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## Appeal Decision

Inquiry held on 12-15 February 2019

Accompanied site visit made on 14 February 2019

**by Alex Hutson MATP CMLI MARborA**

an Inspector appointed by the Secretary of State

Decision date: 8<sup>th</sup> April 2019

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**Appeal Ref: APP/B1740/W/18/3209706**

**Land next to School Lane, Milford on Sea, Lymington SO41 0TU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
  - The appeal is made by Pennyfarthing Homes against the decision of New Forest District Council.
  - The application Ref 17/10606, dated 18 April 2017, was refused by notice dated 19 July 2018.
  - The development proposed is 42 dwellings comprised: 17 detached houses; 8 semi-detached houses; 11 terraced houses; 6 flats; garages; parking; landscaping; estate roads; junction access; footpaths; open space; play area; 5 allotments; and cycleway.
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### Decision

1. The appeal is allowed and planning permission is granted for development of 42 dwellings comprised: 17 detached houses; 8 semi-detached houses; 11 terraced houses; 6 flats; garages; parking; landscaping; estate roads; junction access; footpaths; open space; play area; 5 allotments; and cycleway at land next to School Lane, Milford on Sea, Lymington SO41 0TU in accordance with the terms of the application, Ref 17/10606, dated 18 April 2017, subject to the attached schedule of conditions.

### Application for costs

2. At the Inquiry an application for costs was made by Pennyfarthing Homes against New Forest District Council. This application is the subject of a separate Decision.

### Preliminary matters

3. The application originally sought planning permission for development to include 46 dwellings. However, during the course of the application, this was amended to 42 dwellings. This is reflected in the description of the proposed development in the banner heading above and I have considered the appeal on this basis.
4. The application and appeal form suggest that the appellant, Pennyfarthing Homes, is the main landowner. However, during the course of the appeal, it became apparent that this information was given in error and furthermore, that the appellant had not served the relevant notice on the main landowner as is required. Nevertheless, prior to the opening of the Inquiry, I was provided with a statutory declaration to confirm that the main landowner was aware of

the planning application and appeal and has no comments to make other than to support the proposal. On this basis, I am satisfied that the interests of the landowner have not been prejudiced and that the appeal can proceed.

5. The Government's updated revised National Planning Policy Framework (the Framework) and the Housing Delivery Test 2018 were published on 19 February 2019, subsequent to the close of the Inquiry. The main parties have been given the opportunity to comment on these matters and I have had regard to those comments in my determination of the appeal.
6. A completed Unilateral Undertaking (UU) pursuant to section 106 of the Act was submitted subsequent to the close of the inquiry. The UU deals with matters relating to land transfer, starter homes, affordable housing, open space, a children's play area, allotments, a car park, highway works, a cycleway, habitat mitigation and financial contributions in respect of some of these matters. I have taken note of the statement of compliance with the Community Infrastructure Levy Regulations 2010, as amended (CIL Regulations), which was submitted with evidence. On the basis of the contents of the UU and the compliance statement, I am content that all matters conform to the CIL Regulations and that the UU can be taken into account in my determination of the appeal.
7. Subsequent to the close of the Inquiry, an interested party indicated that they wished to speak on its final day as they were unable to attend the previous three days but, due to some miscommunication, I was not fully aware of this at the time. The interested party has provided some representations in writing and has requested that I consider them in light of this. Given the circumstances, I consider it reasonable for me to accept the representations and have regard to them. The appellant takes the same view and has been given the opportunity to comment on the representations.

#### **Main issue**

8. The main issue is whether the proposal would provide an acceptable level and mix of affordable housing.

#### **Reasons**

9. Policy CS12 of the New Forest District outside the National Park Core Strategy 2009 (Core Strategy) sets out that sites will be identified to allow for housing to address identified local need for affordable and low cost market housing which will not otherwise be met, including up to about 30 dwellings at Milford on Sea. This policy also sets out that development will be permitted subject to the affordable housing contribution requirements contained in Policy CS15(b) of the Core Strategy. Policy CS15(b) of the Core Strategy requires that on greenfield sites released to meet an identified local need for affordable housing which would not otherwise be met, the target will be a minimum of 70% affordable housing (40% social rented housing and 30% intermediate affordable) with the remainder of the site developed for low cost market housing, which could include starter homes. However, Policy CS15 of the Core Strategy also makes provisions for a lower level of affordable housing to be provided where it can be demonstrated that the target level is not economically viable.

