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## Appeal Decision

Hearing held on 27 April 2016

Site visit made on 27 April 2016

**by Jonathan Manning BSc (Hons) MA MRTPI**

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

**Decision date: 15 June 2016**

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**Appeal Ref: APP/X0360/W/15/3140972**

**Silverstock Manor, Sandhurst Road, Finchampstead, Berkshire, RG40 3JE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Creighton-Ward against the decision of Wokingham Borough Council.
  - The application Ref 152100, dated 20 July 2015, was refused by notice dated 13 October 2015.
  - The development proposed is erection of 10 no detached dwellings following the removal of all existing buildings (including 1 no dwelling and outbuildings) and hardsurfacing.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. As part of the appellant's appeal submissions, a revised Site Layout Plan (SR-SL Rev A) and a new Site Sections Drawing (SS-01) were provided. I consider that the proposed changes to the site layout are minor and would not materially alter the scheme or result in any additional effects on any local residents. Consequently, the site layout revision was accepted and I consider that no parties have been prejudiced.
  3. The new Site Sections Drawing (SS-01) was provided to illustrate the street scene views of the revised site layout. This was also accepted, although, during the Hearing it became clear that there were some inaccuracies and the appellant accepted at the site visit that the drawing should be used for illustrative purposes only. I have therefore considered it on that basis.
  4. At the Hearing, the Berkshire, Buckinghamshire and Oxfordshire Wildlife Trust (the BBOWT) provided an updated statement on ecological matters. In the interests of natural justice the appellant was allowed suitable time to respond to the matters raised at the Hearing, including the submission of written representations after the Hearing. Consequently, I consider that no parties have been prejudiced.
  5. After the Hearing took place, the court of appeal judgement 'Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council C1/2015/2559; [2016] EWCA Civ 441' was published. Following the judgment, new and updated Paragraphs 013-017, 019-023 and
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031 have been added to the Government's Planning Practice Guidance (the PPG) section on planning obligations. These paragraphs set out the specific circumstances where contributions for affordable housing and tariff style planning obligations should not be sought from small scale and self-build development. This includes developments for 10 dwellings or less. Given that the proposal is for 10 dwellings, the views of both parties were sought on this matter and I have had regard to the representations made by the appellant and the Council.

### **Main Issues**

6. I consider that the main issues of the appeal are: the effect of the proposal on ecological features; the effect of the proposal on the character and appearance of the area; whether the appeal site is sustainably located, in terms of accessibility to local services, facilities and public transport; and whether the proposal is required to make provision for affordable housing.

### **Reasons**

#### *Ecology*

7. The appeal site is located within the 5 kilometre zone of the Thames Basin Heaths Special Protection Area (SPA). The appellant accepts that mitigation measures are necessary to ensure that there would be no unacceptable impact from the development on the SPA. The Council has set out that a Suitable Alternative Natural Greenspace (SANG) financial contribution would be secured via the Council's Community Infrastructure Levy (CIL) and that a Strategic Access Management and Monitoring (SAMM) contribution is also necessary that needs to be secured by a legal agreement. The appellant has not contested this view and accepts that a Section 106 agreement is necessary to secure such provision. I have considered the evidence put forward by the Council to support its justification for both SANG and SAMM financial contributions and I consider that the requirement for these provisions meets the three tests set out in Paragraph 204 of the National Planning Policy Framework (the Framework or NPPF) for planning obligations, which reflect those set out in Regulations 122 and 123 (where relevant) of the CIL Regulations (2010).
8. I have been provided with a draft Section 106 agreement that has been signed by the appellant, however, it is not complete. The appellant has advised that their mortgage company does not sign Section 106 agreements. I acknowledge the evidence put forward by the appellant in relation to this matter. However, at the Hearing the appellant acknowledged that they were not in a position to provide a signed and dated Section 106 agreement to secure the above financial contribution. Consequently, there is no mechanism before me to suitably secure the necessary mitigation. The proposal therefore has the potential to cause harm to the Thames Basin Heaths SPA, contrary to the EU Habitats Directive and Policy CP8 of the Wokingham Borough Council Core Strategy (2010) (the CS).
9. The appellant has set out that the Section 106 agreement could be secured by a planning condition. The Government's Planning Practice Guidance (the PPG) advises that '*A negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Ensuring that any planning obligation or other agreement is entered into prior to granting*

*planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed'* (Paragraph: 010 Reference ID: 21a-010-20140306).

