



Appeal Decision

Inquiry held on 14 and 15 January 2014

Site visit made on 14 January 2014

by Clive Sproule BSc MSc MSc MRTPI MIEnvSc CEnv

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 February 2014

Appeal Ref: APP/A1720/A/13/2202206

Land to the south of Peters Road, Locks Heath, Hampshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Taylor Wimpey (Southern Counties) Ltd and Bovis Homes Ltd against the decision of Fareham Borough Council.
 - The application Ref P/12/0717/FP, dated 9 July 2012, was refused by notice dated 10 May 2013.
 - The development proposed is residential development comprising the erection of 206 no. dwellings (including affordable housing), together with new vehicle and pedestrian access, associated car parking, landscaping and open space.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 206 no. dwellings (including affordable housing), together with new vehicle and pedestrian access, associated car parking, landscaping and open space at land to the south of Peters Road, Locks Heath, Hampshire in accordance with the terms of the application, Ref P/12/0717/FP, dated 9 July 2012, subject to the conditions in the attached schedule.

Application for costs

2. At the Inquiry an application for costs was made by Taylor Wimpey (Southern Counties) Ltd and Bovis Homes Ltd against Fareham Borough Council. This application will be the subject of a separate Decision.

Procedural matters

3. The application was made in regard to the erection of 207 dwellings. However, when the scheme was determined by the local planning authority it was for 206 dwellings, and this is reflected above.
4. Two executed agreements under section 106 of the Town and Country Planning Act 1990, between the owners of the appeal site and Hampshire County and Fareham Borough Councils, have been provided.¹

Main Issues

5. These reflect the Council's reasons for refusal and are: (a) the effect of the proposed development on the character and appearance of the locality; (b)

¹ ID-7 and ID-8

whether the proposed development would make adequate provision for affordable housing; and (c), whether the proposed development would make adequate provision for a travel plan, on-site open space and play facilities, and access to adjoining sites and locations.

Reasons

Character and appearance

Planning policy and background

6. Fareham Borough Local Plan Review - adopted 2000 (LP) Policy H1 allocates the appeal site for housing. This land and adjoining sites are the subject of a Supplementary Planning Document entitled the *Peters Road Development Brief* (SPD), which was adopted in November 2007. The stated purpose of the SPD is to provide detailed planning and design guidance on how the appeal site could best be developed. It also notes the document to present: a summary of the issues affecting the site; a corresponding set of development objectives; and an indication of how the site can be physically developed.² An *Illustrative Development Framework Plan* was included within the SPD. Section 6.0 of document notes this to give *an idea of how the site could be developed* in relation to the principles set out within the SPD.³
7. LP Policy DG4 is permissive of development that retains any historic features on the site, does not detract from the natural landform, retains features of landscape or nature conservation value, respects views into and out of the site, and takes proper account of any land contamination.
8. Fareham Borough Core Strategy – adopted August 2011 (CS) Policy CS17 seeks all development, buildings and spaces to be of high quality design and be safe and easily accessed by all members of the community. CS Policy CS21 indicates that the Council will safeguard and enhance existing open spaces and establish networks of Green Infrastructure.
9. Subsequently in November 2008 planning permission was granted for 307 dwellings (ref: P/07/1515/OA), but this was not implemented. In April 2013 planning permission (ref: P/12/0974/FP) was granted for land within the allocated area between the appeal site and existing development on Chichester Close, Brook Lane and Peters Road. Construction works were progressing on this site ('Site A') when the inquiry site visit took place.
10. Paragraph 56 of the National Planning Policy Framework ('the Framework') is unambiguous that the Government attaches great importance to the design of the built environment. Good design is highlighted to be a key aspect of sustainable development that is indivisible from good planning, and should contribute positively to making places better for people. Paragraph 64 states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.
11. Framework paragraph 59 encourages local authorities to consider the use of design codes where this could help deliver high quality outcomes, while noting that design policies should avoid unnecessary prescription. Section 8.0 of the

² Page 6 of the SPD

³ Pages 62 and 63 of the SPD

SPD includes the design code for the appeal site. It is noted to be based on consideration of traditional and modern building patterns at local and regional scale, and aims to provide development that is locally distinctive and contextually appropriate.

