

Appeal by Mr B Hansler

re.

2 Ashwood Close, Havant PO9 3QT

Grounds of Appeal

presented by

Robert Tutton BSc(Hons), MRTPI.

Mr Robert 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-five 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 Havant area and has visited the appeal site and its environs on several occasions since being instructed by Mr Hansler in October 2020.

TOWN AND COUNTRY PLANNING ACT 1990 Section 78

APPEAL by **Mr B Hansler** against the decision of **Havant Borough Council** to refuse the grant of planning permission for the erection of a *“First-floor side extension (above existing garage) and two storey rear extension, incorporating roof alterations to accommodate loft conversion with dormers to front and side elevations”* at 2 Ashwood Close, Havant in Hampshire PO9 3QT (APP/20/00586).

GROUNDS OF APPEAL.

1.0 THE APPEAL SITE and its environs.

1.1 Ashwood Close is situated to the northwest of Havant town centre and to the west of Hulbert Road, which joins the A3(M) 1.5 kilometres to the north and Bedhampton Road one kilometre to the south. As its name suggests, Ashwood Close is a residential cul-de-sac that may only be approached from the southeast via Littlepark Avenue. On the north side of Ashwood Close, nine L-shaped dwellings face north to Chestnut Avenue (nos.1-17) while, to the east, two L-shaped dwellings face east to Littlepark Avenue (nos.2-4).

1.2 No.2 Ashwood Close is a three-bedroomed, L-shaped barn-hipped bungalow with a gabled front projection, a flat-roofed attached garage on its southeast boundary and a conservatory at its rear elevation (**Appendix 1**). There are no dormers or roof-lights in its front or rear roof-planes.

2.0 PREVIOUS DECISION

2.1 Havant Borough Council's website shows that planning permission 96/62039/000 was granted in October 1996 for *‘Dormers to front and rear’* of 2 Ashwood Close but the only documents available to be scrutinised are the location plan and the decision notice (**Appendix 2**) - neither the approved details nor the Officers' report which led to *‘Grant perm/consent/certify lawfulness’* are available for inspection. Oddly, the location plan showed the subject of the application to be **no.1** Ashwood Close, **not** no.2.. As case Officer A had recently recognised that the 1996 consent was relevant to her consideration of Mr Hansler's proposal, Robert Tutton requested receipt of copies of the Officers' report, the approved plans and the notice of that decision. Upon receipt of the decision notice and location plan, it was apparent that, although permission 96/62039/000 was attributed to ‘2 Ashwood Close’, the location plan actually related to no.1..In response to Robert Tutton's further email inquiry, Officer A replied *“I’ve just been having a look into the ‘96 permission...I agree the red line appears to have been incorrectly drawn around no.1...It's difficult for me to comment as I don't have access to any of the other documentation, however, I'm assuming that because no.2 is on the decision notice, then it is no.2 that had the permission but this may require further digging.”* In view of Officer A's assurance, the conclusion has been drawn that the permission in 1996 was for front and rear dormers on no.2 Ashwood Close, the dwellinghouse the subject of this appeal.

3.0 PLANNING APPLICATION APP/20/00586

3.1 Planning application APP/20/00586 was submitted to Havant Borough Council on 12th July and validated seventeen days later. The agent for the application was Paul Davey of Principal Design Ltd.. Section 3 of the submitted 1APP Householder form described the proposal as *“Proposed rear extension and loft conversion with dormers”* but it came to be registered as *“First-floor side extension (above existing garage) and two-storey rear extension, incorporating roof alterations to accommodate loft conversion with dormers to front and side elevations.”* Section 10 recorded the intention to finish the walls in ‘Brick/render’, with a roof of ‘Conc. tiles’ and upvc windows and doors.