10. The PPG also goes on to note that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence '*may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk*'. However, I am not of the view that the scheme represents such development. Consequently, I consider that it is not appropriate in this case to secure the requirement for the appellant to enter into a Section 106 agreement by a planning condition.
11. In addition, the Council has also raised concern with regard to the scheme's potential impact on protected species, in the form of reptiles. The appellant is proposing an Ecological Mitigation and Enhancement Plan for reptiles and other protected species. Before the Hearing, a commendable level of discussion took place between the Council and the appellant to try and secure a suitable reptile mitigation plan. However, after many revisions, the proposed mitigation plan includes areas within the site that would require on-going management. The appellant accepted that this would need to be secured by a Section 106 agreement. As set out above, a signed and dated Section 106 agreement is not before me and therefore, such mitigation measures cannot be secured.
12. Despite the above, the appellant also set out at the Hearing that there is unlikely to be any significant population of reptiles on the site and therefore, in any event, mitigation is not required. The Council maintain that there is habitat within the site that is suitable for reptiles and that there is habitat connectivity to nearby areas that are known to accommodate reptiles. As a result of my observations on the site visit, I see no reason to disagree with the Council's view. In the absence of a full and recent reptile survey, the presence of reptiles cannot be adequately ruled out nor can the level of any reptile population be determined. The level of necessary mitigation can also therefore not be suitably determined. I was advised at the Hearing that the reptile mitigation plan was being put forward on a worst case scenario. However, as I have found above, there is no mechanism before me to secure the provisions of the proposed mitigation plan.
13. The latest version of the Ecological Mitigation and Enhancement Plan also refers to undertaking further surveys for reptiles, which it is suggested could be secured by a planning condition after permission had been granted and the appellant set out that a suitable level of mitigation could then be agreed with the Council. However, given the level of information that I have before me, I cannot be sure that suitable mitigation can be implemented or appropriately secured after planning permission had been granted. Therefore, I consider that it is not appropriate to secure further surveys and a revised mitigation plan by a planning condition.
14. Given all of the above findings, I consider that the proposal has the potential to cause harm to protected species and therefore, runs contrary to Policies CP3 and CP7 of the CS and Policy TB23 of the Wokingham Borough Managing Development Delivery Local Plan (2014) (the MDD).

15. In conclusion on this main issue, the proposal has the potential to cause harm to the Thames Basin Heaths SPA and to protected species. This weighs heavily against the scheme.