12. Amongst the matters addressed by the design code are that buildings should: be two, two and a half and three storeys in height; and, follow the slope of the land to provide stepping in built form, while avoiding flat platforms created by regrading the land.
13. The SPD identifies three character areas around the appeal site and these were observed during the inquiry. They are: two storey estate development dating from the late twentieth century with a mixture of dwelling types and sizes and suburban character; a mixture of one and two storey dwellings principally from the mid to late twentieth century in the areas along and around Peters Road and Brook Lane; and, agricultural/commercial nursery land to the south of the appeal site. Also referred to are: the traditional townscape of Titchfield 3.5km to the southeast of the appeal site with its established pattern of streets and squares; and, Ingress Park, Dartford as an example of regional best practice in achieving a high standard of design.
14. The SPD concludes that the immediate area around the appeal site is variable and without an easily identifiable character that would suggest a particular urban design response. It also highlights the potential for traditional patterns of development to provide for a more efficient use of land.⁴

Development within Site A

15. Common themes in materials and design, along with a degree of physical interconnectivity, would be evident between the development on Site A and the appeal scheme. When completed, development in Site A would include a two and a half storey flat block, with three storey elements, that would be in close proximity to the proposed three storey Flat Block 3.⁵ These blocks would be separated by an area of open space within Site A that would extend along this interface between the two developments. The extent of the open space would be highlighted by adjacent areas of car parking, a landscaped strip, and a street within the appeal scheme.

The proposed development

16. The potential benefits of the 'perimeter block' approach to site layout are evident in the areas of secure private gardens and courtyard car parking that would be provided, along with well defined streets and overlooking of public open space.
17. Development within the appeal scheme would concentrate height and massing around the open space toward the centre of the site. Two storey dwellings would be included in groups readily seen from areas immediately around the appeal site. Two and a half and three storey dwellings would punctuate the overall layout, and the larger flat blocks would be seen within the context of terraces of taller dwellings within the development. The SPD anticipated that

⁴ Page 32 of the SPD

⁵ Appendix JW10 of Mr Woolf's proof of evidence

occasional landmark buildings may be three and a half storeys, but no buildings with that many floors have been included within the appeal scheme.⁶

18. Although it would be on the periphery of the development, the three storey height of Flat Block 7 would terminate a view along one of the streets and its simple form would not have the perceived overall massing of Flat Blocks 3, 4 and 8, which would be located around the central area of open space within the appeal scheme. Flat Blocks 1, 2, 5, 6, and 9 are also dispersed within the proposed layout, with Flat Block 9 positioned close to Flat Block 7. They would be large three storey structures seen within the context of the variety of two, two and a half, and three storey built forms. Even so and in common with Flat Block 7, the overall form and positioning of the other dispersed blocks within the street scene would result in an appropriate perceived massing within the appeal scheme.
19. Flat Blocks 3, 4 and 8 would be significant central elements of the scheme and would form part of that variety. The application's Design and Access Statement identifies three character areas within the proposed development and these flat blocks would be within *Character Area 1 - Principle Open Space & Stream Corridor*. This is noted to be edged by taller buildings that provide passive surveillance over it, and this is what the proposed layout achieves.⁷
20. Blocks 4 and 8 are also indicated to be 'Gateway Buildings' on the access road. Flat Block 3 is one of the 'Feature Buildings' within the development, along with unit G36, which would be on the opposite side on the street.⁸ Views of the central green within the scheme would be framed, in part, by these flat blocks and the three storey houses that would stand between them. Within this layout, unit D11 would stand at the end of a terrace and at the entrance to a differing character area. While the design of unit D11 may not conspicuously signify this transition, other elements of the design, including the street layout, would do so.
21. While the Council considers the 'tower' feature on Flat Block 3 to be weak, the thrust of the design would effectively turn the corner in this location, while respecting the architecture of the development around it. Also, the narrowing of the open space by the forms, positions and alignments of Flat Blocks 4 and 8 would address their role as Gateway Buildings, while providing a degree of additional enclosure of the central area of open space. This layout would also draw attention to the greater openness and LEAP/LAP play area to the east.
22. Flat Blocks 3, 4 and 8 would provide focal points in views along roads and the open space within the development. Together with the three storey houses between them, these buildings would produce a strong core around the central open space. Unit G36 would contribute to this and the termination of an important street view within the development, without competing with the nearby Flat Block 3. This scale of development is a clear intention of the SPD, which anticipated landmark corner buildings to be three and a half storeys in height, amongst a general building height of two and a half to three storeys.⁹
23. In considering the *Urban Design Compendium* the appellant companies have highlighted that the resulting degree of enclosure around the central green

⁶ Page 81 of the SPD

⁷ Pages 28 and 29 of the Design and Access Statement

⁸ Page 25 of the Design and Access Statement

⁹ Page 68 of the SPD

would provide a 1:4 height to width ratio, which is recognised as an appropriate scale for such spaces. To the east, this sense of urban enclosure would be replaced by the street, play area and landscaped openness between the dwellings and Lockswood Road. Therefore, while the Council decision questioned the form of development proposed, this central element has been shown to be based on established urban design principles. In any event, the scheme has to be considered as a whole.

24. Supported balconies within the designs of some of the flat blocks would provide detailing that would break up their perceived bulk, while framing views and adding opportunities for and an awareness of natural surveillance.

