

# FAREHAM

## BOROUGH COUNCIL

### Report to Planning Committee

**Date**                    **10<sup>th</sup> September 2021**

**Report of:**            **Director of Planning and Regeneration**

**Subject:**              **LAND EAST OF DOWNEND ROAD – PLANNING APPEAL REFERENCE  
APP/A1720/W/21/3272188**

## INTRODUCTION

### THE APPLICATION

1. An outline planning application (reference P/20/0912/OA) was made in August 2020 by Miller Homes Ltd for the following development at land east of Downend Road, Portchester:

*“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.”*

2. The application proposed improvements to the Downend Road railway bridge in the form of a traffic signal shuttle working arrangement. This included a 2 metre wide footway on the northern/western side of the bridge and a single carriageway 3.5 metres wide on the railway bridge controlled by traffic signals. This arrangement was shown on the submitted drawing no. ITB12212-GA-051D which is included with this report as Appendix A.
3. A report was prepared by Officers for the meeting of the Planning Committee on 18<sup>th</sup> November 2020. The Officer report recommended that outline planning permission be granted subject to:
  - i) the receipt of comments from Natural England in response to consultation on the Council's Appropriate Assessment and delegate to the Head of Development Management in consultation with the Solicitor to the Council to make any minor modifications to the proposed conditions or heads of terms or any subsequent minor changes arising after having had regard to those comments;
  - ii) the applicant first providing further details regarding the proposed surface water drainage strategy and, the Lead Local Flood Authority (Hampshire County Council) raising no objections to those further details;
  - iii) the applicant/owner first entering into a planning obligation under Section 106 of the Town and Country Planning Act 1990 on terms drafted by the Solicitor to the Council in respect of various matters;
  - iv) Delegate to the Head of Development Management in consultation with the Solicitor to the Council to make any minor modifications to the proposed conditions or heads of terms or any subsequent minor changes arising out of detailed negotiations with the applicant which may necessitate the modification which may include the variation, addition or deletion of the conditions and heads as drafted to ensure consistency

between the two sets of provisions; and

- v) A schedule of planning conditions.
4. Since the committee meeting and as part of the subsequent appeal proceedings, responses from Natural England and Hampshire County Council have been received to satisfy points i) & ii).
  5. Notwithstanding the recommendation from Officers, Members resolved to refuse planning permission for the following reasons which were given on the Decision Notice dated 25<sup>th</sup> November 2020:

*“The development would be contrary to Policies CS5 of the adopted Fareham Borough Core Strategy 2011 and Policy DSP40 of the adopted Local Plan Part 2: Development Sites and Policies Plan, and Paragraphs 109 and 110 (c) of the National Planning Policy Framework, and is unacceptable in that:*

*The proposal would result in a material increase in vehicular and pedestrian movements along Down End Road across the road bridge over the railway line. The works to the bridge as shown on drawing no. ITB12212-GA-051D (titled “Downend Road Bridge – Proposed Signal Arrangement With Footway General Arrangement”) 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. Furthermore the application does not make acceptable pedestrian crossing provision on Down End Road for future residents of the development.”*

## **THE APPEAL**

6. Following the refusal of planning permission, Miller Homes Ltd (hereafter referred to as “the Appellant”) lodged an appeal against the Council’s decision. The appeal is currently in the process of being determined by a Planning Inspector appointed on behalf of the Secretary of State (appeal reference APP/A1720/W/21/3272188). The procedure being followed is the inquiry procedure.
7. The inquiry began on Tuesday 3<sup>rd</sup> August. In advance of the inquiry, as is standard procedure, the Appellant and the Council submitted evidence to the Planning Inspector on the key issues.
8. On the first day of the inquiry the Inspector heard evidence from local residents and ward councillors. The Council’s highways witness gave his evidence and by the end of proceedings on the third day was part way through cross-examination by the Appellant’s counsel.
9. The inquiry was adjourned at the start of the fourth day Friday 6<sup>th</sup> August due to the Council’s highways witness suffering a family bereavement on the Thursday night. The Planning Inspector has confirmed that the inquiry will resume on

Tuesday 14<sup>th</sup> September and will sit for a further three days in total (including Wednesday 15<sup>th</sup> September and Friday 17<sup>th</sup> September).

