

Appeal by Miller Homes in respect of Land East of Downend Road, Portchester, Fareham

Planning Inspectorate's Reference: APP/A1720/W/19/3272188

Opening Submissions on behalf of

Fareham Borough Council

(Inquiry commencing 03/08/21)

1. Introduction

- 1.1 The appeal is against the decision of Fareham Borough Council to refuse outline planning permission for residential development including the demolition of existing agricultural buildings and the construction of up to 350 buildings and associated works.
- 1.2 The application was refused by the Council on 18th November 2020. The reason for refusal related to:
 - (1) The proposals resulting in unacceptable harm to the safety of users of the highway;
 - (2) The application not making acceptable pedestrian crossing provision; and
 - (3) The proposals would have an unacceptable effect on the operation of the highway because of vehicle queuing and driver delay.
- 1.3 It is now agreed that the Council will not be providing evidence in support of the third element of the reason for refusal – that relating to capacity – on account of the fact that, following exchange of rebuttal evidence, Mr Lewis (the Council's expert on highway matters) accepts that there will be no unacceptable affect on the operation of the highway due to capacity considerations.

1.4 It is agreed that:

- (1) The Council cannot demonstrate a 5 year housing land supply and therefore the titled balance in paragraph 11 of the NPPF applies;
- (2) There is harm to heritage assets which must be given considerable importance and weight in the planning balance;
- (3) The development would fall outside of development boundaries in circumstances contemplated by policy DSP40 of the Local Plan Part 2. Policy DSP40 provides that, where the Council does not have a 5 year housing land supply, additional housing sites, outside of the urban area boundary, may be permitted only where five criteria are met;
- (4) These criteria include (v) the proposals will not have any unacceptable environmental, amenity or traffic implications.

1.5 It follows that the key issue in dispute is whether the proposal will have unacceptable traffic implications.

1.6 In relation to development which would be in conflict with the Development Plan it is highly material that development should be plan-led. This is inherent in section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 which establish a statutory presumption in favour of the Development Plan. This presumption is re-emphasised in the Framework and was the subject of guidance by the Court of Appeal in *Gladman Developments Limited v Daventry* [2016] EWCA Civ 1146. In respect of a very old development plan Sales L.J. stated at paragraph [40](iv):

““iv) Since an important set of policies in the NPPF is to encourage plan-led decision-making in the interests of coherent and properly targeted sustainable development in a local planning authority's area (see in particular the section on Plan-making in the NPPF (2012), at paras. 150ff), significant weight should be given to the general public interest in having plan-led planning decisions even if particular policies in a development plan might be old. There may still be a considerable benefit in directing decision-making according to a coherent set of plan policies, even though they are old, rather than having no coherent plan-led approach at all.”

- 1.7 In relation to the weight to be attached to harm found to the significance of listed buildings by development within their setting the Court of Appeal decision of *Barnwell Manor Wind Energy Limited v (1) East Northamptonshire District Council (2) English Heritage (3) National Trust (4) SSCLG [2014] EWCA Civ 137* emphasises that, in enacting s.66(1), Parliament had intended that the desirability of preserving the settings of listed buildings should not simply be given careful consideration (in the procedural sense) by the decision-maker for the purpose of deciding whether there would be some harm, but should be given "considerable importance and weight" when the decision-maker carried out the balancing exercise. This is the case whether the harm is substantial or less than substantial.
- 1.8 It will be demonstrated that, as on the previous occasion when an application for this site was determined on appeal, the Planning Committee were right to refuse permission for this scheme. On that occasion Inspector Gould (CD7.1) dismissed the appeal, in spite of the fact that the Highways Authority had raised no objection, on the basis that there would be both unacceptable harm to pedestrian safety and the operation of the highway (paragraphs [97] and [100]). Furthermore, Inspector Jenkins has recently considered the relevant policy framework in the context of highway safety issues in the Newgate Lane (North and South) appeals (CD 7.4) and found that a breach of DSP40(v) is a "matter of the greatest weight" when considering whether permission should be refused (paragraph [111]).
- 1.9 This analysis respects the dicta of Lord Carnwath at paragraph [55] of *Suffolk Coastal DC v Hopkins Homes and another [2017] UKSC 37* (CDJ 7.15). The fact that the provisions of DSP40 are breached puts the development squarely at odds with the Council's development strategy and the core principle that planning for the future should be genuinely plan led. To use the words of Lord Carnwath at [21] the Framework:

"...cannot and does not purport to displace the primacy given by statute and policy to the statutory development plan. It must be exercised consistently with, and not so as to displace or distort, the statutory scheme."

