

Dear Member

PLANNING COMMITTEE - WEDNESDAY, 14TH NOVEMBER, 2018

Please find attached, for consideration at the next meeting of the Planning Committee, taking place on Wednesday, 14th November, 2018, the following report that was unavailable when the agenda was printed.

Please bring this document with you to the meeting.

Agenda No Item

4. **Milford on Sea (MOS1 Site) Appeal (Application 17/10606)**
 (Pages 1 - 12)

To note the statement of case for the forthcoming appeal.

Yours sincerely

Committee Administrator

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PLANNING COMMITTEE – 14 NOVEMBER 2018

MILFORD ON SEA (MOS1 SITE) APPEAL – Statement of Case

1. INTRODUCTION

- 1.1 On 11 July 2018, the Planning Committee refused an application for 42 dwellings, a public playing field and allotments on land at School Lane in Milford on Sea.
- 1.2 The application was refused permission on the basis that the proportion of affordable housing proposed falls significantly below that specified in Policy CS15 of the Local Plan Part 1 and Policy MOS1 of the Local Plan Part 2 and that the market housing was not low cost market housing. The decision reflected the fact that the site was only released from the Green Belt and allocated for housing on the basis that its development would meet local housing needs. A copy of the decision notice is attached as Appendix 1.
- 1.3 In August 2018 an appeal was lodged against the Council's refusal of permission. The appeal will be considered at a public inquiry which is scheduled for 3 days commencing 12 February 2019. The Council's statement of case is due to be submitted by 19 November 2018.

2. CURRENT POSITION

- 2.1 On 24 July 2018 the Government published its revised National Planning Policy Framework (NPPF) and associated Planning Practice Guidance (PPG) which included new advice on viability. In the light of this, and in preparing for the case, a further viability appraisal was commissioned from an independent valuation consultancy - Vail Williams to re-assess the appellant's viability case for the provision of 45% affordable housing, as against a policy target of 70%.
- 2.2 The new viability evidence from Vail Williams indicates that the site could reasonably provide not less than 60% affordable housing. The 45% scheme presented for determination by the Planning Committee proposed 23 open market houses with 19 affordable units comprising 6 flats and 13 terraced houses. The Vail Williams appraisal considers that 25 affordable units comprising 6 flats, 13 terraced houses and 6 semi-detached houses could be viably provided, under a 60% affordable housing scheme, together with 17 open market houses.

3.1 RECOMMENDATION

That Members endorse the Statement of Case, as set out in Appendix 2 to this report, for submission to the Planning Inspectorate.

FOR FURTHER INFORMATION CONTACT

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Major Proposals)
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BACKGROUND PAPERS

Published Documents

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**NEW FOREST DISTRICT COUNCIL
TOWN AND COUNTRY PLANNING ACT 1990
Town and Country Planning (Development Management Procedure) (England) Order 2015**

Mrs Pourebrahimi
Thrive Architects
Building 300
The Grange
Romsey Road
Michelmersh, Romsey
SO51 0AE

Application Number: **17/10606**

Applicant: Pennyfarthing Homes

Date of Application: 26 April 2017

THE NEW FOREST DISTRICT COUNCIL as the Local Planning Authority **REFUSES TO GRANT PERMISSION** for the following development:

Development: **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; cycleway**

Site Address: **Land North Of School Lane, Milford-On-Sea**

This decision has been taken in respect of the plans and particulars which were submitted with the application and numbered as follows:

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, P.18-23.pe 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, P.38-39.e REV B

Reason(s) for Refusal:

- 1 The proportion of affordable housing proposed falls significantly below that specified in Policy CS15 of the Local Plan Part 1 (Core Strategy 2009) and Policy MOS1 of the Local Plan Part 2 (Sites and Development Management Plan 2014). Additionally the remainder is not wholly low cost market housing as required by Policy CS15. The site was only released from the Green Belt and allocated for housing on the basis that its development would meet local housing needs which would not

otherwise be provided for and this alone provided the exceptional circumstances which justified the alteration of the Green Belt boundary. Having regard to the exceptional circumstances which underlie the site's allocation for development, it would not be appropriate to allow such a limited provision of affordable housing and low cost market housing. The proposal is considered to be an unsustainable form of development which would seriously prejudice the objectives of the Development Plan.

