



## Appeal Decisions

Inquiry Held on 8-11 and 15-17 February 2022

Site visit made on 8 March 2022

**by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC**

an Inspector appointed by the Secretary of State

Decision date: 31<sup>st</sup> May 2022

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### **Appeal A Ref: APP/A1720/W/21/3283643**

#### **Land to the south of Funtley Road, Funtley, Hampshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Mr Andrew Munton, Reside Developments Ltd and Atherford Property Investments Ltd against Fareham Borough Council.
  - The application Ref P/20/1168/OA, is dated 2 October 2020.
  - The development proposed is to provide up to 125 one, two, three and four-bedroom dwellings including 6 self or custom build plots, community building or local shop (Use Class E & F.2) with associated infrastructure, new community park, landscaping and access, following demolition of existing buildings.
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### **Appeal B Ref: APP/A1720/W/21/3284532**

#### **Land to the south of Funtley Road, Funtley, Hampshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr Andrew Munton, Reside Developments Ltd and Atherford Investments Ltd against Fareham Borough Council.
  - The application Ref P/20/1166/CU, is dated 2 October 2020.
  - The development proposed is the change of use of land from equestrian/paddock to community park following demolition of existing buildings.
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## Decisions

1. Appeal A is allowed and outline planning permission is granted for up to 125 one, two, three and four-bedroom dwellings including 6 self or custom build plots, community building or local shop (Use Class E & F.2) with associated infrastructure, new community park, landscaping and access, following demolition of existing buildings at land to the south of Funtley Road, Funtley, Hampshire, in accordance with the terms of the application, Ref P/20/1168/OA, dated 2 October 2020, subject to the conditions in the schedule attached to this decision letter.
2. Appeal B is allowed and planning permission is granted for the change of use of land from equestrian/paddock to community park following demolition of existing buildings at land to the south of Funtley Road, Funtley, Hampshire in accordance with the terms of the application, Ref P/20/1166/CU, dated 2 October 2020, subject to the conditions in the schedule attached to this decision letter.

## **Preliminary Matters**

### *The event*

3. The Inquiry was conducted online. Following this I made a site visit where I was accompanied by representatives of the main parties and then a visit to the wider vicinity on an unaccompanied basis.

### *The applications*

4. The application subject to Appeal A was made in outline including the matter of access for consideration. Matters of appearance, landscaping, layout and scale are reserved for future determination. I have treated any details of those reserved matters shown on drawings as illustrative albeit that certain parameter plans which would influence those reserved matters formed part of the proposal.
5. The Council did not make a decision on either application. Had they done so the Council advise that they would have refused planning permission for the Appeal A scheme. Their reasons for doing so were that they consider that the development would not reflect the character of Funtley and would fail to respond positively and respectfully to key characteristics of the area, harming the character and appearance of the countryside, and that the development would not be sustainably located.
6. The Council also listed notional refusal reasons that the development would be unacceptable in the absence of planning obligations to: secure mitigation for any likely significant effects on protected habitats; provide for open space and facilities; provide affordable housing; meet education needs of future residents; and, provide and fund a travel plan. However, the Council subsequently withdrew those objections in light of the appellants' unilateral undertaking and their evidence on effects and mitigation on protected habitats sites.
7. The Council do not object to the scheme subject to Appeal B and confirm that had they made a decision they would have granted planning permission subject to conditions. My reasoning below therefore focusses on Appeal A and any references to the appeal or the appeal site in my reasoning refers to that of Appeal A unless otherwise stated.

### *Policy and background*

8. It is not a matter of dispute that the Council cannot demonstrate a five year supply of deliverable housing sites. In such circumstances Local Plan Part 2<sup>1</sup> (LP2) Policy DSP40 provides that additional housing sites may be permitted outside the urban area boundary where they meet a range of criteria. These include, at criterion ii., that proposals are sustainably located adjacent to, and well related to, the existing urban settlement boundaries, and can be well integrated with the neighbouring settlement. Also, at criterion iii., that they are sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the Countryside. That Policy's other criteria are not in contention between the main parties.
9. The principle of housing development on the majority of the appeal site is not in contention as Outline Planning Permission was granted in 2020 for 55

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<sup>1</sup> Shaping Fareham's Future - Fareham Borough Local Plan Part 2: Development Sites and Policies, 2015.

dwelling (the 55-unit scheme) on a site in a similar location to the Appeal A proposal albeit with a different boundary not extending as far to the south.

10. Prior to this, in 2018, planning permission was granted for a community park covering a broadly similar but slightly smaller area to that proposed in Appeal B with its northern boundary following the extent of the 55-unit scheme.
11. The main parties agree that the 55-unit scheme would be a genuine 'fallback' should the appeal fail but it is not suggested that it would be a more harmful alternative than the appeal proposal. Rather, the Council consider it preferable in a number of respects. It is an important consideration and in effect sets a baseline by way of illustrating the parameters of a residential development on much of the appeal site that the Council previously found acceptable.
12. Most of the appeal site is allocated for housing development in the emerging Fareham Local Plan, 2021<sup>2</sup> (emerging FLP) under its Policy HA10 with an indicative yield of up to 55 dwellings. That allocation has the same boundary as the 55-unit scheme.

### **Main Issues**

13. The main issues raised by Appeal A are therefore:
  - the effect the proposed development would have on the character and appearance of the area, with particular regard to whether it would enable a detailed scheme to come forward that would reflect the character of the neighbouring settlement and minimise any adverse impact on the countryside, and;
  - whether or not the proposed development would be in a suitable location, with particular regard to the spatial strategy for the location of new housing and the accessibility of services and facilities for future occupiers.

### **Appeal A - Reasons**

14. The appeal site largely comprises a series of paddocks. These are separated by wire fences, and in places tracks, along with some woodland and utilitarian agricultural or equestrian buildings and a surfaced riding area. Consequently, the site has the overall character and appearance of countryside, albeit one that is being relatively intensively used for equestrian uses. This is not uncommon in the area with the upper slopes immediately to the south of the site (including much of the Appeal B site) and nearby countryside on the other side of the Deviation Line footpath embankment also demonstrating a similar character in places.

#### *Character and appearance – response to neighbouring settlement*

15. The village of Funtley has evolved from a very modest collection of dwellings alongside farms and brickworks. It retained a largely linear configuration aligned along Funtley Road until the mid C20. This was predominantly to the east of the railway cutting, with industrial uses to the west side along with a few more isolated houses. Since then, industry has disappeared and incremental expansion in the form of modest housing estates and groups of homes have developed behind those on the south side of Funtley Road. This has given the east part of Funtley a mixed character within which vestiges of its earlier linear arrangement can be seen in the disposition of older properties.

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<sup>2</sup> Revised Publication Fareham Local Plan 2037, 2021.

16. To the west of the railway cutting the few older houses along the north side of Funtley Road have effectively been subsumed into the frontages of late C20 and more recent housing estates. Although on whole detached, the buildings running along Funtley Road are relatively closely spaced giving the character of a more or less continuous built up frontage between the railway cutting and the Deviation Line. This forms the northern setting of the appeal site where most of the houses have a character and appearance typical of C20 dwellings with little apparent local distinctiveness. Overall, Funtley does not display a single, cohesive character beyond being a fairly tightly knit, built up village.
17. Although matters are reserved for future consideration, parameter plans anticipate development coming forward within three main and one small development cells surrounded by landscaping. An illustrative masterplan indicates that these could be developed with a series of smaller perimeter block type configurations. The development is largely proposed at two storeys with slightly taller key buildings, then dropping to a one and a half storey height to the south of the site where the land begins to rise more steeply.
18. In broad terms the development of the site for housing would reflect the character of the neighbouring settlement insofar as it would be developed as a housing estate. In terms of a more finer grain consideration of character, it appears likely that in order to accommodate the number of dwellings proposed that, rather than a typical suburban layout, such as that on much of the north side of Funtley Road, a more consolidated built form would be the result.
19. That being said, the closely spaced arrangement of existing homes on the older and more recent estates opposite is such that they present a fairly built up character along the estate roads with visual relief only where orientation changes allowing views across back gardens. The effect of this is that although at a lower density than that proposed in the appeal development, their configuration creates a built up character and appearance. Those dwellings are not so generously spaced that their front and rear gardens make the estates appear as anything other than suburban developments.
20. In this context, the built form that may be likely to come forward on the appeal site may not have a feeling or character that would be greatly more dense than that opposite even though in quantitative terms it would be. Considered against this measure, a scheme could come forward that would reflect those aspects of the character of the neighbouring settlement.
21. Nevertheless, the intensity of development likely to deliver the number of proposed homes and still retain substantial landscaping and planting areas around development cells would mean that a built form such as that shown on the illustrative masterplan may come forward. This would differ in detail from the detached houses of relatively uniform appearance arrayed along estate roads and culs-de-sac opposite, and those elsewhere in the village. It would be likely to create a series of more intimate streets which may perpetuate a village like character into the site beyond the Funtley Road Frontage.
22. The illustrative layout with a number of squares could act as focal points and has the potential for a more legible and communal arrangement of streets, buildings and spaces than the estates opposite. In this respect it may not reflect the detailed character of the settlement opposite albeit that the Lakeside and The Waters estates in the east part of the village have some houses arranged around open areas.