*Character and appearance*

16. The appeal site is located on Sandhurst Road and is currently a relatively open area of land that accommodates one dwelling and some outbuildings. The front of the appeal site is formed by a large bund that stretches the length of the frontage. There is also a drainage ditch in front of the bund on the western part of the site and there is a vehicular access point, with a large gate that is flanked by large red brick walls. The site is largely surrounded by woodland, although there are some dwellings in relatively close proximity to the northwest along Sandhurst Road. These are large properties set well back from the road, within very large plots and are largely screened from the road by mature vegetation.
17. I agree with the Council that the area does have a rural context and that there is a sense of remoteness and solitude as identified within the key characteristics of the Council's Landscape Character Assessment (2004) Character Area M1: Finchampstead Forested and Settled Sands. However, I also accept the appellant's view that the appeal site does have a man-made appearance, given the bund, drainage ditch and the access. I also share the view of the appellant that the open nature of the appeal site, particularly when viewed from Sandhurst Road, is out of place with its surroundings.
18. The proposal would result in the construction of 10 dwellings following the removal of the existing dwelling and outbuildings. These would be large 5 bedroom detached properties, all of which would have substantial detached double garages. The dwellings would also have a ridge height of some 9 metres. When viewed from Sandhurst Road, the properties and associated garages of Plots 1, 2, 3 and 4 would appear as an almost continuous line of development, relatively close to the road, with only very minor gaps between the built structures. I acknowledge that the revised site layout plan has moved the dwellings of Plots 1 and 2 further into the appeal site. However, despite this I consider that they would still be very evident from the street scene. The continuous façade of built development for the majority of the site frontage would be incongruous with the rural context of the area and the nature of the existing development within the vicinity. Whilst there is some linear or ribbon development to the northwest, as set out above, these dwellings are set well back from the road and are set within very large plots.
19. The proposal would also have a cul-de-sac layout, which would introduce the appearance of two tiers of development when viewed from Sandhurst Road. This in itself, is not characteristic of the area, with the predominate pattern of development being linear along Sandhurst Road. Given all of the above, I am of the view that the proposal would have an overly dense appearance and would cause an unacceptable urbanising effect on the rural character and appearance of the area.
20. I acknowledge that planting would to some degree soften the appearance of the dwellings when viewed from Sandhurst Road. However, the built structures would nonetheless still be evident and I consider that this would not overcome my concern. Further, I fully accept that the current appearance of the appeal site detracts from the area, but this in itself does not provide justification for a

proposal that is harmful in its own right. I consider that a sensitively designed and landscaped scheme may well improve and benefit the character and appearance of the area, however, such a scheme is not before me.

21. I acknowledge that the proposed architectural style and materials of the dwellings would be in keeping with the properties in the surrounding area. However, this does not in any way overcome my above concerns.
22. In conclusion, the proposal by virtue of its scale, layout and density, would cause harm to the character and appearance of the area. The scheme therefore runs contrary to Policies CP3 'General Principles for Development' and CP11 'Proposals Outside Development Limits – Including Countryside' of the CS and Policies CC03 'Green Infrastructure, Trees and Landscaping', TB06 'Development of Private Residential Gardens' and TB21 'Landscape Character' of the MDD.

*Sustainably located?*

23. The Council are of the view that the future occupants of the proposal would be heavily reliant upon a private motor vehicle to access local services and facilities. The appeal site lies in the region of 2 to 2.5 kilometres from the majority of the local shops and services that are located within Finchampstead. Such facilities include a small supermarket, post office, pharmacy, doctors, 2 restaurants, a petrol garage and a fish and chip shop. A primary school is also located some 1.5 kilometres from the appeal site.
24. I observed on my site visit that there is a footpath along Sandhurst Road, which for the majority of its length has street lighting. However, it is very narrow and I observed that vehicle speeds along this section of Sandhurst Road were relatively high. Given the distances involved to the local services and facilities and the nature of the footpaths along Sandhurst Road, I consider that it would not offer an attractive route to walk to the future occupants of the scheme. I am also of the view that given the undulating nature of Sandhurst Road and the vehicle speeds along this stretch that the use of a bicycle would also not be an attractive option to access the local services and facilities.
25. There are bus stops located approximately 715 metres to the southeast along Nine Mile Ride and approximately 750 metres to the northwest along Finchampstead Road. The Council has provided the timetable for the 125/A/B bus services that run from these bus stops. It is clear that the bus service available is relatively limited from these stops and whilst commuting may be possible, I consider that such opportunities would be limited. There is also very little service on a weekend. The bus service is not considered to be a 'good' standard as set out in Paragraph 4.37 of the CS that supports Policy CP6 of the CS. I am also mindful that the walking distance to the bus stops is significantly greater than the maximum recommended distance of 400 metres set out in the Chartered Institution of Highways and Transport guidance that has been referred to by the Council.
26. I acknowledge that there is the 3 Leopard bus service that does offer a good level of service. However, this is located some 2.5 kilometres from the appeal site and for the reasons set out above, does not offer an attractive option to access on foot or by bicycle.