10. The appeal site is located on the edge of the settlement of Milford on Sea and comprises part of a large agricultural field. Its southern part lies within the defined settlement boundary and its northern part within Green Belt. It is allocated under Policy MoS1 of the New Forest District outside the National Park Local Plan Part 2: Sites and Development Management 2014 (Local Plan) to provide residential development for local housing needs in accordance with Policies CS12 and CS15(b) of the Core Strategy, and for public open space. Policy MoS1 of the Local Plan requires, amongst other things, the provision of a maximum of 30 dwellings on the southern part of the site, which was removed from the Green Belt on the adoption of the Local Plan, and for 70% of dwellings provided to be affordable housing.
11. The proposal would provide 42 dwellings on the southern part of the appeal site and playing fields, a children's play area, allotments and a car park on the northern part. The proposal would also make provisions for footpaths and cycleways. Of the 42 dwellings, 6 would be for affordable rent, 6 would be for shared ownership and 7 would be starter homes. The remaining 23 dwellings would be for sale on the open market.
12. Whilst the Framework recognises starter homes as a form of affordable housing, there is dispute between the main parties relating to whether they can be defined as such in the context of the abovementioned local planning policies. Nevertheless, even if starter homes were to be included within the affordable housing offer, the overall provision would fall below the 70% affordable housing target level set out in Policy CS15(b) of the Core Strategy and Policy MoS1 of the Local Plan. Consequently, it should be demonstrated that to develop the appeal site to meet this affordable housing target level would not be economically viable.
13. The Council raises no concern in respect of the development of the appeal site with a greater level of housing than that set out within Policy CS12 of the Core Strategy and Policy MoS1 of the Local Plan. It also accepts that, by way of its own viability assessment (VA) as part of the appeal, to develop the appeal site to provide 70% affordable housing with the remainder low cost market housing would not be viable. It is, however, the Council's view that, on the basis of its own VA, a further 6 units of affordable housing (3 x affordable rent and 3 x shared ownership) could be provided. The appellant, on the other hand, contends that the VA it has undertaken as part of the appeal demonstrates that, similarly to the one undertaken as part of the original planning application process in liaison with the District Valuer Service (DVS) who act as independent property specialists, to provide more affordable housing than that proposed would not be viable.
14. There is no dispute between the main parties that there is an acute need for affordable housing in Milford on Sea and the District in general. Nevertheless, the main parties agree that viability lies at the heart of the appeal. Moreover, they take the view that if I favour the Council's VA, then the appeal should be dismissed for this reason and conversely, if I favour the appellant's VA, the proposal, in terms of the level, mix and tenure of housing proposed would be acceptable. The differences between the Council's and the appellant's VAs and the reasons for such differences is thus the key factor to my consideration of the main issue.

15. On this matter, the areas of difference are narrow. Furthermore, most areas of difference do not materially change either the appellant's or the Council's case and are thus not decisive. I therefore need not consider them in any further detail. The one area of difference on VA matters which is decisive relates to build costs. In respect of this, the appellant and the Council have used data for the New Forest District taken from the Building Cost Information Service (BCIS) of the Royal Institute of Chartered Surveyors. BCIS provides cost and price information for the construction industry and I understand that to use it in VAs is standard practice. The difference is that the Council has used the BCIS default median build cost data (default data), which includes data from the last 15 years, whilst the appellant has used BCIS median build cost data from the last 5 years (5 year data). The notable variance between using the default data and 5 year data can be seen in the construction costs of the proposed detached dwellings. The default data indicates a noticeably lower cost of constructing such dwellings than is indicated by the 5 year data. It is for this reason that the Council's VA suggests that a greater number of affordable dwellings could be provided, whilst still achieving a residual land value similar to the agreed benchmark land value, defined as a price for land which would incentive the landowner to sell for development, whereas the appellant's VA does not.
16. The Council's written evidence does not address why it prefers the default data. However, through cross examination, the Council viability witness indicated that although the 5 year data was more recent, it was not as representative as the default data given the small sample size and that the data is taken from building projects around the country, albeit adapted for local circumstances.
17. However, the sample size of the default data is also not extensive and it is my understanding that it too comprises data taken from house building projects around the country, albeit adapted for local circumstances. The appellant's written evidence sets out that the 5 year data has been used as it is more reflective of the current market and draws upon more relevant and recent house build projects which reflect current specifications and new build standards which were not applied historically. I was also informed that to prevent any build cost anomalies from abnormally distorting the 5 year data, the upper and lower 25% build cost figures are excluded and that, normally, if BCIS was not content with the sample size for a specific type of dwelling, it would not populate the relevant part of the table with any build cost data. I have no substantive reasons to consider otherwise. In addition to this, the DVS has confirmed, in an email from its Head of Viability to the appellant, that it uses the 5 year data for all residential projects. Moreover, that this data was used in the VA which accompanied the original planning application for the proposal and for VAs associated with other applications for residential development on sites allocated under policies of the Local Plan in the District which have been granted planning permission<sup>1</sup>. It is also my understanding that the 5 year data has been used in the consideration of viability for proposed site allocations in the Council's emerging Local plan by the consultants tasked to undertake this.