Flat Block 5

25. Flat Block 5 would principally be a two and a half storey structure running roughly parallel to the property boundary with existing development along Brook Lane. A two storey element of the building would project out toward Brook Lane. Two one-bedroom flats would be present on the second floor of the block. These would have principal aspects through dormer style windows south eastwards away from Brook Lane. The scale, symmetry and subdivision of the three storey fenestration in the frontage of Flat Block 5 would terminate views and define the corner in this part of the development.
26. Evidence indicates the ridge height of Flat Block 5 would be 1.2m higher than proposed two storey housing on the appeal site, and 1m lower than two and a half storey housing. At second floor level, and in addition to high level roof light windows, the only dormer style window looking toward Brook Lane would be serving a lobby area at the entrances to the two second floor flats.
27. Proposed hip roof elements on Flat Block 5 would help to reduce the perceived scale of the structure, as would the presence of the flat roof two storey rear lobby area, and the two storey hip roof element of the building. Nevertheless, the building would be substantial in scale and in a previously undeveloped location. In views from dwellings and gardens on Brook Lane the bulk of the building would be emphasised by the height of the eaves and the resulting extent of the second floor part elevations above the first floor windows.
28. There are many single storey dwellings along Brook Lane, including on the section next to Flat Block 5. However, there is also sufficient variety in building types and sizes to ensure that Flat Block 5 would not appear as a particularly unusual component of this suburban environment. Its architecture would reflect other parts of the development, and its positioning would be sympathetic to both the flow and alignment of the proposed layout, and that under construction on Site A.

Slope and cut and fill

29. There would be some cut and fill and levelling on the appeal site. Even so, elevation details for plots including units C25 to C28 (drawing no. A-SH3010-05-001 Rev P-03) and units C4 to C12 (drawing no. A-A300-05-001 Rev P-01), indicate examples of where the stepping of house terraces would occur. This would be in accordance with the SPD design code objective to avoid flat regraded platforms. In addition, the stepping of these two terraces would substantially reflect the nature of the topographic fall recorded by the SPD.¹⁰

¹⁰ Page 46 of the SPD

30. It was suggested that terrace C4 to C12 would be unusual by the lack of the stepping in an out of its front elevation. Indeed, many of the proposed terraces, including C24 to C29, would provide an additional degree of variety and interest in the street scene through the use of stepped elevations and differing building designs. While this would be less so for terrace C4 to C12, the inclusion of three gable features and a stepped roof form would provide a degree of variety in the front elevation of the terrace. It would also provide a logical context for the flush stepping of render beneath the associated step in eaves height. Moreover, other terraces are shown to also have a degree of consistency in their front elevations, including units B12 to B17 and F50 to F55. Consequently, the suggested condition regarding modification to the front elevation of terrace C4 to C12 is not considered to be necessary.
31. Sections within the Design and Access Statement show the relationship between terrace C4 to C12 and adjoining open space. While this terrace would be a substantial built form, it would be seen within the context of the architecture, the layout of built forms and openness around it. These matters would prevent its scale being unacceptably intrusive or overbearing to users of footways and the open space.

Conclusion on character and appearance

32. The SPD is clear on the variable nature of the residential development around the appeal site and the potential for new development in this location to draw on traditional patterns of development to provide higher densities, while also delivering significant areas of open space. The appeal scheme would achieve both of these, without being detrimental to local character.
33. The layout would respond to that of Site A. Users of the main area of open space within Site A would have an access and vista through the narrowing between Flat Block 3 and unit G36 to the area of open space between Flat Blocks 3, 4, and 8; then onto the larger area with the LEAP/LAP play area and the landscaping along the site access and Lockswood Road. This larger area of open space and landscaping would maintain the route of the footpath through the site and provide users with additional recreational opportunities. Open space within the proposed development would have visual and physical links to that within Site A, and along with the retained trees and landscaped buffer zones, would provide a network of features that would benefit users of the open space and wildlife to meet the objectives of CS Policy CS21.
34. LP Policy DG4 seeks development to respect views into and out of the site. Although the appeal scheme would place substantial forms of built development in locations where currently there is none, the separation distances between these and existing residential land uses would be sufficient to ensure that aspects would be those expected in a residential environment of this type. Local character would not be harmed by the views created or modified by the appeal scheme.
35. It would not be poor design. It is apparent that the appeal scheme, including the three storey development within it and Flat Block 5, would create a distinct new development in the locality with its own character and sense of place, while respecting surrounding development. As such, it addresses the objectives of the SPD for the future development of the appeal site and in regard to matters concerning character and appearance, complies with LP

Policy DG4, and CS Policies CS17 and CS21. These policies are consistent with the relevant parts of Framework that the appeal scheme also complies with.