23. However, given the mixed character of much of the village and undistinguished appearance and layout of more recent developments, those aspects are not necessarily ones to replicate or reflect in the interests of good urban design. This could, however, mean that in some respects the development that comes forward may not comprehensively or exactly reflect the character of the neighbouring settlement. Nevertheless, not reflecting the character of some aspects of the settlement is not necessarily a harmful thing. The influence of those parts of the village which are 'of their time' as it were with limited local distinctiveness, do not necessarily set an appropriate precedent to be reflected in new residential areas.
24. That aspects of the design and layout might be influenced by villages such as East Meon some miles to the north of Funtley, would not be as harmful as the Council suggest. The illustrative masterplan does not appear to attempt to replicate a new village isolated from Funtley but shows that following influences from traditional villages in the wider area has the potential to enable a relatively dense scheme to be well designed. Therefore, following the approach of a traditional consolidated village core in some urban design principles for the site would not be alien to the settlement or the area.
25. Buildings in Funtley are overwhelmingly of two storey configuration, although I noted that rooflights are not uncommon in buildings in the east of the village. How second floors in the "up to 2.5 storey key buildings" might manifest themselves externally would be a detail to consider at the reserved matters stage. However, the principle of some second floor accommodation would not be at odds with the existing character of the village.
26. The illustrative masterplan anticipates a built up frontage running parallel to Funtley Road but set back with intervening estate roads and landscaping. Such an arrangement would not be vastly different from that of the arrangement of the estates opposite where many houses face the Road but are served by access spurs or drives running parallel to Funtley Road with a landscape strip. Notwithstanding the Council's reservations about this feature, this proposed configuration would broadly reflect that aspect of the development opposite.
27. It is of note that the Council's design witness felt that the much lower densities that may come forward under the 55-unit scheme and the emerging HA10 allocation would be in the form of generous open space and landscape buffers rather than larger gardens. A 55-unit scheme has not been worked up in any detail unlike the appeal scheme, so a considerable degree of speculation remains. For reasons already stated, I am not convinced that a layout and density similar to that of the Roebuck Avenue development opposite would necessarily result in a well designed scheme even if it did enable more generous landscaping surrounds.
28. I am also conscious that the up to 55-unit capacity for the site has remained the same even when the developable area has been enlarged slightly as the emerging HA10 site allocation has evolved with the emerging FLP. Furthermore, I note that in landscape terms at least the Council's landscape witness considered a development in the region of seventy or eighty dwellings may be acceptable, albeit that number is still far lower than the appeal scheme proposes. The 55-unit scheme would also not be spread out equally across the site and it too would in all likelihood come forward with a layout and

appearance with a degree of consolidation within its development cells, although again with less dwellings within them.

29. Although the Council felt that there would be what they considered 'excessive' undercroft parking in the illustrative masterplan, there is little justification of what the adverse effects of parking in such an arrangement would be. It may well be a practical solution to reduce reliance of on street parking, another of the Council's concerns, and enable a continuation of built up frontages above.
30. Overall, the design flaws identified by the Council would be limited. Some would not necessarily be harmful at all and others could be considered in detail at a reserved matters stage. The implications are that it has not been convincingly demonstrated that a satisfactory design could not come forward at reserved matters stage that could be sensitively designed to reflect the positive aspects of the character of the neighbouring settlement. Consequently, the parameters as proposed would set a framework for a scheme to come forward that could adhere to the principles of the National Design Guide<sup>3</sup> and its ten characteristics of well-designed places.
31. Any differences in built form likely to result between the respective number of dwellings in the approved and proposed developments would not necessarily be harmful at odds with the character of the area or the settlement. Indeed, there is the potential to provide more distinctiveness and one where dwellings are arranged in a legible manner responsive to new streets.
32. As the potential clearly exists for the design to be sensitive and, overall, could reflect the character of the neighbouring settlement, the development would accord with that component of LP2 Policy DSP40. Furthermore, its situation relative to the existing built up part of the village along with these circumstances mean that it would be well related to existing urban settlement boundaries.
33. The development would enable a scheme to come forward that could meet Core Strategy<sup>4</sup> Policy CS17's high quality design requirements and the illustrative masterplan shows potential for according with its detailed criteria so far as they are relevant for the scheme. For the same reasons there would be no conflict with emerging FLP Policy D1 which requires high quality design set out in the same terms as the National Design Guide's ten characteristics. Similarly, there would be no reason that a scheme adhering to the National Planning Policy Framework's (the Framework) policies for achieving well-designed places could not come forward.

#### *Character and appearance - effect on countryside*

34. The appeal site is not designated in the development plan as having any particular landscape value. The emerging FLP identifies the land to the south of its HA10 allocation as an Area of Special Landscape Quality (ASLQ). As the appeal site boundary extends slightly farther south than that allocation, part of the appeal site would be within that proposed ASLQ. However, the parameter plans show the part within the proposed ASLQ as being green space, undeveloped apart from an equipped play area.

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<sup>3</sup> National Design Guide - Planning practice guidance for beautiful, enduring and successful places, MHCLG, 2021.

<sup>4</sup> Fareham Local Development Framework, Shaping Fareham's Future - Core Strategy, 2011.

35. The site sits within a component of the wider landscape being well defined by man made and natural features forming what the appellants refer to as the 'Funtley triangle'. This is sided by the higher land to the south beyond which is the M27 motorway cutting, the railway line in its cutting and the Deviation Line embankment. The local landscape shares some landscape characteristics with the upper Meon Valley. The Fareham Landscape Character Assessment (2017) characterises the area on either side of the Deviation Line as small scale mixed farmland and woodland. However, the Funtley triangle forms a relatively discreet component of it where trees, topography and infrastructure mean there is limited visibility into the component from outside, particularly close by, with longer distance views from locations outside the Funtley triangle where the development is likely to be perceived largely being limited to those from the north east.
36. The proposed development would result in the loss of the existing paddocks and pasture, and fundamentally change that part of the countryside it would occupy. Notwithstanding the fencing and the few buildings on or adjacent to the site, its development would result in a significant area of open countryside being lost. The open area between the built up part of Funtley on the North side of Funtley Road and the motorway with northern suburbs of Fareham beyond would be significantly reduced. There would be an adverse impact on the countryside through this loss of presently green and open area of land.
37. That being said, the character and appearance of the area of countryside that would be lost has suffered from the subdivision into small paddocks with the odd stable building and tracks. It is not what one might consider pristine countryside and it is of note that the revised Local Plan Sustainability Report<sup>5</sup> (Sustainability Report) records the area being of high sensitivity but perhaps less sensitive than the Meon Valley to the south of the motorway. These characteristics reduce the harm of its loss, albeit to a limited extent.
38. Although the retention of existing features would not necessarily be precluded by the arrangement of development cells in the 55-unit scheme, the proposed development cells on the parameter plan would enable the remnants of hedge and the few trees along one of the field boundaries in that location to be reinforced. This would align with one of the Sustainability Report's proposed mitigation measures of development being integrated into the existing field pattern, strongly enclosed by vegetation.
39. There would be harm in the context of the wider landscape character although there would be no physical or visual intrusion into the substantive Meon Valley landscape itself, again due to the separating effect of the Deviation Line embankment. It would erode that wider landscape which at a landscape scale would be adverse. However, visual effects would only be to a very limited degree given the particular circumstances of its location within that landscape being a relatively discrete, and indeed discreet, component of the Meon Valley.
40. The landscape and countryside harm has the potential to be mitigated, particularly how any new buildings and spaces may be arranged on the site and in how structural landscaping might be introduced. The parameter plans provide for structural landscaping around the perimeter of the development

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<sup>5</sup> Sustainability Appraisal and Strategic Environmental Assessment for the Fareham Borough Local Plan 2037, 2019, 1. Detailed Assessment Matrix ID3121.

cells which would go some way to mitigating the those effects, its impact increasing as it becomes established.

