

Note for Farnham Town Council

Appeal Decision APP/R3650/W/22/3311941

Land West of Waverley Lane and Opposite Old Compton Lane, Waverley Lane, Farnham, GU9 8ET

Background

The inspector's decision issued on the 3rd July 2023 is to allow the appeal and to permit the development of up to 146 dwellings on the site. The application had originally been refused by Waverley Borough Council on 11th November 2023, with members overturning the officer recommendation to grant permission.

The appeal has been determined on the basis of the 'tilted balance' which applies when a local planning authority cannot demonstrate a 5 year supply of deliverable land to meet its housing target. There is no dispute that Waverley does not have a 5 year housing land supply, although exactly what figure it can demonstrate has fluctuated depending on the analysis of individual inspectors at recent appeals.

This decision follows on from two other recent appeal decisions at Hawthorns, Hale Road (APP/R3650/W/22/3302987) and at Lower Weybourne Lane, Badshot Lea (APP/R3650/22/3310793). In the first of these the appeal was allowed whilst in the latter the inspector dismissed the appeal.

The Town Council has asked for planning advice on the inspector's decision and reasoning with a view to considering whether the decision might be challenged. The Head of Planning at Waverley Borough Council has indicated that Waverley will not challenge the decision although she considers the decision to be 'very poorly phrased'.

The Town Council should be aware that the courts have been clear that inspector's decisions are not to be read 'forensically' with a view to finding errors of wording or phrasing that do not, in fact, demonstrate any failure of reasoning or judgement. Just because an inspector does not mention a specific policy for instance does not inevitably mean that they were unaware of it or did not take it into account. Even if a mistake is made, they will often be given the benefit of the doubt if it is considered that any error or lack of clarity would not have changed the outcome. To that extent I agree with Waverley that a poorly phrased decision should not be confused with a faulty decision.

However, it is important to consider the inspector's reasoning carefully and consider whether there are underlying inconsistencies or omissions which may call her conclusions into doubt. The two issues arising from the inspector's report to which I would draw attention to are set out below.

The status of part of the appeal site within the Surrey Hills AONB review

Part of the appeal site lies within the area which might form an extension to the Surrey Hills AONB under the formal review by Natural England of the AONB boundary currently in progress. The review has reached a relatively advanced stage in which 'candidate sites' for inclusion into the AONB have been identified. This means that they have been assessed and found to meet all of the relevant landscape and related criteria. It is therefore far more than speculation to believe that part of the appeal site (if it is not developed) would be included within the AONB in the future. The next stage in the process is for Natural England to formally propose the revised boundary by way of a Variation Order and make its request for confirmation to the Secretary of State.

The inspector considered this matter in paragraphs 22 and 23 of her report and concluded that as the Variation Order had not been submitted she would attach only limited weight to the consultation document.

However, nowhere in her report does she make any reference or give any attention to Policy FNP10 (c) of the Farnham Neighbourhood Plan (FNDP) which says:

Outside of the Built Up Urban Area Boundary, as defined on Map A, priority will be given to protecting the countryside from inappropriate development. A proposal for development will only be permitted where it would:

(c) Conserve and enhance landscape and scenic beauty of the Surrey Hills Area of Outstanding Natural Beauty and its setting – including those Areas of Great Landscape Value under consideration for designation as AONB.

The purpose of the policy is to give additional protection to any land which is being considered for inclusion within the AONB and which has not been allocated for development by FNP14. It is essentially a 'safeguarding policy' to ensure such land is not lost whilst consideration is given to whether it should be afforded AONB status. The policy operates within the context of the FNDP having made a full allocation of sites necessary to meet the housing requirement for Farnham identified in the Waverley Local Plan.

FNP(c) is not part of the AONB designation process – it is a separate policy and should be considered as such. It is fully consistent with the intent of Para 176 of the National Planning Policy Framework which states that:

Great weight should be given to conserving and enhancing the landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues.

and which goes on:

The scale and extent of development within all these designated areas should be limited, while development with their setting should be sensitively location and designed to avoid or minimize adverse impacts on the designated areas.