Affordable housing

36. CS policy CS18 seeks developers of sites that can accommodate 15 or more dwellings to provide 40% affordable units, and where development viability is an issue, for proposals to be supported by a viability assessment.
37. Viability negotiations have occurred between the appellants and the local planning authority regarding affordable housing and developer contributions in relation to the appeal proposal. Viability appraisal work indicates the maximum number of affordable homes that can be achieved through the appeal scheme to be 10% of the dwellings in the development. The Statement of Common Ground confirms that the mix and location of the affordable dwellings has been agreed with the local planning authority. No evidence in this case effectively challenges the robustness of the agreed position between the main parties in relation to the viability of the appeal scheme.
38. The planning obligation between the appellant companies, other landowners and the local planning authority would ensure that the appeal scheme delivers 22 Affordable Rented Dwellings. In doing so, it would meet the Framework objectives of driving and supporting sustainable economic development, while contributing to meeting the need for affordable homes in the area.
39. The executed agreement also addresses the updating of economic viability assessments once a future assessment date has been reached. This would determine if any changes in market conditions indicate that improved viability would enable a financial contribution towards and/or additional on-site provision of affordable homes.
40. CS policy CS18 has been met through the provision of a financial assessment that clearly demonstrated the maximum number of affordable dwellings that can be achieved on the appeal site at this time.

Provision for a travel plan, on-site open space and play facilities, access to adjoining sites and locations

41. CS Policy CS15, amongst other things, directs development to locations with sustainable transport options. CS Policy CS5 indicates that the Borough Council will work with other bodies to promote, develop and/or safeguard a high quality and sustainable integrated transport system. The policy is permissive of development that contributes toward and/or provides necessary and appropriate transport infrastructure including 'reduce and manage' measures, and traffic management measures. In addition, CS policy CS20 may require development to make provision or contributions toward the impact of development on infrastructure.
42. Regulation 122 of Statutory Instrument 2010 No.948, The Community Infrastructure Levy Regulations 2010 (CIL), indicates 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. These matters reflect the tests of an obligation within paragraph 204 of the Framework.

43. The executed planning obligations referred to above are with the County Council and Borough Council. They address matters in relation to: a Travel Plan; and in addition to affordable housing which is dealt with above, on-site open space, a play area, suspended contributions and economic viability, and a section of footpath.
44. By addressing the provision of a Travel Plan and the section of footpath, and within the context of the overall layout and nature of the development proposed, the scheme adequately addresses access to adjoining sites and locations.
45. In respect to the Travel Plan, it is clearly relevant the proposal, required by local planning policy, and matters in relation to it have been considered throughout the determination of the application. Likewise, the obligations in relation to the provision of open space, the play area, the section of footpath, and suspended contributions and economic viability are necessary to meet the objectives of adopted planning policy within the context of the appeal scheme. Evidence before the inquiry indicates these obligations to be fairly and reasonably related in scale and kind to the development proposed. Accordingly, the obligations meet the tests within Framework paragraph 204, and facilitate the meeting of CS Policies CS5, CS15 and CS20.

Other matters

Living conditions

46. CS policy CS17 requires new housing to secure adequate external space, privacy, sunlight and daylight. It is a *Core Principle* of the Framework that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupiers of land and buildings.
47. A number of dwellings on Brook Lane would share a property boundary with the appeal scheme. Due to the previous uses of the appeal site and the number of bungalows in this location, it is apparent that residents of these dwellings have enjoyed a high level of privacy when using rooms or garden areas at the rear of their properties. Concerns have been raised regarding potential levels of overlooking and visual impact along this boundary. In addition, a courtyard area would be created along part of the boundary with dwellings on Brook Lane which could be a source of noise and disturbance.
48. The appeal scheme would place new buildings on land that has been open and undeveloped. Proposed windows in Flat Block 5 would be at a distance from the dwellings on Brook Lane and some would be at oblique angles to existing development. The appellants highlight the distance between facing windows in Flat Block 5 to windows of 146 Brook Lane would be in the region of 34m and approximately 18m to the property boundary. Plans show the proposed first floor windows to serve a kitchen area, bathroom and hallway. As a result of this layout, the principal views from the northern first floor flat would remain eastwards.¹¹ At the southern end of Flat Block 5, proposed secondary bedroom windows would have oblique views over a similar distance toward no.144.
49. For 148 Brook Lane these figures would be 30m and 11m, with the 11m measured perpendicular to the kitchen window of the first floor flat. These

