



## **INSPECTOR'S CASE MANAGEMENT CONFERENCE NOTE**

**10.00am, Monday 20 September 2021**

**Appeal Ref: APP/A1720/W/20/3254389**

### **Land east of Posbrook Lane, Titchfield**

The appeal is made by Foreman Homes against a failure by Fareham Borough Council to give notice within the prescribed period of a decision on an outline planning application for the erection of up to 57 dwellings, together with associated parking, landscaping and access from Posbrook Lane, at Land east of Posbrook Lane, Titchfield.

(Application Ref: P/19/1193/OA, dated 29 October 2019).

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#### **Purpose of this note**

1. This note summarises matters discussed and actions arising from the Case Management Conference (CMC) held on Monday 20 September 2021 in preparation for the Public Inquiry scheduled to open at 10.00am on Tuesday 7 December 2021.
2. The CMC was led by Peter Rose, the Secretary of State's appointed Inspector, and was addressed by Mr Christopher Boyle of Queen's Counsel on behalf of the appellant, and by Mr Ned Helme of Counsel on behalf of the local planning authority.
3. The conference broadly followed the agenda set out in the Inspector's earlier note of 10 September.

#### **Confirmation of advocates and witnesses**

4. Mr Boyle and Mr Helme confirmed their appointments as advocates for the Inquiry.
5. A full list of proposed witnesses (names, subjects, qualifications etc.) will be required for each main party in advance of the Inquiry, together with confirmation of instructing authorities for the advocates.

#### **Likely main Issues**

6. These currently involve consideration of:
  - possible implications for local character and appearance (and including the scheme's relationship to the settlement boundary);
  - possible implications for the significance of local heritage assets;

- development of agricultural land;
- whether or not the scheme would make provision for appropriate mitigation in relation to:

the integrity of European Protected Sites;

affordable housing;

education;

open space;

public rights of way.

7. Matters of mitigation are the subject of on-going discussion between the parties and with a view to addressing through a planning agreement as appropriate.
8. Regard will also be given to all other relevant matters raised by local interested parties.
9. The Inquiry will look at any benefits to be weighed in the exercise of planning balances, and any implications arising from 5-year housing land supply (5YHLS) and related matters.

### **Other interested parties**

10. Possible third party participation remains to be clarified following publicity of the event and will need to be accommodated within the programme. The full extent may not be known until opening.
11. Any identified participants should be encouraged to make any proposed written statements available in advance of the Inquiry if possible.
12. If there are significant numbers of persons wishing to speak, any advanced efforts by the authority to suggest representative spokespersons will be welcome.

### **Inquiry format**

13. The appeal will be conducted through a virtual format involving use of Microsoft Teams.
14. Whilst that is now the plan, future events remain subject to government rules and requirements, and to PINS' own operating guidance relating to COVID-19, and to any other relevant exigencies.

### **How the main issues will be handled**

#### ***Pre-Inquiry***

15. The Council and appellant are expected to engage in continuing discussions regarding the local planning authority's objections, both to identify common ground around which particular areas of dispute may be resolved, and to define the specifics of those areas of disagreement remaining.

16. Statements of disagreement, either separately or as part of the overall (and currently outstanding) statement of common ground, are to be prepared jointly in relation to all remaining areas of dispute, and those positions are to be agreed prior to the drafting of any evidence. The statements need to make clear what the specific differences are, and the form they take.
17. Proofs should then focus upon those specific matters set out in the statements, and aspects of which may still be the subject of discussion up until the Inquiry with a view to resolution. Those statements will also, in turn, shape where attention is to be directed at the Inquiry.

***At the Inquiry***

18. Following openings, the Inspector will invite any local interested parties who wish to speak to address the Inquiry.
19. The appellant will wish to consider how to respond to any objections (and likewise the Council should there be any representations of support). Advocates may have questions and/or may wish to address matters through their own witnesses.
20. Rather than completing the overall cases for each of the main parties in turn (as per convention), the remaining main issues will be heard on a more compartmentalised, topic basis. Some topics may be addressed through evidence-in-chief and cross-examination, others through round-table discussion.
21. This will mean all the parties in turn presenting their cases as part of one focussed session for each topic, whether through formal examination or round-table discussion. The Inquiry will then conclude its hearing of that topic, and move on to the next item as agreed. This will also be consistent with the round-table format as will be deployed for some topics.
22. The Inspector's preliminary expectation remains that character and appearance and heritage appear likely to require formal cross-examination, as do issues of overall planning balances/policy, whilst other aspects may be more appropriate for round-table discussion, subject to details of the remaining differences. That initial screening will be further reviewed in due course and arrangements confirmed after the evidence is available.
23. Whether formal examination or a round-table format, the clear focus of each session will be upon those specific aspects remaining in dispute.
24. For round-table discussions, the Inspector will lead the conversation informed by the proofs and any dedicated topic-specific statement of disagreement/agreed agenda as may be appropriate.
25. The evidence will also need to address any other matters raised by local interests as may be considered relevant to their cases.
26. Annex B attached to the Inspector's previous note sets out the preferred format and content of proofs and accompanying documents, and which should be observed.

