

**APPEAL REF: APP/A1720/W/21/3272188**  
**Land to the East of Down End Road, Portchester**

**The Council is encouraged to draw the attention of interested parties to this Note, including posting a copy on its web site.**

### **CASE MANAGEMENT CONFERENCE SUMMARY NOTE**

1. The case management conference was led by myself, the Inquiry Inspector, Dr Andrea Mageean. The Inquiry is to be held as a virtual event on the Microsoft Teams platform, opening at 10.00am on Tuesday 3 August 2021, resuming at 09.30 on subsequent days. Once the Inquiry is open, it will run along the same lines as a face to face event, adopting the same protocols and etiquette as are normal in the Inquiry room.
2. Although initially scheduled to sit for up to 4 days, it was agreed that a further 1 or 2 additional days may be required, given the need for shorter sitting sessions and longer breaks necessitated by the virtual nature of the event and the matters on which evidence will need to be heard. Following the receipt of availability from the main parties, I suggest that an additional sitting day should be Monday **9 August**, with Thursday **12 August** held in reserve.
3. Appearances for the main parties were confirmed as follows:

#### Appellant

John Linton QC, who will be calling:  
Jacqueline Mulliner (Planning and housing land supply)  
Tim Wall (highways)  
TBC (transport modelling – if necessary)

#### Council

David Lintott of Counsel, who will be calling:  
Steve Jupp (Planning and housing land supply)  
Alan Lewis (highways)

### **Notifications**

4. The Inspectorate will provide the wording for the site notice, setting out what is required in the notification letter, including the necessity for parties to register in advance if they wish to participate in the Inquiry, and details of how interested parties can participate (including access by telephone from a land line for those without access to a computer or smart phone).
5. Inquiry notifications should normally be issued a minimum of 2 weeks in advance of opening. However, given the virtual format of the Inquiry and the need to register in advance, **as much notice as possible should be given to allow interested parties time to consider whether they wish to participate.** The Council must send a copy of the notification letter to the Case Officer, together with a list of all those notified, **at the**

**same time that it is sent out to the parties, but in any event no later than 13 July 2021.**

6. The Council also agreed to erect site notices containing the same information at locations around the site. To avoid any confusion, the Notices are to be posted on the same day that the letters of notification go out. Once posted, a plan is to be submitted confirming the locations of the Notices, with photographs of each. The notices must not be removed before the Inquiry takes place.

### **Main Considerations**

7. The main considerations were agreed as being likely to relate to:
  - The effect of the proposed development on the operation of the local highway network, with particular reference to vehicular and pedestrian movement across the Down End Road bridge across the railway line, and the provision for pedestrian crossing of Down End Road;
  - The effects of the proposed development on the integrity of the Portsmouth Harbour Special Protection Area and Ramsar Site, the Solent and Southampton Water Special Protection Area and Ramsar Site, the Solent and Dorset Coastal Protection Special Protection Area and the Chichester and Langstone Harbours Special Protection Area and Ramsar site (the designated habitats) and,
  - Whether the proposal conflicts with the provisions of the development plan and if so, whether there are any material considerations, including the level of housing land supply, that would outweigh that conflict.

### **Additional Material and Plans**

8. Further plans submitted during the course of the application in relation to Down End Road bridge and the site access. However, it was agreed that the only amendment of substance relates to the movement of the stop line 4m to the North. As such it is not necessary to undertake further consultation on this minor amendment.

### **Dealing with the evidence**

9. A signed statement of common ground (SoCG) has not yet been submitted. The importance of a good SoCG, or more to the point a statement of uncommon ground, will be critical in terms of providing a focus for the Inquiry and helping us get through all that we need to in a reasonable time. It was agreed that this would be submitted no later than **29 June 2021**.
10. The Council agreed to undertake further work to clarify its position in relation to highways matters, and in particular to determine whether any further highway modelling work would be undertaken. It was agreed that this point should be progressed as a matter of urgency, such that areas of agreement/disagreement, effectively precursor to a statement common ground, would be produced by **21 June 2021**. If determined necessary, the areas identified for further modelling work and the evidence on which the Council relies should be included as an update to

the Council's statement of Case by **25 June 2021**. A highways SoCG should then be produced by **2 July 2021**.