3.2 As first submitted, the ‘Ground Floor Plan’ showed Bedroom 1 retained in the front projection but Bedroom 2 was proposed to be reduced in size to become a study and Bedroom 3 was to make way for a new staircase. A pair of dormers in the front roof-plane would serve the new Bedroom 2 and a first-floor extension over the garage was shown to be served by high-level roof-lights in a barn-hipped roof that would face the front and rear of the property, for Bedroom 3. A new two-storey barn-hipped extension on the rear elevation would achieve a kitchen and dining room at ground floor, with bi-fold doors to the garden and Bedrooms 4 and 5 (the latter with en-suite facilities) at first-floor.

3.3 Seven households were directly notified by Havant Borough Council of the application’s receipt. While the details of seven representations were to later be fully reproduced in the Officers’ report, the addresses of respondents were redacted for web-site presentation, so the origin of particular concerns could not be appreciated or tested by Mr Hansler or his agent. Notwithstanding, amended proposals were presented in an attempt to allay the concerns of neighbours - the east-facing dormer serving Bedroom 4 made way for two roof-lights with high-level sills to meet the ‘loss of privacy’ concern of no.1 Ashwood Close and the rear extension was reduced in height and barn-hipped, to reduce its prospective impact on the outlook of residences to the south and east.

3.4 Despite a request by Councillor Smith that the application be ‘called in’ for determination by the Development Management Committee, it proceeded to be determined by the Officers under their delegated powers, so no opportunity was afforded for Mr Hansler or his agent to appreciate the matters on which the decision would turn or to present a virtual deputation in favour of the proposal directly to Members. The decision notice issued on 9th October 2020 cited these two reasons for withholding consent:

“1. The proposal would result in development at a 2-storey height across virtually the whole width of the plot, coupled with a substantial addition to the rear elevation of the dwelling. Taken together, the development would not be subservient to the host dwelling and would result in a loss of space about the building, to the detriment of the visual amenities and spatial characteristics of the streetscene and surrounding area. The proposal is therefore contrary to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011, the Havant Borough Design Guide SPD 2011 and the National Planning Policy Framework.”

“2. The proposed development, by reason of its mass and bulk and proximity to the boundary with the neighbouring residential property at No.1 Ashwood Close, would be detrimental to the amenities of the occupiers of that property. The proposal is therefore contrary to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011, the Havant Borough Design Guide SPD 2011 and the National Planning Policy Framework.”

3.5 The Officers’ Delegated Report which led to the decision has since become available for scrutiny (**Appendix 3**) and these matters are considered noteworthy:

A. The ‘Policy Considerations’ were identified as being (unspecified parts) of Policy CS16 of the Havant Borough Local Plan (Core Strategy) March 2011 re High Quality Design; (unspecified parts) of the Havant Borough Council Borough Design Guide SPD December 2011; and (unspecified parts) of the National Planning Policy Framework.

B. The ‘Community Involvement’ was recorded as 7 representations. The addresses of respondents were withheld, so it was not possible to identify the specific concerns of individual households.

C. “The application site is located within the defined urban area, therefore development is considered acceptable in principle, subject to development management criteria.” (Para. 7.2)

D. “Policy CS16 states that all development should demonstrate that its design does not cause unacceptable harm to the amenity of neighbours through smell, the loss of privacy, outlook, noise and overlooking.” (Para 7.12).

E. “The single storey garage at no.2 is located on the boundary alongside the rear garden of no.1...There are two windows on the rear elevation of no.1 which serve a kitchen, both windows are set in slightly...The first-floor side and rear extensions are judged to have some impact upon notably late afternoon sunlight from the west received by these windows as well as to the private amenity space which is located immediately adjacent to the extension site...Due to the stepped back relationship between the properties, the proposal would mean a total of approximately 12 metres of two storey level wall along the boundary, although towards the rear this would be set in by 3 metres off the boundary...This is judged to be an overbearing and unneighbourly development, located in very close proximity to the neighbouring property and therefore impacting the rear amenity space.” (Para.7.13)