¹¹ As illustrated by Appendix 5 to Mr Rose's Proof of Evidence

- existing dwellings are substantially further than the 22m sought by LP Appendix 6 paragraph A6.2. Oblique views at considerably less than 11m could be taken of the rear most section of the garden at no.148. However, it is a longer garden than would be provided by these LP minimum figures and the overlooking would be comparable to that from neighbouring two storey houses.
50. Given the type of development proposed, these separation distances are sufficient to ensure that an acceptable level of overlooking would occur. Tree planting is proposed between Flat Block 5 and the gardens of 144, 146 and 148 Brook Lane. If higher levels of privacy are sought, existing vegetation and proposed landscaping could be reinforced with additional planting.
51. Plans show that the configuration of the roof light windows within the proposed roof and layout of the building would significantly reduce the potential for overlooking from these openings. It has not been shown that the potential overlooking from these openings would be sufficient to be unacceptably harmful to the living conditions of local residents. Consequently, suggested conditions for obscure glazing of the openings in the rear elevation of Flat Block 5 would fail to meet test of necessity within Circular 11/95 – *The Use of Conditions in Planning Permissions*.
52. However, the proposed layout has been shown to include two other dwellings where unacceptable levels of overlooking of existing neighbouring dwellings could occur. In these instances the likely harm would result from additional openings being created in unit numbers F39 and B17. Harm could be caused to the living conditions of neighbouring residents by the proximity and directness of overlooking from new openings. If this appeal were to be allowed, these matters would justify the exceptional control of relevant permitted development rights by condition.
53. Given the form, massing and position of Flat Block 5 and its proximity to the rear boundary of no.148, there would be a certain degree of visual impact experienced in views from the rear part of the existing garden. However, the greatest impact would only be experienced in views to the side of the garden and would not be so significant as to be harmful to the living conditions of users of the garden.
54. The two and a half storey main element of Flat Block 5 would be positioned parallel to the property boundary with nos.144 and 146. It would be 18m from the property boundary and at an oblique angle to the rear elevations of the dwellings. The two storey hip roof part of the building is shown to place a blank wall 8m from the property boundary with nos.144 and 146. However, within the context of the scale of the built forms and their layout within the open areas in this location, the proposed development would not result in occupiers of existing (or proposed) dwellings experiencing an unacceptably harmful visual impact. Nor would existing land users in this setting suffer an unacceptable loss of daylight or sunlight from the proposed layout.¹²
55. The provision of amenity space and courtyard car parking along the property boundary with dwellings on Brook Lane would have the potential to create noise and disturbance. However, this is an existing residential area that includes a development plan allocation for further development, where a certain degree of noise and disturbance can be expected to occur. Given the

¹² As illustrated by Appendix 6 of Mr Rose's Proof of Evidence

nature of the amenity spaces and their use, the layout of the car parking and the probable frequency of vehicle movements, it is not likely that the effects of these activities would be unacceptably harmful to the living conditions of residents and visitors to Brook Lane. Noise and disturbance could occur during the construction period and if this appeal were to be allowed, it could be addressed through the imposition of a condition regarding hours of working.

56. Reference has been made to the differences between the layout of the appeal scheme and development shown on the SPD's *Illustrative Development Framework Plan*. As noted above, the purpose of this part of the SPD was to demonstrate a possible design solution, and the appeal proposal falls to be considered on its own merits, within the context of the planning policies and circumstances that pertain to it.¹³
57. Concerns have been raised in relation to water management and drainage. These matters, and possible effects on infrastructure, have been the subject of detailed studies that accompanied the application. These indicate that the matters can be adequately addressed through the scope of planning conditions, obligations and other mechanisms.
58. For the reasons above, and following consideration of all representations made, it has not been shown that the appeal proposal would be likely to be unacceptably harmful to the living conditions of local people. In this respect, the proposed development complies with CS policy CS17 and the Framework

Highway safety

59. Traffic and highway proposals associated with the proposed development have been considered by the Highway Authority, which raised no objection to the proposal, subject to the provision of planning obligations and the imposition of certain planning conditions. Given the negotiations that have taken place, evidence has not been provided that would cause me to conclude the proposal would be likely to be harmful to highway safety.

Protected Sites and Species

60. The appeal site is noted to be in proximity to the Lee-on-the-Solent to Itchen Estuary Site of Special Scientific Interest (SSSI) and Lincegrove and Hackett's Marshes SSSI, which forms part of the Solent and Southampton Water Special Protection Area (SPA) and Ramsar sites, and the Solent Maritime Special Area of Conservation (SAC). Natural England's consultation response on the proposal requested a condition regarding vegetation clearance during the bird breeding season, and noted that implementation of the proposals in accordance with the application would avoid impacts on the interest features of the these designated sites.
61. Due to the nature of the development proposed, the opportunities that would be provided for recreation both on the appeal site and that are available elsewhere in the area (away from the SPA, SAC and SSSIs), it has been shown that the appeal scheme would be unlikely, alone or in combination with other plans and projects, to have a significant effect on the SPA/SAC. Nor would it be likely to damage the special interest features of the SSSIs.

