



## Appeal Decision

Hearing held on 23 August 2022

Site visit made on 23 August 2022

**by G Pannell BSc (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 21 September 2022**

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**Appeal Ref: APP/A1720/W/22/3297544**

**Land east of North Wallington Road, Wallington, Fareham, PO16 8TE**

- 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 Foreman Homes Ltd against Fareham Borough Council.
  - The application Ref P/19/0894/OA, is dated 23 July 2019.
  - The development proposed is residential development of 32 dwellings with access off North Wallington Road.
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### Decision

1. The appeal is dismissed and outline planning permission for residential development of up to 29 dwellings, associated landscaping and access off North Wallington Road is refused.

### Preliminary Matters

2. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form the description has been changed to the one that the Council used to deal with the proposal. This was agreed with the appellant following amendments made to the scheme during its consideration and I have therefore used this in my formal decision.
3. The original application was made in outline with means of access to be considered and I have dealt with the appeal on this basis. I have treated any details on the submitted drawings relating to landscaping, layout, scale and appearance as being illustrative only.
4. As part of the appeal the appellant has submitted amended plans to address concerns regarding pedestrian access from the site along North Wallington Road. Whilst these drawings have been subject to consultation during the appeal process, I have not considered them as part of this appeal. I consider that the changes would materially alter the nature of the application and, due to the degree of uncertainty surrounding the precise details of suggested highway works, would prejudice the interests of interested parties.<sup>1</sup>

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<sup>1</sup> Annex M of the Procedural Guide Appeals – England advises that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.

## **Main Issues**

5. The Council have confirmed that if they had been in a position to determine the proposal then they would have recommended refusal of the application and set out six putative reasons for refusal within their appeal statement. The statement of common ground confirms that three of these would be addressed by a legal obligation pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) which was submitted during the appeal.
6. In light of the above the main issues are:
  - whether the site represents an appropriate location for the proposed dwellings, having regard to:
    - i) the council's spatial strategy;
    - ii) access to services and facilities on foot; and
  - the effect of the proposed development on the character and appearance of the area.

## **Reasons**

### *Appropriate Location*

7. The site is located at the end of North Wallington Road, adjacent to a number of commercial units. Beyond the appeal site North Wallington Road extends towards the town of Fareham and comprises a range of dwellings. There is limited connectivity for pedestrians from the appeal site, along North Wallington Road, due to the lack of dedicated footpath, to the services and facilities within Fareham.
8. The site is located outside of the defined urban settlement boundary and is therefore within the Countryside for planning purposes. The strategy for housing development which is set out within Policies CS2, CS6 and CS14 of the Fareham Local Development Framework, Core Strategy 2011 (CS) direct development to strategic sites and those within the urban settlement boundary. There is a general presumption against new residential development outside of these areas. The proposed development would therefore conflict with these policies.
9. However, Policy DSP40 of the Fareham Borough Local Plan Part 2, Development Sites and Policies 2015 (DSP) sets out that where the Council does not have a five year supply of land for housing, additional sites outside of the urban area may be permitted where they meet five criterion.
10. The development comprises up to 29 dwellings, which is relative in scale noting the level of shortfall that has been identified by the parties. I am also satisfied on the basis of the evidence before me that the development is deliverable in the short term, noting that the appellant has accepted the suggestion of a shortened period for commencement. Therefore, the development would comply with part (i) and (iv) of the policy.
11. The policy also requires proposals to be sustainably located adjacent to and well related to the existing urban settlement boundaries, where it can be well integrated into the neighbouring settlement. The site if developed, whilst not abutting the urban settlement boundary, would be physically well related and