F. “The dormer window previously proposed to this elevation has subsequently been removed and replaced with two velux rooflights...This is judged to mitigate against the previous overlooking issue - the rooflights

appear to be set 1.7 metres above floor level, although no section drawings have been provided.”(Para. 7.14)

G. To the west of the application site is no.3 Ashwood Close...This property is stepped back behind no.2 and therefore in general impact is judged to be lessened...There is a single storey garage separating the properties on the side of no.3 and, following that, a blank gable wall forming the side elevation of the property at two storey level...Towards the rear is a small conservatory...Although the rear extension would extend back alongside no.3, there are no windows to be impacted...The dormer proposed is judged to have a limited impact as it would have outlooks over the roof slope...The window proposed at first floor level on the west elevation is judged to overlook the windows towards the front of no.3, including the dormer window at first floor level...Although this is the case, this window would serve a hallway and therefore could be conditioned to be obscure glazed.” (Para.7.15)

H. “Immediately towards the rear of the site is no.29 Chestnut Avenue and properties either side...The rear gardens of both properties back on to one another...A first-floor window is proposed to the rear elevation, serving a dressing area/bedroom 1 and in addition the building line would be brought closer back towards the rear boundary – 14 metres of rear garden space would be retained, creating a total of 25 metres back-to-back distance between the properties...This meets the 20 metres back-to-back distance guidance as specified in the Havant Borough Design Guide...It is judged that, on balance, the rear window would not result in any significant harmful overlooking towards these properties.” (Para.7.16)

I. “Consequently, it is considered that the proposal will appear overbearing, having an unneighbourly and unacceptable impact on the amenity of no.1 Ashwood Close, contrary to the requirements of Policy CS16 of the HBLP (Core Strategy).” (Para 7.17).

3.6 Via email at 1012 hours on 10th October 2020, Robert Tutton informed Officer A that *“We have carefully scrutinised the two Reasons for Refusal and found that they do not satisfy the requirements of Planning Practice Guidance (PPG) - its Section 21b.020.20140306 asks “What information must the local planning authority include in their written decision notices of planning applications to applicants?” and responds “...where planning permission is refused, to state clearly and precisely the full reasons for refusal, specifying all policies and proposals in the development plan that are relevant to the decision”. Robert Tutton asserted that “It is a tenet of good public administration that Reasons for Refusal should derive from an explicit examination of the relevant issues and the applicant should be able to understand and appreciate, upon their receipt, the charges set down in the decision notice...Core Strategy Policy CS16 has 7 criteria, the Design Guide has 51 pages and the NPPF has 217 paragraphs; we should not be obliged to trawl through the whole of these documents and then surmise your concerns, in order to advise*

our client how he should best respond to your decision...We would therefore welcome the receipt of an email from you which precisely clarifies your concerns, in order that the matter may be progressed."

3.7 On 12th October, Officer A wrote *"In response to your query, I felt the reasons for refusal were clear and do state relevant policies/elements of the proposal worthy of refusal...For more clarity, the decision notice should be read following the delegated report, which goes into more detail of the reasons for refusal within the context of policies, notably CS16 and the Havant Borough Design Guide...In the report, it quotes extracts from both documents...For further clarity, pages 44-49 of the Havant Borough Design Guide should be used for reference...Policy CS16 is outlined in the Havant Borough Local Plan, which can be found online...The section on Policy CS16 outlines the points referenced in the report."* Later that day, Robert Tutton responded: *"With respect, you have missed the central point, which is that the 'clear and precise information' required by the PPG should have been set down fully on the decision notice in the first instance; it should not have been necessary to refer back to the delegated report, in order to surmise how policies have been interpreted."*

