

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

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

*LPA Reference: P/20/0912/OA*

**Closing Submissions on behalf of Miller Homes**

**Introduction**

1. These Closing Submissions are considerably shorter than they would have been had the Council not withdrawn all its reasons for refusal and agreed that the proposed development is in accordance with the development plan.
  
2. The Council's withdrawal of its reasons for refusal and agreement that the proposed development is in accordance with the development plan means that the appeal should be allowed for two reasons. First, s.38(6) of the Planning and Compulsory Purchase Act 2004 requires, as a matter of law, that development proposals which are in accordance with the development plan should be permitted unless there are material considerations which indicate otherwise. Secondly, para. 11 NPPF (2021) says that proposals which accord with an up-to-date development plan should be approved without delay.

## **The Development Plan**

3. As set out in the Planning Statement of Common Ground (30 June 2021) (“Planning SoCG”) the development plan comprises (1) the Local Plan Part 1: Core Strategy (“LP1”): and (2) the Local Plan Part 2: Development Sites and Policies (“LP2”) – see para. 3.2 Planning SoCG. It is further agreed that the most important policies for determining the appeal are Policies CS5 of LP1 and DSP40 of LP2 (CD4.2 and 4.1 respectively).
4. 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”*. 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 was only these two limited aspects of Policies CS5 and DSP40 of the development plan that the Council alleged the proposed scheme was in conflict with and resulted in the planning application being unreasonably refused. The Council did not suggest that there were any other ‘material considerations’ that would indicate that planning permission should be withheld.

## **The Amended Scheme**

5. In its evidence, the Council alleged that the original scheme (1) would cause unacceptable queuing/delay; (2) would cause unacceptable harm to the safety and convenience to the users of the highway; and

(3) did not make acceptable crossing provision on Downend Road for future residents.

6. The Council abandoned its case on (1) on the Friday before the Inquiry opened. The reason for that is made clear in paras. 11 - 13 of the Report to the Special Planning Committee held on 10<sup>th</sup> September (see Annex 4 of the Addendum Planning SCG dated 13<sup>th</sup> September 2021), namely that the Council's case relied on certain assumptions, all of which it had to prove in evidence. And, because it concluded shortly before the Inquiry that it would be unable to prove those assumptions, the Council had no choice but to withdraw its evidence relating to queues and delay (the "capacity argument").
7. So far as the remaining two issues were concerned, the Appellant was confident that the original proposals for crossing Downend Road via a pedestrian refuge north of the bridge and an informal crossing south of the bridge were acceptable in highway safety terms (a position supported by Hampshire County Council ("HCC") as the highways authority) and by independent Road Safety Audit.
8. However, having been approached by the Council after the Inquiry adjourned in August 2021 and been asked to consider whether it would be willing to include a pedestrian phase as part of the light controlled shuttle working arrangements over the bridge, the Appellant submitted an amended scheme.
9. As explained by Mr Wall, the Amended Scheme (1) extends the footway on the east side of Downend Road towards the bridge, (2) includes light controlled pedestrian crossings north and south of the bridge as part of the shuttle working arrangements; and (3) removes

the pedestrian refuge north of the bridge – see plan ITB12212-GA-071 Rev. B attached as the penultimate drawing to the 2<sup>nd</sup> Addendum Agreed Statement on Transport Matters (“2<sup>nd</sup> Addendum ASoTM”).

10. The effects of the Amended Scheme on the operation of the bridge in terms of queues and delays have been assessed by the Appellant and HCC and are acceptable in all scenarios – see the Summary Table in the email dated 20<sup>th</sup> August attached as Appendix A to the 2<sup>nd</sup> Addendum ASoTM. The Council also accepts this and, with the inclusion of pedestrian phases as part of the Amended Scheme, that it no longer has any concerns as to the safety of highway users or the adequacy of pedestrian crossing facilities for future residents of the proposed scheme. Thus, it has withdrawn its remaining reasons for refusal together with the evidence of Mr Lewis, the Council’s transport witness, and it has agreed that the Amended Scheme complies with (1) Policies CS5 and DSP40; and (2) paras. 111 & 112 of the NPPF – see para. 1.16, Addendum Planning SoCG.
11. The consequence of the Council’s withdrawal of all the reasons for refusal and acceptance that the Amended Scheme complies with Policies CS5 and DSP40 is that planning permission should be granted pursuant to s. 38(6) of the 2004 Act and para. 11(c) of the NPPF, without delay.