11. It would also be beneficial to have a topic based SoCG in respect of housing land supply. In general, such documents help drill down in more detail into exactly what is at issue between the parties and so assist in the preparation of the proofs. As advised, they can take the form of tables and bullet points to make the basis of your differences, and the reasons for those differences, very clear. More specifically in relation to housing land supply, it would be helpful to have a table listing the disputed sites, along with the party's respective positions. It was agreed that the housing land supply SoCG should be provided by **2 July 2021**.
12. For the event itself, the evidence in relation to the highways matters and planning policy/the planning balance will be tested through formal presentation and cross-examination.
13. In relation to housing supply matters a round table session is preferred.
14. Whilst not a reason for refusing the application, a round table discussion of the effect of the proposal on designated habitat sites is also proposed. It is not anticipated at this stage that this will be a detailed technical discussion, but rather its purpose will be to clarify points made in the HRA Screening Matrix and Appropriate Assessment Statement provided by the appellant. The parties are asked to include the Solent Recreation Mitigation Strategy in Core Documents to support this discussion.
15. The appellant should also be prepared to respond to the other matters raised by interested parties, including where they are raised during the event.

### **Conditions**

16. An *agreed* schedule of possible conditions, together with the reasons for them (including references to any policy support) will need to be submitted in Word format at the same time as the proofs (**6 July**). Careful attention is to be paid to the wording of the conditions, which should avoid 'tail-pieces.' They will need to be properly justified having regard to the relevant tests, in particular the test of necessity. You are reminded that conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification. The reasons for any pre-commencement conditions will need to include that justification. Any difference in view on any of the suggested conditions, including their wording, should be highlighted in the schedule with a brief explanation given.

### **Planning Obligation**

17. An early draft of the planning obligation is to be provided by **6 July**, with a final agreed draft to be submitted shortly before the Inquiry opens. The final draft must be accompanied by the relevant office copy entries and a CIL Compliance Statement prepared by the Council. This statement should set out a fully detailed justification for each obligation sought, detailing how it complies with the CIL Regulations, in particular the test of necessity in terms of how it would mitigate a particular harm

arising out of the development proposed. It should include reference to any policy support and, in relation to any financial contribution, exactly how it has been calculated and precisely what it would be used for.

18. I will allow a short time after the Inquiry for submission of a signed version of the obligation.

### **Core Documents/Inquiry Library/hard copies**

19. You will need to discuss and agree a list of Core Documents so they can be properly referenced in the proofs of evidence. That list must be submitted with the proofs (ie by **6 July**). A suggested format is attached at Appendix 1.
20. The Core Documents should comprise **only** those documents to which you will be referring in your evidence. Where any documents on which it is intended to rely are lengthy, only relevant extracts need to be supplied. Such extracts should, however, be prefaced with the front cover of the relevant document and include any accompanying relevant contextual text. A copy of the Framework does not need to be included. Neither do documents that relate to matters which are not in dispute. Any Appeal Decisions and/or legal authorities on which you intend to rely will each need to be prefaced with a note explaining the relevance of the document to your case, together with the propositions on which you are seeking to rely, with the relevant paragraphs flagged up.
21. The Council agreed to set up and host an electronic Inquiry library. The library is to include all the Core Documents, plus the proofs and appendices, together with any rebuttals etc.
22. It is expected that all necessary documents will have been submitted in advance of the Inquiry. Any additional documents can only be handed up to the Inquiry with the Inspector's permission. If accepted, they will need to be sent to the case officer 'hosting' the event so that they can be forwarded to the Inspector and then placed in the Inquiry library from where they can be shared and viewed by all parties.
23. I will need some documents in hard copy. That will include the proofs and appendices, and any rebuttals, relevant plans and, in all likelihood, at least some of the core documents. I will confirm which core documents once I have seen the final list. These should be sent to me via the case officer, Tim Salter, in due course.

### **Inquiry Running Order/Programme**

24. Following on from my opening comments on the first day of the Inquiry, I will invite opening statements from the Appellant and then the Council, which should be no longer than 10-15 minutes.
25. The Inquiry will then hear from any interested parties who wish to speak (although there will be scope for some flexibility if someone has difficulties that prevent them from attending and speaking on day one). Until we have an idea of the numbers who might register to speak, we will not know how long that is likely to take.

