The Planning Inspectorate

Appeal Decision

Hearing Held on 14 and 15 August 2018

Site visit made on 15 August 2018

by Kenneth Stone BSc Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th September 2018

Appeal Ref: APP/A1720/W/17/3192431
Sawmills Industrial Park, Wickham Road, Fareham, Hampshire PO17 5BT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by BST Warehouses Ltd against Fareham Borough Council.
- The application Ref P/17/0189/FP, is dated 17 February 2017.
- The development proposed is described as 'demolition, site clearance and remediation with the erection of 72 C3 residential dwellings and associated access, parking, ancillary infrastructure and landscaping works'.

Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing applications for costs were made by BST Warehouses Ltd against Fareham Borough Council and by Fareham Borough Council against BST Warehouses Ltd. These applications are the subject of separate decisions.

Procedural matters

3. Prior to validation the planning application was the subject of a screening direction issued by the Secretary of State for the Department for Communities and Local Government. The screening direction concluded that the proposed development was not EIA development.

4. The Council's Planning Committee considered the application following the appeal being lodged and resolved that had it had the opportunity to determine the application it would have refused permission for six reasons. Those putative reasons included reference to inadequate information in relation to land contamination, inadequate survey information in respect of protected species and the absence of a planning obligation. During the appeal and prior to the conclusion of the hearing further information was submitted to address issues related to land contamination and protected species and a Unilateral Undertaking (UU) planning obligation pursuant to section 106 of the Town and Country Planning Act 1990 was executed and submitted. On this basis the Council confirmed it did not seek to pursue the reasons for refusal related to those matters. I address the planning obligations and matters arising out of that further information below. The sixth reason for refusal, related to highway

matters, was not pursued by the Council following further information and discussion with the Highway Authority.

5. The remaining substantive issues between the parties related to the design quality of the scheme and the adequacy of infrastructure provision and these form the basis of the main issues set out below.

6. The Solent is internationally important for its wildlife and three Special Protection Areas (SPAs) have been designated to protect over wintering birds. The Solent Recreational Mitigation Strategy (SRMS) requires contributions from all dwellings built within 5.6 Km of the boundaries of the SPA. The appeal site is located within the 5.6 Km zone of influence of the Solent SPAs and it is not disputed that a contribution is required and indeed such a contribution is secured in the UU.

7. However, following the Court of Justice of the European Union judgement in the People over Wind and Peter Sweetman v Coillte Teoranta, case C-323/17 it is not permissible to take account of measures intended to avoid or reduce harmful effects of the plan or project on a European site at the screening stage under the Habitat Regulations Assessment. The proposed development is not directly connected with or necessary for the management of the Solent SPAs. Given the agreement between the parties that a contribution under the SRMS is required it is accepted and acknowledged that there would be a potential for the proposal to have a significant effect on the interest features of the site through the increased pressure resultant from an increase in the population resulting in increased visitor numbers with the potential for increased disturbance of the over wintering birds. Whilst the SRMS has been developed to mitigate such impacts given the recent judgement of the CJEU this cannot be taken into account at the screening stage and therefore it must be concluded that it is likely the proposal would have a significant effect, either alone or in combination with other developments, through the increased recreational pressure.

8. The outcome of that conclusion is that an appropriate assessment must be carried out to determine whether or not the development would have an adverse effect on the integrity of the European site. But again given the justification for the required mitigation this is on the basis that there would be a significant effect that requires to be mitigated. The appropriate assessment therefore results in a conclusion that there is a risk of adverse effects on the integrity of the site. However, the HRA process then seeks to consider whether the adverse effects can be mitigated. In this regard there is a published mitigation strategy which has been agreed by various bodies including Natural England, the Statutory Nature Conservation Body. The appellant has provided a UU planning obligation which, among other matters, secures the payment of the required contribution to meet the SRMS and would therefore adequately mitigate the adverse effects that would result from additional recreational pressure on the integrity of the SPAs. There is therefore no bar to development on this basis.

