

9 March 2009

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Our Refs: APP/B1740/A/08/2070281
APP/B1740/A/08/2070282
APP/B1740/A/08/2070285

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78 APPEALS BY
LINDEN HOMES SOUTHERN LTD AND AFC TOTTON, LINDEN HOMES
SOUTHERN LTD AND BELTON LEISURE LTD, AND LINDEN HOMES
SOUTHERN LTD, BAT FOOTBALL CLUB AND AFC TOTTON: LAND AT AFC
TOTTON TESTWOOD PARK TESTWOOD PLACE TOTTON SOUTHAMPTON
SO40 3BE, LAND AT TOTTON SPORTS CLUB SOUTHERN GARDENS TOTTON
SOUTHAMPTON SO40 8RW, AND LAND AT LITTLE TESTWOOD FARM
SALISBURY ROAD CALMORE SOUTHAMPTON SO40 3ND
APPLICATION REFS: 07/90288, 07/90294 & 07/90292**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Ruth V MacKenzie BA(Hons) MRTPI, who held a public inquiry on dates between 21 October and 30 October 2008 into your clients' appeals against:

- The decision of New Forest District Council ('the Council') to refuse planning permission for the demolition of the existing buildings and the erection of 86 dwellings with access from Testwood Place, in accordance with application ref 07/90288, dated 31 May 2007 (**Appeal A**);
- The decision of the Council to refuse planning permission for the demolition of the existing clubhouse and the erection of a new clubhouse and equipment store for Totton and Eling Cricket Club, the retention of the cricket pitch and tennis courts, relocated practice nets, together with the erection of 102 dwellings on the former BAT football pitch with access from Southern Gardens, in accordance with application ref 07/90294, dated 31 May 2007 (**Appeal B**); and
- The decision of the Council to refuse planning permission for the change of use of land from agricultural to recreation to provide sports pitches with flood lighting, the erection of a clubhouse, four stands (one with changing

facilities), equipment store, on-site car parking and public open space, in accordance with application ref 07/90292, dated 31 May 2007 (**Appeal C**).

2. On 20 May 2008, appeals A and B were recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990. The appeals were recovered as they raise policy issues relating to residential development of 150 or more dwellings which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities. Appeal C was also recovered on 20 May 2008 as it is most efficiently and effectively decided with appeals A and B.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeals be allowed and planning permission granted for all three appeals, subject to conditions. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and with her recommendations.

Procedural matters

4. For the reasons set out in IR3, the Secretary of State notes that the inquiry was closed in writing on 18 November 2008.
5. The Secretary of State notes that the appellants requested that appeals A and B be assessed on the basis of some alternative illustrative plans, that the Inspector accepted these revisions, and that the Council agreed with the Inspector's decision (IR4). The Secretary of State further notes that the appellants requested that appeal C be assessed on the basis of some revised plans, as set out at IR5. She has considered carefully the Inspector's reasoning (IR6) and observes that the Inspector accepted the revised plans and that the Council agreed with this decision. The Secretary of State concludes that no prejudice has been caused to any party by these changes.

Matters arising after the close of the inquiry

6. Following the close of the inquiry, the Secretary of State received a letter dated 5 January 2009 from your company. She also received an email from Nicholas Straw (Senior Planning Officer at New Forest District Council) on 12 February. The Secretary of State has taken these representations into account in reaching her decision but does not consider that these representations raised any issues which require her to refer back to the parties prior to reaching her decision. Copies of the correspondence are available on written request.

Policy considerations

7. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan, unless material considerations indicate otherwise.

8. In this case, the development plan consists of the Regional Spatial Strategy for the South East (RPG9), published in March 2001; the saved policies of the Hampshire County Structure Plan 1996-2011 (SP) adopted in 2000; and the New Forest District Local Plan First Alteration (LP), adopted in 2005.
9. The Secretary of State has also had regard to the emerging Regional Spatial Strategy (RSS), the *South East Plan*. She notes that the Proposed Changes to the emerging RSS were published on 17 July 2008. Given the advanced stage of development of this document, the Secretary of State affords its policies significant weight in determining these appeals. The Secretary of State affords limited weight to the November 2008 New Forest District Council Local Development Framework (Core Strategy) as it is at consultation stage.
10. Material considerations which the Secretary of State has taken into account include Planning Policy Statement 1 (PPS1), *Delivering Sustainable Development* and its supplement *Planning and Climate Change*; Planning Policy Statement 3 (PPS3): *Housing*; Planning Policy Guidance note 13 (PPG13): *Transport*; Planning Policy Guidance note 17 (PPG17): *Planning for Open Space, Sport and Recreation*; Planning Policy Statement 25 (PPS25): *Development and Flood Risk*; Circular 11/95: *Use of Conditions in Planning Permission*; and Circular 05/2005: *Planning Obligations*.

