five year supply of housing within each local authority area is required, and if this is not demonstrated a tilted balance in favour of the development applies.

6.2 Three dimensions of sustainability are to be sought jointly: economic (supporting economy and ensuring land availability); social (providing housing, creating high quality environment with accessible local services); and environmental (contributing to, protecting and enhancing natural, built and historic environment) whilst local circumstances should also be taken into account, so that development responds to the different opportunities for achieving sustainable development in different areas.

6.3 Five Year Land Supply

The Council has an ongoing responsibility to ensure that there is a continuous five year supply of housing. The government has consulted on changing the requirements for having to demonstrate land supply and as such, it is not proposed to update the position until the NPPF is revised. The last published

figure was 5.1 years for in July 2022 and the current local plan is very recent, having only been adopted in April 2022.

7.0 Reasons for Refusal

7.1 Below is a more detailed justification for the reasons for refusal.

7.2 Reason 1: - Impact upon neighbouring SINC and Ancient Woodland

The proposed development would have a detrimental impact on the integrity of adjacent Stoke Park Woods SINC and ancient woodland due to the proximity from the woodland boundary resulting in the increase in physical disturbance, the blocking of a linear feature used by protected species, light pollution and shading all contributing to a significant loss of important biodiversity which is contrary to policy DM11 of the Local Plan.

7.3 Whilst it is acknowledged that there are numerous existing residential properties which back onto Stoke Park Woods, all are reasonably set back from the woodland edge, with at least 10-15 metre separation – the neighbouring property at No.65 Underwood Road being one such example – although the majority are set back a much greater distance, as is evident from the submitted location plan. In stark contrast, the appeal proposal, at only 3.0 metres from the rear elevation of the proposed dwelling to the rear eastern boundary with the neighbouring SINC, would be far closer than any other neighbouring plot along the woodland edge. It is this extremely close proximity which is of concern to the LPA.

7.4 This close proximity and limited garden space will result in general domestic garden activities being forced up against the woodland edge, thereby resulting in additional disturbance. Although it is accepted that the same activities would take place in neighbouring gardens, the likelihood of them taking place immediately adjacent to the woodland edge is lessened by the much greater size of these neighbouring plots. Effectively, the greater size of these plots dilutes the impact upon the SINC. The very small size of the appeal proposal's

garden and its proximity to the woodland edge, when compared to the general character of neighbouring properties, has insufficient space to reduce physical disturbance upon the SINC in the same way.

- 7.5 Equally, the very close proximity of the proposed dwelling to the tree canopy will result in a much greater degree of light pollution into the woodland. Again, whilst it is accepted that existing dwellings already cause a degree of pollution in this respect, no dwelling is as close to the woodland edge as that proposed. As such, the impact of light pollution from the appeal proposal would be far greater, given that there is not the physical space in which to allow the intensity of light to disperse. The comments from the Appellant regarding curtains been drawn in the evening are noted. However, there is no way in which this could be conditioned or enforced. Curtains are not only drawn to prevent light spill, but mainly to retain warmth in the winter months and provide privacy. Given the rear of the appeal dwelling is not overlooked, the occupants could easily choose to keep curtains open as there is no need to preserve their privacy.
- 7.6 The close proximity of the two storey rear elevation, which measures ten metres in length, will result in a considerable degree of overshadowing and shading of the woodland edge. This will impact the existing woodland edge habitat by reducing available light, to its detriment.
- 7.7 The proposed development would also physically interrupt the woodland edge, which is used predominantly by bats for navigation and foraging. The introduction of a structure of the height and scale proposed in such close proximity to this important linear feature would interrupt this important flightpath for protected species. Equally, it would effectively infill an obvious gap in the existing built development edge, thereby restricting routes for bats to and from Stoke Park Woods with land to the west.
- 7.8 It is for these reasons that a suitable buffer zone is required when new development is adjacent to designated SINC's and Ancient Woodland. As set out in the response from the Council's Ecologist, which was provided with the appeal questionnaire, the Council seeks a buffer of at least 20 metres for designated SINC's and 15 metres for Ancient Woodland, as is national guidance.

Whilst there may be scope for some compromise on the size of these buffers, the three metres of the appeal proposal is considerably under these minimum buffer widths. As such, and without specialist evidence to the contrary, it is the LPA's opinion that the appeal proposal will result in unnecessary harm to the adjacent Stoke Park Woods SINC and Ancient Woodland, contrary to Policy DM11 of the adopted Eastleigh Borough Local Plan 2016-2036.

7.10 Reason 2: - Inadequate private amenity space

The level of garden provision for the proposed new dwelling would be out of keeping with the existing pattern of development and, due to the awkward shape and resultant overshadowing by adjacent trees, would have a harmful impact on the amenity of future occupiers contrary to policy DM1 of the Local Plan and the guidance set out in the Quality Places SPD.