Notes to applicant

1. Important notes, including the rights of appeal, are set out on a sheet attached to this notice and you are advised to read these carefully.
2. New Forest District Council has adopted a Community Infrastructure Levy (CIL) charging schedule and any application now decided, including those granted at appeal, will be CIL Liable. CIL is applicable to all applications over 100sqm and those that create a new dwelling. Under Regulation 42A developments within the curtilage of the principal residence are likely to be exempt from CIL so CIL may not be payable provided the applicant submits the required exemption form prior to commencement of the development.
3. In accordance with paragraphs 186 and 187 of the National Planning Policy Framework and Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, New Forest District Council takes a positive and proactive approach, seeking solutions to any problems arising in the handling of development proposals so as to achieve, whenever possible, a positive outcome by giving clear advice to applicants.

In this case, the application proposals have been the subject of negotiations both before the application was submitted and during the application process. The applicant sought pre-application advice on the form of development proposed however, while development of the site was discussed, the enquiry was not formally concluded prior to the submission of the current planning application. The proposal remains for a development in exceed of the policy requirement of 30 dwellings on the site, but the applicants have worked positively with Council officers to respond to the concerns expressed. Most specifically revisions have been made to reduce the size of the drop off area within the Green Belt, reduce the number of units proposed on the site to 42 dwellings and revised the layout. This achieves a better balance of development on the site and proposes a layout that seeks to address the sensitive rural edge to Lymington Road as well as including the provision of a cycle path link along both Lymington Road and through the site.

Although the Officer's recommendation was for approval, Members of the Planning Committee determined that the application was unacceptable for the reason for refusal as set out above.

4. This decision relates to amended / additional plans and documents received by the Local Planning Authority on Amended plans received on 23 May 2018; 25 May 2018; 04 June 2018; 08 June 2018; 12 June 2018 and 28 June 2018.

D. Groom

Date: 19 July 2018

D Groom
Service Manager
Planning Development Control
Appletree Court
Beaulieu Road
Lyndhurst
Hampshire
SO43 7PA

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Appeals to the Secretary of State

- If you are aggrieved by the decision of your Local Planning Authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.
- If you want to appeal against your local planning authority's decision then you must do so within 6 months of the date of this notice online at <https://www.gov.uk/planning-inspectorate> or if you are unable to access the on line appeal form please contact the Planning Inspectorate to obtain a paper copy of the appeal form on Tel: 0303 444 5000
- The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to him that the Local Planning Authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.
- In practice, the Secretary of State does not refuse to consider appeals solely because the Local Planning Authority based their decision on a direction given by him.
- If an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against your local planning authority's decision on your application, then you must do so within: 28 days of the date of service of the enforcement notice, or within 6 months of the date of this notice, whichever period expires earlier.

(2) Purchase Notices

- If either the Local Planning Authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.
- In these circumstances, the owner may serve a purchase notice on the Council. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part 6 of the Town and Country Planning Act 1990.

NEW FOREST DISTRICT COUNCIL

Town & Country Planning Act 1990 (as amended by the Planning and Compulsory Purchase Act 2004)

The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 (SI: 2000/1625) as amended.

Appeal by Pennyfarthing Homes against the decision of New Forest District Council to refuse permission for 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; cycleway at:

Land north of School Lane, Milford-on Sea, SO41 0RF

STATEMENT OF CASE

PINS Ref: APP/B1740/W/18/3209706
LPA Ref: 17/10606

Nicholas Straw. MA, MRTPI.