## **Other Matters**

12. There are a number of residual matters that need addressing.

### *5 Year Housing Land Supply*

13. The absence of a 5-year housing land supply remains relevant because it is a trigger for the application of Policy DSP40. The Housing Land Supply Statement of Common Ground 2 July 2021 (“Housing SoCG”) records that even on the Council’s case it cannot demonstrate more than 3.57 years of housing land supply.
14. For the reasons set out in Ms Mulliner’s evidence (Appendix JM1 to her PoE) and the round table discussion on housing land supply at the Inquiry the Appellant submits that the supply is no more than 1.76 years. This is because many of the sites relied on by the Council as contributing to the supply of housing land are not “deliverable” within the NPPF meaning of the word for the reasons explained by Ms Mulliner.
15. Now that the Council accepts that the proposed development is in accordance with the development plan it is unnecessary to consider the differences further. What, however, is clear is that there is a significant shortfall in the 5-year housing land supply which the proposed scheme will make a real contribution in addressing.

### *Heritage Assets*

16. S. 66 of the Town and Country (Listed Building and Conservation Areas) Act 1990 requires the Secretary of State when considering whether to grant planning permission to have special regard to the desirability of preserving listed buildings or their settings. In this case the appeal site is within the extended setting of Portchester Castle (Grade I), Fort Nelson (Grade II\* scheduled monument) and the Nelson Monument (Grade II\*).

17. The appeal proposals have been assessed as having a low and less than substantial level of harm on the settings of these heritage assets which is outweighed by the benefits of the scheme – see JM PoE paras. 6.27 – 6.30 and the Planning SoCG paras. 4.21 & 4.22. The benefits of the scheme outweighing the limited harm to heritage assets are set out at JM PoE paras. 8.8 – 8.14.

### *Habitat Regulations*

18. As the competent authority, the Secretary of State has to be satisfied that the proposed development will not have a significant effect on the integrity of any European Site. The Council has already undertaken a Habitat Regulations compliant Assessment and concluded, with appropriate mitigation (secured through conditions and the s.106 agreement), that there is no likelihood of the proposed development adversely affecting the integrity of the relevant European Sites. The basis for this is set out in the Habitat Regulations Statement of Common Ground (“the Habitat Regulations SoCG”) and, in particular, the HRA attached at Appendix 1, together with Natural England’s response dated 20 November 2020 at Appendix 2, to the Habitat Regulations SoCG.

### *3<sup>rd</sup> Party Reps*

19. Issues raised by 3<sup>rd</sup> parties are all addressed by Ms Mulliner and Mr Wall in sections 7 and 6 of their respective PoEs. None of the matters raised by 3<sup>rd</sup> parties could conceivably be so serious that planning permission should be refused, contrary to both the adopted and

emerging development plan. Indeed, many of them are concerned with traffic and the safety of the existing network which the proposed development will significantly improve e.g. the current pedestrian facilities across Downend Road bridge, the junction of Downend Road with the A27 at Shearwater Avenue and the improvements for pedestrian/cyclists to the A27 itself – see TW PoE section 7 for the full list of highway benefits.

## **Conclusion**

20. It has always been the Appellant's position that the proposed development is in accordance with the development plan and should not have unreasonably been refused by the Council contrary to its officers' recommendations.
21. Whilst HCC do not consider it to be necessary, it is satisfied that the Amended Scheme is acceptable and will also work without causing unacceptable queues and delays. The inclusion of a pedestrian phase to the light control across the bridge also addresses the Council's concerns relating to safety such that it too is now satisfied that the development is in accordance with the development plan.
22. The appeal should be allowed and permission should be granted without any further delay for what clearly is sustainable development.

**Dated 15<sup>th</sup> September 2021**

**John Litton QC**

**Landmark Chamber**

**180 Fleet Street**

**London, EC4A 2HG**