

PC 453/24

NEW FOREST NATIONAL PARK AUTHORITY

PLANNING COMMITTEE MEETING – 19 MARCH 2024

DESIGNATED PROTECTED AREA (DPA) WAIVER REQUEST WHARTONS LANE, ASHURST

Report by: David Illsley, Policy & Conservation Manager

1. Introduction

- 1.1 Shared ownership schemes are integral to the Government's objective of delivering more affordable homes and increasing home ownership. Purchasers typically buy an initial minimum share of 25% of the equity of a home owned usually by a Registered Provider and pay rent on the remainder. The leaseholder may then buy further equity shares (known as 'staircasing') until the property is owned outright.
- 1.2 Sections 300 to 302 of the [Housing and Regeneration Act 2008](#) enable the Secretary of State to designate 'Protected Areas' ('DPAs'), which have the effect of ensuring shared ownership houses are retained as such in areas that they would be difficult to replace (such as National Parks). The policy objectives behind the Act aim to ensure that shared ownership houses in such areas are not subject to the general Government aim to enable leaseholders to gain full ownership (i.e. 'staircasing' to 100%).
- 1.3 The Act and associated Regulations and Order relating to DPAs are designed to have a positive impact on the provision and retention of shared ownership houses by: (i) providing greater certainty for housing and planning authorities that proposals for shared ownership homes in areas with identified need, where opportunities to build are scarce, can be brought forward without the risk of those homes being lost to the open market; and (ii) enabling an increase in the availability of land due to landowners having greater assurance that the homes will be retained as affordable in perpetuity.
- 1.4 The [Housing \(Right to Enfranchise\) \(Designated Protected Areas\) \(England\) Order 2009](#) lists all the DPAs. This includes over 20 parishes within the New Forest National Park, including the parishes of Ashurst & Colbury, Brockenhurst, Lyndhurst and Sway – the four defined villages in the adopted Local Plan (2019) and settlements where four of the five Local Plan housing allocations are located. For dwellings within a DPA, the associated Regulations - The Housing (Shared Ownership Leases) (Exclusion from Leasehold Reform Act 1967) (England) Regulations 2009 - envisage that landlords include in the shared ownership lease conditions that either:
 - restrict the leaseholder's equity share to a maximum of 80%; or
 - ensure that, following the leaseholder's acquisition of 100% of the house, once it becomes available for resale it is sold back to the landlord.
- 1.5 Homes England has agreed that under certain conditions, it is able to waive the particular conditions relating to DPA status. Further details are available at [Designated Protected Areas - GOV.UK \(www.gov.uk\)](#) and any such requests for a waiver must be made with the support of the relevant planning authority. Therefore any request for a DPA waiver for development sites within the boundary of the New Forest National Park require the support of the National Park Authority in our capacity as the sole planning authority for the National Park area.

2. Request for NPA support for a DPA waiver request – Whartons Lane, Ashurst

- 2.1 The Government's [National Parks Circular](#) (2010) confirms that national park authorities have a key role as planning authorities for their areas, but they are neither housing authorities nor housing providers. Paragraph 79 states, '...the Government expects the [Park] Authorities to maintain a focus on affordable housing and to work with local authorities and other agencies to ensure that the needs of local communities in the Parks are met and that affordable housing remains so in the longer term.' This is reflected in paragraph A3.7 of the adopted New Forest National Park Local Plan (2019) which states, '...a planning obligation will be secured to ensure the occupancy of the dwellings is confined to persons in local housing need in perpetuity.'
- 2.2 The delivery of affordable housing for people in identified need in the National Park is a major driver behind the policies in the adopted New Forest National Park Local Plan (2019). The greenfield housing allocations at Ashurst, Fawley and Sway amount to over 200 dwellings and set a policy target of 50% on-site affordable housing delivery. Land at Whartons Lane in Ashurst is allocated for around 60 dwellings through policy SP22 in the adopted Local Plan. Planning application 21/00472 set out proposals for 62 dwellings on the site, including 50% on-site affordable dwellings. The application was submitted by Foreman Homes, working with Vivid Homes. The application was considered by our Planning Committee in April 2022 (see Annex 1 for site layout plan), which delegated authority to officers to grant permission subject to the completion of the necessary legal agreement. Following completion of a section 106 legal agreement the full planning permission was issued on 31 January 2024.
- 2.3 On 2 February 2024 Vivid Homes formally requested the support of the National Park Authority in a request to Homes England that the DPA status of the Whartons Lane, Ashurst site be waived. The request from Vivid Homes stated:
- The Whartons Lane site is due to deliver 31 affordable dwellings under the requirements of planning permission 21/00472 and the accompanying Section 106 agreement. These would comprise 22 affordable rented dwellings and 9 Shared Ownership. The remaining 31 dwellings could be delivered as open market tenure. Vivid wishes to deliver these as a mix of social rent and shared ownership allowing the deployment of Homes England Strategic Partnership funding.
 - However, in order to make it possible for Vivid to use some of their grant allocation for this site, they need to obtain a DPA waiver, as the site is in a 'designated rural area' under the DPA legislation. The DPA restrictions would affect any affordable housing provided with grant.
 - The purpose of the Act is to secure affordable housing in perpetuity in villages with a limited supply of affordable housing. However, Vivid Homes are providing a significant number of new affordable homes for the Ashurst area and this negates the need for the DPA restrictions for the site. The reality is that it is a very small percentage of people that staircase to 100% ownership and without the DPA waiver, Vivid would be unable to provide the additional affordable homes proposed.
- 2.4 Any calls for the Authority to support a DPA waiver request must be carefully considered given the challenges around delivering affordable housing for local people in perpetuity within a nationally protected landscape.

