

**Section 78 Appeal by Mrs B Gander against
the decision of Havant Borough Council to
refuse permission for "*Demolition of existing
outbuilding and erection of 1no 2 bedroom
bungalow*" on land adjacent to 60 Gladys
Avenue, Cowplain, PO8 8HS.**



**APPENDICES OF STEPHEN JUPP MRTPI ON
BEHALF OF MRS B GANDER.**

LPA REF: APP/17/00651

Appendices

- 1 Photographs of the appeal site and its context
- 2 Appeal decision letter for the building of 44a Gladys Avenue
- 3 Details of planning permission at 8 London Road, Widley
- 4 Photograph of 8 London Road under construction

APPENDIX 1

Photographs of the
appeal site and its
context

View towards 60 Gladys Avenue



View towards Gladys Avenue and 17 Lovedean Lane



View of 17 and 15 Lovedean Lane



View to south east of plot



View to east of plot





View from only bedroom window of 17 Lovedean Lane towards plot



View from only bedroom window of 15 Lovedean Lane towards plot



View of plot from garden of 17 Lovedean Lane



Recent Developments in the locale

42c Gladys Avenue – 9th dwelling to the south



Windows overlooking 42c and 40 Gladys Avenue



Recent developments in Gladys Avenue cul de sac



APPENDIX 2

Appeal decision letter
for 44a Gladys Avenue



Appeal Decisions

Hearing held on 1 October 2008

Site visit made on 1 October 2008

by **P W Clark** MA MRTPI MCMI

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
10 October 2008

Appeal A Ref: APP/X1735/A/08/2068016

Rear of 46 Gladys Avenue, Cowplain, Waterlooville, Hampshire PO8 8HS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Meon Valley Developments Ltd against the decision of Havant Borough Council.
- The application Ref 07/72647/000, dated 30 September 2007, was refused by notice dated 19 December 2007.
- The development proposed is construction of one single storey bungalow including associated car parking.

Appeal B Ref: APP/X1735/A/08/2078274

Land to rear of 46 Gladys Avenue, Cowplain, Waterlooville, Hampshire PO8 8HS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Meon Valley Developments Ltd against the decision of Havant Borough Council.
- The application Ref 08/72647/001, dated 8 April 2008, was refused by notice dated 16 June 2008.
- The development proposed is construction of one detached four bedroom house including associated car parking.

Appeal C Ref: APP/X1735/A/08/2078349

Land to rear of 40 Gladys Avenue, Cowplain, Waterlooville, Hampshire PO8 8HS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Meon Valley Developments Ltd against the decision of Havant Borough Council.
 - The application Ref 08/68395/002, dated 18 March 2008, was refused by notice dated 22 May 2008.
 - The development proposed is construction of one detached four bedroom house including associated car parking.
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Applications for costs

1. At the Hearing applications for costs in respect of appeals A and B were made by Meon Valley Developments Ltd against Havant Borough Council. These applications are the subject of separate Decisions.

Procedural matters

2. Appeals A and B concern two alternative proposals for one piece of land within a newly developed cul-de-sac opening off Gladys Avenue. Appeal C concerns a proposal for another, separated, piece of land within the same cul-de-sac.
3. The application in appeal A was amended by the submission of additional drawings, in particular showing a revised roof pitch, during the Council's consideration of the application. I have considered the appeal and made my decision on the basis of the amended proposal.

Decisions

4. I allow all three appeals, subject to conditions.

Appeal A

5. I grant planning permission for the construction of one single storey bungalow including associated car parking at the rear of 46 Gladys Avenue, Cowplain, Waterlooville, Hampshire PO8 8HS in accordance with the terms of the application, Ref 07/72647/000, dated 30 September 2007, and the plans submitted with it and subsequently amended, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The dwelling shall not be occupied until works for the disposal of sewage have been provided on the site to serve the development hereby permitted, in accordance with details to be submitted to and approved in writing by the local planning authority.
 - 3) The dwelling shall not be occupied until works for the attenuation of surface water drainage and run-off to a level no greater than that existing prior to the development have been carried out in accordance with details to be submitted to and approved in writing by the local planning authority.
 - 4) No development shall take place until details of external lighting, if any, and samples of the materials to be used in the construction of the external surfaces of the building and associated car parking and paving hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 5) No development shall take place until details of the provision to be made for the storage and disposal of refuse from the use of the dwelling have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. The dwelling shall not be brought in to use before the refuse storage facilities are completed.

- 6) No development shall take place until details of finished floor levels and existing and proposed ground levels (above ordnance datum) have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 7) The foundations of the building shall be designed and constructed using piles, beams and suspended floors in accordance with the recommendations of the arboricultural appeal statement by Jonathan Fulcher dated April 2008.
- 8) The development shall not be occupied until the additional planting shown on the approved tree protection and boundary fencing plan has been carried out in accordance with a planting specification previously agreed in writing by the local planning authority. Any tree or shrub planted in accordance with this condition which dies or is otherwise removed within five years of the date of the first occupation of the development shall be replaced with another of the same species and size in the same position during the first available planting season.
- 9) In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs (i) and (ii) below shall have effect until the expiration of 1 year from the date of the occupation of the building for its permitted use.
 - i) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998 (Tree Work).
 - ii) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.
 - iii) The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved tree protection and boundary fencing plan and particulars specified in the arboricultural appeal statement by Jonathan Fulcher dated April 2008 before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority.
- 10) The development shall not be occupied until the new boundary fencing shown on the approved tree protection and boundary fencing plan has been erected. The fencing so erected shall be retained thereafter.
- 11) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i) the parking of vehicles of site operatives and visitors
 - ii) loading and unloading of plant and materials
 - iii) storage of plant and materials used in constructing the development
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - v) wheel washing facilities
 - vi) measures to control the emission of dust and dirt during construction
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works.
- 12) The dwelling shall not be occupied until space has been laid out within the site in accordance with the approved plans for two cars to be parked. The space shall be kept available thereafter for its intended purpose.
- 13) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no windows/dormer windows shall be constructed on any part of the roof.

