

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 5.No dwellings, landscaping, parking and
associated works following demolition of existing dwelling, site clearance
and preparation

Brighstone, Botley Road, Horton Heath, Eastleigh,

Hampshire, SO50 7DT

Appeal by: Alderbury Homes Ltd

Planning Inspectorate Reference: APP/W1715/W/24/3338792

Eastleigh Borough Council Reference: F/23/95549

May 2024

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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/23/95549 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 and made valid on 3rd July 2023. It was given a reference number of F/23/95549 and described as "*Construction of 5.no dwellings, landscaping, parking and associated works following demolition of existing dwelling, site clearance and preparation*".
- 1.3 The application was heard at the Bishopstoke, Fair Oak and Horton Heath Local Area Committee on 31st January 2024. 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 7th February 2024. The reasons for refusal were as follows:

1) *That proposed, by virtue of its layout, form, height and scale, would result in a visually intrusive development to the detriment of the amenity of neighbouring properties through loss of outlook, together with an unacceptable level of disturbance as a result of vehicle movements in close proximity to shared site boundaries. As such, that proposed is considered to be contrary to Policy DM1 of the Eastleigh Borough Local Plan 2016-2036 and the Council's 'Quality Places' Supplementary Planning Document.*

2) *The close proximity of Plot 5 to trees which are subject to a Tree Preservation Order will result in these trees dominating the residential amenity space of the proposed development, to the detriment of the amenity of future occupiers, as well as increased future pressure for unnecessary works to be undertaken to the trees, to the detriment of the trees' and wider site ecology. As such, that proposed is considered to be contrary to Policies DM1 and DM11 of the Eastleigh Borough Local Plan 2016-2036 and the Council's 'Quality Places' and 'Trees and Development' Supplementary Planning Documents.*

3) *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 NPPF (2021) and the Conservation of Habitats and Species Regulations 2017.*

- 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 5No. two storey dwellings (3No. three bedroom, 1No. four bedroom and 1No. five bedroom) each with private amenity space, parking and landscaping, accessed from Botley Road, following demolition of the existing bungalow on site. The scheme determined was an amended version of that originally submitted in July 2023.

3.0 Site & Surroundings

- 3.1 The appeal site lies along the southern edge of Horton Heath, with open fields to the south and residential development to the north. Whilst open undeveloped garden, the appeal site and the field to the south is designated as being within the urban edge for the purposes of the current adopted Local Plan.
- 3.2 Existing neighbouring development consists of predominantly one and two storey detached dwellings, together with a number of large chalet style dwellings on good size plots. Access to the site would be via Botley Road, which is currently shared with the neighbouring property to the north known as 'Neerome', a 1930s semi-detached two storey dwelling. To the south of the

access is a large and relatively modern two storey red brick dwelling called 'Meadow View'. Along the northern edge of the site are three further chalet style dwellings, known as 'Southview', 'Hideaway' and '14 Cherry Drove'. There are a group of further large detached dwelling beyond the western end of the site, separated by a number of mature trees.

- 3.3 The site itself is relatively flat and level and shaped like an elongated hourglass, i.e. wider at the eastern and western ends but narrowing in the middle just behind the existing bungalow which would be demolished. All boundaries are generally marked by mature hedgerows, with a group of three large oak trees at the western end of the site which are subject to a preservation order. The existing garden also has a number of mature fruit and ornamental trees, as well as timber sheds and greenhouses but is predominantly lawn. The exiting bungalow dates from the 1970s and is of limited architectural value.

4.0 Relevant Planning History

- 4.1 Other than a number of modest domestic extensions, there is no other planning history directly associated with the appeal site. However, it did form part of an application for proposals for eight dwellings in 1987 (Ref: Z/29608/000/00) which was never determined as it was withdrawn by the applicant.

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);
- S3 (Location of new housing); and
- S11 (Transport infrastructure)

Development Management Policies:

- DM1 (General criteria for new development);
- DM2 (Environmentally sustainable development);
- DM3 (Adaption to climate change);
- DM6 (Sustainable surface water management and watercourse management);
- DM11 (Nature conservation);
- DM13 (General development criteria - Transport);
- DM14 (Parking);
- DM23 (Residential development in urban areas);
- DM24 (Creating a mix of housing);
- 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);
- Environmentally Sustainable Development (March 2009);
- Residential Parking Standards (January 2009); and

- 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.

Five Year Land Supply

- 6.3 In accordance with the revised NPPF (December 2023), Local Planning Authorities are not required to maintain a five-year housing land supply if they meet the two criteria in paragraph 76. These are a recently adopted Local Plan, that identified at least a five-year supply when the examination concluded.
- 6.4 The Eastleigh Borough Local Plan was adopted in April 2022 and the final Inspector's report accepted that the Council met the requirement for a five-year supply. The five-year housing land supply position report published by the Council at that time provides further information on the sources of housing

supply. The Council is not therefore required to maintain a five-year housing land supply and the tilted balance will not apply.

