

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

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

Closing 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 both to the proposals resulting in unacceptable harm to the safety of users of the highway and in particular the application not making acceptable pedestrian crossing provision; and to the proposals having an unacceptable effect on the operation of the highway because of vehicle queuing and driver delay.
- 1.3 The Council confirmed at the outset of the inquiry that it would not be providing evidence in support of the capacity element of the reason for refusal on account of the fact that, following exchange of rebuttal evidence, Mr Lewis (the Council's expert on highway matters) was of the view that there will be no unacceptable effect on the operation of the highway due to capacity considerations.

2. The Application as Amended

- 2.1 Throughout his evidence, both in writing and orally, Mr Lewis the Council's highways witness explained 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. This reflected the Council's central concern on this matter as articulated in the reason for refusal. In the absence of a controlled crossing Mr Lewis explained that the Council had no choice but to refuse the application as without it the development proposal did not make acceptable pedestrian crossing provision for future residents.
- 2.2 Following the adjournment of the inquiry, as explained by Mr Wall in his oral evidence, the Appellant stated that it would be possible to make amendments to the appeal proposal to incorporate a pedestrian phase within the proposed signalised shuttle working arrangement, something the Council had always required as explained above. Having considered the physical changes needed, the Appellant confirmed that these could be achieved. They also confirmed that the changes would not result in any capacity concerns in relation to how the junction would operate and that the changes were acceptable to Hampshire County Council, the highways authority.
- 2.3 The changes to the scheme involve the provision of controlled pedestrian crossing points which will be provided on both the northern and southern ends of the bridge crossing junction. Drawing no. ITB12212-GA-071B shows this arrangement, in particular 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; and
 - A pedestrian signal pole on the northern side of Downend Road within the existing footpath.
- 2.4 As also explained by Mr Wall, the Appellant has provided junction modelling evidence and a tracking plan showing how an articulated vehicle could move through the junction (over the bridge through the lights).

- 2.5 You Inspector have confirmed that these amendments to the appeal proposals are considered acceptable under the “Wheatcroft principles”, and the appeal scheme has been amended accordingly.

3. The Council’s Position

- 3.1 The gravamen of the Council’s evidence to the inquiry, as articulated by Mr Lewis, was that the proposed shuttle-working bridge arrangement, along with refuge and splitter islands would effectively create a highway environment where it is very difficult to over-take cyclists for around 180m. In conjunction with the concerns about the lack of acceptable pedestrian crossings, this resulted in the proposals being unsafe.
- 3.2. Members of the Council’s planning committee gave evidence to the inquiry emphasising their concerns that the lack of a controlled pedestrian crossing was unsafe. This had been the Council’s position as expressed in the reason for refusal.
- 3.3 The Appellant’s revised proposals provide controlled pedestrian crossings and in so doing remove a previously proposed refuge island north of the bridge from the layout. This addresses the unsafe environment which the unamended proposal provided for pedestrians seeking to cross the road as well as improving the cycle overtaking environment and substantially reducing risks. It addresses the issue upon which the Council’s expert, Mr Lewis, concentrated his evidence at the inquiry. Mr Lewis also explained in evidence, as Mr Wall reiterated, that the use of intelligent transport systems (ITS) such as MOVA, a form of ITS equipment which minimises junction delay, would also improve the safety of cyclists.
- 3.4 As a result of the provision of the amended scheme by the Appellant, the Council has been able to determine, through the resolution of its planning committee, that the remaining elements of the reason for refusal have been overcome. Accordingly, it has been possible to withdraw the evidence of its witnesses which was based on the unamended scheme.

Determination of the Appeal

3.5 It is agreed that:

- (1) The Council cannot demonstrate a 5 year housing land supply;
- (2) There is harm to heritage assets which must be given considerable importance and weight in the planning balance, but that the benefits of the appeal proposal outweigh this harm;
- (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.

3.6 Prior to the amendment to the scheme, the key issue in dispute was therefore whether the proposal would have unacceptable traffic implications.

3.7 Should development conflict with the Development Plan this is significant because section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 establish a statutory presumption in favour of it. 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* (per Sales L.J. at paragraph [40](iv) as explained in opening). Significant weight should be given to the public interest in having plan led planning decisions and in circumstances prior to the amendment, unacceptable traffic implications set the development in conflict with the Development Plan.

3.8 It is submitted 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 the unamended scheme. On the previous application 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]).

- 3.9 The Development Plan requires that applications such as these, should be dealt with in accordance with DSP40. 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.
- 3.10 However, the position has changed following the acceptance of the Appellant’s amendments to the scheme. Whereas there had previously been a real safety issue, the scheme as amended is agreed by both parties in the Statement of Common Ground Addendum to comply with adopted policies CS5 and DSP40 as well as NPPF paragraphs 111 and 112. This has enabled the Committee to confirm by Resolution that the remaining elements of the reason for refusal are not now pursued. Accordingly, the Council has been able to withdraw its evidence and not contest the appeal

David Lintott

Cornerstone Barristers

14/09/21