41. Considered on a wider landscape scale, the relative discreetness of the Funtley triangle within which the development would sit as well as existing woodland features such as Great Beamond Coppice that would be retained would mean that the intrusion of new housing development within the countryside would not be experienced over a particularly wide area.
42. An important consideration is that much of the harm as a result of a loss of countryside and erosion of landscape character would be shared with that caused by the 55-unit scheme. However, the extent of that harm and the degree to which it might be mitigated differ. A lower density scheme with a less extensive land take for buildings has the potential to have more space within and around new buildings for green space and trees which in time has the potential to provide a greater degree of mitigation.
43. Nevertheless, even at the relatively low densities that the 55-unit scheme would come forward at, that number of houses would still in all likelihood have the character and appearance of a new housing estate in contrast to that site's present appearance and character. This is a factor which significantly reduces any harm that the appeal development would give rise to.
44. From footpaths to the north and east of Funtley the development would be seen and the change from undeveloped countryside to new housing would be perceptible. This would be in the context of the existing intervening buildings of Funtley, themselves interspersed with trees, in the foreground. The distance from views along the footpaths means that the intrusion would only appear as a relatively modest component in the extensive views afforded. Although views from those footpaths would be lost when the later phases of the Welbourne new settlement are constructed between them and Funtley, given the anticipated build dates for those phases the effects would be appreciable for a considerable time in advance of any development on those fields.
45. Closer to, views of the site from the elevated Deviation Line are through trees and hedges. From the recreation area at the apex of the Funtley triangle, new development would be seen with existing estates in the foreground. Although extending slightly farther south than the 55-unit scheme, the proposed building heights would be up to one and a half storeys high at its southern extent which would go some way to responding to that part of the site where the topography starts to get steeper and, in any event, would avoid the steeper slopes which lead up to the M27 motorway. The backdrop of mature trees in Great Beamond Coppice in the limited views of new development that would be afforded from the west and north-west would assist in visually assimilating houses into the wider landscape.
46. The Framework at paragraph 174 a) requires protecting and enhancing valued landscapes, amongst other features. It goes on to state that this should be in a manner commensurate with their statutory status or identified quality in the development plan. There is no identified quality in the development plan in force and no statutory protection for this particular area in landscape terms.
47. Arguments about whether the site is, is not or could be a valued landscape are largely academic. The 2020 Technical Review of Areas of Special Landscape Quality and Strategic Gaps illustrates an ASLQ of similar extent to that

proposed in the emerging FLP. Critically it recommends a proposed boundary excluding the existing built and allocated parts of Funtley which includes the emerging HA10 allocation. So even if the site had the characteristics which gave it potential for consideration, on the basis of available evidence, there is no alternative where the developed part of the site would be formally recognised as an ASLQ.

48. Therefore, even if the site were to have the quality to merit its inclusion as part of an ASLQ, or valued in some other way, the majority of the site is not proposed to be so designated or recognised. In any event, even the 55-unit scheme would have a considerable effect on the quality of the landscape on that site even if it were to be considered valued. In either, or both, scenarios the site would be excluded from the designation and largely built upon. Even if and when designated, the substantive built development that would arise from the appeal proposal would be outside the proposed ASLQ with only open space and a play area within it.
49. Whilst neither the proposal nor the 55-unit scheme would protect or enhance the landscape compared to the undeveloped site, similarly bearing in mind the Framework's caveat about that protection and enhancement being commensurate with a quality identified in a development plan, the proposal would not be contrary to that Framework provision.
50. Beyond the fundamental effects of building within an area of countryside, the 55-unit scheme would also see a housing estate across much of the appeal site. Both have the potential to be laid out, designed and landscaped so as to minimise any adverse impact on the countryside, part of the LP2 Policy DSP40 requirements. The appeal proposal embeds a number of features within its parameter plans including rural edge green space around development cells and what it terms green links running perpendicular from Funtley Road.
51. Nevertheless, such harm that the development would cause by the loss of countryside would be greater than that likely to arise from the 55-unit scheme due to greater land take for building areas and the corresponding potential for more landscaping. However, that difference would be limited.
52. For these reasons I remain unconvinced that in landscape and visual terms that the degree of change between the main parties' agreed baseline of the 55-unit scheme and the appeal proposal would be of such a magnitude that the acceptable and less than significant effects of the approved development would become significant and up to major adverse in landscape terms. This is particularly in light of the fundamental effect of changing the countryside to a housing estate with landscaping remaining as a reserved matter in either case.
53. Emerging FLP Policy HA10 requires, amongst other criteria, that proposals incorporate view corridors from Funtley Road through to the public open space allocation to the south as a means of taking account of the site's landscape context. The parameter plans allow for two view corridors running perpendicular from Funtley Road which have the potential to retain views of the higher ground beyond the proposed developed areas and retain a degree of visual connection from Funtley Road with the higher slopes.
54. Emerging FLP Policy HA10 does not specify their exact location and the eastern corridor on the appeal scheme more or less corresponds to that on the 55-unit scheme. The Council prefer the second, diagonal view corridor of that proposal.

That would allow for a more generous broadening out and a view from Funtley Road to the uppermost part of the high ground beyond development.

55. However, that view corridor has the shortcoming of being set towards the Deviation Line bridge where there is no footpath. It would be less likely to be experienced by many except the occupiers of the houses opposite the alignment, limited glimpses through the trees from the Deviation Line footpath and fleetingly from vehicles travelling into Funtley. The proposed view corridor would be narrower, have less of a splay and reveal a much more limited area of the park beyond terminating in a building beyond that when trees are not in leaf. However, it would allow views of trees along Honey Lane and enable observers to appreciate at least some of the natural landscape beyond the depth of development as well being appreciated by more observers given its more accessible view point on Funtley Road.
56. As the development would incorporate view corridors, the appeal development would satisfy that particular requirement of emerging FLP Policy HA10. The development would be different to that of the 55-unit scheme but having an alternative view corridor, even one that may not be as revealing as that approved, would not make the appeal scheme unacceptable.
57. Given the proposed parameters I am satisfied that a detailed scheme could come forward at reserved matters stage that could minimise any adverse impact on the countryside. It may not do so in exactly the same way as the 55-unit scheme and may even have less potential for open space and planting than that scheme would have done. But that scheme's particular parameters and limitations would not be the only way to develop the site and that does not necessarily mean that the appeal proposal would fail to satisfy the development plan criterion of minimising adverse countryside impact.
58. Whilst there would be harm by way of loss of countryside and an effect on landscape, contrary to Core Strategy Policy CS14 and LP2 Policy DSP6, but this would be limited in itself and the weight that harm, and policy conflict, carries is significantly moderated in light of the previous approved scheme. The development would enable a scheme to come forward that could be sensitively designed to minimise any adverse impact on the countryside and consequently satisfy LP2 Policy DSP40 in that respect. Similarly, with mitigation, the development would enable a detailed scheme to come forward that would recognise the intrinsic character and beauty of the countryside and accord with criterion b) of Framework paragraph 174.

#### *Location and accessibility*

59. The proposed development would share the same locational advantages and limitations in terms of accessibility as the 55-unit scheme and is of course in a location allocated for housing in the emerging FLP. It would however also bring with it an enhanced cycle and pedestrian route linking with the footbridge over the motorway. This would be adopted as a public right of way with the implications that it has the potential to have preferable gradient to that of the existing permissive path which the previous scheme would rely on. Any slight lengthening of the route, and consequently to facilities in Fareham, due to it negotiating the slope in a more sinuous arrangement would be outweighed by more accessible gradients.

