

**IN THE MATTER OF AN APPEAL AGAINST THE DECISION
OF THE SALISBURY DISTRICT COUNCIL TO REFUSE AN
APPLICATION FOR PLANNING PERMISSION FOR THE
PROPOSED ALTERATIONS AND 2-STOREY SIDE EXTENSION
ON LAND AT THE BARKERS BARKERS HILL SEMLEY
SHAFTESBURY SP7 9BQ (PLANNING REFERENCE NO.
S/2007/921)**

**APPEAL PURSUANT TO SECTION 78 OF THE TOWN AND
COUNTRY PLANNING ACT 1990 AGAINST THE NOTICE OF
REFUSAL ISSUED BY THE SALISBURY DISTRICT COUNCIL**

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**HEARING STATEMENT OF CASE ISSUED UNDER THE
PLANNING APPEALS PROCEDURES IN PREPARATION FOR
FORTHCOMING PLANNING APPEAL INFORMAL HEARING**

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VOLUME 1

**THE PLANNING APPEAL REFERENCE IS NO.
APP/T3915/A/07/2055616/NWF**

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1.0 **Statement of Experience and Qualifications relating to the author of this Statement of Case**

1.1 My name is Michael Andrew Jones, Solicitor and Planning consultant of Able Bishop and Company Solicitors of Selwyn Chambers, Sampson House, The Street, Woolpit, Bury St Edmunds, Suffolk IP30 9QN. I have over 25 years experience in the field of town and country planning. During that period of time I have practiced as a specialist-planning solicitor undertaking a wide range of work relating to the preparation of and submission of planning applications and also attending to any resulting appeals. I have advised and worked on a large number of planning appeals including large and complex cases that have resulted in major inquiries. For example I was recently involved in the planning inquiry into the Bathside Bay container port inquiry. I am a member of the Law Society's Planning Panel and am also a Chartered Member of the Royal Town Planning Institute. I hold the degree of Master of Science in Environmental Management and the degree of Master of Law in Environmental Law. I also hold a number of other relevant post-graduate qualifications at Masters Degree level. I also hold the degree of Master of Arts in Town and Country Planning from the University of the West of England Bristol.

1.2 I have been involved in negotiating a number of complex planning schemes and I have assisted in helping clients promote complex town centre redevelopment schemes. I have worked on substantial compulsory purchase projects and I have advised on the implementation of compulsory acquisition schemes. I have also advised on all aspects of environmental issues including land contamination, water pollution, waste management and environmental assessments. I have also advised clients on the pursuit of applications to the High Court in relation to challenges under Section 288 and 289 of the Town and Country Planning Act 1990 and also in relation to applications for judicial review in the High Court for the purpose of quashing planning decisions. Prior to entering private practice in 1997 I devoted the first 18 years of my career in the public sector acting as a legal advisor to various local authorities. Prior to leaving the local government service I held First Tier Chief Officer posts and my duties included the management of the planning function of a local authority.

1.3 I have also advised on various aspects of forward planning and I have attended and submitted detailed representations at Local Inquiries into the review of statutory development plans.

1.4 I have provided planning advice to clients from the private sector who have been involved in seeking to gain planning permission from local planning authorities. This has involved providing advice on the tactics to be involved including the preliminary submission of applications for Lawful Development Certificates to preserve the current position so far as Lawful Use Rights are concerned and then to prepare and submit planning applications including advice on the form and type of planning application together with the supplementary information to be included including supporting statements of case and a number of drawings and types of drawings together with attendance at meetings with senior planning officers to Negotiate the terms and conditions of a suitable planning permission together also with providing advice on any relevant amendments together with negotiations with the Environment Agency in respect of overlapping areas of jurisdiction on environmental impact assessments together with advice on other documentation including wildlife habitat surveys including advice on other professional expertise required relating to the preparation and submission of the planning application together also with negotiations with the local highway authority and where appropriate with English Heritage and English Nature and liaison with other public bodies where required together with attending meetings of planning committees and

submitting verbal representations to the committees in support of the planning proposals therein. The work has also involved providing advice on the other side of the fence for local planning authorities in their capacity as clients of the practice.

- 1.5 This has included providing advice on the requirements for planning obligations and attending to the negotiation and settling of the terms of planning obligations to be required from prospective developers. This particular work has also been undertaken when acting for private clients negotiating with local planning authorities in that I have prepared and submitted detailed planning obligations many of them being unilateral planning obligations in support of a planning application where considered appropriate. Examples of cases include sites where I have negotiated applications for the approval of residential development schemes for developments of thirty five homes including the incorporation of requirements for an element of affordable housing in accordance with Circular 6/98 and in accordance with planning policy guidance note 3 on housing together with the negotiation of the appropriate planning obligation relating to contribution to educational provision arising from proposed residential redevelopment schemes. I have also been involved in other cases

involving large scale residential development schemes where similar factors were considered. The type and nature of applications negotiated also included cases of applications for large scale commercial development schemes. Such proposals included applications for large waste transfer stations and recycling facilities. The planning applications have also included other forms of proposed development including recreational and leisure facilities. During the course of the process detailed knowledge and experience has been further enhanced relating to National Planning Guidance and also relating to the statutory development plans.

