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# Appeal Decision

Inquiry held on 9 to 12 October 2012

Site visit made on 12 October 2012

**by K Sheffield BA(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 20 November 2012**

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**Appeal Ref: APP/Q4625/A/12/2175738**

**Land off Four Ashes Road, Bentley Heath, Solihull, B93 8LY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Crest Nicholson South West, Alan and Dawn Denton, Helen Gloster, Amanda Garside and Robert Brown against Solihull Metropolitan Borough Council.
  - The application Ref 2011/1914, is dated 30 November 2011.
  - The development proposed is residential development of 38 dwellings, including new vehicular access and other associated works.
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## Decision

1. The appeal is dismissed and planning permission is refused.

## Application for costs

2. At the Inquiry an application for costs was made by the appellants against the Council. This application is the subject of a separate Decision.

## Main Issues

3. The main issues in respect of the appeal are:
  - (a) whether the development would be sustainable with regard to the proposed density and mix of housing and would represent a suitably efficient use of land which would be reflective of local housing need; and
  - (b) whether adequate secondary education provision would be available in the locality as a result of the development and if not whether a financial contribution towards extensions to the local school would be necessary.

## Reasons

4. The appellants lodged the appeal following the failure of the Council to determine the planning application within the prescribed period. Whilst the lodging of the appeal prohibited the Council from making a decision on the application, the Council confirmed that had it been able to determine the application, permission would have been refused for reasons reflected in the main issues set out above.
5. In reaching this conclusion the Council had regard to the Solihull Unitary Development Plan, 2006 (the UDP), the Solihull Draft Local Plan, 2012 (the draft LP) and the National Planning Policy Framework (the Framework). Whilst the Framework reaffirms that applications must be determined in accordance with the development plan unless material considerations indicate otherwise,

paragraph 215 states that weight should be given to relevant policies in the UDP according to their degree of consistency with the Framework. It goes on to state in paragraph 216 that the weight that can be given to emerging policies depends on the stage of preparation of the plan; the extent to which there are unresolved objections and the degree of consistency of the policies with the Framework. Although I am satisfied that the policies of the UDP relevant to the appeal are generally consistent with the Framework and that significant weight can be attributed to them, as the draft LP is still to be examined limited weight can be attributed to it.

6. The appeal site lies on the north western edge of Bentley Heath. It is located to the east of Four Ashes Road and is bounded to the north by residential properties fronting onto Browns Lane, to the east by the Bentley Heath Recreation Ground and to the south and south west by two detached dwellings. The site comprises of two grassed fields which are generally flat and which are bounded by mature hedges and trees many of which are the subject of a Tree Preservation Order (TPO). The appeal site lies within the catchment area of the secondary school Arden Academy.

## **Housing**

### *Housing land supply*

7. Whilst the appeal site lies within the Metropolitan Green Belt it forms part of a larger site which is designated in the UDP as safeguarded land and is identified in saved Policy H2 for residential development to help meet long-term housing needs (post 2011). The appeal site is also proposed for allocation under Policy P5 of the draft LP and is included in phase one for immediate release with two other sites in the settlement. The principle of the development is therefore established in the UDP and continues to be supported in the emerging LP.
8. Although there was agreement between the parties that the Council does not have a five year supply of housing land and reference was made to the conclusions reached by an Inspector in a recent appeal decision<sup>1</sup> in this respect, there was dispute regarding the actual number of years supply. Regard has to be given to the guidance in the Framework which states in paragraph 49 that housing applications should be "considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites". As the principle of the development is supported, it is the issue of whether or not the proposal represents sustainable development which needs to be addressed in determining the appeal.

### *Housing density*

9. Saved Policy H5 of the UDP expects developments to provide a density of development of between 30 and 50 dwellings per hectare. This requirement reflected the Government guidance current at the time and its concern regarding the inefficient use of land. Whilst the guidance has now been replaced by the Framework, the effective use of land remains a core principle and paragraph 47 of the Framework requires Councils to set out their own approach to housing density to reflect local circumstances. It is considered that Policy H5 generally fulfils this requirement.