Main issues

11. The Secretary of State agrees with the Inspector that the main issues in determining these appeals are set out in IR164 and has gone on to consider these below. The Secretary of State also agrees with the Inspector, for the reasons set out in IR207, that the same decision should be taken on all three appeals.

The effect of the proposed developments on the character of their surroundings

Appeal A

12. For the reasons set out in IR165, the Secretary of State agrees with the Inspector that the character of Testwood Place would certainly change and that the site offers the potential for a tight-knit but interesting layout of 86 houses and flats.
13. The Secretary of State agrees with the Inspector, for the reasons set out in IR166-167, that provided careful attention is paid to the details of the reserved matters, the proposed development would not be harmful to the character of this part of Totton (IR168)

Appeal B

14. For the reasons sets out in IR169, the Secretary of State agrees that it would be possible to develop the site in a way which was neither overbearing nor unsightly for nearby residents. Whilst acknowledging the concerns of nearby residents, the Secretary of State agrees with the Inspector that there is no reason to object to the scheme on the basis of parking provision (IR170-171). She further agrees with the Inspector that, whilst building housing on the edge of a cricket pitch

would increase the risk of damage or injury, the preventative measures proposed by the appellants would be effective (IR172).

15. The Secretary of State agrees with the Inspector's conclusion that, provided careful attention is paid to the details of the reserved matters, the proposed residential development at Southern Gardens would not be harmful to the character of its surroundings (IR173).

Appeal C

16. The Secretary of State notes that the Little Testwood Farm site lies within a Strategic Gap between Totton and Southampton, designated as such in saved SP policy G2 (IR174). She has also noted that the Proposed Changes to the emerging RSS, a document which she considers should be attributed significant weight, deletes relevant policies CC10b and SH3. However, the Secretary of State, like the Inspector, agrees that the appeal proposal would not narrow the existing Strategic Gap (IR176), and would increase the openness of the Strategic Gap because dilapidated buildings in the former farmyard would be demolished (IR177).
17. The Secretary of State has considered carefully the Inspector's reasoning, as set out in IR174-181, and agrees with her conclusion that the proposed development at Little Testwood Farm would not have a harmful effect on the character of its surroundings and there would be compliance with SP policy G2 and LP policy DW-E32 (IR182)

The impact of the proposed developments on the supply of open space in Totton

18. The Secretary of State observes that surveys of informal and formal open space in Totton were supplemented and updated at the inquiry by figures agreed between the Council and the appellants (IR183) and that, for the reasons given by the Inspector at IR184, the supply of informal public open space has not been an issue in these appeals.
19. Whilst the Secretary of State observes that differing methods have been used to calculate the supply of formal open space, she agrees with the Inspector, for the reasons given at IR185, that the proposals would not result in a reduction in Totton's supply of formal open space. Whilst noting that the LP allocation of Little Testwood Farm as public open space was intended to provide additional, not replacement, open space (IR186), the Secretary of State agrees with the Inspector that, overall, the appellants' proposals would achieve the allocation in the Local Plan (IR187).
20. The Secretary of State has considered carefully the Inspector's testing of the proposals against the guidance in PPG17 and the criteria in LP policy DW-R2 (IR188) and agrees with the Inspector's conclusion that, notwithstanding the fact that Little Testwood Farm lies just outside the built-up boundary of Totton, there is sufficient compliance with all the other criteria of LP policy DW-R2, and the guidance in PPG17, to conclude that the objectives of the policy and the guidance would be met by the proposed development of the two football grounds (IR189).

Whether the Transport Contributions Policy should be applied and, if not, the effect on the surrounding road network

21. The Secretary of State observes that the County Council, acting as Highway Authority wants the appellants to pay financial contributions towards the implementation of its Solent Area Transport Strategy (IR190). For the reasons given by the Inspector at IR191-192, the Secretary of State agrees that it would be unfair to apply the County Council's Transport Contributions Policy (TCP) to the appellants' three schemes (IR193).
22. The Secretary of State notes that there are no other highway objections (IR194) and agrees with the Inspector's conclusions that the TCP should not be applied and there would be no materially adverse effect on the surrounding road network (IR195).