Appeal B

6. I grant planning permission for the construction of one detached four bedroom house including associated car parking on Land to the rear of 46 Gladys Avenue, Cowplain, Waterlooville, Hampshire PO8 8HS in accordance with the terms of the application, Ref 08/72647/001, dated 8 April 2008, and the plans submitted with it, subject to the following conditions:
- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The dwelling shall not be occupied until works for the disposal of sewage have been provided on the site to serve the development hereby permitted, in accordance with details to be submitted to and approved in writing by the local planning authority.
 - 3) The dwelling shall not be occupied until the installation of a surface water drainage scheme has been completed in accordance with the plans and specifications contained in the Hydrological Study Report by the Cowan Consultancy dated 27 May 2008.
 - 4) No development shall take place until details of external lighting, if any, boundary treatment and samples of the materials to be used in the construction of the external surfaces of the building and associated car parking and paving hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 5) No development shall take place until details of the provision to be made for the storage and disposal of refuse from the use of the dwelling have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. The dwelling shall not be brought in to use before the refuse storage facilities are completed.

- 6) No development shall take place until details of finished floor levels and existing and proposed ground levels (above ordnance datum) have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 7) The foundations of the building shall be designed and constructed using piles, beams and suspended floors in accordance with the recommendations contained in the letter from Jonathan Fulcher of Alderwood Consulting Ltd dated 12 May 2008.
- 8) In this condition "retained tree" means an existing tree which is to be retained in accordance with the plans and particulars set out in the letter and appendices from Jonathan Fulcher of Alderwood Consulting Ltd dated 12 May 2008; and paragraphs (i) and (ii) below shall have effect until the expiration of 1 year from the date of the occupation of the building for its permitted use.
 - i) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998 (Tree Work).
 - ii) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.
 - iii) The erection of fencing and ground reinforcement for the protection of any retained tree shall be undertaken in accordance with plan JF2 before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority.
- 9) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors
 - ii) loading and unloading of plant and materials
 - iii) storage of plant and materials used in constructing the development
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - v) wheel washing facilities
 - vi) measures to control the emission of dust and dirt during construction

- vii) a scheme for recycling/disposing of waste resulting from demolition and construction works.
- 10) The dwelling shall not be occupied until space has been laid out within the site in accordance with the approved plans for two cars to be parked. The space shall be kept available thereafter for its intended purpose.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no windows/dormer windows or other opening, other than those specifically authorised by this permission shall be constructed above the ground floor on the north or west elevations. The rooflights shown to be installed in the west facing roof slope shall be fitted with obscured glass.

Appeal C

- 7. I grant planning permission for the construction of one detached four bedroom house including associated car parking on Land to the rear of 40 Gladys Avenue, Cowplain, Waterlooville, Hampshire PO8 8HS in accordance with the terms of the application, Ref 08/68395/002, dated 18 March 2008, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The dwelling shall not be occupied until works for the disposal of sewage have been provided on the site to serve the development hereby permitted, in accordance with details to be submitted to and approved in writing by the local planning authority.
 - 3) The dwelling shall not be occupied until the installation of a surface water drainage scheme has been completed in accordance with the plans and specifications contained in the Hydrological Study Report by the Cowan Consultancy dated 28 April 2008.
 - 4) No development shall take place until details of external lighting, if any, boundary treatment and samples of the materials to be used in the construction of the external surfaces of the building and associated car parking and paving hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 5) No development shall take place until details of the provision to be made for the storage and disposal of refuse from the use of the dwelling have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. The dwelling shall not be brought in to use before the refuse storage facilities are completed.
 - 6) No development shall take place until details of finished floor levels and existing and proposed ground levels (above ordnance datum) have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
 - 7) The development shall not be occupied until the additional tree planting shown on the approved site layout plan has been carried out in accordance

with a planting specification previously agreed in writing by the local planning authority. Any tree or shrub planted in accordance with this condition which dies or is otherwise removed within five years of the date of the first occupation of the development shall be replaced with another of the same species and size in the same position during the first available planting season.

- 8) In this condition "retained tree" means an existing tree which is to be retained in accordance with the plans and particulars set out in the letter and appendices dated 30 April 2008 from Jonathan Fulcher of Alderwood Consulting; and paragraphs (i) and (ii) below shall have effect until the expiration of 1 year from the date of the occupation of the building for its permitted use.
- i) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998 (Tree Work).
 - ii) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.
 - iii) The erection of fencing for the protection of any retained tree shall be undertaken in accordance with plan JF1 before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority.
- 9) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- i) the parking of vehicles of site operatives and visitors
 - ii) loading and unloading of plant and materials
 - iii) storage of plant and materials used in constructing the development
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - v) wheel washing facilities
 - vi) measures to control the emission of dust and dirt during construction
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works.

- 10) The dwelling shall not be occupied until space has been laid out within the site in accordance with the approved plans for cars to be parked. The space shall be kept available thereafter for its intended purpose.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no windows/dormer windows or any other opening shall be constructed above the ground floor on the southern flank of the dwelling.

