

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL AGAINST REFUSAL OF PLANNING PERMISSION

**Demolition of existing dwelling and erection of 2 no. semi-detached 3 bedroom houses and
1no. 2 bedroom bungalow with associated garages and parking
at 28 Lodge Road, Havant, PO9 3LL**

LPA APPLICATION NO. APP/13/00064

APPEAL NO. APP/X1735/A/13/2208899

APPELLANTS' STATEMENT OF CASE

1.0 INTRODUCTION

- 1.1 This appeal is against a planning application that was made for the construction of a scheme for three residential units.
- 1.2 This statement builds on the Grounds of Appeal that formed part of the appeal submission and draws primarily on the reasons for refusal set out in the Decision Notice. It looks to the officer's published report for the local planning authority's reasoning in reaching its decision. In addition the statement addresses issues raised by consultees and other third parties where they are on the public record.

2.0 GROUNDS OF APPEAL (AS SUBMITTED)

2.1 1.0 REFUSAL REASON 1:

1.1 The refusal reason cites only one local plan policy (C16) which is concerned with achieving high quality in the design of development. It is a criteria based policy which requires specific analysis of the scheme design against a series of objectives. Such analysis is largely subjective but can be tested against published good practice and examples of schemes that exist elsewhere which have similar characteristics.

1.2 Analysis of the policy criteria with reference to the advice in the Borough Design Guide(December 2011) SDP, comparison with schemes built elsewhere and in the context of acknowledged good practice, demonstrates that the LPA is incorrect in its assessment. The scheme has been carefully designed to fit comfortably into the existing character and layout of the area and would not be detrimental to the amenities of the area. The street scene that will exist following the completion of the development is shown in the submitted drawings (212.07/08).This, together with the site layout (212.07/04C), demonstrates that the completed development will not be detrimental in any respect to the existing character and appearance of the area and exhibits a high standard of design.

1.3 The design is well above the level set out at paragraph 56 of the NPPF which asks for 'good design'. It is also clear from NPPF paragraph 64 that the test to be applied is that permission should be refused only if the development is "...of poor design..." The scheme is designed to be well above the level of design quality that the NPPF requires.

2.2 2.0 REFUSAL REASON 2:

2.1 The proposed driveway and hard-standing will not, as the LPA claim, be detrimental to the interests of the occupiers of the adjoining dwellings, both new and existing. The proximity of the drive and hard-standing is not unusual and is indeed a common relationship that can be observed in many developments elsewhere.

2.2 Examples of similar development configurations can be observed at Bedhampton Hill, Lower Road, Glebe Park Avenue, Firlands Rise, Beverley Grove, Park Lane and Leigh Road all of which are within the P09 post code area. Indeed, the arrangement whereby access and parking is alongside boundaries to rear gardens is illustrated in design literature such as in figure 8.12 of Manual for Streets (DCLG/DfT 2007) as acceptable practice and is used extensively in many schemes including, for example, the award winning Poundbury development in Dorchester. A robust boundary structure that can be controlled by a planning condition will reduce any risk that use of the proposed drive will cause unacceptable negative impacts on the occupiers of the existing neighbouring dwelling (26 Lodge Road). The relationship with the proposed dwellings is an acknowledged acceptable design solution that incorporates shared private drives. Such an approach is recommended by the Council's Design Guide SPD at paragraph 5.22. The scheme is not contrary to local planning policy C16 and is fully in accordance with the NPPF.

2.3 3.0 REFUSAL REASON 3:

3.1 The appellants will address this refusal reason by entering into a planning obligation to pay the required contributions through the submission of a section 106 Unilateral Undertaking. However, the introduction of the Community Infrastructure Levy (CIL) should replace the requirement for a s106 Obligation and result in this reason for refusal being withdrawn by the Borough Council.

2.4 4.0 GENERALLY

4.1 The appeal proposals have been carefully designed to meet the requirements of the adopted local planning policies and those contained within the National Planning Policy Framework. The Council was therefore wrong to refuse planning permission.

4.2 The appellant reserves the right to develop these grounds of appeal in a further statement in due course. Government guidance and advice, together with other references, may be drawn on in support of the case against the refusal of planning permission.

NB The refusal of planning permission is dated 22nd May 2013 and as such this appeal falls to be considered under the pre 3rd October 2013 procedures.