60. The development would also provide for bus turning within the scheme. This would have the advantage that bus services, as far as the site at least, might not be reliant on travelling along routes whose use has a cost implication as the current service to Knowle does. Providing a public transport node adjacent to the proposed community building would also be an advantage.
61. The downside of the site's location is that the facilities within easy walking distance in the village itself are very limited. Walking or cycling to facilities and services not within the village may be less attractive due to distance, topography and perceptual barriers, irrespective of which guidance forms the basis for an assessment of the suitability of travel time or the distance they are away. The consequence of this is that future occupiers may rely on private vehicles for many day-to-day journeys. However, this would be a disadvantage of the approved scheme too, just that fewer households would be in that position. The Council acknowledge that this was an influencing factor in their decision to approve that scheme where they found other factors in that case to outweigh accessibility shortcomings.
62. The harm that these limitations to walking and cycle accessibility would give rise to in the appeal scheme has the potential to be greater only inasmuch as there would be a considerably greater number of households in that situation. The development would not be any more remote but there may be more people who choose to use private vehicles than in the 55-unit scheme.
63. That being said, the development provides for alternatives to private car travel and provides appropriate opportunities to promote sustainable transport modes. In addition to the physical infrastructure, provision would also be made to provide vouchers to encourage new residents to use the bus service, to fund the bus service until and unless the turning area is operational, providing cycle vouchers, paying a contribution to the footpath link to the local secondary school as well as contributing towards travel plans at that and the local primary school. A travel plan for the development would be prepared and funding provided to implement and monitor it.
64. These measures would help new residents take advantage of the bus service and cycling. Parents and pupils could seriously consider the option of walking or cycling to school. These advantages mean that it cannot be assumed that necessarily the same proportion of future residents would use private vehicles for such trips. Together these measures would ensure that the site's locational disadvantages would be mitigated against, and any harm in this respect minimised. All things considered the accessibility of the development would not be more harmful than that of the 55-unit scheme and its sustainable transport measures would have some limited advantages over it.
65. Considering all these elements, in these terms the development would satisfy LP2 Policy DSP40's requirement that development be sustainably located. As the development would provide necessary and appropriate transport infrastructure and would help prioritise and encourage safe cycle, walking and public transport journeys it would accord with Core Strategy Policy CS5.

#### *Findings on main issues*

66. For these reasons I do not agree that the scale of development proposed pushes any 'envelope' that may have been established by the 55-unit scheme to 'breaking point' as the Council contend. The evolution of the illustrative

masterplan shows that it may prove challenging to satisfy design requirements with a greater capacity than that proposed but not the scheme as it stands. Furthermore, given the importance of detailed appearance, landscaping, layout and scale to the acceptability of development in this location, the Council would still control over these aspects through consideration of any reserved matters.

67. The development plan's Spatial Strategy anticipates the circumstances where a five year housing supply cannot be demonstrated in the form of LS2 Policy DSP40 which forms part of that strategy. As the development would accord with that Policy it would therefore not conflict with the spatial strategy overall.
68. There would be no conflict with emerging FLP Policies DS1 and DS3 as the built up part of the development would be on a site allocated in that plan and beyond its proposed ASLQ. The development's accordance with LP2 Policy DSP40 would effectively mean conflict with the broadly similar emerging FLP Policy HP4 would also be avoided. The only aspects that would not accord with emerging FLP Policy HA10 would be the number of units exceeding its 55 dwelling indicative yield and the potential for some buildings to be half a storey higher than its two-storey maximum. However, even though the emerging plan can be afforded some weight given its stage of preparation, conflict in these particular respects carries very little weight in light of my findings above.

### **Appeal A - Other Matters**

69. Whilst I can understand local residents' concerns about the effect additional cars may have on local roads I am mindful that even with the anticipated number of vehicles which might use Funtley Road, that there is no substantive evidence that the local road network would fail to cope with the additional traffic. Whilst conceivably queuing for the traffic lights either side of the bridge over the railway to the east of the site may increase, this would not in itself create a safety issue. Furthermore, the measures to enable and encourage walking, cycling and bus use would play a contribution in reducing car trips. I note that the County Council, as highways authority, agree that the proposed access would operate within capacity without queuing within the site or on Funtley Road with negligible driver delay anticipated.
70. In terms of the safety of vehicles leaving the site or travelling along Funtley Road, the proposed visibility splays would ensure that all road users would have sufficient views of one another. I note that the County Council have accepted the proposed dimensions. The evidence available to me does not indicate that there would be a materially harmful effect on the highway network or the safety of any of those who use it.
71. Any surface water runoff from the site is likely to be intercepted and slowed with the proposed approach to drainage including the series of tanks, ponds and swales. Similarly, surface water from farther up the slope would also have the new housing estate's drainage scheme between it and Funtley Road. Bearing in mind the findings of the Flood Risk Assessment<sup>6</sup>, the development is therefore unlikely to exacerbate any existing drainage or flooding issues on Funtley Road or elsewhere. I note that the Lead Local Flood Authority raised no objections to the proposal subject to conditions.

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<sup>6</sup> Land South of Funtley Road, Funtley - Flood Risk Assessment and Drainage Strategy, Motion.

72. There is no substantive evidence that the predominantly residential development would result in unacceptable effects on the local noise environment either from its use or from traffic, especially in the context of the existing railway line and motorway nearby. Similarly, although the development would result in more vehicles, measures would be in place to provide genuine alternative and encourage electric vehicle use. In these circumstances it has not been demonstrated that there would be any material harm by way of any pollution from vehicles.
73. I have noted concerns about the effect the development may have on the capacity of local schools, doctors' surgeries and other services. As detailed below, a financial contribution towards education infrastructure would be secured. There is no specific request from health providers in this regard, and in the absence of compelling evidence to the contrary I am not convinced that the development would have such an effect on local health services that would either make it unacceptable or require mitigation.

### **Appeal A - Planning Obligation**

74. A completed Unilateral Undertaking providing a series of planning obligations has been provided that would achieve a number of objectives were the appeal to succeed and planning permission be granted.
75. It would: provide at least 40%, and up to fifty, affordable homes of a mix of tenures; make provision for the self or custom build homes; secure highway works; provide the bus turning area within the site and contribute to funding the bus service and incentivising residents to use it; provide a new link to the motorway footbridge as a Public Right of Way and fund its maintenance; provide a package of sustainable travel measures and incentives; make provisions to secure the community shop; secure work to implement the community park including its interim management pending its transfer to the Council; provide open space and implement the equipped play area, transfer them to the Council and contribute to their maintenance; make a contribution towards education infrastructure; and, contribute to school travel plans and improvements to the footpath access.
76. Specific provisions would also ensure that part of the land to be the community park will cease to be used for agriculture and grazing thereby enabling it to function as 'mitigation land' as part of the package of measures to achieve nutrient neutrality. An obligation will require payment towards mitigation of recreation impacts on the Solent and New Forest Habitats Sites (see Appropriate Assessment below).
77. The Council have provided a detailed Section 106 Obligations Justification Statement (CIL Statement), which provides their justification for seeking the obligations and the relevant policies which support their view. I have considered the Planning Obligations in light of Regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended), the Framework and the Planning Practice Guidance on the use of planning obligations. On the basis of the evidence before me, I am satisfied that the obligations are necessary to accord with the local and national policies set out in the CIL Statement. Overall, I am satisfied that all of those obligations are directly related to the proposed development, fairly and reasonably related to it and necessary to make it acceptable in planning terms and I have therefore taken them into account.