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<sup>1</sup> Appeal Ref: APP/Q4625/A/12/2169840

10. The appeal proposal would realise a density of 29.7 dwellings per hectare and whilst not meeting the lower figure in the density range expected by Policy H5 the difference is negligible, although it would be significantly less than the upper level figure of 50 dwellings per hectare. However the policy also seeks a greater intensity at places with good public transport accessibility so as to ensure the better and sustainable use of land and given that the parties were in agreement that the site had good transport links it would be reasonable to expect a density of development that fell within the range set out in the adopted policy rather than at its lower end.
11. Whilst Policy P5 of the draft LP does not specify a density, it expects new housing to make the most efficient use of land. Further detail is given in the Table of Allocated Housing Sites (Figure 16) which gives an indicative capacity for the larger site, of which the appeal site forms part, of 150 dwellings at a density of 40 dwellings per hectare which equates to approximately 51 dwellings on the appeal site. It is acknowledged that as the draft LP is still to be tested limited weight can be attributed to Policy P5 and Figure 16. However, the density would fall within the range specified in Policy H5 of the UDP which lends some weight towards a higher density development than that proposed.
12. Policy H5 of the UDP and Policy P5 of the draft LP also require new housing to have regard to the character and local distinctiveness of adjoining residential areas. It is accepted that the properties in the immediate vicinity of the appeal site include large detached properties set in generous plots and therefore a development of greater density than that proposed would have to be carefully designed in order to maintain the character of the area. However, there is no substantive evidence that a higher density development could not be designed to ensure it did not detract from the character of the area or that an increase in density could only be achieved by the provision of three storey housing.
13. On these grounds it is considered that the sustainable location of the site would justify a higher density of development which could be accommodated without detriment to the character of the area.

#### *Housing mix*

14. The appellants seek to erect a total of 38 dwellings of which 15 would be affordable. This represents 40% of the total number of dwellings and complies with saved Policy H4 of the UDP and Policy P4 of the draft LP. The affordable dwellings would be a mix of two, three and four bedroom houses whereas the remaining 23 market houses would all have four bedrooms. The Council has confirmed that it finds the proposals in respect of affordable housing to be acceptable and I have no reason to conclude otherwise.
15. Saved Policy H3 of the UDP requires proposals to make provision for a range of sizes and types of dwelling having regard, in particular, to the projected increase in one-person households. Planning Policy Guidance 3 (now cancelled) formed the policy base for Policy H3 and the appellants consider that it could restrain supply and therefore does not reflect the requirement of the Framework to boost significantly the supply of housing. Whilst Policy H3 and its justification makes reference to the projected increase in one person households and the expectation of a high percentage of one and two bed accommodation, its fundamental objective is to ensure housing developments make provision for a range of sizes and types of dwelling and the justification

makes reference to the need for a balance to be struck between the needs for different types, sizes and tenures across the Borough.

16. This reflects the guidance set out in paragraph 50 of the Framework which requires Councils to deliver a wide choice of high quality homes by planning for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community as well as identifying the size, type, tenure and range of housing that is required in particular locations, reflecting local demand. Therefore the requirement of Policy H3 to make a provision for a range of sizes and types of dwelling carries weight in determining the appeal.
17. The section in Policy P4 of the draft LP which addresses market housing starts by stating that where the Council issues a development brief for a site, this will include details of the likely profile of household types requiring market housing, as identified by the latest Strategic Housing Market Assessment. A brief has not been prepared for the appeal site but this does not obviate the need for developments to address the remainder of this section of the policy which in assessing housing mix requires regard to be given to the existing mix of market housing and local housing demand in the area as guided by the Strategic Housing Market Assessment. It also states that there is a need to secure a range of house types and sizes in the locality in helping to achieve socially balanced and mixed communities. Whilst this policy is still to be examined it shows consistency with paragraph 50 of the Framework and therefore carries some weight in the determination of the appeal.
18. It is the appellants' contention that the development would provide a range of accommodation as smaller units would be provided as part of the affordable rather than the market element of the scheme. In addition the floorspace of the four bedroom market units would vary giving a choice of size and flexibility as some properties may be purchased by smaller households with the intention of one of the bedrooms not being used for that purpose. Whilst it is acknowledged that overall the development would provide a range of house types, those with four bedrooms would still account for a significant proportion of the total number of dwellings and notwithstanding the scenarios put forward by the appellants, the majority would be market housing advertised as and available for occupation as four bedroom units. It is therefore a matter of whether the provision of only four bedroom properties as the market housing element of the development would provide the range of housing that is required in the area.
19. My attention has been drawn to several appeal decisions and in particular two recent cases<sup>2</sup> in the Council's area. However, these raise issues with regard to housing land supply and the principle of the development which is not in dispute in this instance and therefore their relevance to the appeal is limited.

