

Appeal by Mr Daniel Bowers

re.

**'Willow Bee', Allington Lane, West End,
Eastleigh in Hampshire SO30 3HP.**

GROUND OF APPEAL

presented by

Robert Tutton BSc (Hons), MRTPI.

Mr Robert Buchanan Tutton

Qualifications: Bachelor of Science (Honours) Degree in Town and Country Planning awarded by the University of Aston in Birmingham.
Member of the Royal Town Planning Institute since 1976.

Experience. Has worked in the town and country planning field for fifty-eight years, of which nine were spent with Portsmouth City Council (1965-74) and fifteen with Fareham Borough Council (1974-89) in several senior positions, including Chief Forward Planning Officer and Chief Development Control Officer. Has been a Town Planning Consultant in private practice since July 1989 and a Director of Robert Tutton Town Planning Consultants Ltd since January 2008.

Is familiar with the provisions of adopted planning policies for the West End area and has visited the appeal site and its environs on several occasions since first being instructed by Mr Bowers in June 2023.

TOWN AND COUNTRY PLANNING ACT 1990
Section 78.

APPEAL by **Mr Daniel Bowers** against the decision of **Eastleigh Borough Council** to refuse the grant of planning permission for the retention of a replacement entrance gate, hard-standing and fence (together comprising a 'means of enclosure') at the frontage of 'Willow Bee' in Allington Lane, West End, Eastleigh in Hampshire SO30 3HP.

Eastleigh Borough Council's reference: F/23/95507

GROUND'S OF APPEAL

1.0 THE APPEAL SITE

1.1 'Willow Bee' comprises 0.21 hectare of 'previously agricultural' land on the west side of Allington Lane, which links Fair Oak Road (to the north) with Mansbridge Road (to the south, beyond the M27 motorway) in the West End sector of Eastleigh Borough Council's administrative area. Approaching the site from the north on Allington Lane, one passes several entrances that have gateways that stand back from the carriageway behind splayed hard-standings that are contained by walls or fences; indeed they are so numerous and notable that they comprise a significant characteristic of the locality - Lake Farm House, The Garden Society, Allington Manor Farm, West Point, Little Acres Caravan Park, White Harmony Acres, Woodpeckers and Low Moralee (**Appendix 1**). The frontage of this part of Allington Lane is characterised by commercial premises and dwellings in a variety of formats, styles, plot sizes and entrance arrangements; as it lies beyond a defined settlement boundary and has the substantial commercial presence of 'Roddington Forge' to the west, this locality may be best described as "developed countryside".

1.2 The 'Willow Bee' site is broadly aligned east-west and, 83.5 metres in length, it presents a frontage of 32.5 metres to Allington Lane and tapers to a rear western boundary of 21.25 metres. Access to the site was previously gained via a pair of dilapidated chain-link gates (**Appendix 2**) that adjoined the highway near its southeast corner so works were undertaken between 11th February and 16th April 2023 to erect a replacement means of enclosure (gates with side fences) that stand back from the highway behind a splayed hard-standing, (**Appendix 3**) in similar vein to the arrangements which characterise Allington Lane further to the north.

1.3 Within the site, a storage container stands near the north boundary, with a touring caravan close by, within a carport; the container was brought to the site in March 2023 and erection of the carport was substantially completed in May 2023. The site is used for a combination of informal purposes - horticulture, the keeping of horses and family recreation. The container is used for the storage of family assets (bicycles, outdoor toys etc.) and as a lock-up for Mr Bower's tools.

2.0 PREVIOUS RELEVANT DECISION.

2.1 Attention is drawn to planning permission F/18/83772 that was granted in August 2019 for *“4 no. additional static caravans with associated parking and infrastructure and re-positioned entrance to site”* at Little Acres Caravan Park in Allington Lane, just 92 metres to the southwest of Willow Bee. These extracts from the Officers’ ‘Planning Application Report’ which led to that decision (**Appendix 4**) are considered germane to the determination of Mr Bowers’ appeal.