Main issues

8. Two main issues are common to all three appeals. They are the effects of the proposal on the character and appearance of the area and on the living conditions of neighbours. In addition, appeal A is concerned with the effect of the proposal on the safety and security of neighbours. Appeal B is additionally concerned with the effects of the proposal on the developability of adjoining land. A further issue relating to appeal A concerned the effect of the proposal on trees protected by a Tree Preservation Order. This issue has fallen away as the Council has withdrawn that reason for refusal.

Reasons

Character and appearance

9. For appeals A and B, the issue of character and appearance encompasses the principle of developing garden land, not at issue in appeal C. For all three appeals, the issue of character and appearance is concerned with matters of uniformity and conformity and also of subordination of the enclave where the proposals would be situated to the thoroughfare, Gladys Avenue off which it opens. I deal with each aspect in turn.

The principle

10. A previous appeal, reference APP/X1735/A/04/1149472 dismissed a proposal for five two storey houses which included four on land to the rear of 42 and 44 Gladys Avenue with the conclusion that the resulting street scene, looking eastwards, would be a panorama of residential development of such intensity and scale that it would appear more urban than suburban. Since then, permission has been granted for a lesser intensity of development, comprising three properties, including two in the rear garden area. Their construction has taken place.
11. The addition of the two sites of the three appeals before me would provide an area of developed rear garden land more or less double that proposed within the previously dismissed appeal. There would be about twice the space for the same number of dwellings as then proposed. The two houses already constructed have been numbered 44a and 44b. They are separated by a gap of about 2-3m. Their separation from either appeal A or appeal B on number 46 would be about 6-7m, a little less from appeal C on number 40. Such intervals between buildings are common in Gladys Avenue. As a result, the intensity and scale resulting from all or any of the current proposals, on their own or in combination with what has already been carried out, would be far less than found unacceptable in the previous appeal.

12. From Gladys Avenue the existing development would restrict full views of any of the buildings proposed until one has passed the rear walls of the houses which frame the entrance to the enclave. There would remain a clear view through from Gladys Avenue itself to the protected Lombardy Poplar so an impression of suburban spaciousness would remain. As the Council now accepts, neither appeal A nor appeal B would bring about the loss of any tree or hedge characteristic of the area. Only the actual footprint of either dwelling proposed would reduce the area of openness but would not represent excessive site coverage. I am therefore not convinced that the nature of the area is such that its development in the forms now proposed should be precluded from the general thrust of government advice set out in Planning Policy Statement 3 Housing (PPS3) and incorporated in the now lapsed policy H2 of the Havant Borough District-Wide local Plan, to secure a high proportion of housing development on previously developed land.

Uniformity and conformity

13. The two existing houses in the enclave are a handed pair. The appeal schemes would have a family likeness in terms of materials, to be secured by condition, and detailing but none would match the existing pair in height, width or form. In addition, neither scheme in appeals A and B would align with the existing houses in the enclave. But the two existing houses do not align. The topography of the site is dynamic and asymmetric. The layout of the highway within the enclave is organic, not formal. Therefore, there is no intrinsic merit in uniformity and a lack of uniformity matters little.
14. Within Gladys Avenue there are a number of bungalows and some houses originally of a uniform type but now much altered. These are interspersed with other, more individual dwellings of varying heights and forms, so the mixture of uniformity and individuality which is characteristic of Gladys Avenue would be reflected in the enclave by the different forms and eaves heights of appeals A, B and C. Although a building line is generally followed in Gladys Avenue, there are exceptions in which houses project or recede from their neighbours by a couple of metres, so the proposal in appeal A would not be uncharacteristic in doing the same.
15. The proposal in appeal B would have a façade turned at right angles to the others. This is not a feature of Gladys Avenue itself but Gladys Avenue is a through route so the houses run in a line from end to end as befits its nature. By contrast, the enclave is a cul-de-sac. Others in the area such as Dorrita Avenue and Kendal Close have dwellings set out so as to wrap around the end of the cul-de-sac. The layout of the proposal in appeal B would do no more than reflect the nature of the enclave.

Subordination

16. Many of the bungalows in Gladys Avenue, such as number 46, are relatively modest in size. The proposal in appeal A would have a larger footprint. Appeals B and C would have smaller footprints, but include an upper floor. Thus, all three appeal proposals would be more substantial than the existing bungalow at 46. However, that is also true of the two houses already built in the enclave, so the proposals would not be inconsistent with the character now established. Furthermore, other properties in Gladys Avenue, such as number

40, have a larger footprint and are two storeys. All three proposals would be less substantial than properties such as that example, so the proposals would appear larger than some properties in Gladys Avenue but subordinate to others. Collectively, the enclave, including all or any of the three appeals, would be neither dominant nor subordinate but would reflect the variety which exists in Gladys Avenue.

17. I therefore conclude that all three appeal proposals would be consistent with the character and appearance of the area. They would comply with saved local plan policy D1 which, amongst other things, seeks proposals which make efficient use of land, with a distinct identity, respecting local character in terms of siting, massing, scale, proportions, alignment, rhythm, layout, materials, spaces and views.