## **Appeal A - Appropriate Assessment**

78. As the competent authority I am required by the Habitats Regulations<sup>7</sup> to undertake an Appropriate Assessment of the development on the basis of any likely significant effects it may have on European Protected Habitats Sites. These are those collectively known as the Solent Habitats Sites<sup>8</sup> and the New Forest Habitats Sites<sup>9</sup>. The Solent and Dorset Coast Special Protection Area is farther away but I have considered this as well. Bearing in mind its qualifying features and relationship with other protected sites I have considered it along with the Solent Sites.
79. In particular, there would be likely significant effects arising from recreational disturbance from future occupiers during occupation of the development (alone and in combination) in respect of both groups of sites and in regards to the effects of nitrogen nutrient outputs arising from occupation of the development (alone and in combination) in respect on the Solent Habitats Sites.
80. In carrying out this Assessment I have had regard to the appellants' Shadow Habitats Regulations Assessment<sup>10</sup> and supporting evidence. Since the Inquiry closed, Natural England published further advice on the deterioration of the water environment from Nitrates and issued an updated nutrient budget calculator in respect of the Solent Sites<sup>11</sup>. In light of these, the appellants reviewed their figures which resulted in a need to mitigate against an increase in surplus nitrogen. They provided an increased nitrogen budget for the development and in response have put in place measures to secure additional nitrogen nutrient credits<sup>12</sup>. I have had regard to Natural England's views<sup>13</sup> on both the original and revised mitigation provisions in carrying out my assessment.
81. The development itself would incorporate some mitigation, and via conditions and planning obligations further mitigation would also be secured. The main parties and Natural England consider that the likely significant effects could be managed through this package of mitigation measures. These would include ensuring that a component of the proposed community park is taken out of use for pasture and grazing and the purchase of an agreed (revised) level of nutrient credits which would secure land offsite being permanently taken out of agricultural use. This would be complemented by conditions requiring drainage schemes to be approved and limiting the water use in, and consequently waste water from, new dwellings.
82. In terms of mitigating recreational disturbance, contributions would be made to the Solent Recreation Mitigation Strategy and towards access management, wardening and monitoring at New Forest sites. The community park might additionally play some, albeit limited, role in providing alternative recreation close to residents' homes, but mitigation would not rely on this.

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<sup>7</sup> Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended).

<sup>8</sup> Portsmouth Harbour Special Protection Area (SPA) and Ramsar site, Solent and Southampton Water SPA and Ramsar site and the Solent Maritime Special Area of Conservation (SAC).

<sup>9</sup> New Forest SPA, SAC and Ramsar site.

<sup>10</sup> Shadow Habitats Regulations Assessment, Ecology Solutions, 2021.

<sup>11</sup> Joint Statement between Fareham Borough Council and the Appellants -Habitats Sites, 13 May 2022.

<sup>12</sup> Note on Nitrogen Mitigation, 12 May 2022 and Confirmation of Exchange Letter and appendices from Wilson Wraight, 17 May 2022.

<sup>13</sup> Consultation response E-mail from Natural England to the Planning Inspectorate, 28 April 2022 and E-mail from Natural England to Fareham Borough Council 16 May 2022.

83. Consequently, I am satisfied that should planning permission be granted that, subject to the measures secured by planning conditions and obligations, the integrity of the designated Habitats Sites would be safeguarded. Consequently, the development would accord with Core Strategy Policy CS4 and LP2 Policies DSP 13 and DSP15 which together, and amongst other criteria, seek to protect internationally designated sites and mitigate any effects of recreational disturbance on the Solent Sites.

## **Appeal A - Planning Balance**

### *Planning Policy*

84. I am mindful of how other Inspectors have treated LS2 Policy DSP40 in their decisions<sup>14</sup>. I note the appellants' contention that the policy is out of date as they consider that its not worked given the ongoing shortfall of housing sites. However, it is designed to provide a contingency approach to providing housing when a five year supply cannot be met. It is clear from recent decisions that in some cases, including the 55-unit scheme, it has enabled housing sites to come forward that may otherwise not have. Consequently, the policy still carries weight.
85. There would be conflict with Core Strategy Policies CS2, CS6 and CS14 and LP2 Policy DSP6 which strictly control development outside defined settlements with residential development only permitted in limited specified circumstances, prioritising previously developed land for housing and in identified development areas. However, these policies are out of date relying as they do on out of date housing assumptions and implications for settlement boundaries. Also, given the circumstances that LS2 Policy DSP40 is engaged this further reduces the weight any conflict with those policies carries.
86. Whilst LP2 Policy DSP40 does not explicitly override those other policies, it sets out specific circumstances and criteria, where development outside of settlements would be acceptable and hence development in circumstances not provided for in the suite of development location policies. These necessarily include effects on countryside and landscape and it contains provisions within its criteria as to how such effects should be considered which carries more weight than those landscape protection elements of CS14 and DSP6. I note that the Inspectors took a similar approach in the recent Crofton Cemetery and Land at Newgate Lane (north and south) decisions<sup>15</sup> and I consequently prefer the Council's approach that it carries substantial weight.
87. I note that in the Posbrook Lane appeal decision<sup>16</sup> the Inspector found that those particular policies were consistent with the Framework in respect of their countryside protection provisions. However, that finding does not equate to any conflict with those policies gaining more weight. This is because LP2 Policy DSP40 caters for the more specific circumstances of development in countryside.
88. Given that LP2 Policy DSP40 is fundamental to the consideration of the appeal and the consequent reduced relevance of other Core Strategy and LP2 policies

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<sup>14</sup> Including APP/A1720/W/21/3272188, APP/A1720/W/21/3271412, APP/A1720/W/18/3200409, APP/A1720/W/18/3199119, APP/A1720/W/20/3252180, APP/A1720/W/20/3252185 and APP/A1720/W/21/3275237.

<sup>15</sup> APP/A1720/W/21/3275237, APP/A1720/W/20/3252180 and APP/A1720/W/20/3252185.

<sup>16</sup> APP/A1720/W/18/3199119.

dealing with development outside settlements, I consider that the development would accord with the development plan overall.

89. However, even though the most important policy for determining the proposal specifically caters for the particular circumstance where the Council cannot demonstrate a five year supply of deliverable housing sites, those same circumstances mean that the Framework directs that that policy is considered out-of-date. This in turn triggers the Framework's presumption in favour of sustainable development.

### *Benefits*

90. Irrespective of their differences as to the actual numbers, the main parties agree<sup>17</sup> that the shortfall in supply of new homes is significant and the weight to be attached to the delivery of housing from the appeal scheme would also be significant. Up to 125 new homes would therefore be a significant benefit in meeting a need for new housing. This would be enhanced by up to fifty of them being provided as affordable homes. Although there is a duty on the Council in regard of self-or custom build provision, the six custom or self-build plots would nevertheless also be a benefit.
91. Building new homes would generate economic benefits during the construction phase and in the long term through economic activity of occupiers, including those limited facilities in or close to the village. I am less convinced that additional Council tax revenues would be a benefit as they would in general terms help pay for local authority services used by future occupiers. The inclusion of a community building and/or shop would be a moderate benefit not just for future residents of the scheme but for the whole village.
92. Whilst much of the landscaping would be necessary as mitigation against the visual and landscape effects of the development, it would also have the potential to benefit the natural environment with the improvement and creation of habitats and an overall biodiversity net-gain secured by condition.
93. The inclusion of a public right of way would be an improvement over the present permissive path linking the site and the village to the motorway footbridge with the attendant improvements in gradient, construction to a recognised standard and long term protection. The off-site foot and cycle improvements would benefit others and in particular the proposed bus turning capability and short term funding of services would be a benefit for all bus users in the village and potentially encourage new ones.
94. Although the associated community park would be slightly less expansive than that which would accompany the 55-unit scheme I cannot agree with the Council that its provision would not be a benefit. It would provide a number of roles including that of mitigation but would be a public space that all would be able to enjoy. It may be that the weight such a benefit it carries would be reduced as a slightly larger community park would be secured through the 55-unit scheme, but this does not mean that the park would not be a benefit and a considerable one at that.
95. That many of these benefits would also be secured by the extant permissions on the sites does not in itself devalue those benefits as the appeal proposal needs to be considered on its own merits. Indeed, benefits associated with or

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<sup>17</sup> Statement of Common Ground: Five Year Housing Land Supply.

proportional to the number of dwellings would be greater with the appeal proposal, just as those associated purely with the size of the community park would be slightly less.

96. The proposed development also has the advantage over the extant scheme's reliance on the 'permissive path' of directing a public right of way from its current route through Great Beamond Coppice. This would allow for the consolidation and better protection of the ancient woodland. The proposed bio diversity net gain would be secured by way of a condition which, notwithstanding any ecological enhancements which that scheme may deliver is not a feature of the 55-unit permission.
97. In any event, the 'net benefits' of the appeal scheme over and above those of the 55-unit scheme would still be considerable. There would be up to 70 additional dwellings, up to 28 more would be affordable and there would be up to three more self or custom build plots. These would in turn deliver additional economic benefits in terms of the construction phase and ongoing expenditure by future occupiers which would be considerably more than that likely to be associated with the 55-unit scheme. Together these would be significant in themselves and greater, even as a net increase, than that the 55-unit scheme could deliver. It is of note that the Council accept that benefits of the scheme would in aggregate be substantial.