- integrated into the neighbouring settlement of Wallington and noting the limited separation between the defined settlement boundary and the edge of the site can be considered adjacent to it.
12. However, the part of North Wallington Road directly adjacent to the appeal site does not have a defined footpath, which commences at the junction with Riverside Avenue, approximately 275m from the site. As a result of the carriageway width a scheme to provide a formal footpath to link to the existing footpath has not been forthcoming.
  13. The appellant's Transport Statement dated January 2020, sets out that there are limited opportunities to improve the walking environment on North Wallington Road, due to its constraints. It sets out that measures that could be delivered include additional signage to identify the presence of pedestrians and the delivery of a virtual footway scheme.
  14. It has been put to me that these highway improvements could be secured by condition. However, I do not have sufficient detail before me to determine the suitability of any such mitigation or certainty that any such improvements could be delivered if they required the provision of a Traffic Regulation Order. Furthermore, I am concerned that without sufficient detail the extent of any additional lighting or signage could lead to unsatisfactory effects on the character and appearance of the North Wallington Road.
  15. The transport statement provides details of improvements to the pedestrian access via Stannard Way and this would provide an alternative route to the services and facilities within Fareham. The walking distances to most of the existing services and facilities is at the upper end of acceptable walking distances in some guidance documents that I have been referred to and beyond them in others. Therefore, noting the distance to those services would be greater if pedestrians were to choose this route it is unlikely to be used on a regular basis by most people.
  16. Whilst the distance to the services and facilities within Fareham are within a reasonable distance via North Wallington Road, the route is less than ideal. I have had regard to the evidence presented regarding the lack of recorded accidents and the volumes of traffic using the route and the modest increase that would result from the proposed development.
  17. However, the route is not safe, secure or attractive nor does it minimise the scope for conflict between users, in particular the need for pedestrians to step into the middle of the carriageway to avoid parked cars would place them in direct conflict with motorists and this would be particularly discouraging for users of wheelchairs or those with pushchairs. Occupiers of the proposed development would therefore be more likely to opt for the convenience of the private motor car.
  18. In conclusion, the site represents an inappropriate location for the proposed dwellings, having regard to access to services and facilities on foot and conflicts with the council's spatial strategy, being contrary to DSP Policy DSP40 (ii) in this regard.
  19. Paragraph 110 of the National Planning Policy Framework (the Framework) sets out that safe and suitable access to the site should be achieved for all users and paragraph 112 sets out that development should create places that are

safe, secure and attractive which minimise the scope for conflicts between pedestrians, cyclists and vehicles. The identified conflict with both the Development Plan and the Framework is a matter which attracts significant weight.

*Character and appearance*

20. The site comprises an irregular shaped parcel of land which is predominately characterised by gently sloping grassland which is used for grazing. The site boundaries are defined by trees and hedges, with some gaps evident along Stannard Way.
21. The site is within Local Character Area 11 - Portsdown as defined in the Fareham Landscape Assessment (FLA), which encompasses an area of land which is bisected by the M27. The site is defined as being within the Open Arable Downs: Fringe Character and is specifically part of Fort Wallington Fringe.
22. The FLA describes this as a small fragmented area which is severed from the wider chalkland landscape open countryside to the north by the M27 motorway, forming an area of captured landscape sandwiched between the motorway, the A27 road corridor and the northern edge of Wallington. The FLA acknowledges that it has an overriding urban fringe character, noting the presence of large scale industrial/commercial buildings and infrastructures and sets out that its overall value as part of the Borough's landscape resource is relatively low.
23. The commercial buildings are very much evident as you travel along Stannard Way to the top of North Wallington Road with the site located between two industrial sites. The existence of the M27 is also a dominant feature when standing within the appeal site and as such the character of the site is dominated by the presence of these urban features.
24. Taking into account the severance which has been created by the motorway, the area does not have a role in maintaining the definition between town and country and its character is more associated with the surrounding urban area than the open countryside to the north of the motorway. As a result, the site does not contribute to the open rural nature which is experienced beyond the appeal site and does not provide an important visual separation between the existing built development.
25. Whilst there would be a degree of urbanisation and countryside encroachment through additional housing, the introduction of the proposed dwellings into the site would be appropriate within this urban fringe setting. In particular, it would result in the infilling of the existing gap between Stannard Way and the existing development which extends along North Wallington Road and would result in a continuation of the visual and historical relationship of the settlement.
26. The development would be appropriate to the landscape character and quality of the area and result in an infill between the existing built development which is proportionate to the scale of the existing settlement. Furthermore, it would contribute toward addressing local housing needs and assisting with the overall housing growth proposed for the Borough.
27. Concerns have been raised with regard to the proposed layout of the dwellings which has in part been influenced by the findings of the noise impact assessment, whereby the need to provide adequate mitigation for future

occupiers from noise arising from the M27 is a constraint which is likely to affect the layout and orientation of development. However, the application is in outline and details of layout, scale and appearance are not before me.

28. The description of development is for up to 29 dwellings which is a maximum and not a minimum figure. As such, whether the site can accommodate that level of development whilst enabling the constraints of the site to be adequately mitigated, whilst ensuring that the layout and scale of development is compatible with the character and appearance of the area, remain sufficiently flexible such that it has not affected my findings on character and appearance.
29. I therefore conclude that the proposed development would not harm the character and appearance of the area. The development would be in accordance with Policy CS14 which seeks to ensure that development does not adversely affect landscape character, appearance and function.