- 6.5 However, this latest NPPF position only relates to applications submitted after the revised NPPF was published. For any applications submitted prior to this, which includes the current application for Brighstone, the housing land supply must be based on the previous five year supply. The last published figure in July 2022 was 5.1 years, and with the current local plan having only been adopted in April 2022, it is considered that the authority does meet the necessary housing supply requirements.

7.0 Reasons for Refusal

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

- 7.2 Reason 1: - Visual intrusion, increased disturbance and loss of amenity

That proposed, by virtue of its layout, form, height and scale, would result in a visually intrusive development to the detriment of the amenity of neighbouring properties through loss of outlook, together with an unacceptable level of disturbance as a result of vehicle movements in close proximity to shared site boundaries. As such, that proposed is considered to be contrary to Policy DM1 of the Eastleigh Borough Local Plan 2016-2036 and the Council's 'Quality Places' Supplementary Planning Document.

- 7.3 Whilst the LPA acknowledges that the Appellant has tried hard to limit the impact of the development upon existing neighbouring properties to the north of the site through the way plots are arranged and orientated, there are concerns that the position of Plots 3, 4 & 5, together with their generally two storey height, large scale and in the case of Plots 4 & 5 their bulky form, will result in a detrimental impact upon the outlook currently enjoyed by the three existing properties in Cherry Drove – 'Southview', 'Hideaway' and '14 Cherry Drove'.

- 7.4 Of particular concern is the impact upon Southview as a result of the close proximity to the northern flank elevation of Plot 5. Whilst amendments were made to this plot during the course of the planning application – moving its garage further back, hipping the garage roof and facing it in cladding – these did little to alleviate the resulting visual impact and dominance of the structure upon outlook from the rear of Southview. Whilst these amendments did step and break up the building form to some degree, it would still present a sizable and deep elevation to Southview which will be clearly visible above the existing boundary hedge and in very close proximity, dominating outlook to the rear. Were the garage to have been removed or accommodation above it not included, then this impact would have been lessened to a reasonable degree, but these revisions were not undertaken.
- 7.5 To a lesser extent, but nonetheless still of concern, is the position and proximity of Plot 3 in relation to No.14 Cherry Drove. Whilst not immediately in line with the rear outlook from this property, its close proximity and position just short of perpendicular to the rear of No.14 will still result in a substantial structure where one does not currently exist. This is of particular concern for No.14 due to it not having any rear garden to speak of, meaning that the quality of its outlook is reliant upon ‘borrowing’ the view currently available across the appeal site to the south. Although it is acknowledged that care has been taken to prevent any overlooking of No.14 through the position of windows, and that it has been given more of a chalet form – i.e. rooms within the roof space – it is still quite a sizable and bulky structure, having high-set eaves and gabled roof. This will in the LPA’s view result in an adverse impact upon the outlook from the rear of No.14 to the detriment of the amenity of its occupiers.
- 7.6 In addition to the outlook concerns highlighted above, there are also concerns at the position of the site access road, which is in very close proximity to the northern boundary hedge. As has already been highlighted, No.14 Cherry Drove, and to a lesser extent Hideaway and Southview, have very shallow rear gardens. As such, passing vehicles will only be a few metres away from their rear elevations and immediately adjacent to their rear gardens. Whilst separated by the existing boundary hedge, this would do little to shield against the noise of

passing vehicles even if a 'quiet' surface treatment were to be used for the access drive. The Appellant makes reference to the small number of vehicle movements likely and that in years to come many more electric vehicles will be in use, thereby minimising noise generated. Although this may be the case, this must be assessed against the current situation where the appeal site is currently a domestic garden. As such, there are currently no vehicle movements through the site. That being the case, no matter how few vehicle movements may result from the development, it will still cause disturbance to the amenity of neighbouring properties and enjoyment of their gardens.

7.7 Notwithstanding that the planning case officer recommended the application for approval, it is clear from the officer's committee report that the above issues were a significant consideration. Similar concerns were also highlighted by the Council's Urban Design Officer. It is also clear from the committee report that the recommendation was an on-balance view and by no means clearcut. In this instance, the Local Area Committee took a differing view and placed greater weight upon the impact of that proposed upon existing neighbouring properties, as is their right to do so.

7.8 Although the efforts of the Appellant to balance the need to make best use of a site within the urban edge whilst limiting adverse impact upon neighbours is acknowledged, it is the LPA's view that this has not been successfully achieved. As such, that proposed is considered to be contrary to Policy DM1 of the Eastleigh Borough Local Plan 2016-2036 and the Council's 'Quality Places' Supplementary Planning Document.

