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## Appeal Decision

Site visit made on 13 September 2016

**by R J Jackson BA MPhil DMS MRTPI MCMI**

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

**Decision date: 3 October 2016**

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**Appeal Ref: APP/J0405/W/16/3152177**

**Land south of Oving Road, Whitchurch, Bucks HP22 4JF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Rectory Homes Ltd against the decision of Aylesbury Vale District Council.
  - The application Ref 15/03270/AOP, dated 23 September 2015, was refused by notice dated 29 January 2016.
  - The development proposed is the erection of 59 dwellings and creation of a new access off Oving Road; together with open space (incorporating LEAP), landscaping and all enabling and ancillary works.
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### Decision

1. The appeal is dismissed.

### Procedural matters

2. The application was made in outline with all matters except access reserved for later consideration. I have considered this appeal on a similar basis. In addition an illustrative layout was also submitted which I have also taken into account.
3. A Planning Obligation under Section 106 of the Town and Country Planning Act, 1990 (as amended) by way of Unilateral Undertaking to Aylesbury Vale District Council and Buckinghamshire County Council was submitted dated 1 September 2016. I will cover this later in my decision.

### Main Issues

4. The main issues are:
    - the effect on the character and appearance of the area;
    - whether the proposal would result in an unacceptable loss of the best and most versatile agricultural land;
    - whether the proposal makes adequate provision for affordable housing, leisure facilities, education and off-site highway works; and
    - whether there are any other material considerations, including the benefits of the proposal, which would indicate that the proposal should be determined otherwise than in accordance with the terms of the development plan.
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## Reasons

### *Character and appearance*

5. The appeal site is located on the south side of Oving Road. It consists of two fields, which were being grazed by horses at the time of my site visit, divided by a tall hedgerow but with a gate between. The southern boundary is made up a fence beside a high row of evergreen trees with an earthen track beyond, and the eastern and western boundaries by post and rail fences. The northern boundary is a hedgerow with a gate to the road. This hedgerow is set a short distance back from Oving Road, and there is a second hedgerow closer to the highway running parallel to the road across approximately half of the frontage of the site.
6. To the north of the eastern, smaller, field is a two storey doctors' surgery with car park, and to the west is an access road. The site slopes gently to the south and east. Further south and to the southeast the land-form falls more steeply.
7. There are a number of public rights of way crossing and in close proximity to the site. There is a footpath that runs approximately north/south across the centre of the western field and then continues to the south. A second footpath runs north/south immediately to the east of the site, and a third footpath runs north/south a short distance to the west of the appeal site beyond the access track to adjoining land and is located in a strip of vegetation.
8. The main historic area of Whitchurch lies a short distance to the east along the A413, although the road is not flat with the historic area being down a hill. As well as the footpaths across fields there are paved footpaths to the village centre either close to or parallel to Oving Road. There are also bus stops with shelters in close proximity to the site on Oving Road. Development on both sides of Oving Road, and in Whitchurch more generally, consists primarily of frontage development set a short way back from the road, although there is a small cul-de-sac of development a short way to the north and west of the appeal site. Along Oving Lane, to the north there are a couple of enclaves of cul-de-sac development. However, the overall pattern of development is that development does not extend significantly in depth from the main roads.
9. Travelling from the centre of the village frontage development ceases on the south side of the road at the doctors' surgery, and I agree with a colleague Inspector, who considered an appeal<sup>1</sup> on the northeastern part of the appeal site for the erection of four dwellings, that the lack of development allows wide views from Oving Road across the appeal site and that the openness is important in providing the setting of this part of the village. This appeal site, therefore, currently lies outside the village rather than within it.
10. The appeal site lies outside any settlement as defined in the Aylesbury Vale District Local Plan (AVLP), which was adopted in 2004. The proposal is therefore contrary to Policy RA.14 of the AVLP which permits residential or mixed-use development of up to 5 dwellings on the edge of built-up areas

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<sup>1</sup> APP/J0405/A/11/2146610

including Whitchurch on a site not exceeding 0.2ha subject to a number of criteria.