- 1.6 A large number of planning appeals have been pursued including the usual planning appeals under Section 78 and also appeals relating to applications for Lawful Development Certificates, appeals against non-determination of planning applications and appeals against Enforcement Notices. A large number of appeals have in particular been pursued against various Enforcement Notices of various types. Some planning appeals have included major cases. For example I attended and acted as advocate at a major planning appeal relating to the proposed new container port at Bathside Bay near Harwich Essex. That particular planning hearing related to a case which

was to be determined by Central Government. I dealt with planning appeals by written representations and I have also dealt with planning appeals at a large number of informal hearings. I have also attended Public Local Inquiries into planning appeals. Examples of the types of planning appeals dealt with on a routine basis include the following:-

- a. Appeals against refusals of applications for residential development.
- b. Appeals against refusals of commercial development.
- c. Appeals against Enforcement Notices requiring the removal of caravans and mobile homes from land.
- d. Appeals against refusal of applications for Lawful Development Certificate for large car sales and car breaking yards in greenbelt sites.

1.7 With reference to forward planning I have carried out work relating to the preparation for and attendance at local plan inquiries. The works included carrying out initial research after taking instructions from client and preparing a detailed statement of case and submitting the same and then attending the formal part of the hearing relating to the review in public before a planning inspector of the emerging local plan. The representations have

related to for example the review of the statutory development plan for St Edmundsbury. I have also attended and made representations on behalf of client including parish Councils relating to the review of the Babergh District local plan. I have also undertaken similar work relating to other local plans. The work has been extremely complex involving the consideration of infrastructure requirements and demands for various services including a review of highway infrastructure and associated matters.

- 1.8 I have dealt with a large number of disputes over alleged breaches of planning control including dealing with matter such as application for planning injunctions in the County Court both on behalf of local planning authorities and against local planning authorities. I have also dealt with cases involving the conduct of enforcement appeals both on behalf of local authorities and against local authorities. For examples of Enforcement Notice Appeals I have conducted on behalf of local planning authorities include work on behalf of a large London borough Council which involved dealing with the case from start to finish including dealing with the Public Local Inquiry into the appeal as advocate on behalf of the local planning authority. I have also dealt with resulting challenges by way of applications to the High

Court against decisions of the Inspectorate on such Enforcement Notice appeals. I have also dealt with Breach of Condition Notices and on behalf of clients I have represented them in the Magistrates Court in defending prosecutions brought by Local Planning Authorities. I have dealt with a very large number of enforcement cases over a considerable period of time. I have also prepared and issued Enforcement Notices on behalf of local planning authorities.

- 1.9 In the case of actions in the High Court I have dealt with applications by way of challenge under the planning acts relating to decisions of the Planning Inspectorate including a number of challenges which have been settled under the term so Orders to which the Treasury Solicitor has consented for the purpose of arranging for fresh public local inquiry to be held after defects were found in a previous inspectors decision letter. I have also dealt with applications for Judicial Review on planning matters including all of the preparatory work and organising the submission and marshalling of documentation together with the filing of all papers in the High Court together with all legal research on the case law concerning a high profile case relating to the challenge of a decision by Harlow District Council relating to

the purported grant of planning permission for a large scale extension to the town centre of Harlow by a large developer. The decision of the Councils planning permission was quashed by Mr Justice Richards in the High Court.

1.10 I have dealt with compulsory purchase orders and the associated paperwork on behalf of local planning authorities including for example dealing with compulsory purchase order work for a local authority Hampshire relating to a substantial site and dealt with the general vesting declaration and the associated legal work. I also dealt with the attendance at the Public Inquiry into the objections to the original compulsory purchase order. I also dealt with the claims for compensation arising there under and the negotiation before the same reached the Lands Tribunal. I also dealt with the provisional advice on compulsory purchase orders on behalf of private sector clients who were concerned about compulsory purchase schemes promoted by local planning authorities.

2.0 Introduction

2.1 The Planning Appeal is submitted on behalf of the Appellant against the Decision of the Salisbury District Council to refuse the Application for full Planning Permission to make proposed alterations and for a 2-storey side extension relating to a residential property known as The Barkers Barkers Hill Semley Shaftesbury SB7 9BQ. The Application cross refers to a previous Planning Permission which was granted for approval of an extension to the said residential building on the site. The said previous Planning Permission was referenced under number S/2006/1098. It should be noted that that particular Planning Permission was granted by the Council's Western Area Committee in August 2006. Furthermore that particular Planning Permission related to the approval of an amendment to plans relating to a previous Planning Permission which was granted under reference number S/2005/0222 in which Salisbury District Council granted Planning Permission to erect a 2-storey side extension and raise the ridge of the dwelling which was approved under Officer Delegated Powers in December 2005.

2.2 It therefore follows that there has been a long history in this particular case and the long history includes the grant of two previous respective Planning Permissions in favour of the Appellant. The Appellant was of course very surprised to find that the further Application which was submitted on 4th May 2007 did not receive Planning Permission like the previous Applications which secured Planning Permission. The Appellant cannot understand the Decision by the Council to refuse his Application for Planning Permission under reference S/2007/0921 given the planning history of the site which sets out a context in which previous Planning Applications for similar development have been approved.