26. After that, at the current time it appears that the running order is likely to be:

Council – Highways evidence  
Appellant – ditto

RTD – Housing Land Supply/Habitat Matters

Council – Planning Policy and Planning Balance  
Appellant - ditto

27. I will then lead the usual round table discussion on the provisions of the planning obligation and then conditions.

28. That will be followed by closing submissions, the Council first, followed by the appellant. I have requested a copy of your openings and closings in Word format, which will need to be sent to the PINS case officer shortly before you present them. How you exchange with the other parties is up to you.

29. The advocates are to work collaboratively on their time estimates for each stage of their respective cases. These should be provided by **20 July**. I will issue a draft programme following receipt of your final timings, when I will have a better feel for things. This will provide a framework for consideration of the evidence, with the session(s) allocated for consideration of the each of the issues/matters identified. Whilst this will allow some flexibility with timings, as a general rule you are expected to take no longer than the timings indicated, which will require the cooperation of both advocates and witnesses.

30. I intend to undertake a site visit sometime during early July. This will be on an unaccompanied basis. I will inform the appellant of the likely day in due course so that the landowner can be informed. It is also likely that I will undertake a further site visit following the close of the inquiry.

### **Timetable for submission of documents**

31. The main SoCG signed by both the Council and the appellant is to be submitted no later than **29 June 2021**.

32. As set out in the start letter, all proofs are to be submitted no later than **6 July 2021**. Details of the preferred format and content of proofs and other material were annexed to the pre-conference note and are to be observed.

33. An early draft of the planning obligation is to be submitted no later than **6 July 2021**, with a final agreed draft no later than **20 July 2021**, to be accompanied by the CIL Compliance Statement prepared by the Council and the relevant office copy entries.

34. The Council is to make sure a copy of the Inquiry notification letter, and a list of those notified is sent to PINS no later than **13 July 2021**.

35. There is no reference in the Rules or the Procedural Guide to supplementary or rebuttal proofs and PINS does not encourage the provision of such. However, where they are necessary to save Inquiry

time, copies should be provided no later than **20 July 2021**. It is important that any rebuttal proofs do not introduce new issues. As an alternative to a rebuttal, it may be that the matter could more succinctly be addressed through an addendum/ additional SoCG.

36. Final timings for openings and closings, evidence in chief and cross examinations should also be provided by **20 July 2021**.

25 June	Council updated SoC on Highway matters
29 June 2021	Main SoCG
2 July 2021	Highways and HSL SoCG
6 July 2021	Deadline for submission of: <ul style="list-style-type: none"><li>• all proofs</li><li>• suggested planning conditions</li><li>• core documents list</li><li>• initial draft planning obligation</li></ul>
13 July 2021	Deadline for submission of: <ul style="list-style-type: none"><li>• a copy of the Inquiry notification letter and a list of those notified</li></ul>
20 July 2021	Deadline for submission of: <ul style="list-style-type: none"><li>• final draft planning obligation and relevant office copy entries</li><li>• CIL Compliance Statement (Council)</li><li>• any necessary rebuttal proofs</li><li>• final timings</li></ul>
3 August 2021	Inquiry opens 10.00 am

### **Costs**

37. The Appellant has foreshadowed a costs application. It was agreed that this would be submitted in writing shortly before the Inquiry opens.

38. You are also reminded that I have the power to initiate an award of costs in line with the Planning Guidance if appropriate. Unreasonable behaviour may include not complying with the prescribed timetables.

*AJ Mageean*

15 June 2021

## **Appendix 1**

### **TEMPLATE FOR CORE DOCUMENTS LIST (adapt headings to suit)**

**CD1        Application Documents and Plans**

1.1  
1.2 etc

**CD2        Additional /Amended Reports and/or Plans submitted after validation**

2.1  
2.2

**CD3        Committee Report and Decision Notice**

3.1        Officer's Report and minute of committee meeting  
3.2        Decision Notice

**CD4        The Development Plan**

4.1  
4.2

**CD5        Emerging Development Plan**

5.1  
5.2

**CD6        Additional material submitted after determination of the application**

6.1  
6.2

**CD7        Relevant Appeal Decisions/Judgements**

7.1  
7.2

**CD8        Other**

8.1  
8.2