¹³ Pages 62 and 63 of the SPD

62. LP Policy C18 is not permissive of development that would affect protected species or their habitats. Protected species surveys have been carried out in relation to the proposed development, and updated where evidence confirmed this to be necessary to inform the conclusions drawn from them. A programme of reptile translocation to an off-site receptor area has been carried out, along with a 'destructive' search that causes habitat to be unattractive to re-colonisation. Appeal documentation confirms that, subject to certain matters being dealt with by planning condition, protected species would be unlikely to be harmed by the proposed development and it complies with LP Policy C18.

Land ownership

63. Land ownership has been questioned in one part of the appeal site. This decision is in regard to whether or not planning permission should be given for the development proposed. A person does not have to own a site to seek planning permission in relation to it.

The Planning Balance

64. The appeal scheme would contribute to economic growth by developing housing on a site allocated within the development plan for such a use. It would provide both market and affordable homes in proximity to jobs, services and transport links that would enable occupiers to use alternatives to the private car. Both informal and formal play space, amenity space and landscaped areas would be provided within the development. These matters would be beneficial to the social, economic and environmental dimensions of the Framework and provide weight in favour of the proposal. For the reasons given above, the executed planning obligations provide significant weight in favour of the appeal scheme.

65. All matters, including the scope of possible planning conditions, have been taken into account. The appeal scheme is found to comply with: LP Policies H1, DG4 and C18; CS Policies CS5, CS15, CS17, CS18, CS20 and CS21; and, the relevant parts of the Framework. These local planning policies have been found to be consistent with the Framework in relation to matters that are relevant to this appeal. Neither local planning policies, nor specific policies within the Framework indicate that development should be restricted in this case. None of the other matters raised have been found to outweigh the benefits of the scheme and the identified policy compliance.

Conditions

66. Suggested conditions were provided within inquiry document 10. These conditions have been considered against the guidance within Circular 11/95, and within the context of the evidence, discussions and exchanges during the inquiry.

67. For the avoidance of doubt and in the interests of proper planning, a condition shall be imposed regarding the schedules of approved plans.

68. In the interests of providing a sustainable form of development, conditions shall be imposed in regard to the removal of vegetation and sustainable homes.

69. In the interests of the character and appearance of the locality, conditions shall be imposed in relation to landscaping and trees.

70. In the interests of the character and appearance of the locality and to protect local living conditions, conditions shall be imposed in relation to materials for external surfaces, internal finished floor levels, boundary treatment and the provision of external lighting. The suggested condition for external lighting would not seek to control lighting beyond the development phase of the site, and as a consequence residential occupation would, over time, produce a degree of variety across the site. However, the condition is considered necessary to enable the initially installed lighting to provide an appropriately located response and contribution to the character of the development.
71. In the interests of the character and appearance of the locality, highway safety and providing a sustainable form of development, conditions shall be imposed regarding a Construction Method Statement, vehicle parking areas, car ports, the access onto Lockwood Road, the pedestrian and cycle route through the site, emergency access routes, and the provision of bin collection points.
72. To protect local living conditions, conditions shall be imposed in relation to the hours of construction works, the burning of materials on the appeal site, and to control permitted development rights for the installation of windows in the flank elevation and roof of unit numbers F39 and B 17.
73. To protect the historic environment a condition shall be imposed regarding archaeology.
74. In the interests of protecting the natural environment, and future users of the appeal site and land elsewhere, conditions shall be imposed to address potential land contamination, drainage systems, watercourse protection, reinstatement and/or enhancement, and culvert design.
75. In the interests of the natural environment a condition shall be imposed regarding ecological mitigation works and the removal of Japanese Knotweed.
76. A condition has been suggested requiring further survey work in regard to protected species. However, paragraph 99 of Circular 06/2005 – *Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within the Planning System* is explicit that it is essential that the presence or otherwise of protected species, and the extent to which they would be affected by the proposed development is established before planning permission is granted. It has not been suggested that there would have been a reason for refusal in respect of this issue, nor does the evidence in this appeal indicate that protected species would be likely to be harmed by the proposed development. In this instance, there is a lack of evidence to demonstrate that the suggested conditions are necessary, which is the first test of a condition within Circular 11/95 and accordingly, they shall not be imposed.
77. A condition has been suggested to require the obscure glazing of first floor windows in Flat Block 5 facing toward the gardens and rear elevations of dwellings on Brook Lane. However, for the reasons above it has not been shown that the condition would be necessary. The tests of a condition cannot be met simply by a party's willingness to accept a suggested condition. Accordingly, this suggested condition shall not be imposed.
78. This also applies to the suggested condition in regard to the minimum height for roof light windows in the west facing roof slope of Flat Block 5. If, as is required by condition no.2, development is carried out in accordance with the

approved plans, there should be little opportunity for overlooking from the western facing roof light windows in Flat Block 5. It has not been shown that the suggested condition is necessary.