2.3 It should be noted that the residential property is located on a site with steep gradients and is constructed in Bradstone and concrete roof tiles. The previous Approval included permission to rebuild the external walls in local natural green stone and for the roof to be covered in reclaimed clay peg tiles. The PVC windows and external doors are stated to be replaced by wooden windows and doors. It should be noted that the residential building is designed to conserve energy with the insulation of the external walls and the roof. A 1000 gallon underground tank has been constructed to harvest

rainwater. The Appellant commissioned a well known landscape garden designer with a brief to design the garden in “a natural landscape”.

2.4 It should be noted that the Application lodged on 4th May 2007 under reference S/2007/0921 was the second amendment to plans for the previously approved extension to the building. The Planning Application was submitted in order to improve the design of the building. The fact that the site is located on a steep gradient has imposed some constraints in the design of the extension to the residential building. It should be noted that an area approximately 2 metres x 5 metres x 5 metres deep has been created between the existing retaining wall and the rear of the extension to the said building. The new design set out in the Planning Application which is now the subject of the current Appeal was designed to improve the design and eliminate the dangerous hole between the building and the ground level. It should be noted that the proposed extension is mainly below the ground level and therefore has a minimal impact upon the wider landscape. The design was produced deliberately to take into account the Local Plan Policies and in particular the criteria set out in Policy C4 and C5. It should be noted that the design has taken into account the requirements of disabled people and also

older people and younger people with a need for accessibility to the building. It should be noted that the Appellant proposes that the dwelling will be occupied by his family after the completion of the extension and renovation of the said residential building.

2.5 A location map showing the location of the Appeal site edged in red is incorporated within Volume 2 of the Appendices annexed to this Hearing Statement at Appendix No. 8. Reference should also be made to the documents exhibited in Appendices 9, 10, 11, 12, 13 and 14 comprising a series of plans relating to the property. In particular attention is drawn to Appendix 12 comprising the plan which was put forward for the amended north elevation which was refused. Attention is also drawn to those plans prepared in April 2007 exhibited at Appendices numbered 13 and 14 comprising respectively the elevation plan under drawing number 205801/16G and the layout plan under drawing number 205801/15G. It is clear that the proposals set out in the Planning Application comprise reasonable and proportionate proposals for amendments to the approved extension which in the normal course of events would be approved by a Local Planning Authority. The Appellant has been compelled to launch this

Appeal owing to the very surprising Decision of the Council to refuse the Planning Application.

2.6 Attention is also drawn to the Report prepared by the Planning Officer employed by Salisbury District Council dated 19th July 2007 and which is set out in Appendix 6 within Volume 2 annexed to this Hearing Statement. It will be noted from that report that the Officers considered the Planning Application and analysed its contents. From the detailed written Report, the Planning Officers recommended approval of the said Planning Application to the Planning Committee and the conditions they attached to the recommended Planning Permission were set out at the end of the Report comprising specifically five planning conditions which were primarily in the standard form one would expect. In particular attention is drawn to page 3 of the Officer's Report and the conclusion which clearly stated as follows:-

“For the above reasons it is considered that the proposed development would not have a significantly greater impact than the extensions and alterations already approved. As such the proposal would not result in any unreasonable detriment to the character of the area or neighbour amenities.”

2.7 The above summary of the position clearly indicates that the Planning Application which is the subject of the current Appeal was clearly a reasonable proposal which only related to what could only be regarded as minor amendments to a previous approval for the proposed residential extension which was granted Planning Permission in 2006 and which in itself followed on from a previous grant of Planning Permission for the proposed extension in 2005. It is therefore abundantly clear that this Appeal has been generated by a Decision on the part of Elected Members of the Local Planning Authority which was made without reference to all of the relevant material planning considerations. Furthermore the Appellant alleges that it would appear that the Local Planning Authority may have taken into account immaterial planning considerations in reaching what could only be regarded as an unreasonable Decision. It therefore follows that the Appellant is compelled to pursue this Appeal. Furthermore it should be noted that at the time of writing this Hearing Statement the Appellant's duplicate Planning Application which was submitted under the "free-go" principle had not been approved and indeed the Appellant was informed informally that the duplicate Planning Application would also be refused under the inflexible internal procedures operated by the Local Planning Authority whereby any

duplicate Application for Planning Permission in such circumstances would if it followed an Application refused by the Council's Planning Committee be similarly refused by Officers under Delegated Powers. The Appellant protested to the Local Planning Authority about this particular inflexible approach but his protests were apparently ignored.