#### *Housing need*

20. The Solihull Housing Market Assessment, 2009 (the SHMA) considers a great deal of background information relating to housing and population within the area, including projections of both affordable and market housing need. For the purposes of the SHMA Bentley Heath is classed as being within the rural area and the document concludes that within this area the greatest need is for

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<sup>2</sup> Appeal Refs: APP/Q4625/A/11/2157515 and APP/Q4625/A/12/2169840

smaller dwellings. Table 6.42 of the SHMA identifies the annual need for housing and the figures show a ratio of market housing to affordable housing in percentage terms of 35% to 65%. In respect of market housing the need in percentage terms is 22%, 41%, 23% and 14% for one, two, three and four bedroom units respectively.

21. The appellants raised a number of concerns regarding the SHMA claiming that nowhere in adopted or emerging policy is there a requirement for it to be the starting point regarding the consideration of housing mix. Its reliability was also raised as it was produced in 2009, was based on data which is now out of date and was limited in its consideration of newly forming households. In addition the lack of correlation between the housing need and supply figures was highlighted, the level of need being identified in the SHMA as being approximately 35% market housing and 65% affordable as opposed to 40% in respect of the latter being required in both the UDP and the draft LP. The appellants also referred to an appeal decision<sup>3</sup> in which the Inspector had attributed little weight to a Strategic Housing Market Assessment because the document had not been subject to public consultation and concerns had been raised regarding household projections. However, the case was not within the Council's area and there are no details of the concerns raised.
22. The Council confirmed that the SHMA had been prepared in accordance with Government guidance and requirements and had been monitored and reviewed in the light of more recent information but it had been found that any changes were minimal and did not warrant a full review of the SHMA. The Council also confirmed it was of the opinion that the SHMA met the tests as set out in the Framework.
23. The SHMA forms part of the evidence base of the draft LP and therefore will be tested as part of the examination of the plan where no doubt the inadequacies referred to by the appellants will be debated in detail. In the meantime, the SHMA provides an indication of the level of housing need in the area, and in the absence of any other more reliable data with respect to need reliance has been placed on the SHMA in the determination of the appeal, although caution has been applied in view of the discrepancies highlighted by the appellants.
24. Nevertheless, even when caution is applied, the disparity between the proposed market housing being all four bedroom units and the identified 14% need in the SHMA, together with its conclusion that within the area the greatest need is for smaller dwellings, would suggest that an appropriate range of market dwellings would not be provided by the appeal scheme.

#### Housing demand

25. The appellants have provided evidence of demand for market housing in the area in the form of an analysis of two, three and four bedroom properties being offered for sale in Bentley Heath and the neighbouring settlements of Knowle and Dorridge over the period 1 January to 22 August 2012. Of the properties for sale 61% of the four bedroom units available sold in comparison with 39% of the two bedroom units and 59% of the three bedroom units. Whilst the sale of four bedroom units was the highest category, there was not a significant difference between those and the three bedroom units.

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<sup>3</sup> Appeal Ref: APP/H1840/A/12/2171339 dated 24 August 2012.

26. These figures do not include newly built units, many of which are now offered on a part-exchange basis and which the appellants confirmed would be a marketing tool they would use in respect of the proposed development. It is noted that of the developments referred to in evidence which offered part exchange, it was those that were principally four bedroom units which proved more attractive to buyers than a development of smaller units, which had struggled to sell. It is not disputed that the market housing proposed would prove attractive to buyers, particularly as the appellants indicate the sale price would be significantly less than the average price for four bedroom units in the area. However, it is considered that the comparison with other sites offering new houses does not provide conclusive evidence that smaller properties as part of the appeal development would fail to sell.
27. An analysis of the mailing list of a local estate agent of people wishing to purchase properties in the area was also carried out by the appellants and corresponded to the end date of the study period referred to above. The analysis indicates that 320 people were seeking one/two bedroom units; 435 two/three bedroom units; 938 three/four bedroom units and 457 four/five bedroom units. Whilst this indicates a variation in the levels of demand, those seeking three/four bedroom units being substantially greater in number than the other categories, the evidence does suggest a significant level of demand for accommodation with one, two and three bedrooms in the area.
28. It is acknowledged that residential developments across the whole of the area covered by the Council will offer a variety of dwelling sizes and that there are developments where the mix of dwellings does not include four bedroom units and others where there would be a concentration of smaller units, such as the proposed sites within Solihull town centre. However, these would not cater for those who may wish to live in smaller units within Bentley Heath and although there is evidence of demand in the area for four bedroom market housing it is also evident from the appellants' analysis of the mailing list that there is demand in the area for market units with three or less bedrooms.