A. “The site currently has permission for 4 gypsy pitches; this permission seeks a change of use to allow for the intensification of the use of the site, to allow 4 additional gypsy pitches to be created. This includes an additional dayroom.”

B. “The site is bounded by approximately 2m high close board fences to the rear and sides of the site...An existing wall is present to the front of the site; this replaces a previous wall of lower height however the existing wall is not lawful...The site lies on the eastern side of Allington Lane. The area is predominantly rural but with a number of uses scattered along the land, including residential dwellings, a care home and an industrial site adjacent.”

C. “HCC Highways...The potential traffic generation from 4 additional caravans would not have a severe detrimental impact on the operation and safety of the local highway network.”

3.0 PLANNING APPLICATION F/23/95507

3.1 Planning application F/23/95507 was submitted to Eastleigh Borough Council by Robert Tutton Town Planning Consultants Ltd on 26th June 2023 for Daniel Bowers and it came to be validated on 25th July. Permission was originally sought to *“Regularise replacement entrance, hardstanding and frontage fence”* but it came to be registered as being for a *“Replacement entrance gate, hardstanding and frontage fence.”*

3.2 Drawing no.SD-2331-03(A) re ‘*Gates Pre Existing*’ showed the location of the original gateway close to the highway, near the southeast corner of the site (**Appendix 5**). Drawing no. SD-2331-02(B) re ‘*Gates and Fencing Proposed*’ showed the replacement gateway set back from the highway behind a ‘Stone Hardstanding’ and close to the northeast corner of the site, flanked by a “1.8m Close Board Timber Fence”. As requested by Senior Planning Officer Rachael Morris at 1348 hours on 18th July, photographs were presented which showed the pair of dilapidated gates that comprised the original gateway (**Appendix 2**).

3.3 The application was supported by a ‘Planning Design and Access Statement’ prepared by Robert Tutton Town Planning Consultants Ltd and attention is drawn to these particular submissions:-

A. “Regardless of whether one approaches from the northeast or southwest along Allington Lane, public views of the site are presently blocked by substantial frontage vegetation. The site is contained on all four boundaries by tall vegetation,”

B. “Vehicular and pedestrian access is afforded via a new gated driveway near the northeast corner of the site. Clear views to the northeast and southwest along Allington Lane ensure that vehicles entering and leaving the site enjoy good visibility and are themselves seen clearly by approaching drivers, riders and pedestrians. An informal surfaced forecourt area affords access and parking for several vehicles in the east sector of the site.”

C. “The development plan for West End comprises the ‘Eastleigh Borough Local Plan (2016-2036)’2022...The Policies Map of the development plan shows this site within the ‘Countryside’ with no special designations.”

D. “Strategic Policy S1 (‘Delivering sustainable development’) records that “1. To be sustainable, new development in the Borough should...1. Maintain local environmental quality...and where possible enhancing, the existing valued...rural environments in the Borough...Strategic Policy S5 (‘New development in the countryside’) states that “2. In permitting new development in the countryside the Borough Council will seek to: (a) avoid adverse impacts on the rural...character...and on the biodiversity of the area.’...Policy DM13 (‘General development criteria – transport’) records that “1. All new development must have safe and convenient access to the highway network..”

E. “The frontage of this part of Allington Lane is characterised by commercial premises and dwellings in a variety of formats, styles, plot sizes and entrance arrangements. Particular attention is drawn to the entrance of ‘Little Acres Caravan Park’ on Allington Lane (92 metres to the southwest of the application site). Planning permission F/18/83772 was granted by Eastleigh Borough Council in August 2019 for this arrangement; the design evidently met the Borough Council’s character/design requirements and Hampshire County Council Highways had ‘No objection’.

F. The subject site is a rectangular holding of land that lies on the west side of Allington Lane. The application site comprises the frontage entrance gates (finished in black timber), pillars (red/brown brick), fences (light timber) and hardstanding area (scalpings) which replaced the historic site entrance. The development the subject of this application commenced in February 2023 and was completed in April.”