1. Introduction

- 1.1 This is an appeal under section 78 of the Town and Country Planning Act 1990 (as amended) against the decision of NFDC to refuse permission to develop land which is to the north of School Lane in Milford-on-Sea for 42 dwellings and public open space.
- 1.2 The application was refused by notice dated 19 July 2018 for one reason concerning the failure of the development to contribute sufficiently to affordable and low cost market housing to satisfy the objectives of development plan policies for the site.

2. Background, history and policy matters

- 2.1 The background to the case will be given, describing the site and its surroundings, the appeal proposal and relevant history relating in particular to the underlying reasons for the site's allocation for housing to meet specific local needs.
- 2.2 Relevant planning policy will be referred to. Relevant policies in this case include Policies CS10, CS12, CS15 and CS25 of the Local Plan Part 1 (Core Strategy) and Policy MoS1 of the Local Plan Part 2 (Sites and Development Management DPD).
- 2.3 The Council will refer to the support for Policy CS12 and CS15(b) of the Local Plan Part 1 given by the Local Plan Inspector in 2009. The Inspector described the approach to providing for local housing needs as “innovative” and he rejected calls to lower the 70% target for affordable housing which he considered would remove the policy's underlying justification. The requirement for affordable and local needs housing was considered to be so great by the local plan inspector as to amount to an exceptional circumstance sufficient to justify the release of land from the Green Belt.
- 2.4 Subsequently, in 2014, the Inspector considering what is now known as the Local Plan Part 2 was also of the view that the intention to meet local affordable housing needs above the housing requirement figure through the removal of sites including the appeal site provided the exceptional circumstances to justify the change to the Green Belt boundary.
- 2.5 The NPPF will be referred to as a further policy consideration, including section 2 on achieving sustainable development and thereafter the advice in sections 4, 5, 11 and Annex 1 together with associated Planning Policy Guidance particularly with regard to affordable housing and viability issues.

3. The Council's Case

- 3.1 Under section 38(6) of the Planning and Compulsory Purchase Act 2004, planning applications should be determined in accordance with the development plan, unless material considerations indicate otherwise.
- 3.2 In the present case, when read together, Policy CS15(b) of the Local Plan Part 1 and Policy MoS1 of the Local Plan Part 2 require development of the site to deliver a minimum 70% affordable housing (of which 40% should be social rented and 30% intermediate affordable housing), with the remainder of the site being developed for “low cost market housing” such as “starter homes, self-build units and extra care housing”.
- 3.3 Whilst the Council is aware of the definition of “affordable housing” as it appears in the NPPF (2018), it will be apparent from the above (and from Policy CS15(b) in particular) that, for the purposes of section 38(6) and whether the application accords with the development plan, “starter homes” are not considered to be “affordable housing”, but are required in addition to the 70% affordable housing.
- 3.4 Against this policy requirement, the application proposes 42 dwellings, of which 6 (14%) would be affordable rented homes, 6 (14%) would be shared ownership homes, 7 (17%) would be starter homes, and the remaining 23 (55%) would be open market dwellings. The application is therefore in conflict with the development plan, whether or not the new NPPF definition of affordable housing is applied:
- (a) applying the development plan definition of “affordable housing”, the application would deliver only 29% affordable housing against the policy target of a minimum of 70%; and only 17% “low cost market housing” (the starter homes) as against the policy target of 30%.
 - (b) using the NPPF definition of “affordable housing”, the scheme would deliver only 45% affordable housing, against the policy target of a minimum of 70%; and no low cost market housing, against the policy target of 30%.
- 3.5 The Council will produce evidence to demonstrate that the need for affordable housing across the District remains high and justifies the priority the Council gives to meeting affordable housing needs. It will also produce evidence to demonstrate that the proposed “starter homes” would not, in fact, be “affordable” to people in need of affordable housing.