9. The National Planning Policy Framework at paragraph 177 advises that the presumption in favour of sustainable development does not apply where development requiring appropriate assessment because of its potential impact on a habitats site is being planned or determined. Given this proposal has

been the subject of appropriate assessment this has implications for the approach to decision making which I return to below in the planning balance.

Main Issues

10. The main issues in this appeal are:

- Whether the proposed development would represent high quality design and contribute towards an attractive, inclusive, safe, well-connected and sustainable community as required by development plan and national policy; and
- Whether the proposed development makes adequate provision for a reasonable proportion of the necessary infrastructure required to support Welborne.

Reasons

Background

11. The statutory development plan for the area comprises the Local Plan Part 1: Core Strategy (CS), the Local Plan Part 2: Development Sites and Policies (DSP) and the Local Plan Part 3: The Welborne Plan (WP). In respect of this appeal the CS and the WP provide the relevant development plan policy framework against which to consider the development.

12. Policy CS13 of the CS provides for a Strategic Development Area north of Fareham to provide for housing and supporting environmental, social and physical infrastructure along with retail and employment floorspace. The aim is for the new community to be as self-contained as possible whilst complementing and supporting the established town centre of Fareham. The policy also sets out high level development principles for the new development.

13. The WP takes forward the strategic development area allocation and sets out the broad type, location, amount and character of the development of Welborne and is provided to guide decision making on future planning applications for the site. The Welborne Design Guidance (WDG) is a supplementary planning document to explain the Council's expectations in the design of Welborne. It builds on policies in the WP and aims to ensure Welborne will be a well-designed development that fits in with the landscape and provides a high quality place to live.

14. Both parties refer to the strategic allocation as a garden village and I understand that Welborne has been identified by the government as a Garden Village which will provide priority access to funding streams and support to assist in progressing the delivery of the 6, 000 homes on the site and the supporting infrastructure.

15. There is an outstanding application under consideration by the Council by Buckland Development Ltd for development of the strategic allocation.

16. The Statement of Common ground accepts that the proposed delivery of housing on the appeal site in advance of the outline planning permission being granted for the wider Welborne Area would, in this case be acceptable and would not prevent the delivery of the overall vision for Welborne and as such is acceptable in principle and as a standalone phase from the wider Welborne project. The proposal, for residential development for the site, is in accordance

with the Strategic Framework Diagram referenced in para 3.50 of the WP which identifies the site for residential development.

17. The appeal site is an existing industrial site occupied by various industrial buildings with the majority of the site laid to open hard standing. It is presently in a relatively low intensity use. There are changes in levels across the site with the eastern boundary of the site, adjacent the A32, being higher than the western boundary, formed by Forest Lane and the southern end of the site, adjacent to existing residential development, being lower than the fields and open countryside that rise to the north of the site.

Quality of Design

18. The National Planning Policy Framework at paragraph 124 clearly advises that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve and that good design is a key aspect of sustainable development. At paragraph 127 the Framework further advises that decisions should ensure developments will function well, be visually attractive, sympathetic to local character, establish a strong sense of place and optimise the potential of the site to accommodate an appropriate amount and mix of development. Paragraph 130 is clear that account should be taken of local design standards or style guides or supplementary planning documents in reaching conclusions on the design of a scheme, with poor design being refused but design not used by decision makers to object to development if it accords with the expectations of policies.

19. The context within which this development is to come forward is as an early phase of the Welborne Garden Village. It may be seen not to prejudice the wider implementation and delivery of the Garden Village but it is still part of the wider allocation and obtains its in principle acceptance as part of the strategic allocation. The scheme must be considered in the context of the planning framework for Welborne, the strategic allocation, development management policies in the Welborne Plan and, as a material consideration to provide further advice and guidance on those policies, the Welborne Design Guide. The success of the project will for a significant part be dependent on the implementation of a high quality design. As the first proposals to be determined in that context it is imperative the aims and aspirations for the Garden Village are fully realised in all its constituent parts.

20. The overall design considerations of the scheme have a number of facets that interact and contribute to the character and layout of the scheme, including the arrangement of buildings, open space provision, the scale and bulk of buildings, parking areas and the communal garden area.