- 2.5 Officers have discussed the principles raised in the request for Authority support for a DPA waiver for the Whartons Lane, Ashurst site with Homes England. Members will recall that in August 2023 the National Park Authority supported a DPA waiver request relating to specific parts of the Church Lane, Sway site (see report PC 429/23). In this case our support as the local planning authority was predicated on the basis that DPA status would only be waived for part of the site (i.e. that earmarked for open market housing) and not the whole site. The Authority's position in August 2023 was that we would not support a DPA waiver request relating to a whole development site due to concerns that ultimately some of the affordable housing delivered may be lost in time through 'staircasing' if the DPA status of the wider site was removed. Such an outcome would be contrary to policy approach in the adopted New Forest National Park Local Plan (2019) and the national planning policy for National Parks.
- 2.6 Homes England have subsequently confirmed they only issue partial-site DPA waivers in very rare circumstances; and that they do not wish to see requests such as that made last year in respect of the Church Lane, Sway site becoming a regular approach. This stated position is an important consideration for members to consider in deciding whether to support the DPA waiver request for the Whartons Lane, Ashurst site.
- 3. Recommended response to the DPA waiver request for Whartons Lane, Ashurst**
- 3.1 It is recognised that a DPA waiver would enable the development at Whartons Lane, Ashurst to access Homes England grant funding to deliver additional affordable housing, over and above the 50% secured through application 21/00472. Funding conditions do not allow Vivid to apply grant to any shared ownership housing where staircasing is restricted (i.e. within a DPA). The delivery of further affordable housing in an area of significant need and high prices would be beneficial.
- 3.2 In assessing the case at Whartons Lane, Ashurst it is important to highlight that the National Park Authority only previously supported a partial DPA waiver request relating to the elements of a development site earmarked for open market housing. This was on the basis that the Authority would not support DPA status being waived for the whole site – including the parts where affordable housing has already been secured through the planning consent and legal agreement. Homes England's stated position that their agreement to a 'partial-site' waiver at Church Lane, Sway in Autumn 2023 was a one-off exception is a key factor in the final recommendation in this report.
- 3.3 Ultimately there is a risk that should a DPA waiver be granted for the whole of the Whartons Lane development site, an element of the shared ownership homes across the whole site could potentially be lost over time through staircasing to 100%. It is acknowledged that national indications are that the number of homes that staircase to 100% is minimal and housing associations are required to reinvest the capital receipt into the provision of affordable housing. However, it should also be highlighted that this could be anywhere in their area of operation and cannot be ring-fenced to the New Forest National Park. If Homes England will only support a DPA waiver for the whole Whartons Lane, Ashurst site the risk is that affordable dwellings could be lost to staircasing compared to the affordable housing provision secured through the planning consent for application 21/00472.

4. Conclusions

- 4.1 Designated Protected Area status for large parts of the New Forest National Park offers important policy protection for shared ownership affordable housing. It helps deliver affordable housing 'in perpetuity' in line with national and local planning policies,

providing reassurance that shared ownership affordable dwellings will remain available for local people in housing need. DPA status helps national park authorities to deliver affordable housing for local people in housing need in the long term, as required by the extant National Parks Circular (2010). For these reasons any request for the Authority to support a request for DPA status to be waived must be considered very carefully.

- 4.2 An important distinction between this DPA request relating to Whartons Lane, Ashurst and the previous request for the Church Lane, Sway site (report PC 429/23) is the position of Homes England. They have the ultimate decision on whether DPA status is waived and have stated that their decision to grant a partial waiver at Church Lane, Sway was a one-off exception to their regular approach. The National Park Authority's position has been that it will not support a waiver that covers a whole development site that jeopardises the provision of affordable housing secured for local people in perpetuity through the planning application process. The removal of DPA status would mean shared ownership properties could staircase to 100% and potentially be lost from the stock of affordable dwellings. There is also no guarantee that any capital receipts would be reinvested back into affordable housing provision in the National Park. There is also a concern that supporting further DPA waiver requests may risk DPA status - and the protections it provides affordable housing - being lost across the National Park.
- 4.3 This report therefore recommends that the National Park Authority does not support the DPA waiver request relating to the Whartons Lane, Ashurst site. The consequence of this position is that the development would deliver a mixed 50% open market and 50% affordable housing development (see affordable housing plan in Annex 2) in accordance with the site allocation policy in the adopted Local Plan (2019) and the consent granted for application 21/00472 in January 2024.

Recommendation:

Members do not support the DPA waiver request relating to the whole of the Whartons Lane, Ashurst site on the basis that the removal of this status could result in a loss of affordable dwellings for local people over time. This would be contrary to national and local policy approach to affordable housing provision in National Parks.

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Papers: **PC 453/24** – cover paper
Annex 1 – Site layout plan, Whartons Lane, Ashurst
Annex 2 – Plan of the Whartons Lane, Ashurst site illustrating the affordable dwellings consented under application 21/00472 in January 2024

Equality Impact Assessment: No impacts have been identified. The provision of affordable housing for local people in housing need at Whartons Lane, Ashurst is a key driver behind the Local Plan site allocation and subsequent planning application decision. The recommendation in this report does not reduce this provision secured in January 2024.




Annex 1 – Site layout plan, Whartons Lane, Ashurst



Annex 2 – Plan of the Whartons Lane, Ashurst site illustrating the affordable dwellings consented under application 21/00472 in January 2024



Key

	Affordable housing rented
	Affordable Rent shared ownership
	Open market housing