#### *Conclusion on housing*

29. One of the core planning principles of the Framework is to proactively drive and support sustainable economic development to deliver the homes the country needs and that every effort should be made to meet the housing needs of an area. It also requires the effective use of land. Given the conclusions reached above, the evidence leads me to conclude that the development would not represent a suitably efficient use of land which would be reflective of local housing need, contrary to Policy H3 of the UDP, Policy 4 of the draft LP and the Framework.

#### **Education provision**

30. In considering proposals for development, Policy IM1 of the UDP allows the Council to enter agreements with developers with the aim of securing financial contributions towards various works which include education facilities. Such agreements are required to be made under Section 106 of the Town and Country Planning Act, 1990 (the 1990 Act) and must also comply with the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations, 2010 (the CIL Regulations). Whilst the Council has also cited Policy P21 of the Draft LP it is understood that this was a late addition which has not been subject to public consultation and on this basis it carries little weight.

31. It is clear from the justification of Policy P5 of the draft LP that the development of the three sites identified in the area for residential development would be conditional on the provision of additional classroom and communal space to meet the needs of the existing and future student population at Arden Academy. Figure 16 of the LP goes further and states that the sites will be expected to make a significant contribution. However, it was made clear at the Inquiry that such a contribution would be towards the provision of the accommodation necessary to house additional pupils generated by the developments and not to address any deficiencies in the current accommodation in providing for the existing capacity of the school.
32. In correspondence<sup>4</sup> sent to the Council in March 2012 the appellants proposed a contribution of £94,752 and sought comments with the intention that it would promote discussion. However, the Council did not divulge the figure it considered to be necessary until after the appeal was lodged. Whilst the appellants are not against making a contribution, the justification for one has been raised as part of the appeal on the grounds that the existing capacity of the school could accommodate the additional pupils generated by the developments. In addition the appellants considered that the methodology used by the Council was not compliant with the CIL Regulations.

#### *Capacity of Arden Academy*

33. Whilst Arden Academy has the capacity to accommodate 1,200 pupils aged 11 to 16 years, which equates to 240 pupils in each year group, there are currently 1222 pupils on the school roll for the current academic year. It is therefore operating in excess of its capacity and the Council is of the opinion that any pupils generated by the appeal proposal could only be admitted to the Academy if a new class was created in each year group and the necessary accommodation provided.
34. The Council has estimated that the number of pupils likely to be generated by the three residential sites identified in the draft LP would equate to an average of 4.5 pupils per year group per 100 houses. This is based on the population profile of two recently completed developments and would suggest approximately 16 pupils per year group of which the appeal development of 38 units would generate less than two pupils per year group. Whilst the appellants' method of calculating the number of pupils used the figures of Cheshire East Council and Warrington Borough Council which are recognised as the highest and lowest statistical neighbours of the Council, the estimated number of pupils per year group which would be generated by the appeal proposal was also less than two. Although the appellants questioned the reliability of the Council's method, I am satisfied with the level of consistency between the figures produced by the parties.
35. Whilst the appellants suggested that the additional pupils could be accommodated by increasing class sizes and made reference to other secondary schools within the Council's area where there are 250 pupils in each year group, the evidence of the Principal of the Academy highlighted the pressure on the existing accommodation at the school. In addition the conditions I observed during an accompanied visit to the Academy confirmed that to increase class sizes by even one or two pupils would not be a satisfactory way of increasing the capacity of the school. On this basis it would

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<sup>4</sup> Report by Education Planning & Data Solutions, 20 March 2012.

be difficult for the school to admit pupils from the appeal site into the existing year groups without additional accommodation.