3.0 The reasons for refusal

3.1 The Council's Planning Committee adopted two reasons for refusal when determining the Planning Application. It should be noted that the Notice of Refusal was dated 28th June 2007 and a copy of the Notice of Refusal is set out in Appendix 1 within the bundle of Appendices herewith. The first reason for refusal states as follows:-

“The proposed extension by reason of its scale and massing which would have an overbearing impact within the street scene and would not be subservient in size to the existing dwelling and house plot would have an adverse impact upon the character of the area and the area of outstanding natural beauty in which it is situated. Furthermore the proposed fenestration to the front of the dwelling by reason of the

excessive amount of glazing and the size of the window openings would be incongruous and out of keeping with the character of the area and local vernacular. Consequently the development would be contrary to Policies G2, D3, H19, H31 and C5 of the Salisbury District Local Plan and contrary to guidance contained within Parts 20 and 22 of the Salisbury Design Guide: Creating Places.”

3.2 The first reason for refusal is extremely difficult to understand particularly having regard to the planning history relating to the site and the specific positive points set out in the Officer’s written Report to the Council’s Planning Committee. It should be noted that the principle of the increase in ridge height to the existing dwelling and the addition of a 2-storey side extension had already been agreed between the Appellant and the Local Planning Authority through the two previous Planning Applications in 2005 and 2006 which had been approved through the grant of the respective Planning Permissions. Given this context it is therefore very surprising to find that the Local Planning Authority issued a first reason for refusal in the terms expressed above. Clearly given the previous decisions of the Local Planning Authority the proposals in the current Planning Application could not be objectionable in terms of scale and massing. Furthermore they could

not possibly have an “overbearing impact within the street scene”. In the circumstances it is entirely unreasonable to maintain that the proposals would be “incongruous and out of keeping with the character of the area”.

3.3 When considering an Application of this nature the Members of the Planning Committee should have confined their consideration of the matter to the specific issues before them. The specific issue related to examination of the impact of the proposed amendments put forward in the current Planning Application to the previous Planning Permission granted in 2006. In other words the Local Planning Authority should have confined its consideration to the issue as to how the proposed amendments in the current Planning Application differed from the previous Planning Permission granted by the Local Planning Authority and whether those differences were reasonable and therefore capable of being approved. It is contended that the differences between the previous Planning Permission granted in 2006 and the proposals set out in the current Planning Application which are the subject of this Appeal are minimal and have no impact upon the environment. In this context it is clear that the first reason for refusal is manifestly absurd. Further detailed analysis of this point is set out in subsequent sections of this Hearing Statement.

3.4 In order to fully understand and appreciate the relevant issues in this particular Appeal it is necessary to read and fully understand the exchange of correspondence between the Appellant and the Local Planning Authority which took place over a number of months. In particular it is necessary to read in full the letter dated 25th July 2007 issued by the Appellant from his address at 19 Cedar Avenue Ringwood in Hampshire to Mr Stephen Hawkins the Head of Development Services at Salisbury District Council. In that letter the Appellant refers to the deliberations that the Council's Western Area Planning Committee held on 21st June 2007. It will be noted from the terms of that letter that the Appellant was critical of the presentation of his Planning Application to the Planning Committee. In particular the following points are drawn to your attention:-

“The presentation of the Application to the Committee was made by Andrew Bidwell. He displayed two different sets of plans; the current proposed Application plan and the 2005 approved plan but he left out the crucial 2006 approved plan and he then mistakenly went onto convey to the Committee that the proposed Application before them was to widen the building by a further 600mm as well as to increase the rear of the extension by 2 metres.”

3.5 The reasons why the Members of the Planning Committee fell into error on the consideration of the Planning Application may perhaps be further understood by the further extracts from the said letter dated 25th July 2007 issued by the Appellant:-

“The Committee wrongly assumed that the proposed Application before them was not only to increase the rear of the extension by 2 metres but also to increase the entire building height by a further 1 metre as well as the increase in the width of the building by a further 600mm (a total increase of 158 cubic metres).

I am at a loss as to why the Committee misunderstood the nature of the Application and misread the plans and made the spectacular mistake to conclude – *“The proposed extension by reason of its scale and massing which would have an overbearing impact within the street scene would not be subservient in size to the existing dwelling and house plot.”*

In essence the facts are that there is no issue concerning *“subservient extension”* as there are existing Planning Permissions in place for the

extension to the building and there are no changes in the Application to what has already been approved with regard to the roof level. The actual proposed Application was firstly to extend the back of the building by approximately 2 metres onto the earthed retaining wall and secondly the amendments to the window openings.”

3.6 In essence it would appear that the first reason for refusal was drawn up on the basis of a misunderstanding of the Planning Application and without reference to the relevant parameters which include the previous Planning Permissions granted by the Council.

3.7 The second reason for refusal was as follows:-

“The proposed extension by reason of its scale massing and close proximity to the boundary with a neighbouring property would have an unduly overbearing impact to the detriment of the residential amenity of the neighbouring property. Consequently the development will be contrary to Policy G2 of the Salisbury District Local Plan.”

The second reason for refusal appears in part to repeat a number of the points which were adopted on the basis of a misunderstanding by the Members of the Planning Committee relating to the terms of the Planning Application. Furthermore the specific focus of the second reason for refusal which appears to relate to the relationship between the proposals in the Planning Application and the residential amenities of the neighbouring property is based again on a fundamental misunderstanding of the terms of the Planning Application. Given the limited number of changes between the Planning Application and the previous Planning Permission granted in 2006 it is impossible to understand how the Council arrived at the decision that the new Planning Application would adversely affect the residential amenities of a neighbouring property. This point was never raised previously concerning the previous Planning Permission granted in 2006. Furthermore it is clear from a site inspection that proposals set out in the plans submitted in support of the Application currently the subject of this Appeal did not in any way have any impact upon the neighbouring property.