Living conditions

18. The site at the rear of number 46 backs on to the garden of number 8 Kendal Close. This is sited on lower ground. Appeals A and B would be elevated in relation to that property. Furthermore, the garden of number 8 Kendal Close is relatively short so that in Appeal A the overall dimensions between the two dwellings would be a little below 20m. This figure is used as a rule of thumb in Havant District to indicate the direct face to face distance which, of itself, would provide privacy. This dimension would not be achieved in the case of appeal A, so would need to be supplemented by screening.
19. The boundary between the two properties consists of a mature hedgerow with deciduous trees so that it would not provide a complete visual screen below the spread of their canopy or in winter. The tree protection and boundary fencing plan for appeal A shows the provision of a 2m close-boarded fence around the boundary to 8 Kendal Close and 48 Gladys Avenue. This would provide an effective visual screen in all seasons, which could be secured by condition.
20. The house at 8 Kendal Close is offset to one side so would not face the site directly. In consequence, the boundary hedge between 46 and 48 Gladys Avenue would also obstruct the line of view. As the proposal in appeal A would be a single storey bungalow, the combination of this evergreen hedge and the close-boarded fence would provide an effective barrier to ensure adequate privacy, provided no alteration is made to the roof to add rooms with windows at first floor level facing towards Kendal Close. This could also be secured by condition.
21. Appeal B would be a two storey property with most of its upper floor windows facing towards Kendal Close. It would be positioned much further away so that adequate privacy would be achieved by distance alone, without the need for further measures.
22. The dwellings in both appeals A and B would be sited more than 20m from the rear elevations of properties in Gladys Avenue. In any event the close boarded fence which exists on the boundary to number 46 would provide adequate privacy at ground floor level. Appeal A would be single storey and Appeal B would only have obscurely-glazed rooflights facing towards Gladys Avenue. This can be secured by condition. In consequence, neither proposal would result in unacceptable loss of privacy for properties in Gladys Avenue.

23. The house in appeal C would be more than 20m from the rear façade of number 40 Gladys Avenue. That relationship would be very similar to that existing between numbers 42/42a and 44a/ b. Adequate privacy would be achieved by distance alone. In addition there is room to plant street trees along the rear of number 40, as indicated on the site layout plan. Their provision could be secured by a landscaping condition.
24. Its relationship with number 44a would be the normal relationship between adjoining houses along a street. The normal, mutual, sideways overlooking of each other's gardens would occur, mitigated in this instance by the intervening roof of the proposed garage. There is nothing in this to indicate that the appeal should be dismissed.
25. Its flank wall would be about a metre and a half from the side boundary with the rear garden of number 38 Gladys Avenue, positioned towards its further end. No windows are shown in its flank elevation. This can be secured by condition. The house would be on the north side of the garden, so would cause no shadow. Its relatively shallow plan would extend for less than one-sixth of the garden's depth. In consequence its impact on the outlook from the garden of number 38 would be limited and far from oppressive.
26. I therefore conclude that all three proposals would result in acceptable living conditions for neighbouring residents. They would comply with the parts of saved local plan policy D1 which require developments to protect neighbours' amenities.

Safety and Security

27. In appeal A, the front garden of the dwelling would extend from the public highway to the side boundary of the rear garden of number 48 Gladys Avenue. In consequence, the latter would acquire increased significance in ensuring the security of number 48 Gladys Avenue but no more so than any side boundary to a rear garden facing a public area. At present the boundary is formed by a thick hedge, including holly in parts, but also including a trellis which provides easy footholds for effecting an entry. In similar situations in the vicinity the boundary is formed by a 2m close-boarded fence.
28. The tree protection and boundary fencing plan for appeal A shows the provision of a 2m high close-boarded fence along the boundary, supplemented by additional planting, which could be secured by condition. With this in place the side boundary would be as secure as the existing gate to the rear garden, positioned at the front of the house abutting its garage. I therefore conclude that the proposal would maintain the safety and security of neighbours to an adequate degree and would comply with the part of local plan policy D1 which requires developments to reduce the possibility of crime or anti-social behaviour.

Developability of adjacent land

29. Although the Council refused planning permission for both appeals A and B on the grounds that they would lead to the undesirable urbanisation of the area, local plan policy D2 requires that proposals should not prevent future access to potential development sites. The Council recognises that further potential development sites lie to the north of number 46 Gladys Avenue, even though it

fears that their development would have an undesirable effect on the character and appearance of the area. No proposal to develop further land is before me so I take no view on the desirability of further development. All that is before me is the question of whether appeal B would keep that option open, or close it down.

30. In the case of appeal A, there is no question but that the layout proposed would afford room for access to be taken to further land. In the case of appeal B, the dwelling proposed would be differently positioned, about 6.2m from the rear garden fence of number 46 Gladys Avenue. A sketch layout produced by the appellant seeking to demonstrate that an acceptable access could be produced within this space failed to convince me in every detail because it retained a pinch point around a parking space belonging to number 44 Gladys Avenue. Nevertheless it provides sufficient information to demonstrate that, with adjustment, an access could be inserted past the location of the dwelling proposed with sufficient width in terms of the government's Manual for Streets and with a clear view from end to end as sought by the Council's Transport Engineer.
31. The proximity of such an access to the fence at the rear of number 46 and the largely blank wall of the dwelling proposed in appeal B would be similar to other narrowly confined accesses which I saw in the neighbourhood. Given the limited amount of development which the access might serve, disturbance to the flanking properties would be similarly minimal and acceptable. I therefore conclude that appeal B would not unduly restrict the developability of adjacent land. It would comply with local plan policy D2.