27. Relevant photographs of any key features/views are encouraged as part of the evidence.
28. The Inspector also requests an annotated development plan proposal map extract with explanatory legend, and with the appeal site boundaries clearly identified.
29. Given the previous possible determination of the appeal through a Hearing, the appellant advised it will, for ease of reference, be producing new statements afresh (but reflecting the same case and evidence).

### **5YHLS**

30. This will be the subject of a separate statement of common ground, and the need to examine/discuss evidence at the Inquiry will be reviewed by the Inspector once that position is known.

### **Conditions**

31. An agreed schedule of suggested planning conditions and their reasons, and including references to any policy justification, is to be submitted at the same time as the proofs.

### **Planning agreement**

32. A final draft is to be submitted shortly before the Inquiry opens and accompanied by the relevant official copy of Land Registry title and a CIL compliance statement prepared by the Council. The statement must contain a fully detailed justification for each obligation sought, setting out how it complies with the CIL Regulations and reference to any policy support. In relation to any financial contribution, it needs to specify exactly how it has been calculated and on precisely what it would be spent and how. A short summary document will also be required for public reference at the Inquiry.
33. If necessary, a short time will be allowed after the Inquiry for submission of a signed version of the final agreement.
34. The statement of common ground is to clarify the substance underlying the details to be subsequently drafted.

### **Core documents/Inquiry documents/public web site**

35. The parties will need to discuss and prepare a single agreed list of core documents in advance of preparing their proofs so they can be properly referenced in evidence.
36. The authority is requested to provide a web site library in some form, containing all relevant references, and to be continually managed before and during the event.
37. The core documents should comprise only those matters to which the parties will be referring.
38. Once produced, the list of core documents will remain fixed. Any adjustments to those documents or additional material will be treated as

'Inquiry documents'. Each will be added to that second and separate list only once accepted by the Inspector.

39. The Inspector is intending to generally work electronically with all documents, but may request particular hard copies/extracts once available.

### **Inquiry running order/programme**

40. Virtual Inquiry sessions should be no longer than one and a half to two hours maximum before any break. The sitting day should comprise 3 such sessions and with suitable breaks (the timing of which will be determined on the day and will include lunch).
41. The Inquiry opens at 10.00 on the first day, but subsequent days will start at 9.30.
42. Opening statements from the advocates should be no longer than 10 minutes, please, appellant first, followed by the Council.
43. The Inspector's opening will be slightly longer than with an in-person event to allow for explanations of Teams and related protocols.
44. Subsequent topic order will be Council first, and then appellant.
45. Closing submissions will be Council first, then appellant (copies to the Inspector in advance, please). Closings should be no longer than 30/45 minutes preferably and should be fully cross-referenced through footnotes to the evidence heard.
46. The Inquiry is currently scheduled to sit for up to 4 days and, subject to agreement on matters in discussion, the parties considered this should be adequate.
47. The advocates are requested to provide time estimates for each stage of their respective cases once proofs are available. The Inspector will then prepare an outline running order and a more detailed programme prior to the event.
48. Other than in exceptional circumstances, advocates are requested to take no longer than the timings to be indicated.

### **Timetable for submission of documents**

49. The Inquiry opens on **Tuesday 7 December** and, flowing from that, the following deadlines were agreed:
- 4 weeks before is **Tuesday 9 November**.
  - Proofs and core documents - by **Tuesday 9 November**.
  - Statement of common ground/statements of disagreement – by no later than **Tuesday 19 October**, (3 weeks before the proofs) (and including annotated development plan extract and clarification of 5YHLS). The Inspector welcomes the parties' indication that these statements could be available sooner.

- Advocates' final timings for openings and closings, evidence-in-chief and cross-examination - by **Tuesday 16 November** (1 week after the proofs and 3 weeks before the event).
  - Inspector's Inquiry programme – by **Tuesday 30 November** (1 week before the event).
  - Draft of the proposed planning agreement - by **Tuesday 30 November** (1 week before the event).
50. The Council is to ensure a copy of the publicity setting out details of the Inquiry, and a list of those persons notified, are sent to PINS once issued.
51. There is no reference in the Rules or the Procedural Guide to supplementary or rebuttal proofs and PINS does not encourage the provision of such. Exceptionally, however, where they are necessary to save Inquiry time, copies should be provided no later than **Tuesday 23 November** (2 weeks after the proofs). It is important that any rebuttal proofs do not introduce any new issues. As an alternative to a rebuttal, it may be that any further matters of clarification could be more succinctly addressed through an addendum statement of common ground.
52. The Inspector will be happy to receive agreed subsequent addendums to the statements of common ground as appropriate.

### **Costs**

53. No application for costs has been foreshadowed but, if any is proposed, it should be made, subject to events at the Inquiry, in writing prior to the start date.

### **Site Inspection**

54. This will be subject to discussion at the event.

### **Virtual event format and protocols**

55. The Inspector identified a number of the routine Teams-related protocols to be followed, including use of microphones and cameras. These will be repeated in his opening.

### **Summary of actions arising**

56. PINS now issues this note summarising the matters discussed at the CMC and as a basis for everyone's future actions.
57. In the interests of transparency, it is expected that this note be made publicly available by the Council (as per all other appeal documents).
58. If there are any further issues arising, the Inspector invites those to be raised through the Case Officer. The Inspector will remain available to engage in further joint discussion and to assist as required.

*Peter Rose*

INSPECTOR  
21 September 2021