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<sup>1</sup> Including sites at: land north of Alexandra Road, Lymington (Policy LYM2 of the Local Plan); land south of Gore Road, New Milton (Policy NMT1 of the Local Plan); and land in Whitsbury Road, Fordingbridge (Policy FORD1 of the Local Plan).

18. Having regard to the above factors and having carefully considered all the written and oral evidence on matters relating to viability, it seems to me that for the appellant to adopt the 5 year data in its VA as part of the appeal is a reasonable approach to take. I therefore favour the appellant's VA over the Council's.
19. It is also worth noting here that numerous other sites allocated under Local Plan policies<sup>2</sup> which set out a 70% affordable housing target have not achieved this where planning applications have been approved by the Council, based on viability evidence, and where in some cases starter homes have been included in the mix of housing. The affordable housing levels approved on these sites, if starter homes are to be included within the figures, range between 35% and 50%, according to the evidence. If starter homes were to be included in the affordable housing offer in the proposal, the figure would be around 45%, so within a similar range. It is my understanding that the single exception to this relates to a site<sup>3</sup> which was developed by a housing association. I have no compelling evidence before me to indicate that any such organisation would be interested in the purchase and development of the appeal site in a similar manner or could do so in a viable way. I am also aware that there are a number of other sites allocated under Local Plan policies<sup>4</sup> which set out a 70% affordable housing target which have not progressed beyond this. Whilst it is not conclusive that viability is a factor in this, given the unknown reasons for this, it cannot be ruled out.
20. I therefore conclude that the appellant has demonstrated to an adequate degree through its viability evidence that the proposal would provide an acceptable level and mix of affordable housing in this instance, albeit that it would not fully address local need for such housing.
21. On the basis that the target level of affordable housing as set out in Policy CS15(b) of the Core Strategy and Policy MoS1 of the Local Plan would not be met, the proposal would conflict with the relevant parts of these policies. It would also conflict with Policy CS12 of the Core Strategy where it requires development to be subject to the affordable housing requirements set out in Policy CS15(b) of the Core Strategy, albeit that this policy is not specifically referenced on the Council's decision notice. Nonetheless, given the Council's own viability evidence indicates that the affordable housing target levels of these policies cannot be met, I afford such conflict limited weight. I also afford limited weight to conflict between the total number of dwellings proposed on the appeal site and any references to 30 dwellings contained within these policies, given that the Council has no objection to this and to set a maximum figure would be inconsistent with the aims and objectives of the Framework which seeks to significantly boost the supply of homes. Moreover, in light of my findings in respect of the appellant's viability evidence and the proposed level and mix of affordable housing, the proposal would comply with Policy CS15 overall, given that this policy makes allowances for the level of affordable housing provision based on economic viability. This is the overriding policy consideration given the interrelationship between the abovementioned development plan policies.

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<sup>2</sup> Including those set out in Table 5 of the appellant's planning proof of evidence

<sup>3</sup> Referred to orally by the Council's planning witness as being allocated under Policy HYD1 of the Local Plan and planning permission approved in November 2015

<sup>4</sup> Including those set out in Paragraph 4.39 of the appellant's planning proof of evidence

*Other matters*

22. The appeal site lies within the zone of influence of the New Forest and Solent Coast European Nature Conservation Sites (European sites). In relation to these European sites, increased recreational visits associated with new housing development may lead to disturbance to the habitat of ground nesting birds, overwintering waders and wildfowl which contribute to their designation. Consequently, in the absence of mitigation, the proposal would, either alone or in combination with other plans or projects, be likely to have a significant effect on the European sites. In accordance with the Conservation of Species and Habitats Regulations 2017 (Habitats Regulations), as the competent authority, I have therefore undertaken an Appropriate Assessment (AA) of the implications of the proposal on these European sites.
23. The Habitats Regulations require that consultation is made with the appropriate nature conservation body, in this case Natural England (NE). NE has commented on the scheme and in relation to the Council's AA, and clearly states that there would be no need for further consultation provided appropriate mitigation proposals are incorporated. I am content that this satisfies the purposes of Regulation 63(3).
24. The Council's adopted Mitigation Strategy for European Sites Supplementary Planning Document 2014 (SPD) sets out the process for securing measures to mitigate the effect of housing development on the European sites. This includes a requirement for a financial contribution towards non-infrastructure access and visitor management and monitoring which would be secured through the submitted UU. It also includes measures to deflect potential visits away from the European sites through, for example, new areas of green space and the enhancement of existing green space and footpaths/rights of way.
25. The Council has a CIL Charging Schedule in place and the funding for mitigation aspects of the SPD which involve infrastructure, would, in most cases, be included within the CIL payment. However, this would not occur where development is CIL exempt, such as in the case of affordable housing. As affordable housing is not exempt from the provision of habitat mitigation, both the appellant and the Council agree that to adequately mitigate the effect of CIL exempt dwellings on the European sites, a negatively worded planning condition should be used to secure the appropriate mitigation. The Council has provided a detailed explanation as to why it considers this to be a suitable approach to take, having regard to Regulation 123 of the CIL Regulations and advice contained within the Planning Practice Guidance (PPG).
26. This explanation suggests that mitigation may be secured through mechanisms including a legal obligation, the provision of suitable land or for the developer to carry out works directly. In my view, all such approaches are likely to result in the submission of a legal undertaking or other agreement. Indeed, the Council's explanation itself accepts that in the majority of cases a planning obligation which seeks contributions is the most practical way of meeting the terms of the condition.
27. However, the PPG sets out that the use of such a condition to secure a planning obligation or other agreement is unlikely to be appropriate in the majority of cases. It goes on to require that a condition be used only in exceptional circumstances and in the case of more complex and strategically important