#### *Overall findings*

98. As set out in my reasoning above the adverse impacts arising from the development would be limited. They would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The Framework indicates that planning permission should be granted in these circumstances. In any event, the development would accord with the development plan taken as a whole and material considerations, including the Framework and the previous planning permission, do not indicate that a decision should be taken contrary to the development plan.

#### **Reasons - Appeal B**

99. The change of use of much of the land between the development and the motorway already has the benefit of planning permission for the same purpose, albeit that its northern site boundary differs and the appeal proposal would be around 0.5Ha smaller than that previously approved. The proposal would provide a large area of public open space for existing and future residents. The change of use would necessitate the removal of some utilitarian equestrian buildings which would improve the character and appearance of the area. There would be the potential for enhancement to biodiversity, access and landscape character including enabling linkages with isolated groups of trees with the ancient woodland.
100. The change of use would accord with Core Strategy Policies CS4 and CS21 and LP2 Policies DSP12 and DSP13 and their objectives of providing green infrastructure and biodiversity conservation, and of providing open space. The development would also accord with the approach in the emerging FLP where it would be compatible with lying within an area intended to be designated as an ASLQ and a Strategic Gap with parts also allocated as public open space and Great Beamond Coppice woodland designated as a Site of Importance for Nature Conservation. In protecting and enhancing the landscape, which the

emerging FLP proposes to be recognised as a valued one, the development would accord with Framework paragraph 174 a). The Council concur that planning permission should be granted for this development.

### **Conditions – Appeal A**

101. Conditions 2 and 3 require that the approval of reserved matters and commencement would be shorter than usual. This reflects the position set out in the supporting text to LP2 Policy DSP40 which indicates that, where necessary, limiting commencement time to ensure delivery in the short term is necessary as the *raison d'être* of the policy is to respond to a current shortfall in deliverable housing sites. Given the importance that the detailed design, layout and landscaping will have in the acceptability of the final scheme, I have given a slightly more generous submission deadline than the Council suggested to help ensure that such details can be as good as possible.
102. It is necessary to specify the approved drawings and documents as this provides certainty to all (4). In order that the mitigation measures in respect of Habitats Sites are secured it is necessary to confirm that nitrate credits have been purchased and that limiting water use, which in turn will limit waste water, is designed into water efficiency in dwellings (5 & 6).
103. In order to minimise risk of flooding and ensure that drainage is properly dealt with it is necessary to require clean and foul drainage schemes to be approved and implemented (7 & 8). To protect and enhance biodiversity on the site and secure benefits of biodiversity net gain it is necessary to implement plans to do so (9 & 26). Their requirements for a range of habitat and species protection and enhancement would go some way to addressing objectors' concerns about the nature conservation implications of the proposal.
104. It is necessary to protect retained trees and hedges from construction (10). In order to ensure there is no harm to health or the environment from potential contamination given previous uses on the site a condition requiring investigation and remediation is required (11). Adherence to a construction management plan will help minimise disruption on the roads, disturbance to nearby residents and harm to the environment (12). To protect residents' living conditions it is also necessary to limit construction hours (19).
105. The living conditions of future occupiers will be protected by requiring levels to be approved, ensuring there is effective noise attenuation from road and rail traffic and requiring refuse storage to be agreed (14, 15 & 17). Making sure that occupiers and visitors have access to a choice of transport modes will be ensured by requiring cycle parking to be provided (16). Building materials need to be approved to preserve the character and appearance of the area (18).
106. To ensure that homes have fit for purpose access, crossings and roads need to be in place (20), access must be provided to an appropriate standard (13) along with a relocated bus stop (24) and safety of all road users will be protected by requiring visibility splays to be provided and retained (21). In order to protect future residents' living conditions and ensure an attractive appearance it is necessary to require that boundary treatments are approved and implemented (22) as is ensuring the landscaping that will be approved at a later stage is retained and maintained, which will also protect and enhance biodiversity (23).

107. Notwithstanding the Building Regulations requirement coming into force later this year requiring electric vehicle charge points in new homes, in the interests of certainty and to ensure that infrastructure to support low carbon transport use is provided it is necessary to require charging points in case building work commences before the trigger points accompanying the new Regulations (25).

### **Conditions – Appeal B**

108. It is necessary to specify the approved drawings as this provides certainty to all (2). To protect and enhance biodiversity on the site and secure benefits of biodiversity net gain it is necessary to implement plans to do so (3 & 4). Ensuring an appropriate amount and suitable location of parking for users of the community park will avoid any harm to safety of all highway users and minimise inconvenience to nearby residents (5). In order to ensure there is no harm to health or the environment from potential contamination given previous uses on the site a condition requiring investigation and remediation is required (6). In order to operate effectively it is necessary that those conditions require details to be approved before commencement.

### **Conclusions**

109. For the above reasons the housing development would be suitably and accessibly located and would not harm the character and appearance of the area, and in particular would enable a detailed scheme to come forward that would reflect the character of the neighbouring settlement and minimise any adverse impact on the countryside. The development would accord with the development plan considered as a whole and Appeal A is therefore allowed.
110. There are no material considerations that indicate the community park proposal should be determined other than in accordance with the development plan with which it would accord. For the reasons given above, I therefore conclude that Appeal B is allowed.

*Geoff Underwood*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANTS:

Mr Zack Simons of Counsel, instructed by Mr Andrew Munton of Reside Developments Ltd

He called:

Mr Robert Rummey, BArch (Hons) RIBA DipLA CMLI FRSA	Rummey Design
Mr David McMurtary, BA MCIHT	Motion Consultants Ltd
Mr Timothy Burden, BSc (Hons) MSc MRTPI	Turley

*Conditions and planning obligations session:*

Mr Karl Goodbun BSc (Hons) MCIEEM	Ecology Solutions
Mr Cairo Nickolls (Solicitor)	Gowling WLG (UK) LLP
Mr Andrew Munton BSc (Hons) MA MRTPI	Reside Developments Ltd

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Ned Helme of Counsel, instructed by the Southampton and Fareham Legal Partnership

He called:

Mr Ian Dudley BSc(Hons) MICFor CEnv CMLI	Nicholsons Lockhart Garratt
Mr Philip Russell-Vick, DipLA CMLI	Enplan
Mr Stephen Jupp, BA (Hons) LLM MRTPI	Planning Consultant

*Conditions and planning obligations session:*

Mr Richard Wright BSc MSc MRTPI	Fareham Borough Council
Mr Adrian Noviss (Solicitor)	Fareham Borough Council

### INTERESTED PERSONS:

Mr Robert Marshall	The Fareham Society
Mr. Andy Jackson MBE	Local Resident
Cllr Mrs Pamela Bryant	Fareham North Ward Councillor
Mr Paul Turner	Local Resident

