

**Land to the East of Downend Road, Portchester,
Fareham Borough**

Appeal Reference: App/A1720/W/21/3272188

LPA Reference: P/20/0912/OA

Miller Homes' Opening Statement

Introduction

1. This appeal against the refusal of outline planning permission by Fareham Borough Council ("the Council") relates to the proposed development of land to the east of Downend Road, Portchester for up to 350 dwellings together with the creation of a new access and associated facilities. A previous application by Miller Homes for the same development was refused permission by the Council because of concerns about the safety/impact of the proposed works to Downend Road bridge and the accessibility of the Appeal Site.
2. An appeal against the Council's decision was dismissed by the Secretary of State (Inspector Gould) on 5th November 2019 because of the concern that the alternative works to Downend Road bridge would not make adequate provision for safe pedestrian access over the bridge (Option 2) or would unacceptably affect the operation of the road because of unacceptable vehicle queuing and driver delay (Option 3). On all other issues (including accessibility), the 2019 Inspector found in favour of the Appellant. He also made a partial costs award against the Council relating to concerns unreasonably

raised by the Council in relation to the safety of the proposed site access and the use of No. 28 Downend Road's access which the Council relied on at the Inquiry but formed no part of the Council's reasons for refusal.

3. The appeal scheme now incorporates a revised arrangement for Downend Road bridge comprising a 2 metre footway and shuttle working arrangement across the bridge controlled by lights. In all other respects (including the pedestrian crossings of Downend Road), the proposed development is the same as that considered by the 2019 Inspector.

The Application and Reason for Refusal

4. The Application was recommended for approval by the Council's planning officer following detailed discussions between Miller Homes and the highway authority (Hampshire County Council) ("HCC"). However, the Council's Planning Committee refused the Application (5/4) because of its concern that the works to Downend Road bridge would "unacceptably affect the operation of the highway because of the vehicle queuing and driver delay that would arise and would result in unacceptable harm to the safety and convenience of users of the highway". The reason for refusal also expressed concern that the application did not make "acceptable pedestrian crossing provision on Downend Road for future residents of the development".
5. There is nothing in the Council's Minutes to indicate that the Planning Committee had received any professional advice that the

Transport Assessment submitted by the Appellant with the Application and approved by HCC was in any way inaccurate or deficient. Mayer Brown, transport consultants who had acted for the Council in relation to the 2019 appeal and is advising it on the transport aspects of the proposed allocations in the emerging local plan, had no objection to the proposed works to Downend Road. The Planning Committee members were advised of Mayer Brown's independent review prior to making its decision.

Housing Land Supply

6. It is agreed that the Council cannot demonstrate a housing land supply of deliverable sites of more than 3.57 years. In fact, the land supply position is materially worse than the Council accepts and is only 1.75 years (the 2019 Inspector found the land supply to be 2.4 years as contended for by the Appellant against a Council figure of 4.66 years) but in either case the shortfall is substantial.
7. The consequence of that shortfall is that the "tilted" balance applies under para. 11d) of the NPPF 2021 (i.e. permission should be granted unless any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole).

The Development Plan

8. It is agreed that the two most important development plan policies relevant to the determination of the appeal are CS5 of the Fareham Borough Core Strategy 2011 and Policy DSP40 of the Local Plan Part 2.

9. CS5 is a general policy which permits development provided that it *“does not adversely affect the safety and operation of the strategic and local road network, public transport operations or pedestrian and cycle routes”* and *“is designed and implemented to prioritise and encourage safe and reliable journeys by walking, cycling and public transport.”*
10. DSP40 provides that where the Council does not have a five year supply of land for housing against the requirements of the Core Strategy additional housing sites, outside the urban area boundary, may be permitted where they meet certain criteria including where *“the proposal would not have any unacceptable... traffic implications”*. It is only these limited aspects of Policies CS5 and DSP40 that the Council alleges the proposed scheme conflicts with.

Main considerations

11. The main considerations agreed at the CMC included (1) the effect of the proposed development on the operation of the local highway network, with particular reference to vehicular and pedestrian movement across the Downend Road bridge across the railway line, and the provision for pedestrian crossing of Downend Road; and (2) 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 the conflict.

The Appellant's case

12. If, as the Appellant contends, the proposed development will not adversely affect the operation and safety of the highway including

that of pedestrians (a position supported by HCC) then there will be compliance with the development plan and the appeal should be allowed in accordance with s.38(6) and the NPPF.

13. However, even if there is some conflict with those parts of CS5/DSP40 relied on by the Council the appeal should be allowed because of the application of the tilted balance and because the nature and level of harm does not reach the threshold levels that would indicate conflict with the NPPF, and they do not significantly and demonstrably outweigh the benefits of the proposed development. These are agreed to include the delivery of housing, the delivery of affordable housing, economic benefits and improvements to Downend Bridge relative to the current situation.

The Council's case

14. Not having taken any professional advice on transport matters before it refused the Application and having disregarded HCC's detailed consultation response, the Council's case has slowly emerged and evolved since the appeal was submitted to the Secretary of State.
15. In accordance with the PINS Procedural Guide, the Appellant submitted a full Statement of Case. The Council did not do so and was required at the CMC to serve an Addendum Statement of Case on transport matters by 25th June.
16. Not only was the Council's Addendum Statement of Case served late (on 29th June) but it failed to identify in any detail what its case on highways/transport matters would be at the Inquiry. Instead, the Council's case on highways/transport matters was only revealed in

its Proof of Evidence (also served late) and its Rebuttal Proof of Evidence (again late, and much of which should have been in its Proof of Evidence). The Council's Transport evidence also raises concerns about aspects of the Transport Assessment, Safety Audits and HCC's consideration of the Application which plainly go beyond the Council's reasons for refusal, Statement of Case and Addendum Statement of Case¹.

17. Despite having provided detailed evidence in his Proof of Evidence and Rebuttal Proof criticising the operation of the shuttle working proposals over the bridge (including the length of inter-green times, the absence of pedestrian/cycle facilities as part of the junction, the use of 2026 as the forecast year, the trip generation figures used in the TA and not assessing the impact of traffic in the peak 15 minutes in the AM peak hour), on 30th July (i.e. 2 working days before the Inquiry was due to start) the Council notified the Appellant by email that it was no longer pursuing matters "*in relation to the effect on the operation of the highway and the resultant delay*".
18. An immediate request for clarity as to which parts of Mr Lewis' evidence was no longer being relied on (shown by track changes in Mr Lewis' Proof of Evidence and Rebuttal Proof of Evidence) went unanswered until track-changed versions of the Council's Proofs/Rebuttal Proofs of Evidence were received by the Appellant after 5pm on 2nd August (i.e. the night before the Inquiry). There has

¹ The Appellant foreshadowed at the CMC that, in the absence of a full Statement of Case in from the Council in accordance with the PINS' Guidance, the Council would only reveal what its case was in its evidence which would be unfair, contrary to the Guidance and inimical to the efficient running of the Inquiry.

been no response at all from the Council to the “Scott Schedule” sent to it on 28th July in an attempt to refine the matters in dispute.

19. The implications of the Council’s last-minute concessions are yet to be fully assessed by the Appellant but they will have consequences both in terms of how the Inquiry proceeds and, inevitably, in costs.

Dated 2nd August 2021

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