3.8 As Havant Borough Council's web-site promised prospective respondents that *"Your name and address will not be published, in accordance with General Data Protection Regulations"*, Robert Tutton invited Officer A on 15th October to clarify how Mr Hansler and his agent were expected to respond to objections from concerned neighbours:- *"How can the efficacy of a third party objection be fully assessed if their address is withheld...As the addresses of respondents were not available for scrutiny on the web-site, how was our client to appreciate the impact of his proposal on individual properties, in order to consider how it should be amended to address their concerns...Did you assess the impact of the proposal from any of the home/gardens of interested parties that had raised specific concerns - if so which properties did you visit?"* Officer A replied later that day:- *"Due to coronavirus, we have been limiting site visits and therefore I have visited only the application site, however, due to the land levels and low boundaries, I was able to view the gardens either side and to the rear...I have also been sent photos to aid this."*

3.9 These factors have emerged from scrutiny of the Officer Delegated Report and Officer A's subsequent explanation of the decision-making process:

- i. 2 Ashwood Close stands within the urban area, where development is acceptable in principle, if development management criteria are satisfied (3.5(C) above).
- ii. The design of a proposal should not cause unacceptable harm to neighbours through smell, the loss of privacy, outlook, noise or overlooking." (3.5(D) above)
- iii. Redaction of respondents' details (especially addresses) prevented Mr Hansler and his agent from appreciating the concerns of individual neighbours.
- iv. Officer A did not visit the home of each respondent.

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 statutory development plan for Hayling Island comprises the **Havant Borough Local Plan (Core Strategy) 2011** and the **Havant Borough Local Plan (Allocations) 2014**. The **Havant Borough Design Guide** was supplementary planning guidance adopted in 2011.

4.2 The **Havant Borough Local Plan Core Strategy (Appendix 4)** was adopted in March 2011; its paragraph 1.04 tells one that it “...describes the council’s long term vision and objectives for what the borough will be like as a place in 2026” and paragraph 1.06 assured that “When considering planning applications, the council will consider all the policies contained in the Core Strategy that are relevant to the proposal...It is therefore essential that the Core Strategy is always read as a whole”. When a policy document is intended to provide a reference point for decisions about all of the different kinds of development that may be promoted across the borough during a fifteen-year period, it is perhaps inevitable that its criteria are generalised and one needs to scrutinise a policy closely in order to find a test that directly applies (as in this case) to a domestic extension in the garden of an existing dwelling. Paragraph 7.28 of the Core Strategy re ‘Sustainable Construction and High Quality Design’ recognised that limitation - it stated that *...Policies CS14 and CS16 set out the principles that will be applied to **all new developments**...All new development is defined as **one dwelling or more** and 500 square metres or more of non-residential floorspace*” (emphasis has been added). It is evident that a proposal comprising less than a whole dwelling (which would evidently include a domestic extension) should **not** be subject to the requirements of Policies CS14 or CS16. It is evident from the charges laid in the two Reasons for Refusal, however, that Officer A gave no attention to paragraph 7.28 of the Core Strategy and misdirected herself by her focus on Policy CS16, as the central test of Mr Hansler’s extension proposal.

4.3 Core Strategy Policy CS16 is a ‘coarse-grained’ omnibus policy that generates a presumption in favour of development proposals that meet seven ‘High Quality Design’ tests that are intended to apply to all forms of development proposals; the generality of its criteria poses an inevitable challenge as to which (if any) should be applied to a domestic extension; indeed, that is probably why para.7.28 of the Core Strategy recognised that its tests should **not** be applied to a proposal of less than one dwelling. As Policy CS16 was a central component of both of Havant Borough Council’s reasons for its rejection of application APP/20/00586, however, attention has necessarily been given to those tests which influenced the Officers’ decision:

“Planning permission will be granted for development that is designed to a high standard, which helps to create places where people want to live, work and relax. All development should demonstrate that its design:

1. Responds to, draws inspiration from and respects local context and:

- a. Identifies and responds positively to existing features of natural, historic or local character within or close to the proposed development site...
- c. Uses the characteristics of the locality to help inform the design of the new development, including heights, massing, existing building lines, plot widths and depths, materials and proportions of windows and doors...
- e. The development does not cause unacceptable harm to the amenity of neighbours through smell, the loss of privacy, outlook, noise and overlooking....