3.8 Attention is drawn to a series of photographs which include ground level photographs and also aerial photographs set out in Appendix 22 which clearly demonstrate that there is no adverse impact upon the residential

amenities of the occupiers of the neighbouring property arising from the proposals set out in the said Planning Application. Furthermore it is clear from a number of the photographs that the application site is well screened by existing high and substantial vegetation. The screening provided by the existing vegetation not only screens the property from adjacent open countryside within the area of outstanding natural beauty but also from the adjacent neighbouring property. Accordingly, it is clear that the proposed development referred to in the said planning application which is the subject of the current appeal would not give rise to any adverse impact on the residential amenities of adjacent properties and particularly in the neighbouring property given that there is a substantial existing screening around the application site and furthermore there is an opportunity for even more dense screening to be provided if thought appropriate.

It will be noted from the photographs within appendix 22 that a number of the photographs have been the subject of annotations in order to provide guidance on the interpretation of the said photographs. For example the photographs include annotations showing the position of the proposed new window proposed in the planning application. The annotations are marked in red. It will be noted from the annotated photographs that the proposals set

out in the planning application will have very little impact upon the appearance of the building which is of course still partly under construction.

One of the photographs shows a close up view of the high laurel hedge which is quite thick and clearly separates the adjacent residential property from the application site. It will be noted that there is no prospect of any overlooking from any of the windows proposed on the application site towards the neighbouring property.

3.9 Reference should also be made to more recent correspondence generated between the appellant and the local planning authority relating to the duplicate planning application currently under consideration by the local planning authority. The relevant recent correspondence set out in appendix 23 annexed to this hearing statement. It will be noted that the correspondence does not indicate any specific overriding planning objections concerning the proposals set out in the duplicate planning application.

4.0 Grounds of Appeal

4.1 The reasons for refusal adopted by the Local Planning Authority are misconceived and inappropriate. Both reasons for refusal are clearly inapplicable to the Appeal site and should be rejected. The Appeal should be allowed.

4.2 It is quite clear that the proposed development comprising proposed extension is of reasonable size. The proposed extension is well within the reasonable scale and mass which one would expect in relation to the original dwelling house. It would not have an overbearing impact within the street scene. It would not have an adverse impact on the surrounding area and the proposed extension will be well within the reasonable parameters for development of this nature. The proposed development would not have an adverse impact upon the character of the area or upon the character of the area of outstanding natural beauty.

4.3 The proposed fenestration to the front of the dwelling is reasonable and it would fit in with the existing character of other buildings in the area. The

proposed extension would not be incongruous and would not be out of keeping with the character of the area and the local vernacular architecture.

4.4 The proposed development would be consistent with the planning policies designated G2, D3, H19, H31 and C5 of the Salisbury District Local Plan. It would also be consistent with parts 20 and 22 of Salisbury Design Guide entitled Creating Places.

4.5 The proposed extension is of a reasonable size. It would not have an overbearing impact and would not have an impact upon the residential amenities of the neighbouring property. The proposed development would not be contrary to policy G2 of the Salisbury District Local Plan.

4.6 The terms of Planning Policy G2 in the Salisbury District Council adopted Local Plan (June 2003) states as follows:-

“General Criteria for Development G2 – New development will be considered against the following criteria:-

- (i) a satisfactory means of access and turning space within the site, where appropriate, together with parking in accordance with the guidance at Appendices V and VI of the Local Plan;**
- (ii) avoidance of placing an undue burden on existing or proposed services and facilities, the existing or proposed local road network or other infrastructure;**
- (iii) a minimum loss of disturbance to forestry land and the best and most versatile agricultural land, and avoid the severance of holdings;**
- (iv) respect for existing beneficial landscape, ecological, archaeological or architectural features and include measures for the enhancement of such features and the landscaping of the site where appropriate;**
- (iv) avoidance of the loss of important open areas, a gap in a frontage or natural or built features (such as trees, hedges or other habitats, wall, fences and banks), which it is desirable to retain;**

- (v) avoidance of unduly disturbing, interfering, conflicting with or overlooking adjoining dwellings or uses to the detriment of existing occupiers;**

- (vi) avoidance of locations which are liable to environmental problems due to their proximity to incompatible development;**

- (viii) avoidance of detriment to public health or pollution to the environment by the emission of excessive noise, light intrusion, smoke, fumes, effluent or vibration; and incorporation of energy efficient design through building design, layout and orientation.**

4.7 With reference to the provisions within the Statutory Development Plan quoted by the Local Planning Authority it is noted that reliance is placed in particular on policy G2 which appears in both reasons for refusal. It will be noted from the terms of that Policy Statement that it is expressed in very general terms. Although no mention is made of the specific part of the Policy from which the Council seeks to rely one can only assume that they are basing their misconceived refusal on the terms of sub-paragraph 6 which

refers to the need to avoid development which is “unduly disturbing, interfering, conflicting with or overlooking adjoining dwellings”. There is obviously a considerable degree of discretion in the interpretation of such a Policy Statement. Clearly, there is also an element of subjective assessment in considering this policy. It is curious to note that the precise wording adopted in the second reason for the refusal is couched in rather different terms, specific wording at the relevant part of the Policy Statement. Whilst the policy focuses on interference and overlooking, curiously the Council is referring in general terms in its refusal to “an unduly overbearing impact” and an adverse impact upon “residential amenity”.