3.0 PLANNING POLICY

National Planning Policy Framework (NPPF)

- 3.1 The basis of planning policy is grounded in the National Planning Policy Framework (NPPF) 2012. It sets out the requirements of Government with which every local planning policy and decision must accord. A 'golden thread' running through the NPPF is the presumption in favour of sustainable development. Sustainable development, whilst being given no clear definition, has three stated dimensions: economic, social and environmental. Seeking sustainable development, the NPPF advises, means pursuing positive improvements in the quality of life of people including widening the choice of high quality homes.
- 3.2 The proposed development is aimed at replacing an existing dwelling that is of an older design and of poor quality, particularly in respect of its construction, appearance and energy efficiency, with three new high quality homes. These will provide a range of accommodation for families in homes that will be efficient and highly sustainable.
- 3.3 The NPPF is clear that good design is a key aspect of sustainable development. It should take the opportunity to improve the character and quality of an area and the way it functions. The proposal is designed to respect the character of the area through careful siting of the buildings and a thorough attention to architectural scale, detail and the choice of materials. In addressing the design of new development the NPPF makes it clear that the test as to whether to refuse development relates to "*...poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions*". The appeal proposal is of a high standard of design and reflects the architectural character of the locality as well as the pattern and grain of development that has evolved in the area. It will replace a poorly designed house with three new houses of high quality and in so doing will enhance the character and quality of the area.
- 3.4 The NPPF requires that, in accordance with planning law, applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise and due weight should be given to relevant policies in existing plans prepared prior to the publication of the NPPF in March 2012. However, at paragraph 197 the NPPF states quite clearly: "*In assessing and determining development*

proposals, local planning authorities should apply the presumption in favour of sustainable development." The site location and form of development are highly sustainable and so the presumption in favour applies in this case.

The Havant Borough Core Strategy 2011

- 3.5 The HBCS, adopted in March 2011 (which predates the NPPF) provides the most recent local planning policy and its policies are relied upon by the Borough Council in its refusal reasons, which are addressed below. In addition to the policies that are referred to in the refusal reasons are policies that encourage development of the type that the appeal scheme proposes.
- 3.6 New housing is encouraged by Policy CS9 and its construction to Level 3 of the Code for Sustainable Homes by CS14: Efficient Use of Resources. The replacement of a single poorly performing home by three high performing homes is consistent with planning policy.

4.0 STATEMENT OF CASE

- 4.1 The rejection of this proposal by the local planning authority is based primarily on design grounds, as has been outlined above. Both the principal reasons for refusal are based on subjective assessments of the proposal by the council's planning officers, in the context of the council's policies and guidance. However, these assessments are not robust and do not stand up to proper analysis either in the context of good design practice or the tests established by the National Planning Policy Framework.
- 4.2 The broad principle of developing backland sites is one that is clearly acknowledged as being acceptable and is illustrated by the numerous examples of similar forms of residential development that have been approved in the area in the recent past (see Appendix 1). The first reason cites 'tandem development' and claims that it is both 'out of keeping' with the character and 'detrimental to the amenities' of the area. To explore what this rather vague summary might mean it is necessary to consider the officer's report and what it may say on these issues. The key passages are contained within Section 7 and are based on the policy criteria under seven headings.
 - (i) Principle of development.
- 4.3 The report concludes that the development is acceptable subject to other criteria.
 - (ii) Effect on the character of the area and street-scene
- 4.4 The principle of the proposed semi-detached houses is considered acceptable by the report's author who expresses the view that the pair would be architecturally consistent with other houses in the area, albeit slightly narrower. As can be seen from the submitted street scene (Drawing No. 212.07/08) the design of the existing houses and bungalows in Lodge Road is varied in terms of height, width and roof form. Architecturally the proposed houses take their design cues from the range of details and forms that are exhibited in the fairly eclectic patterns that exist in the immediate area.
- 4.5 The report continues by inaccurately claiming that the need to serve the proposed bungalow from a new drive will adversely impact on the setting of the dwellings and that this will be caused by both the parking and bin store. However, there is no 'bin store' proposed at the front of the dwellings, only a 'bin collection area', to be used on bin collection days, which is screened by landscape planting. This will ensure that the appearance of the area can be improved by reducing the somewhat tawdry sight of bins

placed in open view on the kerbside. The car parking spaces at the front are also proposed to be screened and will be considerably less visible than the numerous vehicles parked on nearby driveways along Lodge Road, close to the footpath and in full public view. Again, the design solution is aimed at improving the street scene. The proposed access to the bungalow is formed as a shared driveway with one of the two semi-detached houses and is not therefore going to be seen as anything other than a normal drive that looks similar to the rest in the street scene. Indeed, only a small area of drive nearest the road will be visible from the street as most of the appeal site will remain screened by the boundary planting.

