

LAND AT SACHELL LANE, HAMBLE-LE-RICE, SOUTHAMPTON

APPEAL BY FOREMAN HOMES LTD

PLANNING INSPECTORATE REFERENCE: APP/W1715/W/22/3292580

OPENING SUBMISSIONS

ON BEHALF OF

EASTLEIGH BOROUGH COUNCIL

INTRODUCTION

1. Of the seven Reasons for Refusal originally given, four remain alive today¹:
 - a. The proposal is contrary to Policy S5 of the recently adopted Local Plan and both unacceptable in principle and would be harmful in terms of the local landscape (Reason for Refusal 1);
 - b. It would provide an unsafe pedestrian access between the Appeal Site and the nearby Health Centre and Secondary School (Reason for Refusal 2);
 - c. It would generate additional traffic on a peninsula, where junctions already suffer from severe congestion and delays (Reason for Refusal 3); and
 - d. It is a poorly designed Appeal Scheme, which is a detailed proposal and not in outline (Reason for Refusal 4).

2. In refusing permission for these reasons, the Council were aware, of course, that outline planning consent had previously been granted, on appeal, to develop the site for up to 70 dwellings (CD 8.1). However, and as we shall come on to over the next 6

¹ In relation to Reason for Refusal 5, the Appellants have provided further information during the appeal process, which has addressed the outstanding matters. As for Reasons for Refusal 6 and 7, these can be addressed by the completion of a satisfactory Section 106 Planning Obligation.

days, that was in very different planning circumstances and the consent has now lapsed.

REASONS FOR REFUSAL

3. I will in opening briefly summarise the Council's position on the four Reasons for Refusal which remain, and, given that we are asking you to disagree with a previous Inspector's decision with regard to Reason for Refusal 2 (pedestrian safety), I propose to address that first, and then Reasons 3 (highway congestion) and 4 (design), leaving Reason for Refusal 1 (the principle of the development and landscape impact) till last.

Reason for Refusal 2

4. As you will have seen, the Local Highway Authority objected to the Appeal Application *inter alia* on the grounds that the Appeal Site does not provide a safe and sustainable access for pedestrians to local services to the west and north – notably, the Secondary School and Health Centre.
5. This, of course, was an objection that they also made at the previous appeal, when the Inspector agreed that this route was, indeed, unsafe (CD 8.1) stating as follows at paragraph 36:

“... [T]he appellant's position was that the northern route was a safe walking route for those choosing to walk to the northern facilities. I have to disagree with that position. I walked the route, in both directions, on two occasions – once before the Inquiry and once at the conclusion of my formal site visit. The first visit was undertaken as dusk was falling. The road is unlit, possesses no footpaths for most of the route, and includes a number of tight bends. In many places there are steep banks which limit the ability of pedestrians to avoid oncoming traffic.”
6. That, moreover, is a conclusion which the Appellant no longer contests (Wilde, paragraphs 2.2.1 and 2.8.2).
7. However, having firmly decided that the route along Satchell Lane was unsafe, the previous Inspector went on to ignore this because there was “no policy requirement” for schoolchildren or patients to use it, and there was another route available, albeit one which was far longer (CD 8.1, paragraph 38):

8. With the greatest of respect to the previous Inspector, that is a remarkably strange decision. The obvious question to which his earlier conclusion gave rise was ***not*** whether there was some “policy requirement” for them to use an unsafe route; but whether vulnerable schoolchildren and/or patients would be likely to risk doing so, rather than take the much longer alternative. You, of course, are fully entitled to come to your own conclusion on that matter, and are not in any way bound by the judgement of a previous Inspector, provided you give good reasons for disagreeing with him. The legal position on this is unequivocal².
9. Moreover, I respectfully suggest that there are compelling reasons to come to a different decision to that which was reached on the last occasion:
- a. First, whilst no one can plan in ways that prevent foolish people from ***taking*** unnecessary risks, one can (and must) plan to avoid ***putting*** vulnerable people at obvious and unnecessary risk;
 - b. Second, it simply defies common sense to believe that many (if any) teenage schoolchildren who have to walk to school on a dark and rainy winter morning, and who are already late, will take the longer route - it is blindingly obvious that many (if not all) will take the risk of the much shorter, but highly unsafe, route up Satchell Lane instead;
 - c. Third, as we shall explore a little later in this Inquiry, whilst the previous Inquiry Inspector reached the view that he did, the Inspector who examined the recently adopted Local Plan appears to have come to a very different conclusion when considering the possibility of residential development over the road at Hamble Marina; and
 - d. Fourth, Reason for Refusal 2 is entirely consistent with a very recent decision reached by an Inspector in nearby Fareham (Grantham, Appendix 6) which

² See: *King's Cross Railway Lands Group v London Borough of Camden* [2007] EWHC 1515 (Admin) (CD9.2), paragraph 18

also concerned a residential proposal where there was no footway on the shortest route to local facilities, and alternatives were available *via* longer routes that generally conformed to maximum recommended walking distances. Having held that it was unlikely people would use the longer route on a regular basis (paragraph 15) and that the shorter route (which they would be more likely to take) was unsafe (paragraph 17), the Inspector concluded as follows (paragraph 19):

“Paragraph 110 of the National Planning Policy Framework ... sets out that safe and suitable access to the site should be achieved for all users and paragraph 112 sets out that development should create places that are safe, secure and attractive which minimise the scope for conflicts between pedestrians, cyclists and vehicles. The identified conflict with both the Development Plan and the Framework is a matter which attracts significant weight.”