- 4.8 In the Salisbury District Council Local Plan one finds within the housing chapter a reference to housing restraint areas in Policy H19 which states that:-

“Within the Housing Restraint Areas defined on the Proposals Map and listed below, residential development, comprising the extension of an existing dwelling, the conversion of a single dwelling to form two or more units, or the erection of a new dwelling, will be acceptable only if the following criteria are met:

(i) there will be no adverse impact on the character of the settlement or neighbourhood designated as a Housing Restraint Area;

(ii) there is no loss of an important open space which contributes to the special character of the area;

(iii) the loss of features such as trees, hedges and walls, which contribute to the character of the area, is kept to a minimum; and

(iv) the development will be in keeping with the character of the neighbouring properties.”

4.9 It will of course be appreciated that the Council’s interpretation over the terms of its own Policy framework is open to some criticism given the points mentioned in the preceding paragraph. It would appear that the Council’s re-interpretation of its own policies does expose a considerable degree of weakness in the Council’s position. Curiously, the Council does not seek to

explain what is meant by the term “overbearing”, nor does the Council even attempt to claim that there is “overlooking”. Furthermore, the Council does not indicate which of those aspects of “residential amenity” are potentially affected by the proposed development. Clearly, matters of this nature are more readily determined when investigating the matter in some detail and taking measurements showing the distance between habitable rooms proposed on the site with windows and existing built development having windows into habitable rooms within such dwellings. There are of course a number of precise guidelines on this issue including the guidelines contained within the recommendations of the British Standards Institute. It is clear that none of the guidelines issued by the British Standards Institute have been breached. It is interesting to note that the Local Planning Authority has not cited any specific guidelines.

4.10 With reference to Policy H19 on the issue of “housing restraint areas” it should be noted that whilst it is recognised that extensions to existing dwellings may in some circumstances have an impact upon the character of the housing restraint area nevertheless this does not apply in the case of the Appeal site. It should be noted that in any event the policy in Policy Statement H19 on housing restraint areas appears to focus specifically on the

creation of additional separate dwelling units. It is noted that proposals to create additional separate living units within existing dwellings will not be permitted in such housing restraint areas. However the Appeal proposed on this case does not fall within the terms of Policy H19 because it constitutes a straightforward extension to the existing dwelling on the site. Furthermore, it does not breach the main principles behind Policy H19 because the proposed development will not have any adverse impact upon the character of the settlement. There will be no loss of important open areas within the settlement which contribute to the character of the area. There will be no loss of small fields or large gardens and the proposal is clearly in keeping with immediately adjacent properties in terms of plot size, dwelling size and design.

4.11 In essence the Council have put forward a reason for refusal which refers to a policy, Policy H19 which is not relevant to the circumstances of the present case.

4.12 Within the Salisbury District Council Local Plan policy H31 states that:-

“In the countryside extensions to existing dwellings will be permitted provided that:

- (i) the extension is subservient in size to the existing dwelling and house plot and does not substantially alter the character of the dwelling;**
- (ii) the design of the extension is in keeping with that of the existing dwelling and uses complementary materials; and**
- (iii) the extension would not create, or be capable of creating, a separate dwelling.”**

4.13 With reference to Policy H31 in the reason for refusal, it should be noted that again the Council has fallen into error in referring to this policy which is not relevant to the circumstances of the present case. Policy H31 focuses on controls on the size of extensions in relation to existing houses in order to prevent the creation of large new houses in the open countryside. In other words the policy is a general policy concerning the issue of proportionality. It is submitted that in this case the policy has not been breached because the proposed extension is well within the reasonable parameters of a reasonable extension to the existing main dwelling on the site. The proposed

development when completed will still leave sufficient amenity space round the dwelling. It is therefore consistent with Policy H31.

4.14 In the Salisbury District Council Local Plan policy D3 states that:-

“Extensions to existing properties, or the development of ancillary buildings within their curtilages, will be permitted where:

(i) the proposal is compatible in terms of: the scale, design and character of the existing property and use of complementary materials; and

(ii) the development is integrated carefully in relation to other properties and the overall landscape framework.”

4.15 With reference to Policy D3, it is contended that there is no breach of the terms of Policy D3 in the appeal proposal. Policy D3 is a permissive policy which states that extensions to existing properties or the development of ancillary buildings within their curtilages will be permitted where the proposal is compatible in terms of the scale, design and character of the existing property

and the use of complimentary materials and the development is integrated carefully in relation to other properties and the overall landscape framework. It is contended that the Appeal proposals clearly put forward an extension which is acceptable in terms of scale, design and character in relation to the existing property and uses complimentary materials. It is also integrated carefully in relation to other properties and the overall landscape framework.