Flooding and other matters

32. Local residents are concerned with the potential for the developments to cause flooding to adjoining land through surface water run-off. For appeals B and C I have hydrological study reports which recommend the provision of underground storage tanks to attenuate the rate of run-off from hard surfaces to a rate no greater than that which exists at present. There is no evidence to demonstrate that they are sized other than for the conditions specified in the residents' own hydrological report.
33. Although this would not cure existing surface water flooding, nor remove the blockages to existing drainage ditches which are noted in the residents' report, I am satisfied that with these measures in place, secured by condition, appeals B and C would make matters no worse. The proposals would therefore comply with saved local plan policy US4 and also with the now lapsed policy F2.
34. For appeal A, there is no hydrological report to show the size or position of surface water storage tanks but the principle is established and accepted. The omission is not advanced as a reason for refusal of appeal A. I have no evidence to show that adequately-sized storage tanks cannot be provided. With a condition to require the submission of details of these, I am satisfied that this consideration and others advanced by third parties do not lead me to a conclusion which differs from those which I have reached on the main issues.

Conditions

35. In the event of my allowing these appeals, the Council suggests a number of conditions which I have considered in the light of government advice contained in circular 11/95, the Use of Conditions in Planning Permissions. In addition to those conditions already discussed, details of sewage disposal, refuse disposal and, in the cases of appeals B and C, boundary treatment, need to be provided. To ensure that the proposals would sit comfortably within the sloping topography, details of floor levels in relation to ground levels need to be provided. The protection of trees needs to be secured by foundation design and protective fencing as specified in the various arboricultural reports relevant to each appeal. In view of the restricted dimensions of the existing cul-de sac a construction method statement is necessary for the duration of the construction and off-street parking provision is required for the constructed developments.
36. I have not imposed conditions requiring sight lines for the accesses because the developments are shown to be open plan at the front. Other than to secure the additional planting specified in appeal A and to secure the street tree planting referred to in appeal C, there is no evidence to demonstrate the need for the Council to approve the planting of private gardens, so I do not impose a general landscaping condition. In so far as construction hours of work would not be indicated in the construction method statement, they are more effectively controlled by environmental health legislation than by planning control. I have imposed restrictions on permitted development rights to those situations where I have evidence that the exercise of those rights would cause harm, so I have not included conditions imposing a more general restriction, which lacks justification.

P. W. Clark

Inspector

APPEARANCES

FOR THE APPELLANT:

Christopher Ward BA MRTPI	Director, Bryan Jezeph Consultancy, The Gallery, 3 South Street, Titchfield, Hampshire PO14 4DL
Paul Bennett	Green View Cottage, Football Green, Minstead, Hampshire SO43 7FQ

FOR THE LOCAL PLANNING AUTHORITY:

Robert Ainslie DipTP MRTPI	Development Control Team Leader, Havant Borough Council
Tracey Ford BEng MEng	Sustainable Transport Engineer, Havant Borough Council

INTERESTED PERSONS:

Councillor David Keast	Havant Borough Council
Robert Hornbuckle	54 Gladys Avenue, Cowplain, Hants PO8 8HS
Julie Hornbuckle	54 Gladys Avenue, Cowplain, Hants PO8 8HS
Jane Wells	8 Kendal Close PO8 8ET

DOCUMENTS

- 1 Saved policies direction 18 June 2008.
- 2 Environmental Assessment Services Ltd, Review of Hydrological
Issues and Consequent Flood Risk



Costs Decisions

Hearing held on 1 October 2008

Site visit made on 1 October 2008

by **P W Clark MA MRTPI MCMI**

an Inspector appointed by the Secretary of State
for Communities and Local Government

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
10 October 2008

Costs application in relation to Appeal Ref: APP/X1735/A/08/2068016 Rear of 46 Gladys Avenue, Cowplain, Waterlooville, Hampshire PO8 8HS

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Meon Valley Developments Ltd for a full award of costs against Havant Borough Council.
- The hearing was in connection with three appeals including this one against the refusal of planning permission for construction of one single storey bungalow including associated car parking.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

Costs application in relation to Appeal Ref: APP/X1735/A/08/2078274 Land to rear of 46 Gladys Avenue, Cowplain, Waterlooville, Hampshire PO8 8HS

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Meon Valley Developments Ltd for two partial awards of costs against Havant Borough Council.
- The hearing was in connection with three appeals including this one against the refusal of planning permission for construction of one detached four bedroom house including associated car parking.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

The Submissions for the appellant

1. The hearing dealt with three appeals, A, B and C. The application is for a full award of costs in respect of Appeal A and two partial awards of costs in respect of appeal B. An aspect of the claim for appeal A is identical to the first partial claim in respect of appeal B. Reference is made to paragraphs 9, 12 and 15 of Annex 3 of Circular 8/93. No application is made in respect of appeal C.

Appeal A

2. Officers recommended approval. Members disagreed. The first reason for refusal concerns urbanisation. The hearing has debated both "any development" and "design specific" aspects of spaciousness. Opposition to "any" development is contrary to firm advice contained in the local plan until the day before the hearing and to the government's PPS3. It is also contrary to the previous decision to allow a cul-de-sac with two houses to be constructed in the backland. The turnaround is contrary to policy.
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3. The second reason for refusal concerned the impact of the proposal on a tree subject to a preservation order. There was no objection from the Council's tree officer or from other officers. The relationship of the tree to the proposal was identical to its relationship to the previously approved development of the cul-de-sac. Therefore there was no ground to suppose that the proposal would have an adverse effect on the tree. The tree reason for refusal has now been withdrawn, so the members had no firm ground for refusal. The necessity of getting an arborist's report made it possible for officers to go back to members to withdraw the reason for refusal but incurred unnecessary expense.
4. The third reason turned on non-conformity with a building line. But there is no suggestion of a need for uniformity and no fixed building line.
5. The fourth reason concerned security of an adjacent dwelling. There is no justification for putting the security of number 48 Gladys Avenue over others, or for deciding that a 2m fence would be insecure in the face of other examples.