21. Policy WEL2 in the WP supersedes the high level development principles for Welborne as originally set out in CS13. These include a requirement for each phase to be well designed and incorporate a range of densities and building heights to create a series of attractive places with different and distinctive characters. The WP identifies four character areas including a Woodland Character Area at Figure 4.1. The WDG provides further advice on the expectations and division of the character in these character areas. The appeal site would be located within the 'Woodland Character Area'. In advising on the character of Welborne as a whole the WDG at 2.33 advises that the more sensitive areas of the development are those on the outskirts of the site. In these locations it is suggested development would be expected to be less

intensive and pre-dominantly 2-storey. Page 34 includes design guidance for the Woodland Character Area and indicates residential development should be predominantly 2 storey with occasional 2.5 storey pre dominantly detached and semi-detached with occasional short terraces and a mix of setbacks. The Woodland Character Area should be characterised by tree cover that is a dominant feature of the area, a layout that ensures surrounding woodland is visible from within the site and in particular locations be of a more rural character.

22. The appeal proposals are predominantly formed of short blocks of closely spaced terraces set in formal arrangements and with building heights that incorporate a significant proportion of building heights in excess of 2 storeys. The resultant layout, form and character is one of a more urban or suburban residential estate. The limited separation of spaces between a number of the terraces result in longer runs of building frontages dominating the spaces. The Crescent terrace to the south of the site and the group of housing enclosing the SUDs space to the north form distinctly urban typologies. Similarly the main housing group fronting the large open space with narrow plots and higher building heights, including up to three storeys, dominate the centre of the scheme and produce a very civic appearance.

23. There is an east west pedestrian route through the site which could link to the wider Welborne development and form part of the Green corridor and infrastructure required in the WP. The relationship of this with the large open area in the centre of the site contributes to a strong element of green infrastructure. However, its effectiveness is reduced to some extent by the subdivision from the SUDs area to the north and the children's play area and the constrained access points onto Wickham Road and Forest lane.

24. The large open space and the green route that runs through the site provide the potential for tree planting but given the limited other spaces and dominance of the road through the scheme this would not result in a Woodland Character where tree cover was a dominant feature. The nature of the road alignment and positioning of the blocks would restrict views to the wider areas beyond the site and reduce views to the woodlands beyond to glimpsed views rather than integrated within the overall design and contributing to the importance of woodland in those views.

25. In my view this conflicts with the Councils expectation for the area which would suggest lower intensity development in a more informal layout with a more rural character and could undermine WEL2 which seeks to ensure that development creates a series of attractive places with different and distinctive characters.

26. There are a number of locations where the layout provides flank walls and garden boundaries onto roads conflicting with the advice in the WDG and providing for poor or reduced surveillance of these sections of the site.

27. The northern section of the site is particularly unsuccessful in seeking to address the issues raised by the site. Whilst I acknowledge that the WDG seeks to promote perimeter block development it does not require only such a form of development and that would be inappropriate. This site is constrained is previously developed has significant variations in levels and other factors which may suggest that such an approach is not the only solution. However, many of the principles behind the perimeter block approach including natural

surveillance, defensible space, the separation and definition of public and private spaces are important concepts to retain. With the use of the parking courts many of these respected principles are lost. Much of the parking areas in these locations are poorly over looked are not readily distinguishable as private or public spaces or provide clear demarcation of ownership. They are poorly screened and are somewhat unrelieved unattractive large areas of hardstanding. Whilst it was suggested additional windows could be inserted in the flank walls of properties fronting these spaces to increase overlooking that does not address the basic issue. These windows would in any case at best be secondary windows or not to primary habitable rooms which would do little to improve passive surveillance of the parking areas.

28. These would conflict with WEL6 which requires development, amongst other matters, to provide a layout and design that will help to create safe well-connected neighbourhoods.