- 4.6 The report goes on to assert that because there is a further property proposed to the rear it must be a 'discordant' form of development. However, this assumes that the new development to the rear will be visible from the street, which it will not. This sort of arrangement is characteristic of the local area and as can be seen from Appendix 1, there are numerous examples of similar types of residential development that have occurred in the locality and that have taken place on sites to the rear of existing development. The principle of such an approach cannot, therefore, be considered either unacceptable or 'discordant' because of it being in some way an alien urban form. Analysis of the various other developments nearby shows that the particular characteristics exhibited by the development in respect of the land to the rear are neither unusual nor unacceptable. Indeed, the Council's Design Guide is clear in its acceptance such an approach:

"5.25 Havant Borough Council acknowledges that backland and infill developments have a role to play in delivering the council's housing and development targets."

- 4.7 Examples are documented at Appendix 1:

- Land to the rear of 41 Bedhampton Hill: This development was granted planning permission by the council (Ref.04/52260/005) on land that required private drive access alongside the rear garden of the existing dwelling and includes one single and two 2 storey dwellings that face directly onto the rear of an existing house and a further dwelling that looks onto the rear garden of one of the new houses. Notwithstanding this, they appear to function well and provide a pleasant environment for all the residents.
- 28 and 28A Bedhampton Hill comprises an existing house (28) fronting Bedhampton Hill with a new single storey dwelling (28A) built behind and which is accessed by a private drive alongside the entire eastern boundary No.28. As with 41 above, there appear to be few, if any, problems with the arrangement.
- 70 to 72B Lower Road is a small group of two storey houses sited close to Bedhampton Hill and accessed from Lower Road by way of a long private drive that passes the full length of the rear garden of No 70. The arrangement appears to function perfectly satisfactorily.
- 5, 7 and 9 Lodge Road are an integral part of the mature Lodge Road development and all face directly towards the rear of 28, 30 and 32 Lower Road, the rear gardens and garages of which gain access from Lodge Road. There do not appear to be any problems either functional or social as a result of this arrangement.
- Glebe Park Avenue and Firlands Rise show backland sites successfully developed with characteristics that include driveways alongside gardens, two storey dwellings facing directly onto the rear of adjoining houses and the juxtaposition of gardens and access driveways so that both can exist in harmony through the judicious use of robust boundary treatments and clever landscape planting.

- 4.8 The Council's report goes on to assert that the new development would be "cramped" which implies that the site is not of sufficient size to accommodate the development. However it later concedes that "...the division of the plot would leave acceptable garden sizes..." The facts demonstrate this latter statement is true. The site is 0.12ha and three dwellings are proposed resulting in a proposed density of 25 dwellings per hectare or about 10 per acre, which is an average suburban density. The individual plots provide, as the report concedes, more than adequate garden amenity space with garden lengths of 10m or more. There are no adverse issues raised by this aspect of the scheme.
- 4.9 It is a fundamental principle of planning policy and practice that the control of development is undertaken in the public interest such that planning decisions to refuse permission should be made only if the public interest is materially compromised. In respect of the effect on character and street scene, the rear bungalow has little or no impact and the proposed semi-detached houses are architecturally consistent with the rest of the street. The view into the site from the street will continue to include substantial soft landscape planting providing a setting for the houses and driveways similar to that of the other dwellings in Lodge Road. It must follow that there will be no material harm to the character of the area or to the street scene from the appeal proposals.

(iii) Effect on existing residential properties

- 4.10 The report assumes that it is unacceptable for a single private driveway to be located adjacent the garden of another dwelling. This is clearly not the case as such arrangements are part of the urban fabric of villages, towns and cities all across the country. Indeed, as can be seen in Appendices 1 and 2, they can be found locally, nationally and in the professional literature espousing good practice. The Council's own Havant Borough Design Guide SPD acknowledges that design solutions incorporating rear courtyard parking are acceptable and provides advice for such circumstances:

5.22 Private rear boundaries must be masonry walls and not fences to limit the impact of noise and disturbance on residents.

