



TERENCE  
O'ROURKE

Town & Country Planning Act 1990 (as amended)

APPEAL REFERENCE: **APP/A1720/W/21/3272188**

LPA REFERENCE: P/20/0912/OA

## **LAND TO THE EAST OF DOWNEND ROAD, PORTCHESTER FAREHAM BOROUGH**

S78 APPEAL AGAINST THE DECISION BY FAREHAM BOROUGH COUNCIL TO  
REFUSE PLANNING PERMISSION

Outline planning application with all matters reserved (except the means of access) for: 'Residential development, demolition of existing agricultural buildings and the construction of new buildings providing up to 350 dwellings; the creation of new vehicular access with footways and cycleways; provision of landscaped communal amenity space, including children's play space; creation of public open space; together with associated highways, landscaping, drainage and utilities.'

## **PLANNING EVIDENCE: SUMMARY FOR THE APPELLANT**

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On behalf of Miller Homes

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Inquiry 3 – 9 August 2021

## 1. SUMMARY

- 1.1 The appeal is made by Miller Homes against Fareham Borough Council's (FBC) decision to refuse an outline planning application (ref: P/20/0912/OA) for 350 homes on land to the east of Downend Road, Portchester (decision notice dated 25th November 2020, CD3.3). Only one reason for refusal is given, relating to off-site highway matters essentially covering the impact of proposed traffic signal controlled shuttle working across Downend Road rail bridge, on the operation of the highway, and the safety of the pedestrian crossing facility proposed on Downend Road.
- 1.2 Specifically, FBC considered the scheme to be contrary to policies CS5 (part 3) of the Core Strategy (LP1 CD4.1) and DSP40 (criterion v) of the Development Sites and Policies Plan (LP2 CD4.2) as well as paras 109 and 110(c) of the National Planning Policy Framework (NPPF).
- 1.3 The main issue, in this respect, is, *"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."* (CMC)
- 1.4 There is planning history to the position in that a previous appeal had been dismissed on the basis that, unsignalized shuttle working (i.e. a priority arrangement) across Downend Road rail bridge would unacceptably affect the operation of the highway because of vehicle queuing and delay – the nature and extent of which the previous appeal Inspector categorized as 'severe' (CD7.1 para 74).
- 1.5 In response, the Appellant, in agreement with HCC as the highway authority, has modified the proposals to secure:
- a single 3.5 m carriageway for vehicles on the eastern side of the existing bridge and allow one-way vehicular flow controlled by traffic signals;
  - a formal raised footway, 2m in width and with raised kerbs, on the western side of the bridge for unimpeded two-way pedestrian flow across the bridge;
  - a pedestrian crossing refuge just south of the vehicular access to the Appeal Site and north of the traffic lights (in between the two new highway features), to connect the Appeal Site's internal footway with the existing footway on the west side of Downend Road (which leads southwards onto the bridge).
- 1.6 The current scheme, before this inquiry, is a signalized version of the priority working arrangement. As before, for pedestrians and cyclists three access alternatives are to be provided:
- A. Onto Downend Road, with the vehicular access and improved pedestrian provision across the bridge
  - B. Onto 'Upper Cornaway Lane' via footpath 117 (which would be improved)
  - C. Onto 'The Thicket' via Cams Bridge

- 1.7 Importantly, and in response to FBC's SoC which suggests that the proposals for Downend Road are; not safe; do not provide a high-quality environment; will have unacceptable environmental, amenity and traffic implications; and do not provide for the timely delivery of appropriate infrastructure, it is highly relevant that:
1. The current scheme is a signalised version of the priority shuttle working and the Appellant's transport evidence outlines the extensive and thorough process of design and safety review undertaken with regards to these proposals.
  2. The Inspector concluded that shuttle working would make adequate provision for pedestrians.
  3. The previous scheme also included a pedestrian refuge, as is clearly depicted on the then application plan, 'Site Access Arrangement – Ghost Island'. This arrangement/refuge is repeated on the current application/appeal plan ITB12212-GA-014 Rev D.
  4. The previous reasons for refusal (dated 26 April 2019 CD 7.1) took no issue with the pedestrian refuge, only with the works to the bridge itself.
  5. The previous appeal SoCG signed with regards to 'Pedestrian Accessibility and Safety' (Appendix JM2) recorded an agreed position with regards to the pedestrian access strategy, that:
    - There are three proposed pedestrian access points available from the site which is considered to be a reasonable access strategy to serve the development.
      - Downend Road – the site access is available for pedestrian and cyclists to use. Pedestrian facilities are shown on Drawing ITB12212-GA- 014A and include a crossing refuge island.
  6. The same SoCG also under 'design considerations' agreed that a 2m footway *"will enable pedestrians of all mobilities to cross the bridge safely."*
  7. In all the previous extensive submissions and agreements of common ground, including the final agreed position schedule (Appendices JM3, JM4 & JM5), the acceptability of the environment and amenity provided by the pedestrian crossing refuge and by a 2m footpath across the bridge, was never highlighted as a matter of dispute. In fact, the final position statement on disputed issues (Appendix JM4) explicitly confirmed FBC's position with regards to Policy DSP40(v)<sup>1</sup> as:
 

*"Full conflict – 'unacceptable traffic implications' – highway safety and operation (no conflict with other environmental / amenity matters)"*

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<sup>1</sup> Criterion (v) reads "The proposal would not have any unacceptable environmental, amenity or traffic implications"

So, the concern lay squarely with highway safety and highway operation, not with the environmental quality and amenity of pedestrian provision and/or the impact that this would have in terms of discouraging pedestrian and cycle movements.