G. “It is submitted that the constructed entrance arrangement accords with the character of its surroundings and has not compromised any key sustainable development principles of national or local planning policy.”

H. “It is submitted that the requirements of the development plan are satisfied by this proposal since it would not detract from the existing street-scene; would be in keeping with the character of its surroundings; is of a high standard of design; incorporates materials and design elements sympathetic to local character; provides safe access for pedestrians, cyclists and vehicular traffic; respects privacy, outlook and sunlight; and takes into account the prospect of criminal activity and anti-social behaviour...Development of this site in the manner proposed would achieve more efficient use of this land without harm to the character or appearance of the locality or the amenities of neighbours...It is contended that the proposal comprises an acceptable form of development that accords with the development plan and no other material considerations suggest otherwise.”

3.4 By letter dated 8th August 2023, Matt Grantham of Hampshire County Council (the Highway Authority) presented his response to the consultation: *“In regard to application F/23/95507, having reviewed the information contained within the application pack and onwards following a site visit, **there is no objection in principle to the proposals from a highway perspective...**The new access design allows for a set back holding space into the site prior to the gates, which allows for a vehicle to wait off the highway while the gates are opened...This is an improvement on the historical gated access which directly abutted the highway and meant a vehicle had to obstructively wait for the gates to be opened...In terms of visibility, whilst no plan has been submitted to demonstrate whether or not visibility splays can be accorded to in line with current standards, which typically for a 40mph speed restricted road would be a minimum of 2.4m x 120.0m. Following a site visit it does appear that there may be a shortfall...However, in consideration with the historical access, the use of which could continue should planning for the new access be refused and which also appears to be below standards in terms of visibility, **the benefits of the new access outweigh the benefits of the retention of use of the old, from a highway perspective.**”*

3.5 Via email dated 23rd August 2023, ecologist Lisa Malter recorded that she had *“...reviewed the site photos and aerial photos from Google maps (2023 imagery) and Google earth (2000 to the present)...From the Gates and Fencing Proposed plan by Solent Design (Rev B June 2023) it is not clear whether the closed board timber fence is just at the front of the site or continues all the way round the property...The site entrance has been cleared of vegetation and the surface appears to have been compacted...There is a black surface water drainage pipe/culvert which has been laid across and under the site entrance and closed board fencing with solid (concrete) base boards has been constructed at the entrance and along the Allington Lane road frontage...**A surface water drainage plan is required...**The closed board fence must have gaps in the base boards (15 x 15cm minimum) where small mammals such as hedgehogs can move freely across the property.”*

3.6 On 26th September 2023, Highway Consultant Nick Culhane presented his ‘Highway Technical Note’ to support the application (**Appendix 8**); these extracts are considered

particularly relevant to the determination of this appeal:

A. “Allington Lane is a classified public highway with the identification number C194. At the point of the replacement entrance gates, the road is rural in character, having no pedestrian footways and no street lighting. The road is also subject to a 40mph speed limit at this point.”

B. “Historically, the site was served by a narrow simple verge crossing where visibility was limited and a gate set at the back of the verge resulted in vehicles having to wait within the carriageway whilst the gate was opened and closed. This current application seeks retrospective consent for works undertaken which include the widening of the access, a set of brick piers and high gates set back from the edge of the highway.”

C. “Whilst the road is subject to a 40mph speed limit, in order to assess whether traffic speeds are less than the posted limit, a 7-day automatic traffic speed and volume survey was undertaken...Based on the outcome of the HCC Sight Stopping Distance Calculator, visibility Y distances of 79.0m would be required to the south and 74.0m to the north. Clearly, however, these are not available, given the existing vegetation within the highway verge and the alignment of the road...Whilst it is acknowledged that such splays fall short of the desirable splays based on the HCC sight stopping distance calculator, the LHA have recognised that such splays are an improvement over the previous situation and that the hardstanding at the front of the site is a genuine improvement, as it allows vehicles to stand clear of the highway rather than have vehicles stood in Allington Lane, on a bend where forward visibility was limited.”