36. Examination of the admissions figures over the last five years reveals that significant numbers of children resident outside the catchment area have been admitted into Year 7. Whilst some of these include pupils who have siblings already at the school, the Academy's admissions policy gives preference to pupils who are resident in the catchment area and therefore anyone entering the school in Year 7 from the appeal site would be given preference. Nevertheless there have been two years, 2009 and 2010 when only 1 and 12 pupils respectively were admitted from outside the catchment area. Whilst this would suggest that the Academy would be able to admit all the children generated by the development into Year 7 without additional accommodation in most years, it would not accommodate the total number estimated to be generated by the three identified sites and would also be dependent on the number of children transferring from the feeder primary schools.
37. Although the number of pupils currently attending the feeder schools suggests that in most years the existing capacity at the Academy would be sufficient to accommodate these pupils in Year 7, there are only two years in which the number of pupils on the roll totals less than 235 and in two other years the number is 240 and 242. It was accepted that there would be pupils resident in the catchment area not attending a feeder school who would be eligible for admission to the Academy and also those at feeder schools who would choose not to transfer, although the numbers involved are not known. Nevertheless, if it is assumed that a number similar to those currently on the rolls of the feeder schools would be likely to transfer, there would be little or no spare capacity to accommodate pupils generated by the appeal proposal or the other identified residential developments.
38. On the basis of the submitted evidence Arden Academy does not currently have the capacity to accept pupils generated by the appeal site into the existing year groups or future year groups. It is therefore concluded that additional accommodation would be required at the school to cater for pupils from the proposed development.

#### *Capacity at other schools in the Council's area*

39. Just as Arden Academy admits pupils from outside its catchment area, so too do other schools in the Council's area and there is therefore the potential for children from the appeal site to attend a secondary school other than the Academy. Examination of the pupil rolls for the secondary schools show a wide divergence between those in the north of the Council's area where there is a significant number of surplus places and those in the south which are operating at or close to capacity. Whilst it would be possible for pupils from the site to be admitted to a school in the north, the practicalities of this in terms of travel arrangements and the time taken would make this option unacceptable.
40. From the statistical evidence submitted to the Inquiry it is ascertained that Tudor Grange Academy and Alderbrook School, being the closest to the appeal site, have admitted significant numbers from outside their catchment areas since 2008. However, in allocating places to children from outside a school catchment area preference is given to those living closest to it. The figures indicate that whereas places at Tudor Grange were filled by pupils living a



shorter distance from the school than the appeal site, in the case of Alderbrook some pupils who were admitted lived a greater distance away.

41. Although this indicates that children from the appeal site might receive a place at Alderbrook, the specific number of places allocated to pupils who live a greater distance from the school than the appeal site is not known. It is therefore considered that no reliance can be placed on pupils from the appeal site being admitted to other secondary schools in the Council's area if Arden Academy has insufficient capacity to be able to offer them a place.

*Level of financial contribution*

42. The appellants have submitted a Unilateral Undertaking under Section 106 of the 1990 Act in which four possible levels of contribution ranging from no contribution to £380,952 have been put forward for consideration. These four scenarios have to be considered in the light of the tests set out in the CIL Regulations which require that the Unilateral Undertaking is necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
43. It is accepted that as the appeal site falls within the catchment area of the Academy, pupils generated by the development could expect to be admitted to the school under its current admissions policy. In addition it has been concluded that additional capacity would be required at the Academy in order to accommodate those pupils. It is therefore considered that a financial contribution is necessary to make the development acceptable in planning terms and that it is directly related to the development. The test that therefore has to be addressed in relation to the level of contribution required is whether it would be fairly and reasonably related in scale and kind to the development.
44. Scenario 1 set out in the submitted Unilateral Undertaking proposes that no further places would be required at the Academy as a result of the development and therefore no contribution is required. Given the conclusion reached above, Scenario 1 is considered to be inappropriate.
45. The Council considers that additional classroom and communal space to accommodate a new class in each year group is required at an estimated cost of £2 million. The contribution the Council seeks from the appeal development is £380,952 based on its contention that the total cost of the works should be apportioned between the three identified residential sites. It is this figure which is reflected in Scenario 4 of the Unilateral Undertaking.
46. However, the additional accommodation proposed by the Council would provide an extra class in each year group. Whilst this may be the logical way forward as it would be difficult to provide additional accommodation which did not accommodate a full class, it would be significantly in excess of that necessary to accommodate the estimated two pupils per year group to be generated by the appeal development or the sixteen from the three sites as a whole. It is therefore considered that the level of contribution required by the Council would not be fairly and reasonably related in scale and kind to the appeal proposal, contrary to the CIL Regulations and on this basis Scenario 4 of the Unilateral Undertaking is unacceptable.
47. Scenarios 2 and 3 propose contributions of £118,011.37 and £114,469.38 respectively. Whilst both these figures are based on a child yield of 19 pupils