8. At no time has an issue been raised with regards shuttle working that cycling would be unsafe or discouraged.
9. At no time has timing of the delivery of infrastructure been raised. The works to Downend Road are to be delivered 'up-front' before any residential development and is secured by legal agreement. If the infrastructure is delayed, so is the residential development.
10. This time, the highway impact has been assessed using LinSig (not ARCADY) because the introduction of signals allows for this, as industry standard software to model signalised arrangements.

1.8 FBC officers recommended that permission be granted and rightly considered, in their report to committee (CD3.1), that:

- a. There would be urbanisation and a degree of landscape harm but the impact would be lessened by the location of landscape and view corridors in the development (para 8.84).
- b. There would be less than substantial harm, at the lower end of the spectrum, to the setting of heritage assets but the harm would be outweighed by the public benefits of granting permission (para 8.84).
- c. There were no outstanding amenity and environmental issues which cannot otherwise be addressed through planning conditions and obligations (para 8.85).
- d. There would not be any unacceptable impact on highway safety and the residual cumulative impact on the road network would not be severe (para 8.85).
- e. Policy DSP40 is engaged and the scheme satisfies the five criteria (para 8.88).

1.9 Members agreed disagreed with d and e above, but had no evidence to substantiate the position.

1.10 Important policies for the determination of the appeal are CS5 (part 3), DSP40 (criterion v), the elements of which FBC say the proposals are in conflict with are accepted as being consistent with the NPPF.

1.11 With respect to CS5 part 3 of, the Appellant's transport evidence, supported by the ASoTM, confirms that the necessary and appropriate transport infrastructure has been identified and is to be provided in a timely way. With the highway infrastructure improvements proposed, including the improvements to Downend Road rail bridge and introduction of signalized shuttle working, the development will not adversely affect the

safety and operation of the road network including with respect to public transport, walking and cycling. Further, with the three points of pedestrian/cycle access secured, it is demonstrated that the scheme has been designed to prioritise and encourage safe and reliable journeys responding positively to the context of the Appeal Site's location.

- 1.12 The CS5 policy threshold in terms of highway capacity and safety is met.
- 1.13 With respect to DSP40, there is no dispute that the proposals comply with criteria i – iv, confirming that the site is a proportionate and important response to the housing land supply shortfall, that the site is sustainably located, that impact on countryside has been minimised and the proposal is deliverable.
- 1.14 The evidence before the inquiry is that criterion v is complied with in that there are no unacceptable environmental, amenity or traffic implications of the proposals.
- 1.15 With reference to NPPF policy, and as confirmed by Mayer Brown in the emerging evidence base (CD8.2), the ASoTM and by Mr Wall in evidence:
- a) The residual impacts are not severe (NPPF para 109)
  - b) Public transport has been provided for, so far as possible (NPPF para 110)
- 1.16 Whilst important policies for the determination of the appeal are out of date, the development as proposed accords with the development plan overall, particularly when read in the context of consistency of the policies with NPPF. The statutory test is passed.
- 1.17 In policy terms, the tilted planning balance is engaged and the development, as proposed, meets the NPPF policy requirements.
- 1.18 The benefits of the proposal, and grant of planning permission, are further supported by material considerations:
- Compliance with the NPPF, as a whole
  - Support for the residential allocation for the site through the emerging local plan (Reg 19 consultation), including support from FBC's own transport consultants assisting with the local plan evidence base and with detailed knowledge of the previous appeal proposals / decision and the current appeal proposals
  - A substantial five-year housing land supply shortfall (the deliverable supply only amounting to 1.75 years)
  - An acute affordable housing need
- 1.19 With regards to heritage matters, it is agreed that the effect would be less than substantial and that the harm would be outweighed by the public benefit of the scheme.

- 1.20 Interested parties raise no issues that have not already been addressed in the application submission, consultation responses, officer report and/or evidence to the inquiry.
- 1.21 There is compliance with the most important policies, understood in the context of compliance of those policies with the NPPF, and compliance with the development plan as a whole.
- 1.22 Further, NPPF 11d is engaged, triggering a presumption in favour of granting planning permission for sustainable development; in this case, the demonstrable harm is limited and benefits substantial.
- 1.23 In accordance with the statutory provision and material considerations, including policy considerations, planning permission should be granted without delay.