- 3.6 In these circumstances, whilst the Council recognises that the site is no longer subject to Green Belt policies, it is important to achieve as near as possible to the policy target for affordable and low cost housing, in order that the rationale for the release of the site is not undermined. Accordingly, the Council will contend that the development of this site with the proposed proportions of affordable and low cost housing proposed falls so far short of the targets for local needs housing as set out in development plan policies that permission ought not to be granted.
- 3.7 In preparing its case, the local planning authority has reviewed the evidence of the appeal scheme's viability in order to take account of more recent data and to ensure consistency with the NPPF 2018 which had not been published at the time the application the subject of this appeal was determined by the Council. The conclusion of the independent viability consultant is that the scheme could deliver 25 affordable homes (i.e. 60%) compared to the 19 affordable homes (i.e. 45%) as proposed by the appellants. The Council will produce evidence relating to the viability of the scheme at the Inquiry.
- 3.8 Whilst a 60% provision of affordable housing, with the remainder of the housing to be high-cost market housing still falls short of development plan targets, such a scheme would enable the site to come forward whilst achieving a better balance between policy aspirations and delivery of the right type of housing to meet local needs. This acceptability of any such proposal would need to be tested through the submission of a planning application.
- 3.9 The Council accepts that it is unable to demonstrate a 5 year supply of deliverable housing sites when the Council's assessment of OAN is used as a proxy for the housing requirement. However, given that all residential development in the District is subject to an appropriate assessment as part of a Habitats Regulations Assessment due to the likely adverse impact of residential development on European sites in the area, under the terms of paragraph 177 of the NPPF the presumption in favour of sustainable development does not apply.
- 3.10 In any event, given the strong support in the NPPF for affordable housing, even if the presumption were applied, the adverse impacts of allowing the development with such a significant shortfall in the amount of affordable housing would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework when taken as a whole.. Further, having regard to the decision of the Supreme Court in ***Suffolk Coastal District Council v. Hopkins Homes* [2017] UKSC 37**, this is a case in which it would remain appropriate to give significant

weight to the development plan. In particular, given that the proposed development could viably support a greater proportion of affordable housing, there is no good reason why it should not do so.

- 3.11 In the event that the Inspector is minded to allow the appeal, an Appropriate Assessment of the likely impact of the development on European sites of nature conservation will be required. The Inquiry will be provided with an Appropriate Assessment and a condition will be suggested which would require appropriate mitigation to be in place prior to development. The Council will also request other conditions, as set out in the Officer's Report

4. Conclusions

- 4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires, where regard is to be had to the development plan, that the determination of a planning application be made in accordance with the development plan unless material considerations indicate otherwise.
- 4.2 Section 70 of the Town and Country Planning Act 1990 requires planning authorities to have regard to the provisions of the development plan so far as material to the application, and to any local finance considerations so far as material to the application and to any other material considerations when dealing with an application for planning permission.
- 4.3 In this case, the most relevant policies of the development plan are Policies CS12 and CS15 of the Local Plan Part 1 (Core Strategy) 2009 and Policy MoS1 of the Local Plan Part 2 (Sites and Development Management) 2014.
- 4.4 The appeal scheme is contrary to those policies, and the local planning authority considers that the appropriate planning balance between benefits and dis-benefits, having regard to statutory duties, is achieved only through the refusal of planning permission. Accordingly the Inspector will be invited to dismiss this appeal.

List of documents the LPA intends to rely upon

Local Plan Part 1 (Core Strategy)
New Forest District outside the National Park 2009

Local Plan Part 2 (Sites and Development Management DPD)
NFDC 2014

Viability Assessment report.
Vail Williams. November 2018

New Forest Strategic Housing Market Assessment
GL Hearn/NFDC 2014

New Forest District Council & the New Forest National Park Authority.
Objectively Assessed Housing Need (OAN)
J G Consulting. October 2017

People over Wind, Peter Sweetman v Coillte Teoranta 2018
C-323/17