10. Moreover, Reason for Refusal 2 has a secondary element. Not only does an unsafe pedestrian access breach paragraphs 110 and 112 of the NPPF in terms of safety, it also breaches the NPPF policy to promote sustainable modes of travel by discouraging people from walking and encouraging them to get in the car instead.
11. For reasons of both safety and sustainability, therefore, Reason for Refusal 2 should be upheld.

Reason for Refusal 3

12. I come, next to Reason for Refusal 3 which is, of course, closely related, because the Local Highway Authority also objected to the application on the basis of the resulting, cumulative, traffic impacts on Hamble Lane:
 - a. That is a Lane which already experiences high levels of congestion, as confirmed in a recent appeal decision letter concerning a proposal for residential development of the GE Aviation Site (CD 8.2); and
 - b. The Appeal Scheme would simply add more traffic onto junctions which already suffer severe delays.

13. Mr Wilde’s response to this, as articulated in paragraph 3.1.8 of his Main Proof, boils down, essentially, to the argument that, even though the congestion in Hamble is already severe, one can happily add to that provided the additional impact of the new traffic is not, additionally and independently, also severe. In an endeavour to make this argument good, he even dips into the Cambridge Dictionary and relies on the definition of “impact” (Wilde, paragraph 3.1.9).
14. However, that semantic exercise entirely misses the point:
- a. Hamble residents *already* experience severe delays along the Hamble corridor;
 - b. Any additional traffic brought forward *via* new development will simply make the congestion even *more severe*; and
 - c. That plainly breaches paragraph 111 of the NPPF, which expressly requires the refusal of permission if “*the residual cumulative impacts*” on the road network would be severe”, words which necessarily invoke consideration of the *extant and the additional*.
15. Moreover, Mr Wilde’s alternative interpretation would lead to obviously absurd consequences. Developers could come forward, one after the other, each with proposals to add yet more traffic onto an already congested network, and argue that because their proposals did not, individually, have a “severe” additional impact they were all acceptable despite their cumulative impact on roads which already suffered severe delays. That cannot possibly be right. Indeed, it is precisely to avoid that argument being made that paragraph 111 of the NPPF is worded as it is. Reason for Refusal 3 should also be upheld.

Reason for Refusal 4

16. I come, then, to Reason for Refusal 4 and issues of design. In these regards, of course, national planning policy has been updated since the previous appeal, in 2018, and the

NPPF now places an increased emphasis on achieving good design in new developments:

- a. Paragraph 126 of the updated NPPF makes it clear that the creation of high quality, beautiful, and sustainable buildings and places, is fundamental to what the planning and development process should achieve; and
 - b. Paragraph 130 goes on to identify various requirements for achieving good design, including ensuring that a development functions well, is visually attractive, sympathetic to local character, and creates a strong sense of place, and a safe and inclusive environment.
17. So we have to aim high. We have to strive for beautiful buildings, laid out in a way which responds successfully to the context in which they are proposed, and are sympathetic to local character. For all of the reasons given by Mr Osmond, however, the Appeal Scheme would result in a development lacking in interest, imagination, or any sense of place. Development has been pushed hard up against the site boundaries in an insensitive and unsympathetic manner and with insufficient room left over to provide worthwhile green infrastructure, tree planting, or useable public open space. Streetscapes have been poorly composed, lacking any form of hierarchy, and the 'character areas' proposed are not clearly defined or understandable.
18. Reason for Refusal 4 should also be upheld.

Reason for Refusal 1

19. I come then to Reason for Refusal 1, the principle of development. In these regards, the Appeal Site lies outside of the defined urban edge and within the open countryside, and is, therefore, in clear conflict with Policy S5, breaching the spatial strategy of a recently adopted Local Plan.
20. This, of course, is a very considerable change of circumstance since the last appeal:
- a. The previous appeal decision was based on adopted and emerging policies that the previous appeal Inspector considered to be of limited weight;

- b. Since then, the Council's approach to housing supply, delivery, and distribution, has been fully examined through the Local Plan process and found to be sound;
 - c. Furthermore, whilst the Appellant will contest this, the Council will demonstrate that it does have a 5YHLS and so full weight must be given to both Policy S5 and the breach of the spatial strategy of a recently adopted Local Plan which the Appeal Scheme entails.
21. Moreover, and in addition to the objection in principle, the proposed development would also have an irreversible and urbanising impact on both the Appeal Site and the surrounding area, in circumstances in which:
- a. At present, the site contributes positively to the transition from the built-up area of the settlement of Hamble to the more rural character of the countryside beyond; and when
 - b. Paragraph 174(b) of the NPPF states that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside – an imperative which applies to all countryside, not just designated, or “valued”, landscapes.
22. For both of these reasons - being objectionable in principle and harmful to the intrinsic beauty and character of the countryside - Reason for Refusal 1 should also be upheld.

CONCLUSIONS

23. Given that the Council will demonstrate they have a 5YHLS, the ordinary, untilted, balance applies. All 4 Reasons for Refusal entail breaches of the Local Plan (and notably so Policy S5); and there are no material considerations which outweigh the breaches of planning policy which the Appeal Scheme entails.
24. Moreover, even if the tilted balance were to be applied (which it should not), the adverse impacts of the Appeal Scheme would significantly and demonstrably

outweigh the benefits when assessed against the policies in the NPPF, taken as a whole:

- a. Pedestrian safety (NPPF paragraphs 110(b) and 112(c));
- b. Congestion (paragraph 111);
- c. Design (paragraphs 126 and 130); and
- d. Harm to the intrinsic character and beauty of the countryside (paragraph 174(b)).

25. For all these reasons, I will in due course respectfully request that this appeal be dismissed.

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1st November 2022