

APPEAL UNDER SECTION 78 (2) OF THE TOWN AND COUNTRY
PLANNING ACT 1990 (AS AMENDED)

Against the decision of Havant Borough Council to refuse detailed planning permission for the retention of 'Fowley Cottage' and the construction of 7 No. detached dwellings, two on the Warblington Road frontage and five to the rear garden area. Access to Plot 5 to be taken off Warblington Road, access to Plots 1-4, 6 and 7 to be taken off Curlew Close

on land at

46 Warblington Road
Emsworth
Hampshire
PO10 7HH

on behalf of Mr Charles Glanville

LPA Reference: APP/19/00623
Genesis Reference: 17045
PINS Reference: APP/X1735/W/20/3252953

August 2020



1.0 INTRODUCTION

- 1.1 On behalf of the appellant, Mr Charles Granville, we make the following comments on the Statement of Case of Havant Borough Council in respect of the appeal against the refusal of detailed planning permission for the retention of 'Fowley Cottage' and the construction of 7 No. detached dwellings on land at 46 Warblington Road, Emsworth, Hampshire, PO10 7HH.

Paragraph 1.5

- 1.2 This states that ***"A private covenant exists restricting the number of dwellings that may be served off Curlew Close to six"***. The covenant allows a maximum of five houses on the 46 Warblington Road site positioned between the existing house and the harbour/sea that may be served by Curlew Close. This is correctly stated in paragraph 6.44.

Section 4 – Planning Policy (Fourth & Fifth Paragraphs)

- 1.3 The fourth paragraph refers to a set of recommended changes to the Pre-Submission Havant Borough Local Plan 2036. These were considered and agreed by the Cabinet on 1st July 2020 which in turn recommended that the changes should be reported to the Full Council with the intention of preparing proposed changes for consideration by the Inspector at the Local Plan Examination.
- 1.4 It is noted in the fifth paragraph that the Borough Council acknowledges that these changes may not have weight in development management but it is possible that at the point of determination of this appeal, they could have at least limited weight. This point is generally accepted in principle by the Appellant which means that significant weight can only be given to the Local Plan when the Inspector has reported and will only have full weight when it is adopted.

REASON FOR REFUSAL 1

Paragraphs 6.2 to 6.6

- 1.5 The Council's comments in paragraphs 6.2 to 6.13 are noted. The Appellant has completed a Unilateral Undertaking in a form approved by Havant Borough Council and by payment of the monies (£5,574.35 which includes the 5% monitoring fee and administration fee of £23). A signed copy of the Undertaking comprises Appendix 1 of this submission.

Paragraphs 6.7 to 6.13

- 1.6 The comments raised in these paragraphs relate to water quality and appropriate mitigation to achieve nutrient neutrality on the Solent European Sites. These comments are noted by the Appellant. As stated in paragraph 6.11 the Appellant agrees to the imposition of a Grampian Condition with regard to this issue which is reflected in the second bullet point of Condition 3 in the '**List of Suggested Conditions**' forming Appendix L of the Borough Councils Statement. The Appellant agrees with this condition.

REASON FOR REFUSAL 2

Paragraphs 6.16 and 6.49

- 1.7 It is noted that the Borough Council is proposing a number of changes to the Pre-Submission Local Plan 2036 including a change to Policy H13 – Fowley Cottage which reduces the amount of development on the appeal site from 40 to 20 dwellings. This change plus others in the emerging Plan, have yet to be formally published and tested at the Examination stage, a date for which has yet to be confirmed. The appellant will continue to object to the proposed change to Policy H13. As result there is an unresolved objection relating to the amount of development on the proposed allocation (appeal site) and only moderate to limited weight can be given to this policy in the determination of this appeal.

Paragraphs 6.22

- 1.8 This paragraph refers to part c) of paragraph 123 of the NPPF which is noted. This indicates that the local planning authorities should refuse applications which they consider fail to make efficient use of land. No reference is, however, made to part b) which refers to the use of minimum density standards and that it might be appropriate to set out a range of densities that reflect the accessibility and potential of different areas, rather than one broad density range. It is important to note that Policy H3 - Housing Density of Pre-Submission Local Plan Changes continues to set out minimum dwelling per hectare (dph) figures for various parts of the borough but does not set out a range of densities as suggested by paragraph 123 b) of the NPPF. Given the diverse character across the two density areas that the appeal site falls within (i.e. a minimum of 55dph in its northern part and a minimum of 40dph on its southern part) it would be better if there was a broad density range to facilitate an appropriate transition of density across the site. This approach would help assist in maintaining the character of the immediate surrounding area.

Paragraphs 6.37

- 1.9 This paragraph refers to the potential creation of a form of 'gated community' which would not support the social cohesion with the surrounding area. Although the Appellant would like the Local Highway Authority to adopt the access road it is not willing to do this. If felt necessary, the Appellant would accept a planning condition that prevents the installation of gates on the proposed access points from Curlew Close and Warblington Road. This would prevent the possible creation of a gated community.

