

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