Appeal B

6. It is accepted that officers recommended refusal of appeal B but only on access grounds. Officers told members emphatically that the reasons for refusal of appeal A should not be carried over to appeal B. Members again referred to undesirable urbanisation and to siting forward of a building line. There are no firm reasons for that judgment, given officers' advice, so the first claim in respect of appeal B is a partial one, in respect of those two reasons for refusal.
7. A separate partial claim is made concerning the access reason for refusal. A dimension of 6.2m must be self-evidently wide enough to get an access way through. Highways officers had not considered or commented on the application at the stage when the decision was made, their evidence has only been adduced later. There are examples of equally narrow accesses approved by the Council nearby. The previous case on the Council's agenda had led to the approval of an access to two houses through a gap just 4m wide.

The Response by the Council

Appeal A

8. The case officer had recommended approval. But that was a balanced judgement. It took into account the benefits of the efficient and effective use of land. But members will have local knowledge and understanding. PPS3 places considerable weight on the efficient and effective use of land but always tempered by consideration for the character of an area. Likewise, concerning siting and alignment, members took the view that these were important and that the proposal would have an adverse impact.
9. Concerning the tree, although the Council's tree officer made no objection, members did not have the benefit of an impact statement. The objection was withdrawn at the earliest moment possible. The appellant was told about four weeks prior to the Hearing that a recommendation for withdrawal would be made.

10. Members felt that the development would increase the security risks to neighbours. There is a relevant policy, D1. Members had a right to take a different view from officers.

Appeal B

11. If members felt that the first application was unacceptable in terms of its alignment, they would certainly say the same of the second. It needed to be marked up as a reason for refusal.
12. The access issue was not just a matter of physical practicality. In fact the consideration was adequate access not compromising the amenity of adjacent occupants.
13. If there is a chance of backland development occurring, then a proposal must comply with policy D2 on a contingent basis. There is therefore no inconsistency between the first reason for refusal and the Council's opposition to the backland development for the other two reasons.
14. The recommendation was again a balanced one. It was not unreasonable for members to take a different view from officers.

Conclusions

15. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
16. Issues of character and appearance are very often a matter of subjective judgement, so the lack of objective documentary evidence from the Council is not necessarily conclusive. But what I saw on my site visit and what is shown on the applications are both at odds with the Council's stated perception of the site and the proposals. Furthermore, the Council's decision was inconsistent with its previous decision on the cul-de-sac which has now been developed. On both accounts, the Council's decision on the first and third reasons for refusal of appeal A and the second and third reasons for refusal of appeal B are unreasonable.
17. The second reason for refusal of appeal A was not withdrawn because the proposal was amended in any way but on the occasion of the Council being informed of the appellant's evidence that would be put before the hearing. That evidence did not tell the Council anything which it did not already know as a result of the previous applications on the adjoining site. From that, it should have known that its concerns could have been met by conditions. Its reason for refusal was therefore unreasonable. No time was spent at the hearing on this point but the appellant could not be sure of that until the Council actually made its decision to withdraw, despite prior warning of officers' recommendations. Therefore the appellant incurred unnecessary costs up to the point where he was informed of the Council's actual withdrawal.
18. Although crime prevention is a proper concern of planning, the Council's point in relation to this case was simply and adequately met by an amendment to the scheme. This was made before the Council took its decision. It could have

been secured by condition, as I have done in making my decision. The Council's reason for refusal was inconsistent with its lack of concern relating to a very similar situation which would result from appeal C, where it did not form part of the reasons for refusal. The Council had a similar lack of concern for the similar opening up of side boundaries which resulted from the original approval of the development of the cul-de sac which has now been built. The Council's inconsistency and its failure to deal with the point by condition amount to unreasonable behaviour.