D. “This Highway Technical Note has been produced in support of a proposal for a replacement entrance gate at Willow Bee, Allington Lane...The proposal includes a hard standing at the front of the site which allows vehicles to stand clear of the highway whilst the gates are being opened and closed...Whilst it is recognised that the available visibility splays do fall short of those desired by the LHA, the proposal is seen as an improvement over the existing situation...Any consent granted can include a suitably worded condition that requires the splays to be kept clear of all obstructions over 600mm above carriageway level in perpetuity...It is therefore considered that this proposal can now be supported by the Highway Authority.”

3.7 Also on 26th September 2023, Ashley James of EcoSupport presented his “Biodiversity Enhancement and Mitigation Plan” for the whole Willow Bee site (**Appendix 8**). As no charges came to be later laid in the decision notice that the particular requirements of Local Plan Policies S1, DM1, DM11 and DM13 would not be satisfied, detailed attention need not be given to Ashley James’ report at this juncture.

3.8 In response to Lisa Malter’s call for a surface water drainage plan (see para.3.5

above), Andy Traves of Aqua Callidus Consulting Ltd presented his 'Drainage Statement' on 12th October 2023 in favour of the proposal (**Appendix 9**) and these extracts are considered germane to the consideration of this appeal:- *"A review of mapping for the site locality indicates the land falls to the northwest away from Allington Lane...A review of British Geological Survey mapping indicates no superficial soils at the site and bedrock geology of the Wittering Formation – Sand, Silt and Clay...The permeability of the pavement material is anticipated to be one or two order of magnitudes greater than the permeability of the site soils...Therefore developed infiltration characteristics will remain regulated by natural soil formation, as the pavement will not reduce the natural infiltration rate...Application F/23/95507 is for a replacement entrance gate, front fence and hardstand...The application does not propose to change the use of the site.. It is inherent from this that the pollution index from the access as is now present and the previous access are identical...Notwithstanding this, the permeable pavement construction now present provides additional filtration through the permeable pavement and geotextile and is therefore a betterment."*

3.9 The application was determined by the Officers under their delegated powers so there was no prior opportunity to appreciate their prospective interpretation of the policies on which the decision would turn nor to present a deputation to the Hedge End, West End and Botley Local Area Committee (of Members) prior to its consideration. The decision notice issued on 17th October 2023 recorded that planning permission was withheld for this reason:

"1. The proposed development would represent an undesirable visual intrusion into an area of countryside for which there is no overriding planning justification or operational need for the development. As such, the proposal is contrary to policy S5 of the Eastleigh Borough Local Plan (2016-2036)"

Note to Applicant: The application was refused following the assessment of the following plans; SD-2331-02 Rev B and SD-2331-03 Rev A...In accordance with paragraph 38 of the National Planning Policy Framework (September 2023), Eastleigh Borough Council takes a positive approach to the handling of development proposals so as to achieve, whenever possible, a positive outcome and to ensure all proposals are dealt with in a timely manner."

3.10 The Delegated Officer Report which led to the rejection of application F/23/95507 has since come to hand, so it is now possible to appreciate the issues on which the decision turned (**Appendix 10**). These factors are considered particularly noteworthy and thereby germane to the determination of this appeal (for ease of cross-reference later, each issue has been given a letter):

- A. "Representations: None".
"Parish Council: No Comment."

B. "From the Gates and Fencing Proposed Plan by Solent Design (Rev B June 2023) it is not clear whether the closed board timber fence is just at the front of the site or continues all the way around the property...The site entrance has been cleared of vegetation and the surface appears to have been compacted...There is a black surface water drainage pipe/culvert which has been laid across and under the site entrance and closed board fencing with solid (concrete) base boards has been constructed at the entrance and along the Allington Lane road frontage...A surface water drainage plan is required...The closed board fence must have gaps in the base boards (15 x 15 cm minimum) where small mammals such as hedgehogs can move freely across the property."