4.4 In common with eleven other nearby properties, No.2 Ashwood Close is an L-shaped bungalow with a gabled front projection; it has a flat-roofed attached garage on its southeast boundary and a conservatory at its rear. There are no dormers in its front or rear roof-planes but Officer A asserted that planning permission 96/62039/000 was granted in October 1996 for '*Dormers to front and rear*' of this property - that acceptance by the Local Planning Authority is a material consideration in this appeal. The key characteristics of the locality have been accorded weight in the formulation of this proposal since concept stage and careful consideration has been given to the design, to ensure that harm to the amenity of neighbours (particularly through loss of privacy and outlook) is minimised. Contrary to the charge set down in Reason for Refusal 1 on the decision notice, it is submitted that the appeal proposal responds positively to local character close to the site; vital characteristics of the locality have informed the design of the new development; and unacceptable harm would not be caused to the amenity of neighbours.

4.5 The '**Havant Borough Design Guide**' was adopted in December 2011 (**Appendix 5**) Its Executive Summary recorded its aim "*...to provide detailed information that supplements Policy CS16 of the Havant Borough Core Strategy, to raise the standard of design across the Borough and set out what the Council expects developers to deliver in terms of the design of new developments and how the distinctive character and qualities of the Borough should be respectfully improved and enhanced through development...The SPD forms part of Havant Borough Council's Local Development Framework (LDF) and is a material planning consideration in the determination of planning applications in the Borough.*"

4.6 In its 'General guidance on Extensions', para.5.35 of the SPD states that "*In general, an extension should not be bigger than the main building and therefore should appear smaller in mass and height...Extensions should look to the existing building as the main reference point for appearance...The roof form and slope should also reflect that of the main building.*" While para.5.35 acknowledges that, from time to time, an extension proposal *may* be brought forward which is bigger than the main building but nonetheless acceptable, that is not the situation here - the new kitchen/dining room combination would be the same width as the existing kitchen/lounge and its amended barn-hipped roof would tie in exactly with the main roof of the original house. It is particularly noteworthy that, as the rear extension would not be open to view from the public domain, it would not be prominent in the local street scene.

4.7 On the particular subject of 'Side Extensions', para. 5.37 of the SPD recorded the Borough Council's opinion that *"It is important that the extension remains subservient to the main building, so that it can be read which part of the building is the original and which is a later addition...The ridge height of the extension can also be reduced to below the height of the main ridge, so that the extension does not dominate the main frontage...The angle of the roof should be the same as or similar to the existing roof."* The Oxford Compact English Dictionary defines 'subservient' as 'cringing, obsequious, instrumental'; 'obsequious' as 'servilely obedient or attentive'; and 'servile' as 'slavish, fawning'. Issue is taken with the Borough Council's preference that an extension should be cringing, obsequious or fawning in order to be successful; indeed, many extensions have succeeded because they could not be distinguished from the original building. In this case, the rear extension would reiterate the barn-hipped roof form and pitch of the main building, to create new accommodation in a sensitive and attractive arrangement. The Officer Report *"...noted that the rear extension would not be visible from the road and therefore would have a limited impact on the streetscene, however it is also noted that the development would be highly visible from the properties to the south as well as to the east and west and therefore would result in some harmful outlook."* Contrary to the charge set down in Reason for Refusal 1, it is submitted that, as amended on 15th September, the proposed rear extension would **not** *"...result in a loss of space about the building to the detriment of the visual amenities and spatial characteristics of the streetscene and surrounding area."*