development where there is clear evidence that the delivery of the development would otherwise be at serious risk.

28. In this case, I am satisfied that, given the restrictions of the current framework for securing planning gain where there is the need for housing developments to provide mitigation for potential harm to European sites and due to the scale of development proposed, the circumstances can be considered as exceptional. Furthermore, on the evidence presented to me, I find that the scheme, when considered as a site allocated for housing against which the pressing need for affordable housing across the district is to be delivered, represents a sufficient level of complexity and strategic importance. To conclude otherwise would lead to an inference that the mitigation could not be secured by a negatively worded condition and my AA would find that the harm to the European sites would not be mitigated. This would put the delivery of the proposed development at serious risk.
29. Therefore, having considered all the evidence for this case carefully, I consider that the circumstances set out in the PPG are satisfied and that the suggested approach to take is a reasonable one to ensure the appropriate mitigation is secured. I therefore consider that taken together, the mechanisms to secure necessary mitigation are sufficient to ensure that harmful effects on the European sites can be avoided.
30. An ecological appraisal of the appeal site has identified the presence of some protected species. However, I am satisfied that its conclusions and recommendations demonstrate that any effects on these can be mitigated and that this can be secured through the use of an appropriately worded planning condition. The proposal would involve the removal and alteration of some hedgerows, including for the purposes of siting a new cycleway, which have been shown to support dormice, a European Protected Species (EPS). In accordance with the Habitat Regulations, I must consider the proposal against the three relevant tests to ascertain the likelihood of NE granting an EPS licence to carry out such works.
31. In this respect, I consider there to be a reasonable prospect of this as: (a) the proposal is in the public interest as the appeal site is allocated in the Local Plan and a number of new dwellings would be provided in an area where there is an agreed shortfall, as well as other benefits, including facilities for outdoor sport and recreation; (b) given the allocation of the appeal site in the Local Plan and the constraints to accommodate a cycleway, there is no satisfactory alternative; and (c) that the works authorised would not be detrimental to the maintenance of the population of dormice concerned given the mitigation measures proposed, which include the timing of the works, other precautionary measures and the provision of replacement hedgerows. Though some hedgerow works already appear to have been undertaken, this does not alter my view on this matter and the implications of this, insofar as any breach of the law is concerned, lie outside of my remit.
32. I have had regard to the concerns raised by interested parties, including in respect of Green Belt, more suitable brownfield land to develop, pressure on local services including the adjacent school, pressure on sewage systems, trees, access to services and facilities, light pollution, flood risk, noise, odour, pollution, character and appearance, tourism impact, safeguarding of school pupils, bathrooms with no windows, siting of the proposed car park, highway

- safety, crime, second homes and the prioritisation of affordable housing for local residents.
33. Paragraph 143 of the Framework sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 145 of the Framework sets out that the construction of new buildings within the Green Belt should be regarded as inappropriate, with an exception to this being the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments, as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. Paragraph 146 of the Framework sets out other forms of development which are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it, including material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds).
34. With regard to the proposed dwellings, these would not be sited within the Green Belt. The change of use of the northern part of the appeal site for playing fields, a children's play area, allotments and footpaths and thus for outdoor sport and recreation, would, in my view, preserve the openness of the Green Belt and would not conflict with the purposes of including land within it, in accordance with Paragraph 146 of the Framework. The proposed car parking area in the northern part of the appeal site would primarily provide a facility in connection with the change of use of the land that I have just referred to, would be modest in size and any cars parked on it would be transient in nature. Thus, such a facility would, in my view, preserve the openness of the Green Belt and would not conflict with the purposes of including land within it, in accordance with Paragraph 145 of the Framework. Though I recognise that the proposed car park would at times also be used for school pick ups and drop offs, this does not alter my conclusions on this matter.
35. Though there may be some brownfield land or other land suitable for development in the area, this is somewhat immaterial given the allocated status of the appeal site for, amongst other things, housing. There is no substantive evidence to demonstrate that any services would be put under any undue pressure and I note that Hampshire County Council consider that the adjacent school would not be oversubscribed as a result of the proposal. Nor is there any compelling evidence to indicate that sewage systems would be overloaded. On this matter, Southern Water raise no objections and consider that foul water management could be dealt with by way of a suitably worded planning condition. I have no substantive reasons to take a different view.
36. I am satisfied, as is the Council's Tree Officer, that the submitted arboricultural report and associated tree protection plan show how trees to be retained will be protected throughout the development and a suitably worded planning condition could be imposed to ensure this. The southern part of the appeal site is located within the settlement boundary and thus any future occupiers of the proposed dwellings would be likely to have a reasonable level of access to local services and facilities within Milford on Sea, in a manner similar to the occupiers of other nearby housing development. In any event, the principle of housing development on the appeal site has been established through its allocation in the Local Plan.