29. The small block of flats located at the entrance to the development appears shoehorned into this section of the site and has limited space for its setting or to provide amenity space for future occupiers of the building. The limited space to the building, the scale of the elevations and the proximity of tree planting would result in the southern space being unwelcoming and unattractive as a private amenity space for future occupiers.

30. The general appearance of the entrance to the site is somewhat compromised by the level of activity, limited space around the flat block, the additional private access for the four detached properties combining to produce an intensity of built form and level of activity that contributes to a more urban character for the scheme.

31. Bringing all these maters together I conclude that the proposed development would result in a development with a strong urban character conflicting with the more woodland character area proposed and the generally more informal and lower intensity of development rural character sought for this part of Welborne. This would result in a development which would compromise the expectations for the character and appearance of the area. The layout and design introduces elements that produce areas where surveillance would be poor and amenity provision for future residents was unacceptably constrained. On this basis the proposed development would not represent high quality design and would not contribute towards an attractive, inclusive, safe, well-connected and sustainable community as required by development plan and national policy.

Necessary infrastructure

32. Welborne as a new settlement which is aiming for the most part to be self-sufficient has been justified and evidenced on the basis of a delivery plan and assessment of the necessary infrastructure it will require to meet its needs. The WP is supported by an Infrastructure Delivery Plan and the extant application for the wider Welborne development is accompanied by an updated Infrastructure delivery plan.

33. The applicant has not submitted such a plan with their application albeit that such documentation is suggested to be appropriate in the WP. The Council have validated the application on the back of the applicant providing a note

summarising how the development would contribute to the wider infrastructure costs for Welborne and a further note on these matters.

34. It was accepted at the hearing that the Council do not object to the specific costings the appellant has put forward as they have no evidence to challenge those.

35. I also note that the appellant has drawn attention to the fact there is sufficient capacity in the local primary and secondary schools to meet the demands of the development and that there was sufficient capacity in the local doctors surgeries and dentists.

36. However the principle of the development is predicated on the site forming part of the wider Welborne development and that as the new Garden Village develops there would be an expectation that the occupants of this development would use the services and facilities in the wider Welborne development and not travel to other areas. It is not unreasonable to expect all parts of the Welborne strategic allocation to make its proportionate contribution to the provision of the necessary infrastructure to support Welborne's future residents.

37. The appeal site is a previously developed area of industrial land and will require significant decontamination. The decontamination costs form a significant portion of the costs in the appellants note to demonstrate that these are part of their contribution to the necessary infrastructure. However I have no evidence or clarity before me on whether the decontamination costs formed part of the wider Welborne IDP costs and whether the appellant's costs are of a similar scale. Similarly I have no indication as to whether by the appellant decontaminating this site that would reduce, or by how much, the cost that would be borne by the wider Welborne development. In these circumstances there is no clarity on whether there is cross subsidy such that would then justify reductions in other contributions.

38. I note that the high costs of the development ascribed by the appellant but these appear in many instances to be the normal costs associated with a development of a previously developed site to a standard required by development plan policy. Whilst I acknowledge the higher per unit costs towards these matters as compared to the IDP costs divided across the wider Welborne development that does not address the issue. The evidence before me demonstrates that the appellant does not contribute towards infrastructure of schools, primary health care, extra care housing, community buildings, market square public realm sports facilities etc; indeed all of the social and services necessary to support a thriving community. What the costs provided show are costs associated with decontamination, the provision of green infrastructure, transport, and physical energy and drainage projects. But these are all necessary costs of the development.

39. Overall, on the basis of the above, I conclude that the development does not make adequate provision for a reasonable proportion of the necessary infrastructure required to support Welborne. The proposal would therefore conflict with policy WEL41 which requires development to be undertaken in accordance with an agreed delivery plan unless there is suitable alternative appropriate infrastructure to adequately service the development.

Planning Obligations

40. The appellant has secured planning obligations through a Unilateral Undertaking under sec 106 of the Town and Country Planning Act 1990. The UU contains six schedules which set out the obligations the owner undertakes to observe and perform.