4.16 In the Salisbury District Council Local Plan policy C5 states that:-

“Within the Cranborne Chase and West Wiltshire Downs Area of Outstanding Natural Beauty small scale development proposals will only be permitted where they are in accordance with the policies of this Local Plan and provided that:

**(i) the siting and scale of development are sympathetic with the landscape of the AONB in general and of the particular locality;
and**

(ii) standards of landscaping and design are high, using materials which are appropriate to the locality and reflect the character of the area.

Regard should also be had to the social and economic well-being of the area.”

4.17 With reference to Policy C5, it should be noted that the proposal is consistent with the policies in Policy C5. The proposed development will not have an adverse impact upon the landscape and will not adversely affect landscape conservation interests.

4.18 With reference to the policies relating to house extensions set out in the Salisbury Design Guide it should be noted that the proposal set out in the Appeal are fully in accordance with the terms of Part 20 of the Design Guide on house extensions. It clearly follows the general principles and policy set out on page 84 of the Design Guide in that it respects the scale and massing of the existing premises. It is also in accordance with the style at the existing property and uses materials which compliment the existing property. The roof form is also in accordance with the existing part of the property and it will not have any adverse impact upon neighbours. With reference to Part 22 of the Design Guide, it is contended that the detailed design of the windows on the extension are clearly in accordance with the guidelines set out on pages 91, 92, 93, 94 and 95 of Part 22 of the Design Guide.

4.19A full extract of part 20 from the Design Guide issued by Salisbury District Council is contained within appendix 20 of the bundle of appendices accompanying the hearing statement. A full copy of the extract from part 22 on the detailed design of windows set out in the Salisbury Design Guide is also set out in the accompanying bundle of appendices at appendix 21. It will be noted that from a correct construction and interpretation of both extracts from the Design Guide adopted by the Salisbury District Council that the proposals set out in the current planning application are entirely consistent with the terms of the said guidelines.

4.20Reference should also be made to Central Government Policy as set out in the Planning Policy Statements. The relevant Planning Policy Statements are Planning Policy Statement number 1 and Planning Policy Statement number 3. The proposals set out in the planning application which are the subject of this appeal are entirely in accordance with the general advice issued by Central Government in the Planning Policy Statements.

5.0 The Decision Making Process

5.1 The appellant has expressed a number of concerns over the decision making process followed by the elected members of the local planning authority when his application was considered by the committee on 21st June 2007. Reference has already been made to a previous section of this hearing statement of case concerning the apparent misunderstandings and alleged misleading information taken into account at the committee meeting. In this respect at this stage a further reference should be made to this particular issue particularly having regard to the points set out in the letter issued by the appellant dated 18th July 2007 addressed to Mr S Milton the Democratic Services Officer at Salisbury District Council. This letter can be found at appendix 24. It should be noted that the letter was issued by the appellant based on knowledge he gained of the debate by the members of the planning committee from his attendance at that meeting. Attention is drawn in particular to the third paragraph on page 1 of that letter where the appellant recalls a number of assertions apparently made by members of the planning committee during the course of the “debate”. It is considered that the whole of the said letter comprising two pages of text should be read carefully because it summarises the appellant’s recollection of the meeting. It should

also be noted that in that letter the appellant recalls that during the course of the committee meeting the members did not actually give a clear specific reason for their decision to refuse the application. It would appear to the appellant that the two reasons for refusal set out in the specific words used in the decision notice appear to have been drawn up subsequently. It should be noted that as a matter of procedure a decision made by a committee should be based upon reasons adopted by the committee before the decision is actually made by that committee. In other words, the appellant contends that it is not open to the local planning authority through its planning committee to go through a process whereby the members of its planning committee resolve to make a decision and then subsequently decide to delegate responsibility for formulating the reasons for that decision to another body of persons such as officers. Clearly, a decision made on such a basis cannot be correct and as a matter of law is clearly challengeable. In other words it is clear to the appellant that no weight can in any event be attached to the two reasons for refusal given that the two reasons for refusal were not expressed in those terms by the members of the planning committee before they resolved to refuse the planning application.

5.2 Accordingly, as a matter of law the Council is not entitled to rely upon the two reasons for refusal set out on its decision notice because those two reasons were not specifically authorised by the members of the planning committee prior to the resolution to refuse being adopted. It therefore follows that if an Application for Judicial Review were made to the High Court the High Court would inevitably form the view that the only reasons which the local planning authority could rely upon were those reasons before the members of the planning committee before they made a decision to resolve to refuse the application. On this basis it therefore follows that any decision making process which seeks to rely upon the two reasons for refusal set out in the decision notice will clearly be challengeable in the High Court on the basis that the two reasons for refusal were not correct contemporaneous reasons adopted at the committee meeting and were therefore not properly authorised under the Councils standing orders and scheme of delegation. This has implications for the current appeal in that it clearly indicates that the Council cannot reasonably put forward a case before the Planning Inspectorate based upon the two said reasons of refusal because it does not have the appropriate legal authorisation to do so. Clearly, given the way in which this case has developed it will be appreciated that the appellant will be pursuing a formal claim for an Order

for Costs against the Salisbury District Council based upon the criteria set out in Ministerial Circular 8/93 and one of the grounds for the said claim for costs will, inter alia, include this specific issue.