C. "Hampshire Highways...Whilst as suspected the visibility splays are below current standards, as previously outlined this would be acceptable in this specific case, given that the site has an existing use and the new access is an improvement when compared to the existing access that would otherwise continue its use...**There is no objection in principle to the proposals from a highway perspective.** The new access design allows for a setback holding space into site prior to the gates, which allows for a vehicle to wait off the highway while the gates are opened. This is an improvement on the historical gated access which directly abutted the highway and meant a vehicle had to obstructively wait for the gates to be opened...However, in consideration with the historical access, the use of which could continue should planning for the new access be refused and which also appears to be below standards in terms of visibility, **the benefits of the new access outweigh the benefits of the retention of use of the old from a highway perspective...**It is however requested that a condition is placed to ensure that the visibility envelope is kept clear of any vertical obstruction (landscaping/bushes/trees) above the height of 0.6m in the future."

D. "Development Plan: The Eastleigh Borough Local Plan 2016-2036...The most relevant policies are Strategic policies S1, S2 and S5 and Development Management policies DM1, DM2, DM6, DM11, DM13, DM14, DM18 and DM26

E. "Principle...The retrospective application is set within the countryside where the principle of development is not accepted unless otherwise supported by policy in the local plan or there are other material considerations...It is not clear if this entrance is intended for use as a non-residential or residential use, as it appears unrelated to anything other than a constructed hard-standing. The application is not supported with any justification for the operational need for the development in this countryside location...As there is no operational need for development, general countryside restraint policies apply...Strategic policy S5 states planning permission will be granted for new development in the countryside provided it is related to: the provision of employment through agricultural development; the extension and replacement of existing employment uses and the re-use of existing buildings; residential extensions and replacement buildings; limited residential conversions, rural worker's dwellings and

accommodation for Gypsies, Travellers and Travelling Showpeople; community, tourist or visitor uses through the re-use of buildings, including facilities for the interpretation of heritage assets; outdoor recreation and open space; allotments and community farms; cemeteries; and essential public utilities. Therefore, in principle, this retrospective hard-standing and frontage is not supported in principle within the countryside.”

F. “Impact on the Countryside...It is noted that the retrospective frontage gate with brick piers and fencing serves a hardstanding which forms part of this application and has been created by clearing a large area of vegetation...This in turn has created an unauthorised access to a classified road...The entrance gate represents a significant urbanising built form with no clear planning justification to serve and as such is a visually intrusion in this countryside location...The entrance gate with fence represents a sizeable length and scale which does not accord with policy that recommends development will not have an urbanising effect on the countryside in terms of its density, scale, massing, layout and height; and that any access, car parking or landscaping can be provided without having a detrimental impact on the character of the countryside...Given the visual harm caused by the development, it is considered to have a harmful impact on the rural setting and does not accord with policy S5.

G. “Conclusion: The development would represent an undesirable visual intrusion into an area of countryside for which there is no overriding planning justification or operational need for the development . As such, the proposal is contrary to policy S5 of the Eastleigh Borough Local Plan (2016-2036).”

4.0 PLANNING POLICY

4.1 Section 38 of the Planning and Compensation Act 2004 requires an application or appeal to be determined in accordance with the relevant policies of the development plan unless material considerations indicate otherwise; an element of flexibility is provided which enables decisions to be made which may disagree with the development plan. The Policies Map of the **Eastleigh Borough Local Plan (2016-2036)** shows this appeal site within ‘Countryside’ with no special designations (**Appendix 4**). While the Officers Report recorded the view that eleven policies of the adopted Local Plan were seen to be relevant to the determination of application F/23/95507 ie S1, S2, S5, DM1, DM2, DM6, DM11, DM13, DM14, DM18 and DM20 [see paragraph 2.9(D) above] **only one of those (S5 re “New development in the countryside”) was allegedly breached** in the decision notice; by implication, it is surely reasonable to assume that the other ten were all seen to be satisfied, so they need not be accorded attention here.