79. A condition has also been suggested to control the insertion of new openings in a number of flat block elevations. However, such a modification would require planning permission. Therefore, it has not been shown that the suggested condition would be necessary and it shall not be imposed.

Conclusion

80. For the reasons above, I conclude that the appeal should be allowed.

C Sproule

INSPECTOR

Richborough Estates

SCHEDULE OF CONDITIONS

- 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 the approved plans listed in the schedules: Broadway Malyan drawing register (Ref 26998, received on 23 April 2013), and the CSA Environmental Planning drawing register (Ref 11A, dated 17 April 2013).
- 3) The dwellings hereby permitted shall achieve Level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.
- 4) No development shall take place until details of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) No development shall take place until details of the internal finished floor levels of the dwellings hereby permitted in relation to the existing and finished ground levels have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) No development shall take place until a scheme of external lighting (including any floodlighting) has been submitted to and approved in writing by the local planning authority. Such details shall include the location, height, type, direction and intensity of the illumination, the hours at which the lighting within the approved scheme is to be operated, and a phasing programme for its installation. External lighting shall be installed in accordance with the approved details before the phase of development to which it relates is first occupied or brought into use.
- 7) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the dwelling to which it relates is first occupied, and the boundary treatment shall be retained thereafter.
- 8) No development shall take place until full details of hard landscape works have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 9) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping, which shall include indications of all existing trees, shrubs and hedgerows that are to be retained, together with the species, planting sizes, planting distances, density, numbers, phasing details and provisions for future maintenance of all new planting, including all areas to be grass seeded and turfed, and planting within areas of the highway, and an implementation programme. All planting, seeding or turfing

comprised in the approved details of landscaping shall be implemented in accordance with the approved implementation programme; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation to address specific instances of plant failure.

- 10) The development hereby permitted shall be carried out in accordance with the Ian Keen Limited Arboricultural Method Statement Ref: JTK/AMS/6225 Rev E, dated 12 March 2013.
- 11) None of the dwellings hereby permitted shall be occupied until works for the disposal of sewage have been provided on the site to serve the development hereby permitted, in accordance with details to be submitted to and approved in writing by the local planning authority.
- 12) No development shall take place until a scheme for surface water drainage works has been submitted to and approved in writing by the local planning authority. The scheme shall be based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development. The submitted details shall:
 - i. provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii. include how the design of the scheme will enhance the biodiversity value of the site;
 - iii. provide a timetable for its implementation; and
 - iv. provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The surface water drainage scheme shall be implemented in accordance with the approved details.

- 13) No development shall take place until a scheme for the reinstatement and/or enhancement of the watercourses on the site, and for a buffer zone of no less than 3 metres measured from the top of the bank on both sides of the watercourse, has been submitted to and approved in writing by the local planning authority. The scheme shall include:
 - i) Plans showing the extent and layout of the buffer zones
 - ii) Details of the intended enhancement works to the watercourses and buffer zones
 - iii) Details demonstrating how the watercourses and buffer zones, including details of any features or services within them, will be protected during development and managed/maintained thereafter
 - iv) Details of any habitat enhancement and management
 - v) An implementation programme for the scheme

- Development shall be carried out in accordance with the approved scheme.
- 14) No development shall take place until details of all culverts proposed on the site have been submitted to and approved in writing by the local planning authority. The details shall demonstrate that the culverts would be adequately sized to accommodate maximum predicted flows. Development shall be carried out in accordance with the approved culvert details.
 - 15) No development shall take place until details of bin collection points, for properties where bins cannot be placed at the front of the property on the highway, 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 their construction. None of the dwellings hereby permitted that require a bin collection point shall be occupied until the approved bin collection point for that dwelling has been provided in accordance with the approved details, and the bin collection point shall be retained thereafter.
 - 16) No development shall take place until a scheme for the laying out (including width and gradient), construction, surfacing and drainage of the vehicular and pedestrian footways and accesses, including onto Lockwood Road (as shown in principle on drawing no. 2497/110-01 Rev B), and the phasing of these works has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme and the vehicular and pedestrian accesses shall be retained thereafter.
 - 17) No development shall take place until a phasing scheme for the pedestrian/cycle route within the site, shown on drawing numbers 2497/110-01 Rev B and 2497/110-02 Rev B has been submitted to and approved in writing by the local planning authority. No dwellings hereby permitted shall be occupied until the relevant section of the pedestrian/cycle route has been completed in accordance with the approved phasing scheme, and the pedestrian/cycle route within the site shall be retained thereafter.
 - 18) No development shall take place until details of the emergency access points adjacent to unit nos.: D22, A2 and A3; and A11-A13, have been submitted to and approved in writing by the local planning authority. The details shall include the timing of the delivery of the emergency access points and the measures to ensure that the access is only available for use by emergency vehicles, pedestrians and cyclists. Development shall be carried out in accordance with the approved details.
 - 19) None the dwellings hereby permitted shall be first occupied until any car parking (including garages) and bicycle storage area relating to them have been laid out/constructed and made available in accordance with the approved plans. These car parking spaces (including garages) and bicycle storage areas shall be used solely for the benefit of the occupants of the dwelling to which it relates. The car parking (including garages) and bicycle storage areas shall be retained thereafter and kept available for their respective purposes at all times.