41. Schedule one contains obligations related to highway works and a travel plan. These ensure that the highway works will be undertaken at the appropriate stage of development and follow the appropriate mechanisms. The travel plan will encourage sustainable travel. These matters are in accordance with policies WEL23 and WEL27 in the WP and are directly related to the development and fairly and reasonably related to the scale of the development.

42. Schedule 2 contains obligations which secure the provision of 22 affordable housing units, 15 as affordable rent and 7 as shared ownership. The obligations address issues including transfer, delivery, stair casing and release. Three wheelchair units are also secured. The provision of 30% of the units as affordable units is in accordance with policy WEL18 of the WP and is therefore fairly and reasonably related in scale and kind to the development.

43. Schedule 3 secures the provision and management of the open space and play area. These are consistent with the requirements of policies WEL29 and WEL35 of the WP and are fairly and reasonably related to the scale and kind of the development.

44. Schedule four secures the financial contribution required for the SRMS. The contributions are not used for the provision of infrastructure and so are not caught by the pooling restrictions under the Community Infrastructure Levy Regulations. The SRMS contributions support the management of the SPAs to mitigate the harmful impact of additional recreational activity on nesting birds/wading birds within the Solent region. The contributions are therefore fairly and reasonably related in scale and kind to the development.

45. Schedule 5 secures public access to the onsite routes to support the wider Welborne development and ensure access to the green corridors and general access through the wider allocation development as it comes forward. The provisions are therefore reasonably and fairly related to the scale and kind of the development.

46. Finally schedule 6 secures the provision and implementation of an Employment and Skills Plan in accordance with policy WEL43 to provide opportunities for local people to be involved in employment and training during construction. This directly relates to the implementation of the development and in part is directed towards the social dimension of sustainable development. The obligation is fairly and reasonable related to the scale and kind of the development.

Benefits of the Scheme

47. The proposed development would provide for some 72 new dwellings in an Authority where the Council accept that it can only provide for between 3.5 years and 4 years of housing land supply. The houses would come forward now and be an early housing opportunity and first delivery from the Welborne allocation which will contribute to the Council's housing delivery target. This is a significant benefit but given the limited number of units I reduce the overall

weight of this factor and afford it moderate weight. Of those new houses the development would make provision for 15 affordable units, secured through the UU. The Council has a significant need for affordable housing but given the limited number of units provided, which is also no more than policy requires, I also attach moderate weight to this benefit.

48. The appellant suggests the remediation of the site is a key benefit of the scheme. Whilst the old industrial, somewhat dilapidated buildings, hard surfacing and previously developed land would be removed and the site brought into a more productive use this would be the case in any redevelopment of the site. On this basis I give this only limited positive weight as a benefit of the scheme.

49. The scheme would result in the moving of the main access on the A32 and removal of any vehicular access through the site between the A32 and Forest Lane. These are matters that would improve highway safety and are minor benefits of the scheme. Again they could be secured with any redevelopment of the site. I afford this limited positive weight.

50. The site would make provision for connection to the foul drainage network which could facilitate surrounding properties also connecting to the foul drainage system reducing the reliance on soakaways. This is a minor benefit of the scheme to which I attributed limited positive weight.

51. The appellant suggests that positive benefit derives from the landscaping and green infrastructure provided on the site. However, this is a necessary requirement to meet policy and ensure the development provides a good standard of amenity for future residents', to protect adjoining occupiers and addresses ecological requirements. It is also necessary to address the woodland character area within which it is proposed. It is not therefore a positive benefit of the scheme.

52. Adjoining the site is Mill House, a grade II listed building. The proposed development would remove existing large industrial structures close to the boundary and improve the setting of the listed building. This is a positive benefit to which I attribute moderate positive weight.

53. Any mitigation measures provided or secured in respect of the scheme are not positive benefits but seek to address and mitigate the impact of the development.

54. There would be economic benefits associated with the development including new homes bonus, CiL payments for which the development would be liable, the additional spend in the local economy during implementation of the development and the additional financial and community support derived from the increased population using services and facilities in the area once the development is occupied. I give this moderate positive weight.