37. Some lighting is likely to be required as part of the proposal. However, this is not unusual for development within an established settlement. In addition, the details of such could be secured through a planning condition to ensure sensitivity to its surroundings. The appeal site lies within a low flood risk zone and any surface water would be managed through a sustainable drainage system, the details of which I am satisfied, as are the Council, could be secured by way of a planning condition. The proposal, given its uses, is unlikely to generate any harmful levels of noise or odours.
38. No substantive evidence of pollution levels in the vicinity of the appeal site has been provided and, in any case, the additional car usage associated with a proposal of this scale would be unlikely to affect current or future pollution levels to a significant degree. Though the proposal would inevitably alter the character of the appeal site this would be seen in the context of the existing settlement of Milford on Sea and has been accepted through the allocation of the appeal site. Moreover, the Council considers that the proposal would create a distinctive place to live and would respond positively to local character and context. Having regard to the submitted plans, supporting images and my own observations of the appeal site and its surroundings, I would concur with this view and consider that the proposal, overall, would represent good design. Having regard to this, any tourists would be unlikely to see Milford on Sea as a less attractive place to visit.
39. The proposed dwellings which would be closest to the adjacent school have been arranged in a way that would avoid any significant overlooking of the playground areas. Also, pupils are likely to be supervised when using these areas and the school is also likely to have secure boundary fences. The proposal is therefore unlikely to raise any safeguarding issues for pupils of the school. Moreover, it is not unusual for residential development and schools to share boundaries. I note that some of the proposed dwellings are shown with bathrooms with no windows. Nonetheless, bathrooms are not main habitable rooms and natural lighting to them is therefore not so critical. Also, there are other ways to ventilate a bathroom and this matter is likely to be subject to building regulations.
40. The proposed car park would be only a short walk, along a pavement, from the school entrance and thus would be in a reasonable location to serve any pupil drop offs or pick ups should parents or carers wish to use it. It is also my understanding that the majority of parents or carers come from the north when dropping off or picking up pupils and thus any use of the proposed car park for such a purpose would be likely to reduce any congestion at the front of the school during these times. In addition, the proximity of the proposed dwellings to the school would encourage any travel to it by any of its future occupiers by means other than a car. On the basis of the evidence before me, I am also satisfied, as is the Council and the Highways Authority, that the access to the proposed car park would be provided with adequate sight lines to ensure the safe entrance and egress of vehicles from and to Lymington Road and that the local highway network would be able to accommodate safely any additional traffic movements that would arise from the proposal.
41. There is no substantive evidence to demonstrate that the proposal would increase crime in the area. It also appears to me that the proposed public spaces within the housing area would have a good level of natural surveillance by virtue of the dwellings which would front them. Furthermore, the

orientation of an open street towards the children's play area, and the siting of this facility close to the housing area, would provide a sense of safety to and natural surveillance of it. I acknowledge the concern that the proposed open market dwellings could be bought as second homes. Nevertheless, there is no compelling evidence that would lead me to believe that this would inevitably be the case. With regard to the allocation of affordable dwellings, it is my understanding that this would be undertaken via the normal Council procedures which include geographical location of residents with affordable housing needs as a factor.