7.11 At 77% of the proposed dwelling's internal floor area, it is accepted that the private garden area for the proposed dwelling does exceed the 60% minimum area requirement set out in the Council's 'Quality Places' SPD on page 29 (Garden area (88sqm) / Total floor area (114sqm) = 77%). However, the SPD goes on to state on the same page that "The size will need to increase where: the local context requires it"; and where "excessive shading renders significant areas of the garden unusable due to neighbouring buildings or other structures, trees and orientation".

7.12 As discussed above, general garden sizes in the locality are quite generous, which is typical of the era and nature of the original estate. Section 4.0 of the Appellant's statement identifies a number of properties in the wider locality where it is stated that these gardens are of an equivalent size to that proposed. Whilst it is noted that these identified gardens are smaller than the average in the locality, the claim that they are "constrained" (paragraph 4.4) is disputed, as is the assertion that they are of the same size as that proposed for the appeal development. The narrow three metre wide strip around the eastern and southern side of the proposed dwelling is not comparable to any of these identified gardens in terms of size or proportion, or any others in the immediate

area. As such, it is clear that the proposed garden is out of keeping with the existing pattern of development in the locality.

7.13 In addition to the narrow and awkward proportions, the quality of this garden space would be further compromised by significant shading as a result of the close proximity of the woodland tree canopies, as well as the appeal dwelling. Whilst facing east, the garden would only receive direct sunlight for a very short period around midday. Although it is acknowledged that there is a small area to the south of the dwelling, at only three metres wide, this would provide little scope for a wide range of activities likely to take place within the garden of a four bedroom family dwelling. It is acknowledged, as set out in the Appellant's statement, that there is the possibility to utilise the sizable front garden for domestic activities. However, being to the front of the dwelling and open to the street, this would not be considered as private amenity space.

7.14 As such, the LPA remain of the view that the level of garden provision proposed, in terms of its proportions, orientation, shading and the resulting quality of space, will not provide an appropriate standard of amenity for future occupiers of the development, contrary to Policy DM1 of the adopted Eastleigh Borough Local Plan 2016-2036 and the Council's 'Quality Places' Supplementary Planning Document.

8.0 Other Matters

8.1 Water Quality:

Natural England have advised that the increase in wastewater from new housing developments within the borough is having a detrimental effect on the quality of water entering the Itchen and Solent catchment areas through nitrification. As such all developments for additional housing are required to reach nutrient neutrality (ensuring that development does not add to existing nutrient burdens), in order to meet the requirements of the Conservation of Habitats and Species Regulations 2017 (as amended).

8.2 The application site uses the Chickenhall Lane wastewater treatment works, which discharges into The River Itchen. As such the proposed development is required to achieve nutrient neutrality for nitrates and phosphates. To mitigate for the increase in nutrients the Appellant has expressed the intention to purchase credits from the Eastleigh Borough Council scheme, which takes land out of agricultural uses and creates recreational spaces, thus reducing the nutrient output of the land. This scheme is available to the Appellant and the LPA is willing to accept a pre-occupation condition as part of any allowed appeal. However, it is for the Planning Inspectorate as the determining competent authority to decide if this is an appropriate manner in which to secure the necessary mitigation, or if a S106 legal agreement would be preferable.

8.3 Habitats Regulations:

A Habitat Regulations Assessment was undertaken by the LPA for the proposed development, which outlined the likely impacts on the special protection areas and proposed mitigation. This was reviewed by Natural England, who whilst satisfied with the mitigation measures proposed in relation to nitrate mitigation, raised an objection to the proposed phosphate mitigation.

8.4 Whilst the concerns of Natural England were noted, Eastleigh Borough Council as the competent authority for the purposes of Section 281 (6) of the Wildlife and Countryside Act 1981 (as amended), were content that adequate mitigation could have been provided through the Council's water quality mitigation scheme.

9.0 Conclusion

9.1 Despite being recommended for approval by the case officer, the Committee, in their capacity as the Local Planning Authority, chose to overturn that recommendation and refuse the application for the reasons set out above. In their view, following considerable deliberation, it was considered that the proposed development's very close proximity to the edge of the Stoke Park Woods SINC and Ancient Woodland would result in unacceptable harm to the

SINC habitat, contrary to Policy DM11 of the adopted Local Plan. In addition, it was considered that the private amenity space proposed was insufficient to adequately meet the needs of a four bedroom family dwelling, due to its proportions, orientation and the impact of the woodland edge and proposed dwelling in terms of overshadowing, contrary to Policy DM1 of the adopted Local Plan and the Council's 'Quality Places' Supplementary Planning Document.

- 8.2 For the reasons set out above, the LPA would respectfully request that the Inspector upholds the reasons for refusal and dismisses the appeal. However, should the Inspector be minded to allow the appeal, the LPA would request that the conditions set out in Appendix A, which replicate those of the case officer's committee report, be considered and included within their decision.