I can see nothing in the inspector's report which suggests that she has considered the relevance of FNP10(c) or made any assessment of the weight which should be given to it. She does accept (at para 50) that there would be a conflict with FNP10 'as a whole' but this is only in the context of the general (and uncontroversial) point that the development is outside of the urban boundary of the town. FNP10(c) engages specifically with this site to a potentially important degree. The express purpose of the policy is to provide protection to a piece of land in precisely these circumstances - whether or not the tilted balance applies - and the omission of any consideration of the policy is potentially material.

The inspector has given attention to FNP10 only in general terms. She finds there to be a breach of the policy by virtue of the development taking place outside the urban area (which she can hardly fail to do) and indeed she mentions limb (d) and (e) specifically in the report. However she does not include any assessment of the separate harm which clearly arises from the fact that the proposal conflicts with FNP10(c).

Regardless of whether the inspector has approached FNP10(c) in this way, the question also arises as to whether the inspector has indeed given sufficient weight to the status of the site as a candidate for designation into the AONB. The site clearly lies within the setting of the AONB and indeed were it not for the development she has allowed, it is highly likely that part of the site would be included in the AONB in the not too distant future. Whilst the inspector does discuss and consider the issue of the landscape value of the site, and reach conclusions on that, she does not grapple with the question of why, if the site has achieved 'candidate' status for the inclusion in the AONB, it does not deserve some measure of protection under Para 176 of the NPPF on that basis.

The interpretation of policy FNP14

FNP14 is the policy in which the neighbourhood plan allocates those sites necessary to meet the housing requirement for Farnham in conformity with the Waverley Local Plan. It says:

The following sites, as defined on Map 1: Housing Allocations (see also Appendix 2), are allocated for housing development. Development which meets the following general development requirements and specific development guidance set out in the detailed site allocation policies will be permitted

The inspector states that the proposal "does not conflict with Policy FNP14" even though it is not a site allocated by FNP14. By way of explanation she says:

In my view Policy FNP14 is a permissive policy and sets out guidance for specific sites. Whilst the allocated sites may be preferred, Policy FNP14 does not suggest that only these sites should be developed. Indeed such an approach would be contrary to The Framework (sic) that seeks to significantly boost the supply of housing.

The inspector acknowledges that her colleague in the Hawthorns appeal, whilst ultimately allowing the appeal, did find that proposal to be contrary to FNP14 (which means that he considered FNP14 to be an engaged policy requiring an assessment of harm).

Whilst inspectors are indeed allowed to reach different judgements on applying the same policy given the facts of a particular case, I do not see that the interpretation of FNP14 here represents a matter of differing planning judgement. I believe the inspector in this appeal is wrong to state that FNP14 is not engaged and that as a permissive policy it has no negative corollary – that is to say that it does not prohibit that which it does not specifically allow. There is support for this view from the courts¹. She should therefore have given some weight (the amount of weight would be a matter of judgement) to the fact that the proposal is contrary to FNP14. This is the position that Waverley took in the submitted Statement of Common Ground, something the inspector fails to acknowledge.

Although in her conclusions she describes taking FNP14 into account as part of considering the development plan as a whole, since she has specifically stated that she gives no weight to the conflict with FNP14, the overall planning balance cannot have been accurately assessed. In my view that may represent a failure to properly consider development plan policies when determining the application.

¹ Gladman v Canterbury City Council [2019] EWCA Civ 669

Conclusion

I would suggest that given the importance of the decision and the issues of reasoning identified, it would be reasonable for the Town Council to seek counsel's opinion on the merits of the points raised in this note, and any others which counsel may identify. At very least this would ensure that the possibility of statutory challenge to the decision has been ruled out on the best possible advice.

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