Other matters

55. The Council following the publication of the new Framework have confirmed that their supply of available housing land would be in the range of 3.5 to 4 years supply. The appellant accept that this is a reasonable range for the authority at this point in time. The Council cannot therefore demonstrate a 5 year supply of housing land.

56. The development would remove the existing buildings and hard surfacing from the land and de-contaminate the site. The Council originally provided a putative reason for refusal in respect of land contamination however upon receipt of further information have not continued with any objections to the scheme on that basis. The Council is satisfied that should permission be forthcoming land contamination could satisfactorily be addressed by condition and I have no evidence before me to disagree with those conclusions.

57. Similarly further information including further survey work and a mitigation strategy to address any concerns that may arise in respect of Dormice has been provided. Agreement has been reached between the parties that the most appropriate way forward is to accept that there is a strong likelihood that Dormice are on the site. On this basis the appellant has produce a Dormice mitigation strategy in the event it is demonstrated that they are. The Council, and County Council ecologist, accept that the mitigation strategy would address the effects of the development on Dormice if they were to be identified. On this basis a condition requiring the implementation of the Dormice mitigation strategy in the event Dormice were established to be on the site would be an appropriate way forward.

Planning Balance

58. Given that the development has been subject to appropriate assessment the presumption in favour of sustainable development at paragraph 11 of the Framework does not apply. The proposal is therefore only to be considered on the basis of the section 38(6) balance such that the appeal should be determined in accordance with the development plan, unless material considerations indicate otherwise. In this case I have concluded that the proposal would not be high quality design and would conflict with development plan policies CS13 WEL2 and WEL6. I have also concluded that the proposal would not provide adequate infrastructure contributions and would therefore conflict with WEL42.

59. The Council cannot demonstrate a 5 year housing land supply and therefore the provision of housing including affordable housing is a significant consideration. However I have given this only moderate positive benefit given the scale of the development. I have noted a number of other benefits associated with the scheme and take account of the weight I have ascribed to them above.

60. The Framework advises that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Given the conflict with the development plan and the advice on design in the Framework the other considerations do not indicate that a decision otherwise is appropriate. Albeit there is a shortfall in the housing land supply this is the first development in a Garden Village where design will be fundamental to its success and the shortfall of housing does not mean housing at any cost.

Overall conclusion

61. For the reasons given above I conclude that the appeal should be dismissed.

Kenneth Stone

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Simon Ricketts	Town Legal LLP
Gavin Hall	Savills
Richard Powell	Latchmoor Properties
Bruce Slattery	Jacobs Engineering
Jonathan Moore	MH Architects
Andrew Linfoot	Jacobs Engineering

FOR THE LOCAL PLANNING AUTHORITY:

Luke Simpson	Adams Hendry
Alex Russell	Southampton & Fareham Legal Services Partnership
Justin Leach	LDA Design
Valerie Conway	VE Consulting
Maral Miri	Hampshire County Council

INTERESTED PERSONS:

Mrs Brenda Clapperton	Secretary of Fareham Society

DOCUMENTS SUBMITTED DURING HEARING

1 Draft Unilateral Undertaking and summary Schedule submitted by appellant
2 Comments on Revised National Planning Policy Framework submitted by Council
3 Comments on revised national Planning Policy Framework, summary of outstanding issues and Dormouse mitigation strategy submitted by appellant
4 Copy of e-mail from Council to Pins Case officer dated 10 August including NPPF statement, pre-application proposal, delivery trajectory for Welborne The Executive Leaders Announcement on HLS and extracts of Draft Planning Practice Guidance
5 Copy of Judgement of European Court C323/17 People Over Wind and Peter Sweetmanv Coillte Teoranta submitted by Council
6. Copy of updated planning condition 2 to update plan reference numbers and copies of relevant plans (latest revisions)
7 Copy of extract from Welborne Infrastructure Delivery Plan related to New Homes Bonus submitted by appellant
8 Copy of various amended conditions submitted by appellant
9 Original of signed, sealed and dated Unilateral Undertaking
10 Appellants application for Costs
11 Council's application for Costs.

END