
Appeal Decision

Site visit made on 10 June 2025

by **Martin Allen BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 August 2025

Appeal Ref: APP/A1720/W/25/3359668

Land Off Rookery Avenue, Whiteley, Fareham, SO31 1BG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Foreman Homes Ltd against the decision of Fareham Borough Council.
 - The application Ref is P/24/1333/VC.
 - The application sought planning permission for residential development of 32 dwellings, parking and a means of access from Rookery Avenue following demolition of 2 dwellings, glasshouses and associated outbuildings without complying with conditions attached to planning permission Ref P/19/0870/FP, dated 7 February 2024.
 - The conditions in dispute are Nos 13 and 14 which state that:
 - 13. None of the dwellings hereby permitted shall be first occupied unless and until details have been submitted to and approved in writing by the Local Planning Authority confirming that the development has been fully implemented in accordance with the Noise Impact Assessment (prepared by ensafe consultants, dated 12 January 2022 (ref: AC107077-1R5). Once implemented, the noise attenuation measures shall be subsequently retained in that condition for the lifetime of the development.
 - 14. No development above damp-proof course (dpc) level shall be implemented until detailed elevational drawings showing the finished appearance of the 5-metre-high acoustic fence to be erected along the southern boundary has been submitted to and approved in writing by the Local Planning Authority. Once implemented, the acoustic fence shall be subsequently retained in that condition for the lifetime of the development.
 - The reasons given for the conditions are:
 - 13. In the interests of the amenities of future occupiers.
 - 14. In the interests of visual amenity.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form indicates that an amendment to condition 15 was also sought. However, the information before me indicates that this was subsequently removed from the application and therefore, I have not considered this matter.

Main Issues

3. The main issues in this case are:
 - Whether the development makes appropriate contributions towards infrastructure provision in respect of affordable housing, highway improvements, and habitat creation, and

- Whether future occupiers would experience satisfactory living conditions, with particular regard to noise.

Reasons

Infrastructure

4. The application sought the variation of condition attached to a previously granted planning permission. That permission was subject to a planning obligation pursuant to S106 of the Town and Country Planning Act 1990, which secured:
 - Financial contributions to provide for satisfactory mitigation of the 'in combination' effects that the increase in residential units on the site would cause through increased recreational disturbance on the Solent and Southampton Water and Portsmouth Harbour Special Protection Areas,
 - Securing off-site translocation of reptiles,
 - Traffic Regulation Order (TRO) for parking restriction works to junction of site with Rookery Avenue and Shetland Rise, and
 - The delivery of 40% of the permitted dwellings as a mixture of 12 on-site affordable houses and an off-site financial contribution equivalent to 0.8 of a unit.
5. The Council have indicated that the original planning obligation does not cover any further permission granted under Section 73 and thus a deed of variation is required to ensure that the contributions above are secured for any further permission. It is stated that the appellant is actively seeking to produce a deed of variation for this purpose, in association with a further planning application that is under consideration by the Council. However, a draft only has been provided; I am not in receipt of any completed legal obligation or deed of variation that would serve the purpose of securing the above contributions. The appellant has also not sought to argue that the contributions are not necessary to make the development acceptable.
6. In these circumstances, in the absence of a completed planning obligation, the development would not secure appropriate infrastructure provision in respect of affordable housing, highway improvements, and habitat creation. Accordingly, the scheme would conflict with policies HP5, NE1 and TIN2 of the Fareham Local Plan 2037. Together, and amongst other things, these policies seek to ensure that development makes adequate provision for affordable housing, that species and habitats are protected, and that development does not unacceptably affect highway safety.

Living conditions

7. The approved scheme for the development of the site included the provision of a 5-metre-high acoustic fence along the entire length of the southern boundary. This was due to its location adjacent to the M27 motorway and to ensure that the future occupiers of the site would not be unacceptably affected by noise from the motorway. The application seeks amendments to this arrangement.
8. It is proposed that the length of the fencing be reduced from the entire length of the boundary (154 metres) to 95 metres in length, as well as amendments to the height of the fencing along its length. The rationale for this is to take account of the varying ground levels within the appeal site. At the time of my visit, it was apparent

that there is substantial variation in ground levels and that the provision of a uniformly 5-metre-high fence would in some places be ineffective, most notably because at some lengths ground levels fall away below the level of the motorway.

9. The application was accompanied by a revised Acoustic assessment which highlighted that the original assessment failed to take account of the changing topography within the site and as a consequence a large part of the previously approved acoustic fencing would be ineffective. The current scheme seeks to result in a barrier that ensures that noise levels in both the external and internal spaces of the dwellings will be no greater than those agreed previously. In order to ensure this, a minor change to the development is proposed, the increase in one garden fence to Plot 17 from a height of 2 metres to 2.5 metres. The acoustic report acknowledges that there would be some parts of some gardens that may experience slightly higher noise levels, but it also states that parts of these gardens will also experience lower noise levels.
10. I am mindful that the development is positioned alongside a motorway, an inherently busy road, and there will inevitably be some impact from noise at such a location. The Council has already accepted that with mitigation, the impacts of this noise would not be unacceptable. The current scheme seeks to amend the previously approved details subsequent to what appears to have been a flawed assessment. However, the results of the new acoustic report demonstrate that the noise levels previously sought can be achieved, as is accepted within the Council's report to committee.
11. There would be an increase in the noise levels experienced at the area of landscaping that is located between the dwellings and the motorway. However, as the properties have private garden areas, as well as a further area of open space away from the motorway, I consider that any effect on this area would not be unacceptable.
12. When taking into account that potential occupiers of the scheme will be aware of the proximity to the motorway, together with the new assessment setting out revised mitigation and the views of the Council's expert officer who raises no objection to the proposed details, I find that the revised scheme would not result in unacceptable noise impacts on future occupiers of the properties, and thus future occupiers would experience satisfactory living conditions. Accordingly, the revised details would accord with policy D2 of the Fareham Local Plan 2037, insofar as it seeks to ensure that the future occupants and users of a development site will not be unacceptably adversely impacted from existing activities in the surrounding area.

Other Matters

13. Within its statement of case, the Council mentions that from April 2025 an increased contribution is required in respect of recreational disturbance mitigation for the Solent Special Protection Areas. If I were minded to allow the appeal it would be necessary to undertake an Appropriate Assessment, to ascertain if the development would result in any likely significant effect. However, as I have found harm above sufficient to dismiss the appeal, the development subject of this appeal will not take place and thus there would be no resultant effect on these designated areas. As such, I have no need to consider this matter further.

Conclusion

14. For the reasons given above, while there would not be any unacceptable impact through noise, the development before me fails to make adequate provision for the delivery of necessary infrastructure. This matter is decisive. Consequently, the appeal should be dismissed.

Martin Allen

INSPECTOR