5.3 Specific reference to the letter dated 18th July 2007 issued by the appellant is a summary of the various allegations made against the appellant during the course of the committee meeting. The appellant contends that the allegations were incorrect and appeared to colour the perception by the members of the committee of the application currently before them. This was both extremely unfortunate for the appellant and also indicative of problems within the decision making process. In any event it should be noted that as a matter of law it is not appropriate for issues that are irrelevant to the planning application to be considered by the planning committee during the course of the decision making process.

5.4 It will also be noted that the appellant makes allegations concerning the way in which the committee was constituted and alleges that there were procedural irregularities during the course of the committee meeting and also at the site meeting.

5.5 Attention is drawn in particular to the following abstract from the letter issued by the appellant:-

“During our various conversations you confirmed the members were under the impression that the planning proposal was to raise the ridge height by one metre. This is not true and it is not our fault that the members had completely misunderstood the planning proposals. They have should have looked at the application with more care.

However, I can confirm that the planning officer did make a mistake that we were seeking to increase side extension width by 600mm. This is incorrect, there is no proposal for any increase.”

5.6 When one examines the officers report at appendix 4 it is clear that the officers consider that the local planning authority should approve the application. The following extracts from the officers report should be noted:-

“The principle of the increase in ridge height to the existing dwelling and the addition of a two storey side extension have already been agreed

through the previous planning application. The considerations to this current application therefore relate solely to the impact of the amendments as identified above.

In visual terms, when viewed from the street scene, the most significant amendments to the schemes already approved relate to the provision of a chimney to the south elevation, alterations to the eaves details and alterations to the dormer windows and fenestration on the front elevation. Chimneys are characteristic features of dwellings in the area, and the proposed chimney would be of an appropriate scale and design to be in keeping with the dwelling. The revised front dormer windows would be of a taller and narrower appearance, which would better relate to the proportions of the ground floor windows. The revised position and the increased height of the bedroom window within the front of the side extension would have little more impact in visual terms than the original one, and the insertion of an additional bedroom window into the north elevation would not have a significant detrimental impact. Regarding the alterations to the eaves details, use of stone instead of timber soffits is not untypical of the area.

Since the application relates to a relatively small scale development, any disturbance from constructions works are likely to effect only a limited number of neighbours, and it is therefore not considered that a planning condition restricting the hours of construction is necessary in the wider public interest. Furthermore, it is noted that none of the two previous consents contained such a condition.”

5.7 For the above reasons it is considered that the proposed development would not have a significantly greater impact than the extensions and alterations already approved. Such a proposal would not result in any unreasonable detriment to the character of the area or neighbour amenity.

5.8 In summary the minor amendments set out in the current planning application which is the subject of the present appeal are summarised by the planning officers as follows:-

- a. The Enlargement of the two storey side extension by extending it approximately two metres further back into the plot including the provision of access from bedroom doors directly on to the terrace

garden to the rear, and an increase to the two storey side extensions width by 245mm.

- b. Alterations to the appearance of the first floor windows within the front elevation, and the insertion of an additional window in the north elevation of the two storey extension.
- c. Alterations to the eaves details of the dwelling
- d. The provision of two chimneys, and the omission of a flue on the front roof slope.
- e. Changing three roof lights within the rear elevation to three dormer windows.
- f. A marginal increase in the footprint of the original dwelling, due to the over cladding of the reconstructed stone with natural stone.
- g. Alterations to the appearance of the ground floor windows and doors on the rear elevation.

5.9 It is abundantly clear from the officers report that the officers in their professional opinion consider that the various minor adjustments proposed to the residential building are reasonable and have no adverse impact upon any interests of acknowledged importance.

5.10 Accordingly, this would appear to be a case in which elected members of the Council have made a decision which is untenable and which cannot be supported in planning terms. Sadly, the local planning authority appear to have made a decision based on alleged immaterial planning considerations and have failed to take into account all material planning considerations. The Councils decision making process failed to properly interpret and apply the policies set out in the Statutory Development Plan. The Councils decision is inconsistent with the terms of its own Statutory Policies.

5.11 The Councils decision making process is also inconsistent with previous decisions made by the Council comprising two previous grants of planning permission on the same site for similar development.

5.12 Given the above issues and the continuing problems experienced by the appellant in dealing with the Council the appellant has no option other than to make a formal application for an Order for Costs against the Council under the terms of Circular 8/93 on the basis of unreasonable conduct by the Council.

6.0 Conclusions

6.1 Given the professional views previously expressed by the Councils Planning Officers and the Statutory Development Plan it is quite clear that the planning application should have been approved by the Council and accordingly it is requested that the appeal should also be allowed.

6.2 The proposed planning conditions for the planning permission are of course set out in the officer's report presented to the Planning Committee and comprise five planning conditions in standard form with the relevant planning reasons for each of the said conditions. It is recommended that planning permission be granted with those conditions.

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