- 4.11 Of particular relevance is 41 Bedhampton Hill, referred to above and in Appendix 1, which is less than 100m from the appeal site and is located between the rear gardens of houses fronting Bedhampton Hill and Lodge Road (Nos.15, 17 and 19). This 'backland' development is a successful development that does not distract from the character of the area or cause any unacceptable amenity impacts. It has an access drive that passes alongside the rear gardens of adjoining houses and exhibits 'tandem development' characteristics without causing any reason to be concerned about amenity or the area's character.
- 4.12 Other developments located nearby also demonstrate how new development with similar characteristics have been assimilated into the urban fabric without ill-effect, as the examples identified above and in Appendix 1 demonstrate. There are houses that both face the rear of other properties and are accessed, either by private drive or public highway, close to the boundaries of other houses and their rear gardens.
- 4.13 The question is raised as to whether the design of the appeal proposal is such that there are likely to be any unacceptable impacts on adjoining properties. Firstly, the proposal is for only one driveway serving one additional dwelling and so the quantum of activity will be minimal - far less than would occur with a courtyard parking arrangement along the lines described in the Council's Design Guide SPD as being acceptable. Secondly, the construction of a robust barrier, as recommended at paragraph 5.22 of the Council's Design SPD, will prevent any un-neighbourly interaction and thirdly the limiting of the rear

dwelling to single storey ensures that there will be no possibility of either overlooking or overshadowing from it. Indeed, in many cases in the area similar boundaries have only a close boarded fence between the private rear garden of a house and a drive or road providing vehicular access to other properties at the rear. Because of the 'triangular' plot shapes in this part of Lodge Road the distance between the new bungalow's access and No.26 increases as the drive passes further to the rear. At its closest point it is 3m from the existing house with a garage between the dwelling and the boundary. This compares very favourably with the arrangements that can be seen elsewhere and which are considered by the Council to be acceptable.

- 4.14 The closest property to the garden of 28 Lodge Road is 12 Brookside Road. It is at a lower level and at an acute angle to the proposed development. The scheme will include a new fence and the re-planting of the boundary to provide substantial tree and shrub screening. The external rear garden of the property will be made more private than it is now and the first floor bedroom windows will then be protected from view by this new boundary treatment and landscape planting within the site of the proposed new bungalow (Appendix 3). Analysis of the relationships shows that:

- The main habitable rooms of the proposed bungalow face the rear garden, of No.12, not the house.
- The only bungalow window facing (obliquely) towards No.12 Brookside is that of the kitchen/dining room and the distance between the nearest first floor window of 12 Brookside and that window is 19 metres. There is a retained tree (Tr.12) between the two windows.
- In addition, the boundary between No.26 Lodge Road and No.12 Brookside is very well planted and is high enough to screen the whole of No.12's garden.
- There is a new (min.) 1.8m high acoustic fence proposed between the appeal site and the garden of No.26 Lodge Road, which will also restrict views of the proposed bungalow from No.12.
- The proposed bungalow will not overlook any of the garden of No.12.

The finished ground floor level of the proposed bungalow will be 13.24m, resulting in an eaves level of 15.34m. The Council acknowledges in the report that the bungalow proposal would not result in any loss of privacy or outlook for any adjoining existing dwellings.

- 4.15 Despite the claim that there are specific objections relating to the design there is no objective analysis to support the Borough Council's Refusal Reasons. The Council's refusal is based entirely on a broad disapproval of the principle of development which has been distorted into a bogus argument about amenity because the principle is clearly acceptable, as the evidence demonstrates.

(iv) Consideration of residential amenity of future occupants

- 4.16 Although the Borough Council acknowledges that garden sizes are acceptable it again assumes that a private drive adjacent a garden is unacceptable in principle. It is not. Evidence is extensive that such arrangements are perfectly acceptable and there is nothing in the case of the appeal scheme that can lead to a different conclusion in this case.
- 4.17 In considering the scheme the Borough Council clearly accepts that there will not be any overlooking of the proposed dwellings. The distances between the dwellings, including towards the new bungalow from other dwellings, both proposed and existing, are not unusual or unacceptable. The closest is the rear of No. 12 Brookside Road which sits well

below the level of the appeal site and thus the proposed bungalow (Appendix 3 - Drawing No. 212.07/16). This difference in levels means that the proposed bungalow will sit at a similar elevation to the first floor of the adjoining house thus ensuring the effectiveness of boundary fencing and new planting.

4.18 As can be seen from the photograph taken looking south-east from the site of the bungalow (Appendix 1) there is currently a fence and landscape planting between the dwellings which effectively screens views into the site. It is proposed that this will be reinforced and where necessary replaced by the landscape and boundary proposals that form part of the appeal scheme. These will be detailed and implemented in accordance with standard planning conditions.

4.19 The rear of the proposed house faces the side elevation of the proposed bungalow which has no windows in the key elevation (see Drawing no. 212.07/07B) and so there are no amenity issues raised in that relationship.