per 100 homes being the average of the highest and lowest statistical neighbours of Solihull, Scenario 2 uses the Department of Education Cost Multiplier and Location Factors to calculate the cost per place whereas Scenario 3 uses the estimated cost of the additional accommodation per pupil place apportioned to the development. However, the £2 million estimated cost would provide 10 classrooms enabling an extra 30 pupils to be admitted to the school each year. This would be significantly in excess of the pupil numbers likely to be generated by the three residential sites identified to make a contribution. It is therefore considered that the method of calculating the level of contribution set out in Scenario 3 would not fairly reflect the consequent effect of the development on Arden Academy.

48. However, Scenario 2 is calculated using published data and a conventional formula accepted by the parties in the Statement of Common Ground. It is fairly and reasonably related in scale and kind to the development as it follows an accepted methodology whereby the amount of the contribution is openly and clearly demonstrated and is a system which can be used as and when the other sites identified for residential development come forward, ensuring that those developments contribute on an equal footing. It is therefore considered that Scenario 2 satisfies the tests set out in the CIL Regulations.

#### *Conclusions on education provision*

49. The evidence therefore leads me to conclude that adequate secondary education provision would not be available at Arden Academy for pupils generated by the appeal development. Therefore the development would be required to make a financial contribution calculated using the methodology set out in Scenario 2 of the Unilateral Undertaking to be £118,011.37 towards additional classroom and communal space at the Academy, in accordance with Policy IM1 of the UDP and Policy P21 of the draft LP.

#### ***Unilateral Undertaking***

50. In addition to the contribution towards education provision the Unilateral Undertaking submitted by the appellants included provisions for a contribution towards improvements to the Bentley Heath Recreation Ground and a footpath link from the site into it; the provision of affordable housing previously referred to and the provision for an on-site amenity space and its future maintenance. The Council confirmed that it found the Unilateral Undertaking in respect of these matters to be satisfactory.
51. Having regard to national and local policy I am satisfied that these obligations are necessary and reasonable to secure the affordable housing and mitigate the effect of the additional housing on open space provision and that the tests in Regulation 122 of the CIL Regulations are met. Nevertheless, the provisions of the Unilateral Undertaking, including the obligation in respect of education provision, are not sufficient to outweigh the concerns identified with regard to housing provision.

#### ***Other material considerations***

52. Whilst the Council found the proposed layout of the development to be generally acceptable, residents raised concerns with regard to loss of privacy and loss of light. The three dwellings which could potentially be affected by the development are 17 Four Ashes Road and 14 and 16 Browns Lane which adjoin the north western boundary of the site. It is acknowledged that the outlook

- from these properties would alter as a result of the development. However, I am satisfied that the proposed separation distances between the proposed dwellings and the existing two storey properties at 14 Browns Lane and 17 Four Ashes Road, together with the intervening boundary treatments, would ensure no detriment to the living conditions of the occupants of these houses.
53. With regard to 16 Browns Lane, the situation is a little different as this property is a bungalow with a rear extension which is not shown on the submitted drawings. However, it is the side boundary of the garden to this property which abuts the site and only oblique views from the rear of the proposed dwelling on Plot 7 towards the bungalow and its extension would be possible. Although the separation distance between the corner of the proposed dwelling and the extension to No. 16 may be less than the standard normally required by the Council, it is considered that, due to the angle of view, little harm would result to the living conditions of the occupiers with regard to privacy.
54. It is acknowledged that the boundary treatment to the site would enclose the rear garden of No. 16 the width of which tapers towards its eastern end. In addition the side elevation of the dwelling on proposed plot 7 would appear dominant in the outlook from the garden and, due to its orientation, could cast a shadow over the garden.
55. There is a large number of trees on and around the site, some of which are covered by a TPO and many of which would be retained as part of the scheme and protected during the course of the development. However a conifer which was identified to be removed was found to be incorrectly plotted on the submitted drawings. As it lies within the garden of 16 Browns Lane and not within the appeal site it was confirmed that it would be retained. Whilst the development would necessitate encroachment into the root protection area of this tree, it is understood that this would be minimal and without threat to its health or structure.
56. However, in view of the proximity of the proposed dwellings to the conifer and the concerns outlined above in respect of the relationship of the development to 16 Browns Lane, it is considered that both would benefit from an increased distance between them and the built development, although these are insufficient grounds to dismiss the appeal.
57. Loss of open land and protection of wildlife was also raised. Whilst the loss of the open fields would have an effect on the character of the area, the principle of developing the land has been established by the UDP for a number of years. With regard to the effect on wildlife, the retained trees and hedges would act as wildlife corridors minimising the effect of the development and in the absence of any substantive evidence that the development would cause unacceptable harm, there are no grounds to dismiss the appeal on this basis.
58. Concerns were also expressed with regard to highway safety and the speed of the traffic despite a speed limit being in place on Fours Ashes Road in the vicinity of the site. Reference was made to two recent accidents at the roundabout a short distance to the west of the site and it was suggested that the access would be better sited further south than proposed. However, the Highway Authority has raised no objection to the scheme and from the observation of the road conditions during my visit to the site, I am satisfied that the proposed development would provide satisfactory access, without detriment to highway safety.