42. I therefore consider that the concerns raised by interested parties do not weigh against the proposal.

#### *Conditions*

43. I have had regard to the conditions suggested by the Council. I have amended some of these for clarity and conciseness. In addition to the statutory time limit condition, a condition specifying the relevant drawings is necessary as this provides certainty. Those conditions relating to materials, landscaping, hedgerows, tree protection, lighting and slab levels are necessary in the interests of character and appearance. A condition relating to the recommendations of the ecological appraisal is necessary in the interests of biodiversity. A condition relating to a scheme to minimise any impact of construction activity on certain bird species is necessary for the same reason. A condition to secure appropriate mitigation is necessary to avoid adverse effects on European sites. A condition relating to mineral extraction is necessary in the interests of the beneficial use of natural resources. A condition relating to phasing is necessary in the interests of the appropriate delivery of development. Those conditions relating to archaeology are necessary in the interests of heritage. Conditions relating to parking, turning areas and construction management are necessary in the interests of highway safety. Conditions relating to foul and surface water drainage are necessary in the interests of the appropriate management of foul and surface water.
44. The Council considers, and the appellant agrees, that the size of certain plot sizes justifies the removal of some permitted development rights in the interests of character and appearance. I am satisfied that, on this basis and having regard to the submitted plans, exceptional circumstances have been demonstrated for such a condition.
45. I am also satisfied that those conditions which are pre-commencement are necessary to ensure the satisfactory layout of development, its appropriate phasing, biodiversity protection, the beneficial use of natural resources, archaeology protection, highway safety and appropriate water management. The appellant has confirmed acceptance of the pre-commencement conditions in writing.

#### **Planning balance and conclusion**

46. As I have identified, there would be some conflict with some of the policies of the Core Strategy and Local Plan. However, having regard to my findings on viability and thus the overall compliance with Policy CS15 of the Core Strategy, and that I find no other harm, the proposal would broadly comply with the development plan when read as a whole. Moreover, the Council accepts that it cannot demonstrate a 5 year housing land supply and that the shortfall is

considerable. The presumption in favour of sustainable development as set out in Paragraph 11 of the Framework is thus relevant and an important material consideration. On this matter, there would be no adverse impacts of granting planning permission that would significantly and demonstrably outweigh the benefits, which includes much needed affordable and market housing of an ratio to enable a viable scheme, when assessed against the policies of the Framework taken as a whole.

47. Accordingly, for the reasons set out above and having regard to all other matters, I conclude that the appeal should be allowed.

*Alex Hutson*

INSPECTOR

Richborough Estates

## **APPEARANCES**

### FOR THE APPELLANT:

Gary Grant, of Counsel

Instructed by Pennyfarthing Homes

He called:

James Stacey BA (Hons) DipTP  
MRTPI

Director, Tetlow King Planning

Timothy Cann DIP MBA (Est.Man)  
FRICS

Senior Director, BNP Paribas Real Estate

Jacqueline Mulliner BA (Hons)  
BTP (Dist) MRTPI

Director, Terence O'Rourke Ltd

### FOR THE LOCAL PLANNING AUTHORITY:

Paul Brown, of Queens Counsel

Instructed by New Forest District Council

He called:

Tim Davis MSc Cert CIH

Housing Development and Strategy  
Manager, New Forest District Council

Gary Jeffries BSc MBA FRICS

Regional Managing Partner, Vail Williams  
LLP

Ian Rayner MRTPI

Principal Planning Officer, New Forest  
District Council

### INTERESTED PARTIES:

Susan Whitlock

On behalf of Milford on Sea Parish Council

James Cain MRTPI

Planning Base Ltd on behalf of SLAM (School  
Lane and Manor Road)

Patricia Banks

On behalf of Milford on Sea Parish Council  
and as a Local Resident

Andrew Hallows

On behalf of SLAM and as a Local Resident

David Hodgson

Local Resident

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

1. Tree Protection Plan Ref 16283-BT6
2. List of agreed conditions and agreement in writing from the appellant in respect of pre-commencement conditions
3. Extracts from Planning Practice Guidance relating to viability
4. Opening and closing statements on behalf of the Council, the appellant, Milford on Sea Parish Council and SLAM (School Lane and Manor Road)
5. LPA1: Table of building costs differences between the main parties
6. A1: Email from Orion Heritage to Pennyfarthing Homes dated 1 February 2019
7. A2 and A3: Emails between Pennyfarthing Homes and the District Valuer Services dated between 1 February 2019 and 5 February 2019
8. A4: Comparison table of housing registers
9. A5: Email from i-Transport to Pennyfarthing Homes dated 14 February 2019
10. Appellant's costs application and the Council's response

## **DOCUMENTS SUBMITTED AFTER THE INQUIRY**

1. Comments from the Council and the appellant in respect of the updated revised National Planning Policy Framework February 2019, updates to Planning Practice Guidance and the Housing Delivery Test 2018
2. Representations from an interested party and comments from the appellant in respect of those representations
3. Completed Unilateral Undertaking

Richborough Estates

SCHEDULE OF CONDITIONS:

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: LP.01 REV B; SL01 REV G; DBML01 REV G; CSE.01 REV B2; HT.403-A.e REV C; HT.403-A.p REV C; HT.403-B.e REV C; HT.403-B.p REV C; HT.1650.e.1 REV C; HT.1650.e.2 REV C; HT.1650.p REV C; HT.AND-A.e REV C; HT.AND-A.p REV C; HT.AND-H-A.e REV B; HT.AND-H-A.p REV B; HT.FLET.H.e REV C; HT.FLET.H.p REV C; HT.NORTH.e REV C; HT.NORTH.p REV C; HT.NORTH-H.e REV A; HT.NORTH-H.p REV A; S-GAR.01.pe REV C; D-GAR.02.pe REV C; T-GAR.03.pe REV B; SHED.pe REV C; CAR PORT.pe REV A; P.5.e REV B; P.5.p REV A; P.6-7.e REV A; P.6-7.p REV A; P.8.e REV A; P.8.p REV A; P.9-10.p REV C; P.9-10.e REV C; P.11-14.e REV A; P.11-14.p REV A; P.15-17.e REV B; P.15-17.p REV B (black and white version); P.18-23.cpe REV G; P.24-27.e1 REV D; P.24-27.e2 REV D; P.24-27.p REV D; P.28-29.p REV B; P.28-29.e REV B; P.30.e REV B; P.30.p REV B; P.38-39.p REV B; and P.38-39.e REV B.
- 3) Notwithstanding the submitted plans, no development shall take place until a detailed scheme of landscaping and a tree planting schedule for the site have been submitted to the local planning authority for its written approval. This scheme shall include:
  - (a) the existing trees and shrubs which have been agreed to be retained;
  - (b) a specification for new planting (species, size, spacing and location);
  - (c) details of the planting system to be used for trees within the hardstanding areas;
  - (d) details of the areas for hard surfacing and the materials to be used;
  - (e) details of the boundaries of the site and all other means of enclosure;
  - (f) a detailed design for the children's play area, with details of the play equipment to be installed;
  - (g) a precise specification of the proposed levels across the areas of proposed public open space;
  - (h) a precise specification of the playing field surface and the associated below surface drainage measures based on a full drainage survey; and
  - (i) a method and programme for its implementation, and the means to provide for its future management, including a watering scheme and maintenance.

No development shall take place above damp course level unless these details have been approved and then only in accordance with those details.

- 4) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the development hereby permitted or its completion, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development hereby

permitted die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size or species.

- 5) No development shall take place until details of the methodology for the realignment and reinforcement of the boundary hedge to the Lymington Road frontage, where it is required to facilitate the provision of the approved cycleway, have been submitted to and approved in writing by the local planning authority. The methodology shall include the following specific details:
- (a) the extent of hedgerow that will be affected;
  - (b) a methodology for undertaking the works;
  - (c) mitigation measures that will be put in place to safeguard ecological interests (including birds and dormice); and
  - (d) if a suitable hedge realignment methodology (that would ensure the health and long-term survival of this hedge) under (b) is not achievable, details of proposals for a replacement hedge.

Works shall be undertaken in strict accordance with the agreed methodology, under professional ecological supervision.

- 6) No development shall take place until a hedgerow management plan has been submitted to and approved in writing by the local planning authority. This management plan shall include details of the methodology for any hedge removal approved as part of this development and the future maintenance/management of all retained hedges. The methodology and management as agreed shall be undertaken in accordance with the approved details under professional ecological supervision.
- 7) No development shall take place until a plan for the incidental extraction of mineral deposits from the site has been submitted to and approved in writing by the local planning authority. The plan shall consist of a written statement outlining:
- (a) a method for ensuring that minerals that can be viably recovered during the development operations are recovered and put to beneficial use; and
  - (b) a method to record the quantity of recovered mineral (re-use on site or off site) and to report this data to the local and minerals planning authorities.

Development shall only proceed in accordance with the approved plan.

- 8) No development shall take place until a phasing plan, setting out the detailed phasing of the construction of all aspects of the development hereby permitted, has been submitted to and approved in writing by the local planning authority. Development shall thereafter be implemented in full accordance with the approved phasing plan.
- 9) No development shall take place until a programme of archaeological work including a Written Scheme of Investigation has been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions; and:
- (a) the programme and methodology of site investigation and recording;

- (b) the programme for post investigation assessment;
- (c) details of provision to be made for analysis of the site investigation and recording;
- (d) details of provision to be made for publication and dissemination of the analysis and records of the site investigation;
- (e) provision to be made for archive deposition of the analysis and records of the site investigation; and
- (f) nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

Development shall not take place other than in accordance with the approved Written Scheme of Investigation.