### **THE COUNCIL'S CASE**

10. The reasons for refusal given in the decision notice dated 25<sup>th</sup> November 2020 amount to essentially three elements as follows:
  - (1) that works to the bridge will unacceptably affect the operation of the highway because of vehicle queuing and driver delay which would cause unacceptable harm to the convenience of users of the highway;
  - (2) that the works would cause unacceptable harm to the safety of users of the highway, and
  - (3) that the application does not make acceptable pedestrian crossing provision for future residents.
11. In relation to the first element, the so called "capacity argument", the Council's case relied upon demonstrating that an alternative forecast of how Downend Road bridge will operate is the correct one rather than the Appellant's own. This in turn depended upon a number of assumptions coming together. These included (but were not limited to) demonstrating higher levels of vehicular and pedestrian movements to and from the appeal site and the need to incorporate controlled pedestrian crossings at the bridge which in turn would lead to unacceptable queuing and delays.
12. If all these assumptions were made good by evidence, the Council asserted that an alternative projection of the delay at the bridge was more likely to be correct. That delay, using the Council's own assessment criteria, would meet the "significant" or "severe" impact thresholds. However, if the Council were to be unsuccessful in respect to any one of these factors, any delay would not be severe and therefore would not justify refusal of planning permission under the relevant tests set out in the National Planning Policy Framework (NPPF) read together with the Council's policies, on the first element of the reason for refusal.
13. Following exchange of rebuttal evidence before the inquiry, the Council's highways witness confirmed that following this exchange he could not demonstrate that there will be unacceptable harm caused to the convenience of users of the highway through vehicle queueing and driver delay. In his professional view therefore he could not give evidence which supports the first element of the reason for refusal.
14. The Council notified the Appellant and the Planning Inspector on the Friday prior to the inquiry stating that, having now received and considered all of the rebuttal evidence produced by the Appellant, the Council would not be pursuing the first element of the reason for refusal.

## **THE APPELLANT'S OFFER OF A CONTROLLED PEDESTRIAN CROSSING**

15. The evidence submitted to the Inspector on behalf of the Council by its highways witness states that in order to provide a safe crossing of Downend Road, a controlled crossing integrated into the proposed shuttle-working traffic lights should be provided. In the absence of a controlled crossing the appeal proposal does not make acceptable pedestrian crossing provision for future residents.
16. Following the adjournment of the inquiry the Appellant contacted the Council in relation to this matter. The Appellant has said that they are willing to make amendments to the appeal proposal to incorporate a pedestrian phase within the proposed signalised shuttle working arrangement. Controlled pedestrian crossing points would be provided on both the northern and southern ends of the bridge crossing junction. They have provided a drawing showing this revised arrangement – drawing no. ITB12212-GA-071B (attached to this report as Appendix B). The revised drawing shows:
  - The removal of the proposed pedestrian refuge crossing at the northern end of the bridge
  - An extension of the proposed footway located on the southern side of Downend Road to take the footway from the development site to the signals
  - A pedestrian signal pole on the northern side of Downend Road within the existing footpath
17. The Appellant has also provided junction modelling evidence and a tracking plan showing how an articulated vehicle could move through the junction (over the bridge through the lights).
18. Making amendments to appeal proposals such as this are normally considered acceptable under the “Wheatcroft principles” – a reference to case law which sets out the circumstances under which minor amendments may be made to proposals during the course of an appeal being determined.
19. The Appellant does not consider these amendments to be necessary to make the scheme acceptable in planning terms and their agreement to make such amendments does not alter its case for the appeal. However, the Appellant is willing to make these amendments if it addresses the Council’s outstanding substantive concern regarding the pedestrian crossing provision. If the Council is satisfied it addresses the concerns, the Appellant has asked that, once it formally submits the amendments to the Planning Inspector, the Council confirms that it will withdraw its reasons for refusal in totality. That being the case, the Appellant has agreed not to pursue an application to the Inspector for an award of costs against the Council.

### **ADVICE FROM THE HIGHWAY AUTHORITY HAMPSHIRE COUNTY COUNCIL**

20. The highway authority Hampshire County Council have been provided with the drawings and junction modelling for the Appellant's proposed revision and invited to confirm if this alternative arrangement is acceptable.
21. Officers from the highway authority have confirmed with the Appellant and the Council that they are satisfied with the principle of the proposals. In terms of capacity, whilst the Appellant has only provided modelling to show how the junction would perform in the AM peak period this is considered to represent the highest traffic flows and worst case scenario. Overall the performance with both pedestrian crossings in place would still operate within capacity.