Paragraphs 6.38

- 1.10 This refers to paragraph 6.24 of the Core Strategy which states that a mix of dwelling types should be sought from one and two-bedroom flats to terrace and larger detached houses. As such the provision of larger detached houses like those of the appeal scheme are acceptable especially when this type of housing works with the constraints of the site and is in keeping with the character of the adjacent properties which are mainly medium to large size family homes which are predominantly three and four-bedroom detached houses.

Paragraphs 6.39 and 6.42

- 1.11 These paragraphs imply that the amount of development that is proposed by the appeal scheme has been kept deliberately low to avoid the need to provide affordable housing. This is not the case. As previously mentioned, the appeal scheme has resulted from the various on-site constraints and the need to reflect the character and built form of the surrounding area.

Paragraphs 6.46

- 1.12 This paragraph refers to the northern part of the site falling within the 'area of search for 55dph as defined by Figure 23 in the Pre-Submission Local Plan, whilst the southern part of the site would be expected to provide 40dph under the emerging policy (H3). This policy is subject of unresolved objections. Until the outcome of these objections is known following the Examination into the Local Plan only moderate to limited weight can be given to these density thresholds. Figure 23 of the Pre-Submission Plan is based on a blanket approach across various character areas which does not take specific local character in account.

Paragraphs 6.62

- 1.13 This paragraph refers to the emerging Pre-Submission Local Plan only just being able to meet its objectively assessed housing need of 10,433 dwellings between 2016 and 2037 with a very small buffer of 51 homes. This aspect has yet to be considered at the Local Plan Examination. As this is a small margin it is possible that the Examination Inspector may suggest that additional housing sites are allocated or the density of some draft allocations is increased especially at the larger greenfield allocations where it is more likely that there will opportunities to do so without harming the character of surrounding area. This is not always possible on sites within the existing built up area like the appeal site.

Paragraphs 7.3

- 1.14 The paragraph refers the restrictive covenant which can be altered by agreement between the relevant parties. It goes on to state that land and ownership change over time and subsequent owners may be agreeable to a change the covenant which would enable more efficient use of what is a limited resource. It is important to note that the density covenants were entered into by neighbours as recently as April 2019 and even more recently they have indicated that they will not release these covenants. This means that a higher density scheme is not deliverable, and the site will not be developed for the foreseeable future. This will not make best use of the site in a way which respects the character of the area and will lead to increased pressure for further greenfield site releases in less sustainable locations if the emerging Local Plan is to meet its housing requirement.

REASON FOR REFUSAL 3

Paragraphs 6.69

- 1.15 This paragraph confirms that when this appeal was lodged in May 2020 it included an updated Flood Risk Assessment (FRA) Version 6 that responded to the concerns raised by the third reason for refusal. It is noted that the Environment Agency (EA) has been consulted on this version of the FRA and its comments are awaited.
- 1.16 Shortly after this appeal was lodged, the Appellant submitted a planning application (APP/20/00376) for nine dwellings (referred to in Section 2.0 Relevant Planning History of the Borough Councils Statement). This is awaiting determination. The Borough Council consulted the EA on this application, and it responded on the 23rd June 2020. The EA objected and commented that the submitted FRA did not comply with the requirements for site-specific flood risk assessments (as per its response to the appeal scheme of 30th July 2019). Importantly it also referred to an additional concern (which was not raised in its consultation response to the appeal scheme) relating to the failure of the FRA not including mitigation measures in respect of an additional appropriate freeboard to the design flood levels for 2115 of 4.5m AOD. The EA felt that it was necessary to achieve Finished Floor Levels (FFLs) that would make the development flood resilient for its lifetime.
- 1.17 Although the EA's consultation response to the appeal scheme dated 30th July 2019 (when it was at the application stage) did not refer to the need for additional appropriate freeboard to the design flood levels for 2115 of 4.5m AOD etc it is possible that it might now require this information for the appeal scheme. This should become clearer when the EA comments on the FRA (Version 6) that formed part of the appeal submission.
- 1.18 In anticipation that the EA will make the same comments on the updated FRA Version 6 (May 2020), the Appellant has updated the FRA again so that it addresses the freeboard aspect. A copy of the update FRA (Version 6a) forms Appendix 2 of this statement. This conforms that the finished FFLs of the southernmost properties (Plots 1 and 2), and the access road, will be designed to be above the 2115 estimated flood level of 4.59m AOD and will also include a freeboard allowance of 300mm. As the floor to ceiling heights within the proposed dwellings are generous this increase in the FFLs can be accommodated within the proposed height and volume of the dwellings without the need to increase their overall heights/dimensions. As such this change will not be detectable from outside the buildings.
- 1.19 Whilst the Appellant is confident that Version 6a of the FRA addresses the potential concerns of the EA we reserve the right to respond to any future consultation response made by the EA and/or the Borough Council should it be necessary.
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REASON FOR REFUSAL 4

Paragraphs 6.70

- 1.20 It is noted that Havant Borough Council confirms that this reason for refusal has been addressed subject to a compliance condition. The Appellant supports this approach and is content with Condition 10 – Ecological Mitigation of the List of Suggested Conditions forming Appendix L of the Borough Council's Statement.

APPENDIX L - LIST OF SUGGESTED CONDITIONS

- 1.21 Subject to consideration of any conditions required by the EA in respect of flood risk (as set in No. 14) the Appellant agrees with the suggested conditions.