- 10) No dwelling shall be occupied until the analysis, publication and dissemination of the results of the approved Written Scheme of Investigation and archive deposition has been secured and the details made available to the local planning authority.
- 11) No development shall take place until a Construction Management Plan (CMP) has been submitted to and approved in writing by the local planning authority. The CMP shall include the following details:
  - (a) a programme and phasing of construction work;
  - (b) the provision of long-term facilities for contractor parking;
  - (c) the arrangements for deliveries associated with all construction works;
  - (d) methods and phasing of construction works;
  - (e) access and egress for plant and machinery;
  - (f) protection of pedestrian routes during construction; and
  - (g) the location of temporary site buildings, compounds, construction materials and plant storage areas.

Development shall be implemented in accordance with the approved CMP.

- 12) No development shall take place until details of the means of disposal of foul water from the site have been submitted to the local planning authority for its written approval. No above ground construction shall take place until these details have been approved, and then only in accordance with the approved details.
- 13) Notwithstanding the submitted details, no development shall take place until surface water drainage works have been submitted to the local planning authority for its written approval, and the development hereby permitted shall not thereafter be occupied until the approved surface water drainage works have been fully implemented. Before any details are submitted to the local planning authority an assessment shall have been carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall then be provided to the local planning authority with the proposed scheme of surface drainage works. Where a sustainable drainage scheme is to be provided, the submitted details shall:
  - (a) 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;
- (b) include a timetable for its implementation; and,
  - (c) 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.
- 14) No development shall take place until proposals for the mitigation of the impact of the development hereby permitted on the New Forest and Solent Coast European Nature Conservation Sites have been submitted to and approved in writing by the local planning authority, and the local planning authority has confirmed in writing that the provision of the proposed mitigation has been secured. Such proposals must:
- (a) provide for mitigation in accordance with the New Forest District Council Mitigation Strategy for European Sites Supplementary Planning Document 2014 (or any amendment to or replacement for this document in force at the time), or for mitigation to at least an equivalent effect; and
  - (b) provide details of the manner in which the proposed mitigation is to be secured. Details to be submitted shall include arrangements for the ongoing maintenance and monitoring of any Suitable Alternative Natural Green Spaces which form part of the proposed mitigation measures together with arrangements for permanent public access thereto.

The development shall be carried out in accordance with and subject to the approved proposals.

- 15) No development shall take place above damp course level until samples of the facing and roofing materials to be used have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.
- 16) Before development commences in respect of any dwelling hereby permitted, the proposed slab levels in relation to the existing ground levels, set to an agreed datum, shall be submitted to and approved in writing by the local planning authority. Development shall be implemented in accordance with the approved slab levels.
- 17) No dwelling shall be occupied until the areas for the parking of cars and cycles associated with that dwelling have first been provided and made available in accordance with the approved plans. These areas shall be retained and made available for their intended purposes thereafter.
- 18) The development hereby permitted shall not be occupied until the areas for the turning of vehicles have been provided and made available in accordance with the approved plans. These areas shall be retained and made available for their intended purpose thereafter.
- 19) The 36 unallocated parking spaces in the northern part of the site that are designed to provide parking for the open space, allotments and school drop offs/pick ups shall be provided and made available before the occupation of any dwelling hereby permitted. These spaces shall be retained and made available for their intended purpose thereafter and at

- no time shall any of these spaces be allocated to any of the dwellings hereby permitted.
- 20) No development shall take place between 1st October and 31st March inclusive unless a mitigation scheme to minimise the impact of construction activities on wintering Brent geese and waders has been submitted to and approved in writing by the local planning authority. Development shall be implemented in accordance with the approved mitigation scheme.
  - 21) No external lighting shall be installed until a detailed scheme of lighting has been submitted to and approved in writing by the local planning authority. The scheme shall include a detailed specification of lighting columns/fixtures, designs and locations. Development shall only proceed in accordance with the approved details.
  - 22) The trees/hedges on the site which are shown to be retained on the approved plans shall be protected during all site clearance and building works in accordance with the measures set out in the Barrell Tree Consultancy Arboricultural Assessment and Method Statement (Ref 16283-AA5-DC) dated 10th June 2018 and the Barrell Tree Protection Plan (Ref 16283-BT6) and in accordance with the recommendations set out in BS 5837: 2012. The tree protection measures that are installed shall be maintained and retained for the full duration of the works or until such time as agreed in writing with the local planning authority.
  - 23) The works hereby approved shall be undertaken in strict accordance with the Ecological Appraisal and Phase 2 Surveys undertaken by Lindsay Carrington Ecological Services dated June 2018 and the supplementary letter dated 8 June 2018.
  - 24) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any re-enactment of that Order), no extension otherwise approved by Classes A, B and C of Part 1 of Schedule 2 to the Order, or garage or other outbuilding otherwise approved by Class E of Part 1 of Schedule 2 to the Order, shall be erected or carried out in respect of plot numbers 11, 12, 13, 14, 15, 16, 17, 24, 25, 26 and 27 without express planning permission first having been granted.