### **Planning Obligations**

30. The appellant has provided a legal agreement under section 106 of the Town and Country Planning Act 1990, which includes a number of obligations which would come into effect if planning permission were to be granted. I have considered the obligations in light of the Framework, Planning Practice Guidance and the Community Infrastructure Levy Regulations (the CIL Regulations). These state that a planning obligation must be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.
31. The agreement facilitates a financial contribution towards a school travel plan and cycle and scooter storage, secures the provision of affordable housing and a recreation avoidance mitigation strategy contribution.
32. Affordable Housing: The delivery of 11 affordable dwellings for rent and shared ownership would be in line with Policy CS18 of the CS which requires affordable housing to be provided at 40 per cent of the overall total. Furthermore, the provision of affordable houses as part of the development would accord with the Framework which seeks to ensure a sufficient supply of homes to reflect identified needs. I am satisfied that this planning obligation meets all three tests and so is necessary. I give this obligation significant weight.
33. Education: Policy CS20 of the CS requires development contributions where they would mitigate the impact of development upon existing infrastructure. The planning obligation secures a sum of £15,000 towards the production of a school travel plan and the provision of additional cycle and scooter storage at the nearest Primary School. This would be required to meet the needs of the future residents of the scheme and to mitigate the impact of development on the nearest Primary School, so is necessary and is neutral in the planning balance.
34. On this basis, I consider the agreement accords with the criteria of Regulation 122 of the CIL and with paragraph 57 of the Framework. I can therefore reasonably take it into account.

### **Habitat Regulations Assessment (HRA)**

35. The Conservation of Habitat and Species Regulations 2017 (the Regulations) require that the competent authority must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of protected sites. The effects arising from the proposal need to be considered in combination with other development in the area and adopting a precautionary approach.

#### *Recreational Pressure*

36. The appeal scheme will result in increased recreational pressure on the Portsmouth Harbour SPA and Ramsar site. These sites are protected for their internationally important wildlife. These include the dark bellied brent goose, black tailed godwit and red breasted merganser. There are also plants and habitats of national and international importance.
37. The appeal site is located within an area covered by the Solent Recreation Mitigation Strategy (SRMS) adopted by a number of affected authorities, including Fareham Borough Council to mitigate the impact of additional recreational activity on nesting/wading birds, within the Solent Region on the region's three special protection areas.
38. Since the development is for twenty nine dwellings, the number of additional recreational visitors would be modest and the likely effects on the sites within the Solent from the proposed development alone may not be significant. However, in combination with other developments it is likely that the proposal would have significant effects on the designated site.
39. Given my findings, the Regulations place a duty on the competent authority to undertake an appropriate assessment of the implications of the appeal scheme in view of the site's conservation objectives.
40. The site is within an area where new residential development is likely to result in recreational pressure, which would, both alone and in combination with other development within the locality, have a likely significant effect on the interest features of the aforementioned sites. Therefore, I consider that the development would have an adverse effect on the integrity of the site, but regard can be had to whether these adverse effects can be mitigated.
41. The SRMS sets out a strategic approach to mitigation by several councils across the wider area. It details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling. Since these include a range of habitat-based measures such as education, communication and monitoring, and have been endorsed by Natural England, I am satisfied that the measures would adequately overcome any adverse effects of the proposal on the Portsmouth Harbour SPA and Ramsar site.
42. The appellants have submitted a planning obligation for the per dwelling contribution to fund the SRMS. Given the evidence before me I am satisfied that the mitigation measures have been secured and would be used for their intended purpose.
43. The contributions would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations. As such, the

contributions toward the mitigation schemes would count as mitigation toward maintaining the integrity of the sites.