## Conclusions

59. Although the evidence has led me to conclude that adequate secondary education provision would not be available in the locality as a result of the development, this issue could be satisfactorily addressed by a financial contribution towards extensions to Arden Academy as proposed under Scenario 2 of the Unilateral Undertaking. However, this is not sufficient to outweigh the conclusion that the proposed development would not be sustainable as it would not represent a suitably efficient use of land with regard to density and mix of housing nor would it be reflective of local housing need.
60. For these reasons, and having had regard to all other matters raised, the appeal is dismissed and planning permission is refused.

*K Sheffield*

Inspector

Richborough Estates

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Miss N Sharif, of Counsel	Instructed by the Solicitor to Solihull Metropolitan Borough Council
She called:	
Miss R Batts MA MRTPI	Housing Policy, Solihull Metropolitan Borough Council
Mrs M Sadler MA	School Place Provision, Solihull Metropolitan Borough Council

### FOR THE APPELLANT:

Mr J Cahill, of Queens Counsel	Instructed by Pegasus Planning Group
He called	
Mr A Bateman BA(Hons) TP MRICS MRTPI MCI MIoD	Managing Director, Pegasus Planning Group
Mr J Powell LLB(Hons)	Operations Director, EPDS Consultants Limited
Mr M Cutler FRICS	Consultant, John Shepherd Chartered Surveyors

### INTERESTED PERSONS:

Mr M Murphy	Principal of Arden Academy
Mr B Timmins	Local resident
Mr G Blythe	Local resident

## DOCUMENTS

- 1 Petition signed by local residents objecting to the development.
- 2 Signed statement of Common Ground.
- 3 Drawing No.C0353\_20 Site sections – omitted from the appeal submission.
- 4 Signed Unilateral Undertaking.
- 5 Draft Schedule of conditions suggested by the Council.
- 6 Letter of 5 October 2012 from Schools Appeal Clerk submitted in support of Mrs Sadler’s evidence.
- 7 Decision in respect of appeal Ref: APP/L2630/A/12/2170575, land at Townhouse Road, Costessey, Norfolk, NR8 5BY.
- 8 Opening statement on behalf of the appellants.
- 9 Opening statement on behalf of the Council.
- 10 Statement submitted by Mr Murphy.
- 11 Responses to consultations not submitted with the appeal questionnaire.
- 12 Solihull Secondary Schools admissions data submitted by the Council.
- 13 Extract from the Solihull Draft Local Plan showing boundary of proposed housing site of which the appeal site forms part.
- 14 Location plan and block plan which forms part of an application submitted for a retirement home on land off Four Ashes Road.
- 15 Agreed list of residential sites to be visited as part of the Inquiry.
- 16 Secondary Schools admissions data broken down into priority groups submitted by the Council.
- 17 Supplementary note confirming the position of tree T26 submitted by the appellants.
- 18 Schedule of distances of the appeal site from Secondary Schools in the area, submitted by the appellants.
- 19 Closing Submissions on behalf of the Council.
- 20 Closing Submissions on behalf of the appellants.
- 21 Application for costs on behalf of the appellants.