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

1. Appeal and Costs decision letters Ref: APP/A1720/W/21/3271412; Land South of Romsey Avenue
2. Statement regarding the position of Natural England by Karl Goodbun, 1 February 2022
3. Mr Andy Jackson's Speaking Notes
4. List of Council's appearances
5. Council's opening submissions
6. Crystal property (London) Ltd v SSCLG [2016] EWCA Civ 1265
7. R (Saunders) v Tendring District Council & Barrett Homes Ltd [2003] EWHC 2977 (Admin)
8. R (Harvey) v Mendip District Council [2017] EWCA Civ 1784
9. Appellants' opening submissions and list of appearances
10. Extract from Sustainability Appraisal and Strategic Environmental Assessment for the Fareham Borough Local Plan 2037, 2019
11. Extract from the South East Plan – South Hampshire Sub-regional Strategy final Advice, 2005
12. Extract from Fareham Local Plan 2037 Strategic Housing and Employment Land Availability Assessment (SHELAA), 2020
13. Agreed Statement on Transport Matters Between Reside Developments Ltd/Atherfold Investments Ltd and Hampshire County Council, version 3
14. Mr R Marshall's Speaking notes
15. Councillor Mrs P Bryant's speaking notes
16. Suggested site visit itinerary plan
17. Suggested site visit itinerary plan with Welbourn Garden Village overlay
18. Appellants' comments on draft schedule of conditions
19. Draft Unilateral Undertaking
20. Wellbourne Garden Village sequencing drawings
21. Fareham Borough Council's note on Suggested Draft Condition 1 (Time for Implementation of Permission), 10 February 2022
22. Summary note of the s.106 Unilateral Undertaking, Gowling WLG (UK) LLP, 14 February 2022
23. Mr Andy Jackson's final speaking notes and plan
24. Appeal decision letter Ref: APP/A1720/W/21/3271214, 84 Fareham Park Road, Fareham
25. Technical Note 1: Flood Risk and Drainage, Motion, 15 February 2022
26. Final agreed summary note of the s.106 Unilateral Undertaking, Gowling WLG (UK) LLP, 15 February 2022
27. National Travel Survey: 2020, notes and definitions, 22 September 2021
28. Council's closing submissions
29. R (Mansell) v Tonbridge and Malling BC [2019] PTSR 1452)
30. Appellants' closing submissions
31. Gallagher Estates Ltd v Solihull MBC [2014] EWCA Civ 1610
32. Forest of Dean DC v SoSCLG [2016] EWHC 2429 (Admin)
33. Dignity Funerals Ltd v Breckland DC [2017] EWHC 1492 (Admin)

34. Edinburgh City Council v SoSS [1997] 1 W.L.R. 1447
35. SoSCLG v West Berkshire District Council [2016] 1 W.L.R. 3923
36. R. v SoSE Ex p. PF Ahern (London) Ltd [1998] Env. L.R. 189

**DOCUMENTS SUBMITTED FOLLOWING THE INQUIRY**

37. Appeal decision letter Ref: APP/A1720/W/20/3254389, Land east of Posbrook Lane, Titchfield
38. Completed Planning Obligation by Unilateral Undertaking
39. E-mail from Natural England to the planning Inspectorate responding to Inspectors consultation in respect of Habitats Regulations assessment, 28 April 2022
40. Note on Nitrogen Mitigation at Land south of Funtley Road, Funtley, Reside, 12 May 2022
41. Joint Statement between Fareham Borough Council and the Appellants - Habitats Sites, 13 May 2022
42. E-mail from Natural England to Fareham Borough Council 16 May 2022
43. Confirmation of Exchange Letter and appendices from Wilson Wraight, 17 May 2022

## **Appeal A- Schedule of Conditions**

**Appeal Ref: APP/A1720/W/21/3283643, application Ref: P/20/1168/OA**

- 1) 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.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than eighteen months from the date of this permission.
- 3) The development hereby permitted shall take place not later than one year from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following drawings and documents:
  - a) Existing Footway Measurements - 1908016-02C.
  - b) Existing Footway Measurements - 1908016-03A.
  - c) Proposed Site Access Junction with Visibility Splays - 1908016-01E.
  - d) Proposed Footway Improvement - 1908016-04A.
  - e) Location Plan - RD1731-C1-L002 P).
  - f) Overall Parameter Plan - RD1731-F3- L107-P3.
  - g) Height Parameter Plan - RD1731-F3-L128-P1.
  - h) Density Parameter Plan - RD1731-F3-L114-P1.
  - i) Great Beamond Coppice SINC/Ancient Woodland Management and Monitoring Plan (Ecology Solutions, April 2021).
  - j) Ecological Assessment (Ecology Solutions, September 2020).
- 5) No dwelling hereby permitted shall be occupied until the Building Regulations Optional requirement of a maximum water use of 110 litres per person per day specified in Regulation 36(2)(b) to the Building Regulations 2010 (as amended) has been complied with and written confirmation of such provided to the local planning authority.
- 6) No dwelling hereby permitted shall be occupied unless the Council has received the Notice of Purchase in accordance with the legal agreement between Fareham Borough Council, South Downs National Park Authority and Andrew Sellick of Gawthorpe Estate dated 1 April 2021 in respect of the Credits Linked Land identified in the Nitrates Mitigation Proposals Pack.
- 7) No development hereby permitted shall commence until a surface water drainage strategy has been submitted to and approved in writing by the local planning authority. The strategy shall include the following elements:
  - a) Full details of the means of surface water drainage from the site including:
    - i. A technical summary highlighting any changes to the design from that within the approved Flood Risk Assessment;
    - ii. Detailed drainage layout drawings at an identified scale indicating catchment areas, referenced drainage features, manhole covers and invert levels and pipe diameters, lengths and gradients;

- iii. Detailed hydraulic calculations for all rainfall events, including those listed below. The hydraulic calculations should take into account the connectivity of the entire drainage features including the discharge location. The results should include design and simulation criteria, network design and result tables, manhole schedule tables and summary of critical result by maximum level during the 1 in 1, 1 in 30 and 1 in 100 (plus an allowance for climate change) rainfall events. The drainage features should have the same reference as the submitted drainage layout; and,
  - iv. Exceedance plans demonstrating the flow paths and areas of ponding in the event of blockages or storms exceeding design criteria.
- b) The detailed design of Sustainable Urban Drainage Systems (SUDS) to be used on the site as well as details on the delivery, long term maintenance and adoption of SUDS features.
  - c) An assessment of the condition of the existing watercourse which will take surface water from the development site and, if necessary, detailed proposals to improve its condition through reparation, remediation, restitution and replacement as necessary.
  - d) An assessment of surface water drainage discharge from the site in combination with the development site to the north of Funtley Road (planning application reference P/17/1135/OA) to demonstrate that:
    - i. the greenfield runoff rate will not exceed 13.1 l/s during the 1 in 100 year storm +(40%CC); and,
    - ii. the surface water discharged to the Funtley Road ditch will comply with CIRIA C753 2015 Table 26.2 & Table 26.3.

The development shall be carried out in accordance with the approved details and provided before any dwelling or the local shop/community building they serve is first occupied and surface water drainage arrangements shall thereafter be retained and kept available for use at all times.

- 8) No development hereby permitted shall commence until details of the means of foul water drainage from the site have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and completed in full prior to the occupation of the first dwelling or local shop/community building hereby permitted.
- 9) No development hereby permitted shall commence until a Biodiversity Mitigation, Enhancement and Management Plan (Management Plan) has been submitted to and approved in writing by the local planning authority. The Management Plan shall be devised fully in accordance with the outline ecological mitigation and enhancements measures contained within the submitted "Ecological Assessment, Ecology Solutions, September 2020". The Management Plan shall include the following:
  - a) a Reptile and Dormouse Mitigation Strategy;
  - b) a Japanese Knotweed Eradication Scheme;
  - c) a Badger Protection Strategy;
  - d) details of the timing of clearance works;
  - e) a detailed scheme of biodiversity enhancements;

f) details of a soft landscaping scheme including provisions for buffer planting associated with the adjacent areas of ancient woodland;  
g) details of darkened corridors for foraging and commuting bats; and  
h) a Landscape/Ecology Management Plan including specification of the maintenance of mitigation and enhancement measures.

Thereafter the development shall be carried out in accordance with the approved Management Plan.

10) No demolition, preparation prior to operations nor development hereby permitted shall commence until an Arboricultural Impact Assessment and Method Statement for tree and hedgerow protection (the Scheme) has been submitted to and approved in writing by the local planning authority and the approved Scheme has been implemented. The tree and hedgerow protection shall be retained throughout the development period until such time as all equipment, machinery and surplus materials have been removed from the site.

11) No development hereby permitted shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority.

If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority.

If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within fourteen days of the report being completed and approved in writing by the local planning authority.