4.8 Paragraph 5.42 of the Design Guide states that *'Rear extensions should be a maximum of 3 metres from the rear wall of the existing house, providing that it does not have an adverse effect on neighbouring properties...Outside of Chichester Harbour AONB exceptions to this may be considered, providing there is no adverse effect on neighbouring properties.'* Use of the term 'in general' implies recognition that circumstances may arise which indicate that the '3 metre rule' should be put aside; this is such a case. One has difficulty in appreciating precisely why the length of a domestic extension would bear on nature conservation in the Chichester Harbour AONB but para.5.42 of the Design Guide has no relevance to this case, in any event - the AONB lies beyond Emsworth to the east and Ashwood Close lies two kilometres to the northwest of the north shore of Langstone Harbour; the 'maximum of 3 metres' guideline does not apply here so the acceptability of the rear extension must be judged by whether there would be adverse effect on neighbouring properties. While the proposed two-storey rear extension would be 9.6 metres wide and 4.6 metres deep, it would stand 14 metres away from the rear boundary with no.29 Chestnut Avenue (and consequently 26 metres away from the rear elevation of that dwelling), 3 metres from its southeast common boundary with no.1 Ashwood Close and 2 metres from its northwest common boundary with no.3 Ashwood Close. It is submitted that the rear extension would **not** have an adverse effect on neighbouring properties. One is bound to recall that Officer A admitted that she had not visited each of the neighbouring properties in order to exercise her judgement in this regard.

4.9 Policy CS16 requires that development should not cause 'unacceptable harm' to the amenity of neighbours - a recognition that most developments cause a degree of change to the environment for neighbours but that such harm would need to reach an 'unacceptable'

level in order to justify refusal of consent on that ground. The rear elevation of no.1 Ashwood Close faces south-south-west so the outlook from the two windows which serve the kitchen (which is, by definition, not a habitable room) down its rear garden is essentially parallel to the curtilage boundary. The garage of no.2 Ashwood Close already stands on the common boundary and, while it is proposed to increase its height with a barn-hipped vertical extension, it is submitted that “...*some impact upon notably late afternoon sunlight from the west*” (as summarised in para.7.13 of the Officers’ Report) would not constitute such unacceptable harm as to justify withholding consent.

4.10 Robert Tutton’s email to Officer A at 1012 hours on 10th October invited clarification as to which of the 217 paragraphs of the **National Planning Policy Framework (NPPF)** had been seen to support the refusal of permission but no assistance was forthcoming. It is particularly noteworthy that, although breaches of the NPPF were alleged in both Reasons for Refusal, there was no explicit rehearsal of national policy in the Delegated Report. Indeed, although ‘National Planning Policy Framework’ was set down under ‘Policy Considerations’, no further reference was then made until they appeared (almost as after-thoughts) in the Recommendation. Should reliance be placed on (as yet unspecified) provisions of the NPPF in Havant Borough Council’s Statement of Case, Mr Hansler would retain his right to pass ‘final comments’ upon them.

5.0 CONCLUSION and SUBMISSION

5.1 No.2 Ashwood Close is an L-shaped bungalow that stands within a group of 15 similar dwellings; while there are no dormers or roof-lights in its front or rear roof-planes, permission was granted for ‘*Dormers to front and rear*’ in October 1996, so the principle of such change is not an issue. Contrary to the charge set down in Reason for Refusal 1, it is submitted that the appeal proposal responds positively to local character close to the site; vital characteristics of the locality have informed the design of the new development; and unacceptable harm would not be caused to the amenity of neighbours. While a barn-hipped vertical extension is proposed to the garage that stands on the common boundary with no.1 Ashwood Close, it is submitted that such an arrangement would not constitute such unacceptable harm as to justify Reason for Refusal 2.

5.2 The Secretary of State for Housing, Communities and Local Government is therefore respectfully requested to allow this appeal and grant planning permission for development that **accords** with the policies of the adopted development plan and no other material considerations suggest otherwise.

6.0 APPENDICES

1. Photographs.
2. Documents relating to permission 96/62089/000
3. Officers’ Delegated Report.
4. Havant Borough Core Strategy 2011 (extracts).
5. Havant Borough Design Guide SPD, 2011 (extracts).