### **UPDATED SUMMARY OF COUNCIL'S CASE**

22. The Appellant's offer to include controlled pedestrian crossings at each end of the bridge junction would address the concerns raised by the Council's highways witness who in evidence has said that the proposals must be modified to include controlled pedestrian crossings.
23. The evidence initially submitted to the Planning Inspector by the Council's highways witness had argued that using a longer "intergreen" period in the traffic model and introducing controlled pedestrian crossings would, in combination with a number of factors, lead to delays which would be "severe" or "significant". However, as explained in paragraph 13 above, the Appellant has submitted further evidence to demonstrate why this is not the case and this has been accepted by the Council's witness. Even taking into account therefore the inclusion of controlled pedestrian crossings, the evidence on both the Appellant's side and the Council's side demonstrates the junction operates within capacity. This is consistent with the findings of the highway authority in their response to the revised proposals from the Appellant as set out at paragraph 21 above.
24. As already explained, the Council has confirmed that it will not pursue the capacity argument in the first element of the reason for refusal. Officers are of the view that the Appellant's offer to include controlled pedestrian crossings would address the third element of the reason for refusal meaning that only the second element would remain.
25. The evidence presented to the inquiry in relation to that second element is based on the appeal proposal resulting in an unsafe environment for cyclists. The Council has argued that the proposed shuttle-working bridge arrangement, at the top of a hill, along with refuge and splitter islands will effectively create a highway environment where it is very difficult to over-take cyclists for around 180m. When considered with the concerns about the lack of acceptable pedestrian crossings, the proposals are considered unsafe.
26. The Appellant's revised proposals would provide controlled pedestrian crossings which Officers consider to be acceptable. It would also remove a previously

proposed refuge island north of the bridge from the layout. This would improve the cycle overtaking environment to substantially reduce risks. The Council's highways witness has already acknowledged in evidence that the use of intelligent transport systems (ITS) such as MOVA, a form of ITS equipment which minimises junction delay, could be used to preserve a modicum of safety for cyclists. Officers consider that these factors combined mean that the Council's case in relation to this matter, which in any case is not supported by the highway authority, would not be capable of being sustained.

## **CONCLUSION**

27. During the course of appeal proceedings it has been demonstrated that there would be no unacceptable harm caused to the convenience of users of the highway through vehicle queueing and driver delay. The Council has already confirmed to the Planning Inspector that it will not pursue this particular element of the reason for refusal.
28. Officers consider that the Appellant's offer to incorporate controlled pedestrianised crossings satisfactorily addresses the concern over the lack of adequate crossing provision across Downend Road. As a result of the revised proposals the cycle overtaking environment would also be improved.
29. The Officer recommendation set out below is that Members confirm that, subject to the Appellant submitting these amended proposals to the Planning Inspector ahead of the restart of the adjourned inquiry, those remaining elements of the reason for refusal relating to highway safety, including the lack of acceptable pedestrian crossing provision for future residents, be withdrawn.

## **RECOMMENDATION**

30. That Members of the Planning Committee confirm that:
  - a) Subject to the Appellant Miller Homes Ltd submitting amended proposals to the Planning Inspector showing the inclusion of controlled pedestrian crossings as indicated in drawing no. ITB12212-GA-071B (or substantially similar to that drawing):
    - i) Those elements of the reason for refusal relating to unacceptable harm to the safety of users of the highway and the lack of acceptable pedestrian crossing provision for future residents be withdrawn;
    - ii) For the avoidance of any doubt, the reasons for refusal previously given are withdrawn in totality.

**Background Papers:**

P/20/0912/OA

**Enquiries:**

For further information on this report please contact Richard Wright (Ext 4758)

**Appendices:**

Appendix A – Downend Road bridge signalised shuttle arrangement - drawing no. ITB12212-GA-051D (as proposed with application)

Appendix B – Downend Road bridge signalised shuttle arrangement incorporating controlled pedestrian crossings – drawing no. ITB12212-GA-071B