Other matters

The weight to be given to the illustrative plans of the two housing schemes

23. The Secretary of State agrees with the Inspector that detailed criticism of the illustrative plans is a matter that should rightfully be addressed at the reserved matters stage (IR196). Like the Inspector (IR198), the Secretary of State considers that the appellants' Design and Access Statements meet the requirements of paragraph 53 of Circular 01/2006.

The future of sport in Totton

24. The Secretary of State recognises the degree of public interest and opinions, both for and against the proposals (IR199). She has considered carefully the inquiry evidence and the Inspector's views as set out at IR199-204 and agrees with her conclusion at IR205 that the new facilities for each of the three clubs would enable them to flourish, and that the future of sport in Totton would be well served by the appellants' proposals (IR205).

Housing supply

25. For the reasons given by the Inspector, the Secretary of State agrees that both the proposed housing sites are in highly sustainable locations (IR206). The Secretary of State notes that the main parties agree that an excess of 5 years' supply of housing land within the District can be demonstrated (IR206). However, the Secretary of State agrees with the Inspector that the suitability of the sites for housing should be afforded some weight.

Conditions and obligations

26. The Secretary of State has considered the proposed conditions at Appendices 1-3 of the Inspector's report, the Inspector's comments in IR147-163, as well as national policy as set out in Circular 11/95. The Secretary of State considers that the proposed conditions are reasonable and necessary and meet the tests of Circular 11/95.

27. The Secretary of State has considered the signed, dated and executed planning obligation submitted in the form of a Unilateral Undertaking and national policy as set out in Circular 05/2005. She has had regard to the Inspector's consideration at IR139-145 and, like the Inspector, is satisfied that the planning obligation submitted would comply with the requirements of Circular 05/2005 (IR145). The Secretary of State has considered the objections made to the Unilateral Undertaking by Shoosmiths on the Council's behalf. She agrees with the Inspector's considered responses to those objections in IR140-144. The Secretary of State agrees with the Inspector's observation at IR142 that the Undertaking does not include a positive obligation to transfer land to the Council, merely to offer land. She further notes that, with respect to the transfer of land to AFC Totton, the trustees of AFC Totton are a party to the Undertaking and she therefore sees no reason why a transfer of land cannot be made to them.

Overall conclusions

28. The Secretary of State concludes that the future of sport in Totton would be well served by the proposed developments and that there would be no adverse impact on open space provision. The Secretary of State is also satisfied that the proposals would not have a harmful effect on the character of their surroundings, would not narrow the existing Strategic Gap and would increase the openness of the Strategic Gap. Whilst giving limited weight to the provision of housing, she takes the view that the two football ground sites are highly sustainable locations and there is no reason why the proposed housing schemes should not result in high quality developments. The Secretary of State also concludes that, in the circumstances of this case, it would be unfair to apply the County Council's Transport Contributions Policy to the appellants' schemes.

29. The Secretary of State concludes that the proposals accord with the development plan and relevant national policies and that there are no material considerations of sufficient weight which require her to determine the application other than in accordance with the development plan.

Formal decision

30. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation and grants planning permission for:

- the demolition of the existing buildings and the erection of 86 dwellings with access from Testwood Place, in accordance with application ref 07/90288, dated 31 May 2007;
- the erection of a new clubhouse and equipment store for Totton and Eling Cricket Club, the retention of the cricket pitch and tennis courts, relocated practice nets, together with the erection of 102 dwellings on the former BAT football pitch with access from Southern Gardens, in accordance with application ref 07/90294, dated 31 May 2007; and
- the change of use of land from agricultural to recreation to provide sports pitches with flood lighting, the erection of a clubhouse, four stands (one with

changing facilities), equipment store, on-site car parking and public open space, in accordance with application ref 07/90292, dated 31 May 2007

subject to the respective conditions set out in Annex A to this letter.

31. An applicant for any consent, agreement or approval required by a condition of this permission has a statutory right of appeal to the Secretary of State for Communities and Local Government if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
32. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

33. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
34. A copy of this letter has been sent to New Forest District Council and to all parties who appeared at the inquiry.

Yours faithfully

Richard Watson

Authorised by the Secretary of State to sign in that behalf

PLANNING CONDITIONS FOR APPEAL A – APP/B1740/A/08/2070281

- 1) Details of the siting, design and external appearance of the buildings, and the landscaping of the site, (hereinafter called "the reserved matters"), shall be submitted to and approved in writing by the local planning authority before any development begins, and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The details submitted in accordance with Condition 1) shall reflect the design principles contained in the illustrative plan (Drwg No PP938/P303 Rev L), the Design and Access Statement and the Concept Landscape Master Plan.
- 5) Prior to the commencement of development, full details of the highway works shown on DM Mason drawing L.060/9 shall be submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until such time as the works have been completed in accordance with the approved details.
- 6) The hedges along the western and northern boundaries of the site adjoining the rear gardens of houses in Testwood Lane and Arundel Road shall be retained.
- 7) Prior to the commencement of development, a scheme of measures to mitigate the impact of the development on nature conservation interests during the construction phase, together with a Construction Traffic Management Plan and a Construction Method Statement, shall be submitted to and approved in writing by the local planning authority. The construction shall be implemented in accordance with the approved details.