27. Given my findings above, I consider that the future occupants of the proposed development would be heavily reliant on the use of a private motor vehicle and therefore the appeal site is not sustainably located. The proposal therefore conflicts with Policies CP1 and CP6 of the CS, which seek to ensure that new developments support opportunities for reducing the need to travel, particularly by private motor vehicles and provide sustainable modes of transport to allow choice. I also consider that the proposal runs contrary to the Framework, which seeks to facilitate the use of sustainable modes of transport.

*Affordable housing*

28. The Council is seeking the provision of an off-site affordable housing financial contribution. As set out above, the court of appeal judgement '*Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council C1/2015/2559; [2016] EWCA Civ 441*' was published after the Hearing. Consequently, the previous national policy within the PPG that set out that developments of 10 dwellings or less should not be required to make provision for affordable housing or tariff style financial contributions has now been reinstated and in some places revised.

29. Despite this, the Council are of the view that there is evidence to support their affordable housing thresholds at a local level. The appellant is of the view that the affordable housing contribution is no longer required in line with the PPG. However, the appellant has also set out that should I determine that provision for affordable housing is required, a Section 106 agreement can be secured by a planning condition. However, as set out above, I consider that this is not appropriate in this case. Therefore, there is no mechanism before me to suitably secure such provision. Notwithstanding all of the above, I am mindful that I am dismissing the appeal on other grounds and therefore, this matter does not alter my overall conclusion and has therefore not had a significant bearing on my decision.

*Other matters and planning balance*

30. The Government is seeking to significantly boost the supply of housing, as set out in Paragraph 47 of the National Planning Policy Framework (the Framework). Further to this, the Framework at Paragraphs 14 and 49 identifies that there is a presumption in favour of sustainable development. The proposal would result in the delivery of 10 dwellings. There would also be some associated economic benefits. These social and economic benefits weigh in favour of the scheme.

31. On the other hand, I have identified that the scheme has the potential to cause harm to the Thames Heath SAC and protected species in the form of reptiles. I have also found that the scheme would cause harm to the character and appearance of the area and that the appeal site is not sustainably located. Whilst I accept that the site is previously developed land, I have identified significant harm in terms of the environmental dimension of sustainability, which is not outweighed by the social and economic benefits of the scheme. As a result, I consider that the proposal does not constitute sustainable development, when considered against the Framework as a whole.

32. The matter of whether the Council can demonstrate a five year housing land supply was discussed in some detail at the Hearing. However, I consider that the identified harm would significantly and demonstrably outweigh the benefits

of the scheme, even if I considered that the proposal should make provision for affordable housing and that this could be suitably secured. Consequently, whether the Council can or cannot demonstrate a five year housing land supply does not affect my overall conclusion and therefore has not had a significant bearing on my decision.

33. I acknowledge that several interested parties have supported the application and this is noted. However, I do not consider that this alters my overall findings or outweighs the identified harm.

*Conclusion*

34. For the reasons set out above and having regard to all other matters raised, the appeal is dismissed.

*Jonathan Manning*

INSPECTOR

Richborough Estates

## **APPEARANCES**

### FOR THE APPELLANT:

Nicholas Prior	Appellant
Neil Davis	Davis Planning (Agent)
Nicholas Cobbold	Bell Cornwell LLP
Gary Pope	LCL Solicitors

### FOR THE LOCAL PLANNING AUTHORITY:

Andrew Chugg	Wokingham Borough Council
Gordon Adam	Wokingham Borough Council
Duncan Fisher	Wokingham Borough Council
John Sparling	Wokingham Borough Council
Clare Thurston	Wokingham Borough Council

### INTERESTED PARTIES

Heather Lewis	BBOWT
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## **DOCUMENTS PROVIDED AT THE HEARING**

1. Comments from Craig Williams from Arbtech Consulting Ltd, in relation to concern raised by the Council on the proposed reptile mitigation strategy. Submitted by the appellant.
2. Copy of representations made to the planning application consultation from the BBOWT, submitted by the BBOWT.
3. Copy of representations made to the appeal consultation by the BBOWT, submitted by the BBOWT.
4. Updated appeal statement from the BBOWT, submitted by the BBOWT.