*Eutrophication (Foul Water discharge)*

44. The site is within the surface water catchment of the East Solent system and foul water discharges will be treated at the Peel Common Waste Water Treatment Works, where following treatment, effluent is discharged to the Solent.
45. In the absence of mitigation the appeal scheme would result in a net increase of the total nitrogen entering the water environment of the East Solent system. Having regard to the scale of development proposed, this contribution to nitrogen loading within the environment may not be significant. However, in combination with other developments it is likely that the proposal would have significant effects on the Portsmouth Harbour SPA and Ramsar site, Solent and Southampton Water SPA and Ramsar site and the Solent Maritime SAC.
46. The Hampshire and Isle of Wight Wildlife Trust (HIWWT) entered a legal agreement with Fareham Borough Council and the Isle of Wight Council enable land at Little Duxmore Farm, Isle of Wight to be used for mitigation of housing development in the Borough of Fareham. This is achieved by taking land out of agricultural use at Little Duxmore Farm.
47. The appellant has provided a Notice of Purchase confirming that 23 nitrate credits have been purchased from HIWWT. I am satisfied that this would represent a reduction in nutrient loading and would adequately overcome any adverse effects of the proposal on the Portsmouth Harbour SPA and Ramsar site, Solent and Southampton Water SPA and Ramsar site and Solent Maritime SAC.
48. Therefore, following appropriate assessment, I am satisfied that the proposal, in combination with the other development, will not lead to adverse effects of the integrity of any of the potentially affected European sites. There is no conflict with Policy DSP15 of the DSP which seeks to prevent adverse effects on protected sites.

**Planning Balance**

49. Common ground exists between the main parties that the Council can not demonstrate a five year supply of housing, although the extent of this is a matter of dispute with the appellant putting the figure at 4.34 years and the council at 4.92 years. However, even if I were to accept the Council's position, this is below the 5 year requirement.
50. Furthermore, on 14 January 2022, the Government published the 2021 Housing Delivery Test (HDT) results. The HDT results show that Fareham Borough Council has underdelivered against its housing requirement over the latest 3-year period. Consequently, noting the outcome of the HRA, the presumption in favour of sustainable development contained within paragraph 11 d) of the the Framework is engaged. On this basis, I have not found it necessary to come to a view on the appellants evidence on sites which they consider should be discounted from the supply.
51. Taking into account the current shortfall, 29 dwellings would provide a meaningful contribution to housing supply in the area. There would be social

benefits arising from the contribution to the Council's housing supply, noting the Framework highlights the contribution small and medium sized sites can make to meeting the housing requirement in the area. In addition, the delivery of eleven affordable houses from this development will result in social benefits, to which I have attributed great weight.

52. The development would also give rise to some economic benefits during the construction phase and provide limited support to local services.
53. Nevertheless, the identified adverse impacts of the development, in respect of the lack of an appropriate pedestrian access to nearby services and facilities are notable. The Framework is clear that significant development should be focused where the need to travel can be limited and promote walking and cycling. I consider that the conflict I have identified in this regard, would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, including its presumption in favour of sustainable development.
54. I have had regard to the findings of the Inspector in respect of APP/A1720/W/21/3273119 where in that decision the planning balance concluded the lack of access to services was outweighed by the benefits of delivering homes. However, I am satisfied that in the case before me the sites location in relation to the nearest local services means that pedestrians are likely to favour a route which without appropriate mitigation would not minimise the scope for conflicts between pedestrians, cyclists and vehicles.
55. Furthermore, I can not be certain that the circumstances surrounding the suitability of the route would be the same as in the case before me and as this is a matter of planning judgement, I am entitled to reach a different conclusion from the Inspectors decision in this regard.

## **Conclusion**

56. The proposal would therefore conflict with the development plan and there are no other considerations, including the Framework and its presumption in favour of sustainable development, that outweigh this conflict. For the reasons outlined above, I conclude that the appeal should be dismissed.

*G Pannell*

INSPECTOR

## DOCUMENTS

1. Fareham Landscape Assessment Chapter 2.11 LCA11: Portsdown
2. Fareham Borough Council Planning Obligations Supplement Planning Document for the Brough of Fareham (excluding Wareham) 2016
3. Policy DSP40 Fareham Borough Local Plan Part 2, Development Sites and Policies 2015



## **APPEARANCES**

### FOR THE APPELLANT:

Katherine Richards BSc MSc MRTPI Senior Planner, Foreman Homes  
Thomas Rumble BSc (Hons) MSc MRTPI, Woolf Bond Planning  
Mark Rose BSc (Hons) MSc PGDip MCIEEM, CSA Environmental  
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Emma Jinks, SLR Consulting

### FOR THE LOCAL PLANNING AUTHORITY:

Richard Wright MRTPI  
Principal Planner (Development Management), Fareham Borough Council

Nick Gammer BA (Hons) Msc MCIHT  
Principal Transport Engineer, Hampshire County Council

### INTERESTED PARTIES:

Robert Marshall, The Fareham Society  
Russell Kew, Chairman - Wallington Village Association