PLANNING CONDITIONS FOR APPEAL B – APP/B1740/A/08/2070282

- 1) For the residential element of the scheme, details of the siting, design, external appearance of the buildings, and the landscaping of the site (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) For the non-residential elements of the scheme (the clubhouse, the equipment store and the relocated practice nets) the landscaping of the site (hereinafter called "the reserved matter") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 3) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 4) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 5) The details submitted in accordance with Conditions 1) and 2) shall reflect the design principles contained in the illustrative plan (Drwg No PP938/P103 Rev M), the Design and Access Statement and the Concept Landscape Master Plan.
- 6) Prior to the commencement of development, full details of the highway works shown on Drwg No PP938/P103M shall be submitted to and approved in writing by the local planning authority. No part of the development shall be occupied until such time as the works have been completed in accordance with the approved details.
- 7) Prior to the commencement of development, a Construction Traffic Management Plan and a Construction Method Statement shall be submitted to and approved in writing by the local planning authority. The construction shall be implemented in accordance with the approved details.
- 8) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the club house and equipment store hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 9) No development shall take place until details of the design and materials for the relocated practice nets and the protective netting system have been submitted to and approved in writing by the local planning authority. Details of the means by which the protective netting would be raised and lowered, and the times when it would be raised and lowered, shall also be submitted. Development shall be carried out in accordance with the approved details.

PLANNING CONDIITONS FOR APPEAL C – APP/B1740/A/08/2070285

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) All of the trees and hedgerows shown on the Concept Landscape Masterplan (Drwg No 2207-101) as to be retained and protected, shall be protected by strong fencing, the location and type to be previously approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.
- 3) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. The details shall include proposed earthworks, finished levels, means of enclosure, hard surfacing materials and minor artefacts and structures (eg. refuse or other storage units and signs etc). Soft landscape works shall include schedules of plants (species, size, spacing and location), a timetable for their planting and a plan for their management. If, within a period of 5 years from the date of planting, any tree or plant is removed, uprooted, destroyed or dies, another of the same species and size shall be planted at the same place unless the local planning authority gives its written consent to any variation.
- 4) No development shall start until full details of the highway works shown in principle on Drwg No PP938/P213 Rev M have been submitted to and approved in writing by the local planning authority. No part of the development shall be occupied until the highway works have been constructed in accordance with the approved details.
- 5) No development shall start until a Construction Traffic Management Plan has been submitted to and approved in writing by the local planning authority. The construction shall take place in accordance with the approved Construction Traffic Management Plan.
- 6) No matches shall be played on the site until full details of a traffic marshalling scheme for match days have been submitted to and approved in writing by the local planning authority. On match days, the site shall be operated only in accordance with the approved marshalling plan.
- 7) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 8) Organised outdoor activities at the site shall take place only between 08.30hrs and 22.00hrs
- 9) Ground maintenance machinery shall be used only between 09.00hrs and 19.00hrs Mondays to Friday, and 09.00hrs and 13.00hrs Saturdays and Sundays, and not at all on Bank Holidays.

- 10) The site shall not be used by mobile refreshment vehicles unless details of their location and their measures to control odour and noise emissions have first been submitted to and approved in writing by the local planning authority. Any mobile refreshment vehicle shall operate at the site only in accordance with the approved details.
- 11) No external system of public address or loud speakers shall be used on the site unless details of the system and its hours of operation have first been submitted to and approved in writing by the local planning authority. Any public address or loud speaker system shall be operated only in accordance with the approved details.
- 12) No air horns, drums, trumpets or other noise-making equipment or instruments shall be permitted to be used on the site.
- 13) No flood lights shall be installed on the site until details of their height, type, position and angle of glare, together with a detailed mitigation scheme in respect of light pollution and light trespass, have been submitted to and approved in writing by the local planning authority. The flood lights shall be installed and operated at all times in accordance with the approved details.
- 14) Before any part of the clubhouse is first used, it shall be insulated against noise breakout in accordance with a scheme to be submitted to and approved in writing by the local planning authority.