4.2 Strategic Policy S5 generates a presumption in favour of new development in the countryside that falls within seven nominated categories of development:

“Planning permission will be granted for new development in the countryside

provided it is related to:

- a. the provision of employment through agricultural development (policy DM17), the extension and replacement of existing employment uses (policy DM18 and the re-use of existing buildings (policy DM19);
- b. residential extensions and replacement buildings (policies DM18 and 26); limited residential conversions (policy DM19), rural workers' dwellings (policy DM270 and accommodation for Gypsies, Travellers and Travelling Showpeople (policy DM31);
- c. community, tourist or visitor uses through the re-use of buildings including facilities for the interpretation of heritage assets (policies DM12);
- d. outdoor recreation and open space (policies DM32 and DM33);
- e. allotments and community farms (policy DM27);
- f. cemeteries (policy DM37); and
- g. essential public utilities (policy DM9)."

4.3 As the Eastleigh Borough Local Plan was adopted to guide development proposals for a period of twenty years (2016-2036), it is unusual to find a policy (S5) that sets down a limited number of development categories that **excludes all kinds of 'means of enclosure'**, even an arrangement that would secure improved access to a classified road. From his own experience as Chief Forward Planning Officer with (the adjoining) Fareham Borough Council, Robert Tutton readily appreciated the challenge that Officers of Eastleigh Borough Council faced when they contemplated the formulation of policy S5 - it should have been clear from the outset that, with a plan period of twenty years, proposals would inevitably be presented during that period which would not fit neatly into the seven nominated categories but should nevertheless be welcomed because benefits were offered that were not anticipated prior to adoption of the Local Plan. This is such a case - the gateway/fence/hard-standing that has been erected at Willow Bee has been welcomed by the Highway Authority and, as it reiterates design principles that are already displayed by eight gateways along Allington Lane, this appeal proposal should have been recognised as being a positive contribution to the established character of this 'developed countryside' and planning permission granted for its retention.

5.0 CONCLUSION and SUBMISSION

5.1 An application or appeal should be determined in accordance with the development plan unless material considerations indicate otherwise; there are material considerations in this case which bear in favour of the appeal proposal. While eleven policies of the Eastleigh Borough Local Plan were seen by the Officers to be relevant to their consideration of this proposal, the decision actually turned on a single policy (S5) which generated a presumption in favour of seven specific categories of development but was silent with regard to 'means of enclosure'. Eastleigh Borough Council may perhaps be excused for a failure to anticipate that a 'means of enclosure' could come to be presented as a permissible category of development but there is no excuse for it to put aside the Highway Authority's recognition that the benefits of this proposal outweigh retention of the original gateway in an arrangement that reiterates and reinforces a notable and significant

characteristic of the 'developed countryside' that is Allington Lane ie gateways that stand back from the carriageway behind splayed hard-standings that are contained by walls or fences.

5.2 The inadequacy of development plan Policy S5 should not stand against this proposal, which affords highway benefits in an arrangement that is characteristic of the locality. The Secretary of State for Levelling Up, Housing and Communities is respectfully requested to allow this appeal and grant planning permission for the retention of this means of enclosure.

APPENDICES

1. Gateways are a notable characteristic of Allington Lane.
2. The pre-existing gateway to Willow Bee.
3. Replacement gates and planting proposal.
4. Officers Report and decision notice re. Little Acres Caravan Park.
5. Drawing nos. SD-2331-03(A) and SD-2331-02(B).
6. Planning, Design & Access Statement by Robert Tutton.
7. Highway Technical Note by Nick Culhane.
8. Biodiversity Enhancement and Management Plan by Ashley James.
9. Drainage Statement by Andy Traves.
10. Officers Report re application F/23/95507.
11. Eastleigh Borough Local Plan 2016-2036 (extracts).