- 1.10 The development plan requires that applications such as these, should be dealt with in accordance with this policy. It is by complying with the terms of this policy that proposed development for housing outside of the settlement boundary escapes the fundamental constraints of settlement boundary policy. It follows that a failure to give this policy anything less than the greatest weight would entail a failure to respect the primacy of the development plan and would distort or displace the statutory scheme.
- 1.11 The evidence will demonstrate that there is a real safety issue with what is proposed and that far from acting unreasonably, the Planning Committee was once again correct to refuse permission. In evidence both parties discuss the fact that, earlier this year, since this matter went to committee there has been a fatal accident at the Downend Road bridge in the vicinity of the appeal site access in which someone lost control of their vehicle and hit the verge.

2. The Case for the Council

(1) Conflict with the Development Plan

- 2.1 Policy DSP40 provides (insofar as is material) that permission for development outside of the defined development boundaries of settlements will only be granted where a proposal will not have any unacceptable environmental, amenity or traffic implications.
- 2.2 The supporting text provides at 5.163-4 that:

“Therefore, further flexibility in the Council’s approach is provided in the final section of DSP40: Housing Allocations. This potentially allows for additional sites to come forward, over and above the allocations in the Plan, where it can be proven that the Council cannot demonstrate a five year land supply against the Core Strategy housing targets...

5.164 In order to accord with policy CS6 and CS14 of the Core Strategy, proposals for additional sites outside the urban area boundaries will be strictly controlled.”

- 2.3 Mr Jupp will demonstrate that in circumstances where the Council is unable to demonstrate a 5 year housing land supply, the circumstances where market housing outside of the defined development boundaries of Settlements is permitted are strictly controlled in line with policy DSP40.
- 2.4 Mr Jupp will also demonstrate that in those circumstances, where the Development Plan expressly addresses the manner in which such applications should be decided in circumstances where a five year supply cannot be demonstrated, the fact that the proposal is in breach of policy DSP40 must be given the very greatest weight in the planning balance. It is only by complying with the terms of this policy that proposed development for housing outside of the settlement boundary escapes the fundamental constraints of settlement boundary policy.

(2) Highway Matters

2.5 On the last occasion Inspector Gould found that the development proposal would increase pedestrian use of the bridge by either 83 or 86 % (35 or 36 trips depending on whether one adopts the Council or Appellant calculation) which amounts to 3.5 times the original estimate provided by the Appellant. It was demonstrated that a large portion of this additional demand will take place during the morning peak period and consist of children travelling to school.

2.6 Mr Lewis will demonstrate that:

(1) When a crossing assessment, required by the relevant guidance, is carried out this demonstrates that a controlled pedestrian crossing is required. This is because when one considers the safety of those crossing there is either an insufficiency of time to cross the road and/or the visibility requirements of those crossing are not met. Indeed, it is agreed by the Appellant as part of the traffic statement of common ground that visibility splays may/will be (partially) obstructed when traffic is queued at the stop line or waiting to turn right;

(2) The proposed arrangement at Downend Road bridge will introduce unsafe road conditions for vulnerable road users, in particular cyclists. A highway environment will be brought into existence where it will be very difficult to over-take cyclists for around 180 metres and which will involve pedestrian refuge islands in combination with the bridge itself. Research demonstrates that the presence of these features often encourages drivers to attempt to overtake even if it is unsafe to do so;

(3) Furthermore, in the vicinity of the site access and the bridge, there are a number of factors relating to the proposed design of the scheme including the inadequate length of the ghost island taper lengths (on either side of the access), the transitions of the horizontal alignment, the verge width and gradient and the refuge island depth which will combine to contribute to the unsafe arrangement for vulnerable road users and pedestrians.

(3) Planning Balance

- 2.7 Mr Jupp will demonstrate that the proposed development is in conflict with the Development Plan and fails to comply with policy DSP40 which expressly deals with how an application such as this should be determined in circumstances where there is a five year supply shortfall. The greatest weight should be afforded to this harm.
- 2.8 When this harm is considered along with the agreed heritage harm it significantly and demonstrably outweighs the weight afforded to additional housing, including affordable housing. Furthermore, the unacceptable impact on highway safety in terms of paragraph 111 and 112 of the June 2021 NPPF means that the appeal should be dismissed for this reason alone.

David Lintott

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02/08/21