12) No development hereby permitted shall commence on site until a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved CEMP which shall include (but shall not necessarily be limited to):

a) details of how provision is to be made on site for the parking and turning of operatives', contractors', sub-contractors' and construction vehicles;

b) the measures the developer will implement to ensure that operatives', contractors', sub-contractors' and construction vehicles are parked in accordance with the above provision;

c) arrangements for the routing of lorries and details for construction traffic access to the site;

- d) the arrangements for deliveries associated with all construction works, loading/ unloading of plant & materials and restoration of any damage to the highway;
  - e) the measures for cleaning the wheels and underside of all vehicles leaving the site;
  - f) a scheme for the suppression of any dust arising during construction or clearance works;
  - g) the measures for cleaning Funtley Road to ensure that it is kept clear of any mud or other debris falling from construction vehicles;
  - h) a programme and phasing of the demolition and construction work, including roads, footpaths, landscaping and open space;
  - i) the location of temporary site buildings, compounds, construction material, and plant storage areas used during demolition and construction;
  - j) provision for storage, collection, and disposal of rubbish from the development during the construction period;
  - k) the erection and maintenance of security hoardings including decorative displays and facilities for public viewing, where appropriate;
  - l) arrangements for temporary lighting;
  - m) protection of pedestrian routes during construction;
  - n) provision to ensure no burning on-site;
  - o) a scheme of work detailing the extent and type of any piling proposed;
  - p) a construction-phase drainage system to ensure all surface water passes through three stages of filtration to prevent pollutants from leaving the site; and,
  - q) safeguards for fuel and chemical storage and use, to ensure no pollution of the surface water leaving the site.
- 13) No development hereby permitted shall commence until details of the width, alignment, gradient and type of construction proposed for any roads, footways and access, including all relevant horizontal and longitudinal cross sections showing the existing and proposed ground levels, together with details of street lighting (where appropriate), the method of disposing of surface water, and details of a programme for the making up of roads and footways, have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 14) No development hereby permitted shall commence until details of a) the internal finished floor levels of all of the proposed buildings and b) the external finished ground levels of the land, in relation to the existing and finished ground levels on the site and the adjacent land, have been submitted to and approved in writing by the local planning authority in writing. The development shall be carried out in accordance with the approved details
- 15) No development hereby permitted shall proceed beyond damp proof course level until a scheme for sound attenuation measures necessary to attenuate against noise nuisance to future occupants against traffic and railway noise has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.
- 16) No development hereby permitted shall proceed beyond damp proof course level until details of secure cycle storage to serve the dwellings

and local shop/community building hereby permitted have been submitted to and approved in writing by the local planning authority. The approved secure cycle stores shall be provided before the dwelling or the local shop/community building they serve is first occupied and shall thereafter be retained and kept available for use at all times.

- 17) No development hereby permitted shall proceed beyond damp proof course level until details of the proposed bin storage areas (including bin collection points) have been submitted to and approved in writing by the local planning authority. The details shall include the siting, design and the materials to be used in construction. The approved bin storage and collection areas shall be provided before the dwelling it serves is first occupied and shall thereafter be retained and kept available for use at all times.
- 18) No development hereby permitted shall proceed beyond damp proof course level until details (including samples where required by the local planning authority) of all proposed external facing and hard surfacing materials have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 19) Construction works of any of the development hereby permitted (Including works of demolition or preparation prior to operations) shall take place only between 0800 and 1800 on Monday to Friday, only between 0800 and 1300 on Saturday and not at any time on Sundays or Bank or Public Holidays.
- 20) No dwelling or other building hereby permitted shall be occupied until the pedestrian crossing points and means of vehicular access shown on the approved drawings have been provided. The access shall be subsequently retained and no other means of vehicular access to the site shall be provided at any time.
- 21) No dwelling or other building hereby permitted shall be occupied until the visibility splays at the junction of the estate road/access with existing highway have been provided in accordance with the approved drawing "Access Junction with Visibility Splays (Drawing Reference 1908016-01E)". The visibility splays shall thereafter be kept clear of obstruction (nothing over 0.6m in height) at all times.
- 22) No dwelling or other building hereby permitted shall be occupied until a plan of the position, design, materials and type of boundary treatment to be erected to all boundaries has been submitted to and approved in writing by the local planning authority. The approved boundary treatment shall be fully implemented for that dwelling or building it serves before it is first occupied or in the case of living boundary treatments in the first available planting season following first occupation. It shall thereafter be retained at all times unless otherwise agreed in writing with the local planning authority.

If boundary hedge planting is proposed details shall be provided of planting sizes, planting distances, density and numbers, and provisions for future maintenance. Any plants which, within a period of five years from first planting, are removed, die or, in the opinion of the local planning authority, become seriously damaged or defective, shall be

- replaced, within the next available planting season, with others of the same species, size and number as originally approved.
- 23) The landscaping scheme, required to be submitted under Condition 1), shall be implemented and completed within the first planting season following the commencement of the development or as otherwise agreed in writing with the local planning authority through a phasing plan to be submitted to and approved in writing beforehand by the local planning authority, and shall be maintained in accordance with the agreed schedule. Any trees or plants which, within a period five years from first planting, are removed, die or, in the opinion of the local planning authority, become seriously damaged or defective, shall be replaced, within the next available planting season, with others of the same species, size and number as originally approved.
- 24) No development hereby permitted shall proceed beyond damp proof course level until a scheme detailing the relocation of the existing bus stop on the south side of Funtley Road adjacent to the vehicular entrance to the site has been submitted to and approved in writing by the local planning authority. No dwelling hereby permitted shall be first occupied until the bus stop has been relocated and made available for use in accordance with the approved scheme.
- 25) No development hereby permitted shall proceed beyond damp proof course level until an Electric Vehicle Charging Strategy (the Strategy) has been submitted to and approved in writing by the local planning authority. The Strategy shall identify the nature, form and location of electric vehicle charging points that will be provided, including the level of provision for each of the dwellings hereby permitted and the specification of the charging points to be provided. The development shall be carried out in accordance with the approved Strategy and no dwelling hereby permitted shall be occupied until the electrical charging point(s) for that dwelling have been installed and made available for use.
- 26) No development hereby permitted shall take place until a Biodiversity Net Gain Assessment, confirming at least a 20% habitat net gain and a 10% hedgerow net gain, has been submitted to and approved in writing by the local planning authority. The reserved matters details required by Condition 1) shall accord, and the development shall be carried out in accordance, with the approved Biodiversity Net Gain Assessment.

\*\*\* End of Appeal A Schedule of Conditions \*\*\*

## **Appeal B - Schedule of Conditions**

**Appeal Ref: APP/A1720/W/21/3284532, application Ref: P/20/1166/CU**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing reference RD1731-C1-L003 P2.
- 3) No development hereby permitted shall commence until a Biodiversity Mitigation, Enhancement and Management Plan (Management Plan) has been submitted to and approved in writing by the local planning authority. The Management Plan shall be devised fully in accordance with the outline ecological mitigation and enhancements measures contained within the submitted "Ecological Assessment, Ecology Solutions, September 2020". The Management Plan shall include the following:
  - a) a Reptile and Dormouse Mitigation Strategy;
  - b) a Japanese Knotweed Eradication Scheme;
  - c) a Badger Protection Strategy;
  - d) details of the timing of clearance works;
  - e) a detailed scheme of biodiversity enhancements;
  - f) details of a soft landscaping scheme including provisions for buffer planting associated with the adjacent areas of ancient woodland;
  - g) details of darkened corridors for foraging and commuting bats; and
  - h) a Landscape/Ecology Management Plan including specification of the maintenance of mitigation and enhancement measures.

Thereafter the development shall be carried out in accordance with the approved Management Plan.

- 4) No development hereby permitted shall commence until a Biodiversity Net Gain Assessment, confirming at least a 20% habitat net gain and a 10% hedgerow net gain, has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved Biodiversity Net Gain Assessment.
- 5) No development hereby permitted shall commence until a Parking Provision and Vehicular Access Plan (the Plan) has been submitted to and approved in writing by the local planning authority. The Plan shall include:
  - a) details of how vehicular and cycle parking spaces shall be provided either on or off the application site to meet the anticipated demands of visiting members of the public; and,
  - b) details of the means of vehicular access from the existing highway access on to Funtley Road and the application site.

Before the Community Park is first brought into use, the parking provision and access specified in the approved Plan shall be implemented and made available for the purposes of providing access and parking spaces to members of the public visiting the Community Park and that access and parking provision shall thereafter be retained at all times.

- 6) No development hereby permitted shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures

for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority.

If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority.

If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within fourteen days of the report being completed and approved in writing by the local planning authority.

\*\*\* End of Appeal B Schedule of Conditions \*\*\*