7.10 Reason 2: - Impact upon protected trees

The close proximity of Plot 5 to trees which are subject to a Tree Preservation Order will result in these trees dominating the residential amenity space of the proposed development, to the detriment of the amenity of future occupiers, as well as increased future pressure for unnecessary works to be undertaken to the trees, to the detriment of the

trees' and wider site ecology. As such, that proposed is considered to be contrary to Policies DM1 and DM11 of the Eastleigh Borough Local Plan 2016-2036 and the Council's 'Quality Places' and 'Trees and Development' Supplementary Planning Documents.

- 7.11 This reason for refusal specifically relates to the position of Plot 5 and its close proximity to the three protected Oaks which run along the rear western boundary of the appeal site. Whilst it is accepted that Plot 5 can technically be built without resulting in harm to these trees, i.e. lying outside the root protection areas and with protection measures during construction, this is not the LPA's concern. As has been set out in the Council's Tree Officer's objection, the concern is that of future pressure from occupiers of Plot 5 to have unnecessary and potentially detrimental works undertaken to these trees as a result of the level of shading and visual dominance which would result upon Plot 5 and its garden.
- 7.12 Whilst it is accepted that any future occupiers will be aware of the presence of the trees, past experience has shown that although residents may initially have no concerns with the trees, these views often change once they have lived on site for a few years. These trees are sizable and will likely continue to get larger as they grow. Albeit it is acknowledged that Plot 5 is designed to have main habitable spaces to the east, south and west, these trees will nonetheless still block considerable amounts of sunlight from midafternoon onwards, as well as general daylight to the western rear of the dwelling. Although the garden is quite large, much of it will be overshadowed by the tree canopies.
- 7.13 These issues, together with leaf drop, etc. often leads to requests for extensive pruning works or even felling. Whilst the LPA does not have to grant consent for such works, particularly if they are unjustified in arboricultural terms, the layout of new developments should ensure that such future pressures are taken into account in the layout of the development by ensuring sufficient space for existing trees. This is set out in sections 15 & 16 of the 'Trees and Development' SPD, as well as the 'Quality Places' SPD. In the LPA's opinion, this has not been adequately undertaken in the layout of the appeal scheme and as such is

considered to be contrary to Policies DM1 and DM11 of the Eastleigh Borough Local Plan 2016-2036 and the Council's 'Quality Places' and 'Trees and Development' Supplementary Planning Documents.

7.14 Reason 3 – Impact on Special Policy Areas

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 NPPF (2021) and the Conservation of Habitats and Species Regulations 2017.

Nutrients:

- 7.15 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).
- 7.16 The appeal 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.

Recreational Disturbance:

- 7.17 The site falls inside the 5.6km buffer zone for the Solent Special Protection Area (SPA) and also within the 13.8km catchment area for the New Forest SPA. It is recognised that new housing developments within these catchment areas are likely to result in additional visitors to these protected sites. In order to mitigate for these impacts, the Appellant has agreed to provide contributions towards the Solent Recreational Disturbance Strategy and the Council's New Forest Mitigation Strategy (which provides Suitable Alternative Natural Green Spaces within the borough) via a Unilateral Undertaking, should the Inspector be minded to allow the appeal. This would be acceptable to the LPA.

Habitats Regulations:

- 7.18 Any proposed residential development within the Borough will have a likely impact upon The Solent SPAs and New Forest National Park. As such, an Appropriate Assessment under the Habitats Regulations was completed by the LPA and Natural England consulted. However, no formal response was received.

8.0 Other Matters

- 8.1 Section 5 of the Appellant's statement of case makes reference to the Council's current land supply situation, the Council's view of which is set out in paragraphs 6.3 – 6.5 above. Notwithstanding, it should be made clear that the application was not refused on any grounds relating to housing supply or the need for new housing in the Borough. Indeed, the site is within the urban edge where there is a presumption in favour of appropriate sustainable development. The application was instead refused on the specific design and layout concerns set out above, which in the LPA's view would result in an unacceptable impact

upon the amenity of existing neighbours and protected trees. As such, the Council's current land supply figure is not considered to be relevant to this particular appeal.

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 deliberation, it was considered that the layout, form, height and scale of that proposed would result in a visually intrusive development to the detriment of the amenity of neighbouring properties through loss of outlook, together with an unacceptable level of disturbance as a result of vehicle movements in close proximity to shared site boundaries, contrary to Policy DM1 of the adopted Local Plan and the 'Quality Places' Supplementary Planning Document. It was also considered that the close proximity of Plot 5 to protected trees would have an adverse impact upon the amenity of future occupiers and result in future pressure for unnecessary tree works to be undertaken, contrary to Policies DM1 and DM11, as well as the 'Trees and Development' and 'Quality Places' Supplementary Planning Documents. The application also failed to secure appropriate mitigation towards the development's impact upon the Solent and New Forest SPAs through impacts upon water quality and recreational disturbance.

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.