- 20) The car ports hereby permitted shall be constructed in accordance with the approved plans, and thereafter shall be retained as such without any form of additional enclosure.
- 21) No development shall take place until a site investigation has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site, including the timing and phasing of the remediation, to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority before any development begins. The site shall be remediated in accordance with the approved details, including any measures that would form part of the development, such as the provision of gas vents or membranes within buildings and other structures.
- If, during the course of development, any contamination is found which has not been identified in the site investigation, then additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.
- 22) No development shall take place until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
- 23) The development hereby permitted shall be carried out in accordance with the mitigation measures detailed in the Ecology Solutions documents *Updated Ecological Assessment – June 2012*, as superseded in part by the *Response to Consultation Response – November 2012*, and the *Consultation Response – September 2012*.
- 24) No development shall take place until a scheme, which shall include the timescale, for the removal of Japanese Knotweed from the site has been submitted to and approved in writing by the local planning authority. The Japanese Knotweed shall thereafter be removed in accordance with the approved scheme.
- 25) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- i) the parking of vehicles of site operatives and visitors
 - ii) loading and unloading of plant and materials
 - iii) storage of plant and materials used in constructing the development
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - v) wheel washing facilities
 - vi) measures to control the emission of dust, dirt and light during construction

- vii) a scheme for recycling/disposing of waste resulting from demolition and construction works
- 26) Demolition or construction works shall not take place outside 08:00 hours to 18:00 hours Mondays to Fridays and 08:00 hours to 13:00 hours on Saturdays nor at any time on Sundays or Bank Holidays.
- 27) No materials obtained from clearance of the site or from the construction works hereby permitted shall be burnt on the site.
- 28) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no windows/dormer windows or other openings, other than those expressly authorised by this permission, shall be constructed on the western elevation of unit number F39, and the north eastern elevation of unit number B 17.
- 29) No vegetation removal shall be undertaken during the bird breeding season (1st March to 31st August inclusive) unless the site is first inspected by an ecologist. Where this inspection indicates that mitigation measures are necessary, no vegetation removal shall take place until a scheme for the removal of vegetation has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with any approved scheme for the removal of vegetation.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Martin Edwards of Counsel	Instructed by the combined legal service for Southampton and Fareham Councils
He called Stephen Jupp BA(Hons) LLM MRTPI	Planning consultant

FOR THE APPELLANT:

Peter Village – Queen’s Counsel	Instructed by Mr Woolf of Woolf Bond Planning
He called Neil Rose BA(Hons) DipArch RIBA	Broadway Malyan
Jeremy Woolf MA DipTP MRTPI	Woolf Bond Planning

INTERESTED PERSONS:

John Abel	Local resident
Alison Milne	Local resident
Andrea Florey	Interested party

DOCUMENTS

- 1 Fareham Local Development Framework – Peters Road Development Brief – Adopted November 2007
- 2 Statement by Mr Abel
- 3 Document/Drawing Issue Register 11A - CSa Environmental Planning – date of issue 17/4/13
- 4 List of *Essential Supporting Information* in regard to planning appeal (LPA Ref: P/12/0717/FP) for land south of Peters Road, Locks Heath – July 2013
- 5 A copy of an agreement under Section 106 of the Town and Country Planning Act 1990 between the site owners and Fareham Borough Council
- 6 A Statement of Common Ground between the appellant companies and Fareham Borough Council
- 7 An original copy of an executed agreement, dated 14 January 2014, under Section 106 of the Town and Country Planning Act 1990 between the site owners and Fareham Borough Council
- 8 An original copy of an executed agreement, dated 13 January 2014, under Section 106 of the Town and Country Planning Act 1990 between the site owners and Hampshire County Council (HCC File Ref: PT33A/2115/AC Unique No. 5889683)
- 9 A diagram showing ‘eye level’ projected from a dwelling on Brook Lane to the ridge of proposed flat block 5, with a *notional position of 2 storey house 11m from boundary*
- 10 Suggested conditions
- 11 Location Plan (drawing no. A-02-LP-000 Rev P-01) annotated *WBP Mark Up* – indicating ownership for interpretation of the planning obligations
- 12 Natural England consultation response – dated 11 September 2012

13 An application for costs by the appellants

Richborough Estates