(v) Highways implications

4.20 There are no highways objections or any suggestion that the car parking arrangements are other than acceptable. The appeal scheme is in accordance with the Council's policies for car parking and access.

(vi) Impact on trees

4.21 The proposals for tree care and landscape are accepted by the Council. Planning conditions related to the protection of trees, landscape management and the design and provision of new landscape planting will form an integral part of any planning permission and is acknowledged by the appellants as an necessary basis for a planning permission.

Community Infrastructure Levy

4.22 The Council has advised that the appeal scheme will now fall to be considered under the new Community Infrastructure Levy (CIL) arrangements and the appellants acknowledge that there will be a CIL liability as a consequence of approval of planning permission. The Council has informed the Appellant that it will not be pursuing Refusal Reason No. 3.

5.0 CONSULTATION AND THIRD-PARTY RESPONSES

5.1 None of the comments of the various consultees raise any objections that should result in the proposals being rejected. Some made more detailed comments and suggestions:

Arboriculturalist:

5.2 scheme acceptable subject to conditions;

Hampshire Constabulary:

5.3 The police advise on security measures and in this case suggest a type of door lock for the bungalow, locks for the gates and lighting to the private drive.

Highways Officer:

5.4 Although the Highways Contribution detailed in the response will now be collected through the Borough Council's new CIL payment system. There is adequate car parking despite the under-sized garage that is referred to in the response. As a result no objections are made subject to there being a planning condition to ensure that the first five metres of the drive will be constructed from a non-migratory surface material.

Interested Parties

5.5 There have been a number of letters from interested parties.

14 Lodge Road:

5.6 This property is approximately 50m from the entrance to the appeal site. The writer, Mr West, fully supports the letter of Mr Tate (No 24).

20 Lodge Road

5.7 Agrees with No.24

21 Lodge Road

5.8 Primarily concerned with traffic issues, which do not form part of the reasons for refusal, and agrees with No 24.

22 Lodge Road

Agrees with No.24

24 Lodge Road:

5.9 This letter is the most comprehensive of the responses received by the local planning authority from the local area. Mr Tate objects to the application and makes some detailed comments and suggestions. The appellant's response is as follows:

- Widening of access: there will be some change to the driveway but it will not be significant and will not affect the highway beyond the site boundary.
- Permeable surfaces are proposed for the driveway and footpaths.
- There are no proposals for changing the existing turning head of Lodge Road which functions adequately such that no objection from the Council's highways officers has been made in respect of this issue.
- The on-site parking is generous and meets LPA standards. In addition the shared driveway allows vehicles to reverse and turn without having to use the public highway, which is an improvement on the existing arrangement.
- The provision of a garage is not a planning policy requirement as long as there is adequate parking, which there is. As the bungalow does not affect the street scene it cannot affect its character.
- The design of the semi-detached houses will provide a perfectly acceptable solution in the street scene, as is illustrated on the drawings.
- There is no longer a requirement for a s106 agreement as CIL now applies in this case.
- It is acknowledged that the footpath is not a cycleway. The slight widening of the drive will increase the width of the drive at the junction with the footpath and thus increase visibility.
- The appellants have no objection to reasonable conditions aimed at ensuring that neighbouring properties are not unreasonably affected during the construction process.
- The relative 'invisibility' of the bungalow is a virtue in respect of the street scene as it means that the character is unaffected. The proposed house has been designed to sit comfortably with its neighbours.
- It is not anticipated that there will be any problems with identifying the bungalow's location providing house identification is placed at the entrance.

26 Lodge Road

- 5.10 Agrees with No.24
- 5.11 One other objector agrees with number 24 and two other representations support the proposal

6.0 CONCLUSION

- 6.1 The proposals are consistent with the principles of good design and will not to have any detrimental impact. The implementation of the proposals will bring with it an improvement to the street scene of Lodge Road through the construction of better quality houses to replace that existing. It will increase the choice and availability of new homes in the area by adding two additional new dwellings in a discrete location that will increase the number and quality available in the area.
- 6.2 The National Planning Policy Framework is clear in stating that there is a presumption in favour of sustainable development and that planning permission must be determined in accordance with an up-to-date development plan. The appeal proposals have been carefully designed to meet the requirements of the adopted local planning policies and those contained within the National Planning Policy Framework. The Council was therefore wrong to refuse planning permission.
- 6.3 The Inspector is respectfully requested to allow the appeal.

APPENDICES

- 1 Comparables - Photographs and Location Map
- 2 Examples of good practice
- 3 Sketch section Drawing No 212.07/16