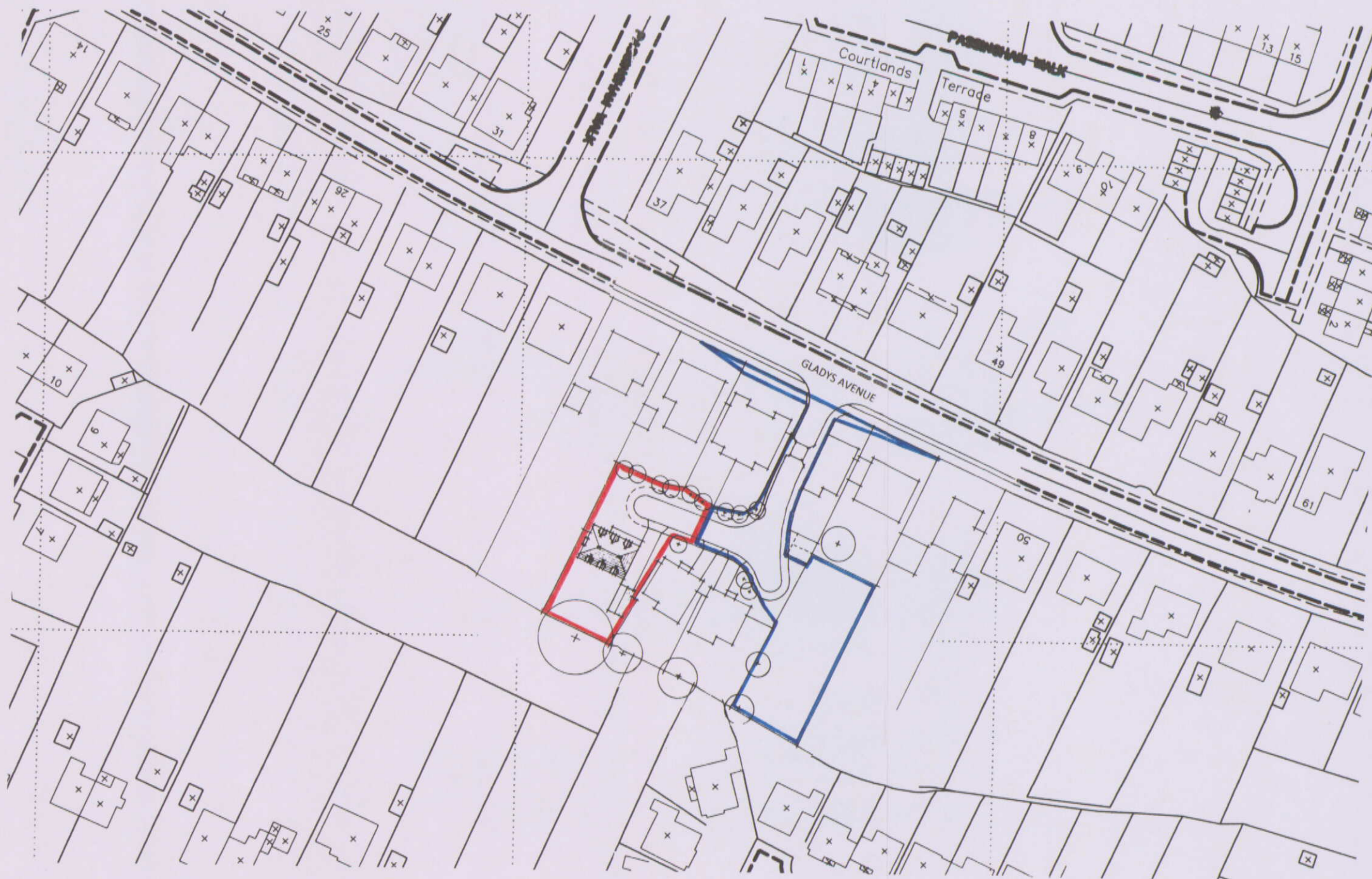
19. I saw several other developments in the vicinity, which the Council has permitted, involving accesses to backland developments. In these, the accesses passed as close to the windows of other dwellings or their rear gardens as anything implied by appeal B and appeared to have no better end to end visibility than that which could be achieved in the case of appeal B. In the light of what I saw, it appears to me that the Council has behaved inconsistently, which is unreasonable.
20. I conclude that the Council has behaved unreasonably in relation to all reasons for refusal in both appeals. The two partial claims for appeal B amount to the full costs associated with that appeal. The claims therefore succeed but as the two appeals were conjoined with a third appeal in one hearing, the award is limited to the costs incurred in appeals A and B only.

Formal Decisions and Costs Order

21. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that Havant Borough Council shall pay to Meon Valley Developments Ltd, the costs of the appeal proceedings limited to those costs incurred in relation to appeals A and B, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned three appeals under section 78 of the Town and Country Planning Act 1990 as amended. Appeal A was against the refusal of planning permission for construction of one single storey bungalow including associated car parking and appeal B was against the refusal of planning permission for construction of one detached four bedroom house including associated car parking both on land at Rear of 46 Gladys Avenue, Cowplain, Waterlooville, Hampshire PO8 8HS. Appeal C, heard at the same hearing, was against the refusal of planning permission for the construction of one detached four bedroom house including associated car parking on land to the rear of 40 Gladys Avenue, Cowplain, Waterlooville, Hampshire PO8 8HS. This was not the subject of a claim for costs.
22. The applicant is now invited to submit to Havant Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Supreme Court Costs Office is enclosed.

P. W. Clark

Inspector



BLOCK PLAN

HAVANT BOROUGH
COUNCIL

19 MAR 2008

RECEIVED

Project :

