

Appeal reference APP/A1720/W/21/3283643
Land south of Funtley Road, Funtley, Fareham

Note produced by Fareham Borough Council on Suggested Draft Condition 1
(Time for Implementation of Permission)

Introduction

1.1 This note sets out the position of the Council in respect of suggested draft condition 1. A draft schedule of suggested conditions has been submitted to the Planning Inspector having been drafted by both the Council and the Appellant.

1.2 Condition 1 of that draft schedule reads as follows:

“Application for approval of details of the appearance, landscaping, layout and scale of the development (referred to as the 'reserved matters') shall be made to the local planning authority before the expiration of XXXX months from the date of this permission. Work shall be commenced in pursuance of this permission no later than twelve months from the approval of the final reserved matter.

REASON: To allow a reasonable time period for work to start, to comply with Section 91 of the Town and Country Planning Act 1990, and to enable the Council to review the position if a fresh application is made after that time.

**Please note that the parties have not reached an agreement on the length of the period by which reserved matters must be submitted.”*

1.3 On Thursday 10th February the Planning Inspector provided the following suggested alternative wording for that condition (emphasis added):

“i) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.

ii) Application for approval of the reserved matters shall be made to the local planning authority not later than [three?] years from the date of this permission.

iii) The development hereby permitted shall take place not later than [two?] years from the date of approval of the last of the reserved matters to be approved.”

- 1.4 The timescale given in the Inspector's alternative wording for submission of reserved matters (point ii) and the development taking place (point iii) is the default timescale given in Section 92 of The Town & Country Planning Act 1990. However, the Inspector appears to acknowledge that a shorter time period for submission of reserved matters and commencement may be appropriate. The Council considers that the condition should be worded to require submission of an application for approval of reserved matters within 12 months of the date of outline permission being granted, and commencement of development no later than 12 months following the approval of the last of those reserved matters.

Justification for shorter timescale for implementation

- 1.5 Paragraph 77 of the National Planning Policy Framework (NPPF) states:

"To help ensure that proposals for housing development are implemented in a timely manner, local planning authorities should consider imposing a planning condition providing that development must begin within a timescale shorter than the relevant default period, where this would expedite the development without threatening its deliverability or viability. For major development involving the provision of housing, local planning authorities should also assess why any earlier grant of planning permission for a similar development on the same site did not start."

- 1.6 Paragraph 027 Reference ID 21a-027-20140306 of the government's Planning Practice Guidance (PPG) sets out the default time limit for beginning development. It also states:

"The local planning authority may wish to consider whether a variation in the time period could assist in the delivery of development. For example, a shorter time period may be appropriate where it would encourage the commencement of development and non-commencement has previously had negative impacts."

The national planning policy framework encourages local planning authorities to consider imposing a shorter time period to ensure that proposals for housing development are implemented in a timely manner. A longer time period may be justified for very complex projects where there is evidence that 3 years is not long enough to allow all the necessary preparations to be completed before development can start."

- 1.7 As the Inspector will be aware, it is common ground between the parties that the Council cannot currently demonstrate a five year housing land supply. The Council has produced a Housing Delivery Test Action Plan [CDH.10] which was approved for publication in June 2021. It identifies various measures that have been, or will be, adopted in order to boost the delivery of housing. At paragraph 5.16 the Action Plan states:

“The Council’s Development Management team has already taken steps to ensure the application process is streamlined, offering pre-application services and recently introducing planning performance agreements. In addition, the addition of a foreshortening of commencement condition has been used to ensure the prompt delivery of some sites.”

- 1.8 The table at Section 7 of that document entitled “Action Plan” goes on to include at row 4 “Development Management” a specific aim and objective which reads:

“Addition of condition foreshortening delivery commencement to encourage commencement of site and therefore prompt delivery.”

- 1.9 Meanwhile, the local plan also supports reducing timescales for implementation where the Council cannot demonstrate a five year housing land supply. Paragraph 5.165 of the adopted Fareham Local Plan Part 2: Development Sites and Policies [CDE.2] reads:

“To ensure that such additional housing schemes contribute towards any five year supply shortage the Council will expect detailed information to be submitted to demonstrate the deliverability of the scheme. This should include a detailed programme of delivery specifically setting out when the proposal will be delivered. If deemed necessary the Council will include a planning condition to limit the commencement time to a year from the date of permission to ensure delivery in the short term. In order to protect areas outside of the existing settlements from unnecessary levels of development, only proposals that are of a scale relative to any identified shortfall will be considered.”