Land to rear of 40 Gladys Avenue, Cowplain

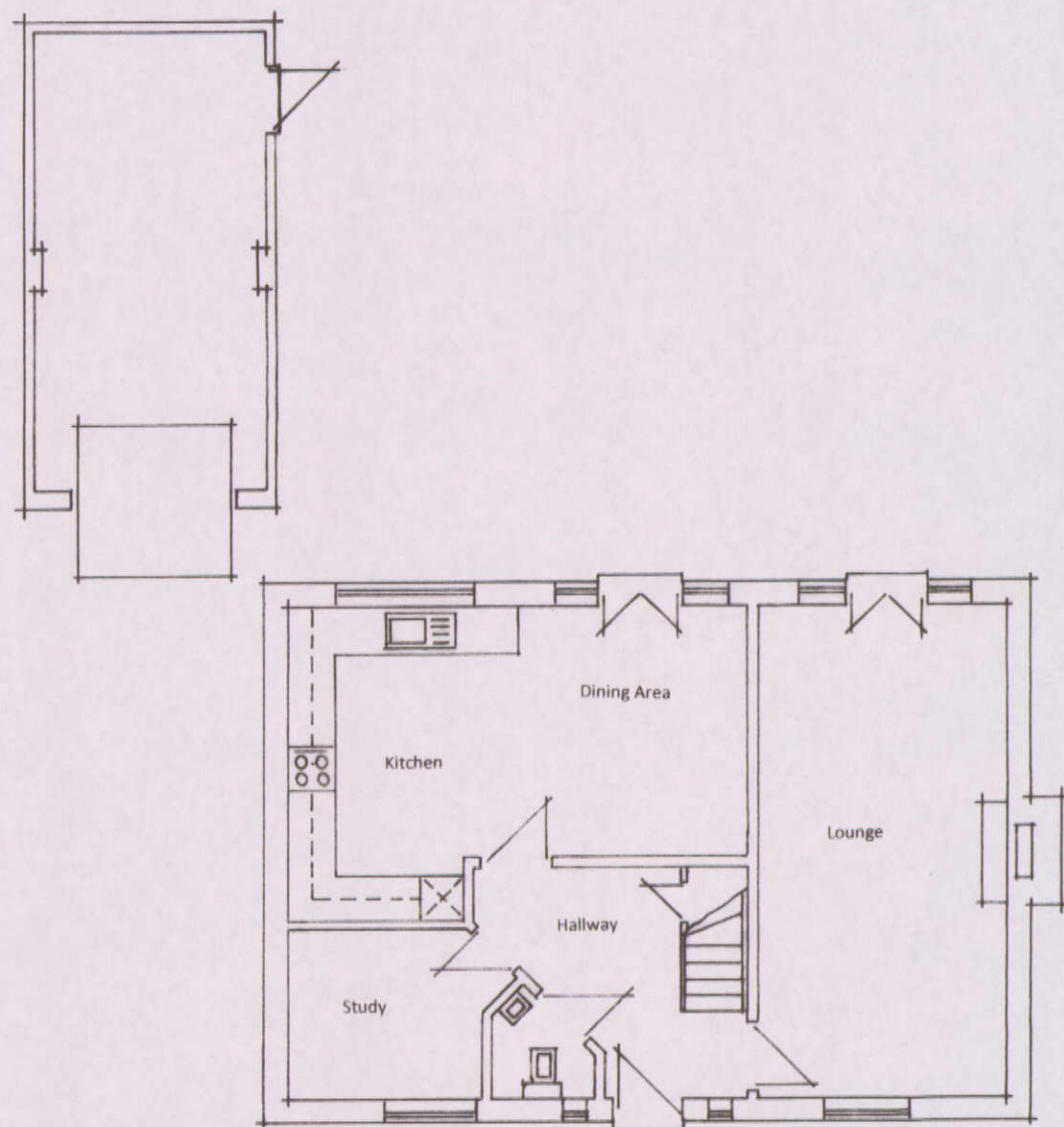
Title :

Block Plan

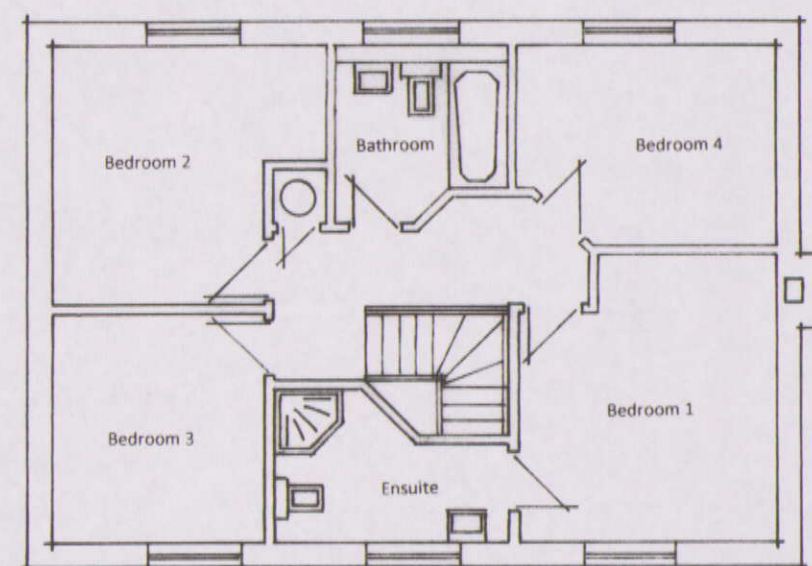
Scale - 1 : 1000

Date - February 2008

Meon Valley
Developments Limited



GROUND FLOOR PLAN



FIRST FLOOR PLAN

HAVANT BOROUGH
COUNCIL
01 APR 2008
RECEIVED

Project :	
Land to rear of 40 Gladys Avenue, Cowplain	
Title :	
Floor Plans	
Scale	- 1 : 100
Date	- February 2008
<i>Meon Valley</i> Developments Limited	

Rev. A - Garage door added

APPENDIX 3

Details of planning
permission at 8 London
Road, Widley

APPENDIX 4

Photograph of new
dwelling at 8 London
Road, Widley

Approved London Road New Build with Loft Under Construction

Larger bungalow being built in smaller plot of rear garden with worse overlooking issues than Gladys Avenue

Area is a few miles from Gladys Avenue in an almost identical geographical area with properties of similar age style and garden lengths.



Bungalow will sit behind the gate in the foreground and be overlooked by the building currently being extended.

Distance from boundary to the lounge bay is 5.6m
From the boundary to the front door is 5.775m
From the boundary to the bathroom is 7.675m