- 1.10 As such, and in order to demonstrate the policy requirement set out at Policy DSP40(iv) – namely that the proposal is deliverable in the short term – the Appellant has provided details of the deliverability of the Appeal development. This is set out at paragraphs 3.118 – 3.122 of Mr Tim Burden’s planning proof of evidence for the Appellant which reads as follows:

“3.118 Although the Appellant is an established house builder, with a track record of delivery, in this case it is likely that the proposal will however be delivered by a third party. The site at Funtley North, immediately adjoining the Appeal Site, commenced development swiftly following its sale to Vivid, and is already being occupied.

3.119 Given the scale of this proposal, the lead in time until first completions are considered to be minimal. Assuming that the Appeal is allowed in early 2022, it is envisaged that it would take circa 9-12 months for the submission of reserved matters, and then a further 9-12 months for development to commence, assuming no issues arise in the interim.

3.120 As such, our clients indicative delivery timetable, assuming that the appeal is allowed, is as follows:

- Outline permission granted – March 2022*
- Submit RM's – by January 2023*
- LPA approves RM's – by June 2023*
- Estimated start on site – September 2023*
- 1st occupation on site – June 2024.*

3.121 It is envisaged that the last occupation at the site would be in approximately March 2027, with the proposal being capable of delivering approximately 40 dwellings per annum. The delivery of the full 125 units is easily achievable within five years, and will make a meaningful contribution towards the Council's shortfall of deliverable housing supply (particularly affordable housing need). The proposal also includes 6 self or custom build plots, for which there is an identified need for in the Borough, as I consider below.

3.122 As such both parties agree that the Appeal Scheme accords with DSP40 (iv).”

1.11 The Council agrees that the Appeal scheme is deliverable in the short-term (para 9.83, LPA Statement of Case).

1.12 With all of the above in mind, it is clear that there is clear and strong justification to impose a shorter period for submission of reserved matters and implementation of the development. The Council suggests that the period for submission of reserved matters should be 12 months with implementation following within 12 months of the last of those reserved matters being

approved. The Appellant's own given timescale in Mr Burden's proof of evidence indicates that this is entirely feasible and indeed is what they intend.

- 1.13 The Council invites the Inspector to impose such foreshortened time periods within the wording of condition 1. By doing so the Inspector would be consistent with other schemes granted on Appeal recently in Fareham.
- 1.14 In October 2021 Inspector Mageean allowed an appeal for the construction of up to 350 dwellings at land to the east of Downend Road, Portchester, Fareham [CDJ.7]. In doing so she imposed a condition requiring the application for approved of reserved matters to be made within 12 months of the date of the decision and commencement of the development within two years (or one year from the date of the approval of the last of the reserved matters, whichever is later). Paragraph 39 of the decision sets out her reasoning as follows:

“Condition 1 requires that the approval of reserved matters should be sought not later than 12 months from the date of this permission, and that development be commenced within 2 years. This reflects the position set out in the supporting text to Policy DSP40. This provides for situations where the Council is unable to demonstrate a 5 year housing land supply. It indicates that, where necessary, the Council will include a planning condition to limit the commencement time to ensure delivery in the short term. As the Council cannot demonstrate a 5 year supply of housing land it is appropriate and necessary to tighten the usual time for the commencement of development.”

- 1.15 In January 2022 Inspector Coffey allowed an appeal for the construction of up to 225 dwellings on land south of Romsey Avenue, Portchester, Fareham [ID.01]. Again, she allowed 1 year for the submission of reserved matters and commencement of development within two years (or one year from the approval of the last reserved matters, whichever is later). At paragraph 154 she explains why by stating (emphasis added):

“I have assessed the suggested conditions in light of the tests set out at paragraphs 55 and 56 of the Framework and the advice in the PPG. The reserved matters need to be submitted for approval. In some instances I have adjusted the suggested wording in the interests of precision. Given the urgent need for housing within the District the timeframe for the submission of reserved matters and commencement of development have been reduced to 12 months. in each case. In order to provide certainty in respect of the matters that would not be reserved for future consideration, a condition requiring the

development to be carried out in accordance with the approved plans is necessary.”

- 1.16 In the appeals referred to above the quantum of development was considerably greater than that proposed in the appeal at land south of Funtley Road. Nevertheless, the Inspector in each case did not consider there to be any reason why a shorter timescale for delivery could not be secured given the need for housing in the Borough.
- 1.17 The Council would be happy to discuss this matter further with the Inspector at the appropriate moment in inquiry proceedings.

10th February 2022