11. The Council has referred to two particular policies of the AVLP which it considers the proposal contravenes. Policy RA.8 refers to Areas of Attractive Landscape (AAL) which have particular landscape features and qualities that are considered appropriate for particular protection. The appeal site falls within the Quanton-Wing Hills designated AAL. Policy GP.35 indicates that new development should respect and complement various features, including the characteristics of the site and surroundings, the historic scale and context of the setting, the natural qualities and features of the area, and the effect on important public views and features.
12. The residential development of the appeal site would markedly change the character of the appeal site both in itself and for those using the public rights of way network on the site and on either side. This urbanisation would be significantly harmful to the character and appearance of this section of the countryside. Having said that the footpath to the west is at a slightly lower level and due to the intervening vegetation there would be less effect on those using that footpath.
13. Although only in illustrative form the layout shows that the nearest development would be set some way back from but facing Oving Road. This would be characteristic of development further to the east closer to the village centre on the southern side of Oving Road.
14. The proposed access would be located towards the western end of the Oving Road frontage and would involve the loss of a section of the more northerly of the two hedgerows. This would urbanise this section of Oving Road, but, in the overall context of the wider development of the appeal site and the existing development on the north side of Oving Road, this would be of limited effect.
15. However, the quantum of development would be fixed and this means that the overall form of the development would, of necessity, involve development in depth behind the development facing Oving Road. The illustrative layout shows that there would be four 'rows' of development. This would be significantly and harmfully out of character and historic form with the majority of development both in the vicinity of the appeal site and Whitchurch more generally. I give this harm very significant weight.
16. I have been referred to another appeal decision<sup>2</sup> where an Inspector concluded that a proposal for 10 dwellings in the village of Cheersley in Aylesbury Vale, set at depth, would not be out of character that area. However, this was a different development on a different site, and would have been at a different scale to the 59 dwellings here proposed. I can therefore only give that decision limited weight.
17. The appellant has commissioned a Landscape and Visual Impact Assessment (LVIA) which describes the change of character caused by the proposed development as being of "high adverse" effect on the local landscape. However, it takes the view that due to the amount of landscaping on the

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<sup>2</sup> APP/J0405/A/14/2223105

appeal site proposed as part of this development the effects would only be "major/moderate adverse" on the appeal site, principally as it takes the view that users of the public rights of way are only receptors of medium sensitivity to change.

18. Having walked around the rights of way network at the site visit and visited other viewpoints identified in the LVIA, I can appreciate that views of the proposed development would be restricted in the wider landscape by the intervening vegetation, buildings and land-form. However, it would markedly and harmfully change the character and appearance in short distance views both within and outside the appeal site and this weighs significantly against the development.
19. The AAL is large and consists of undulating hills and ridges with distant panoramic views across the strongly rural and picturesque landscape, including to the Vale of Aylesbury to the south. Because of the extensive existing landscaping to the south of the appeal site the effect of the development would essentially be limited to views from the north and from the local public rights of way network on either side and through the middle of the appeal site.
20. Looking at the effect on the AAL as a whole I am satisfied that the proposal would not adversely affect any distant panoramic views and that appropriate mitigation could be provided.
21. Overall the proposed development would be significantly harmful to the character and appearance of the area, and very significantly harmful in built form and it would be contrary to Policies RA.14 and GP.35 of the AVLP as set out above. However, it would comply with Policy RA.8 as regards its effects on the wider landscape of the AAL. It would be contrary to paragraphs 17 and 58 of the National Planning Policy Framework (the Framework) in that it would be harmful to the intrinsic beauty of this part of the countryside and would not appropriately respond to local character reflecting the identity of local surroundings. However, paragraph 17 also refers to the need to support thriving rural communities and I also need to assess the proposals on that basis.

*Best and most versatile agricultural land*

22. The appeal application was accompanied by a Soils and Agricultural Use and Quality Report. The northern part of the site was classified as being of moderate quality (subgrade 3b), but the southern, majority (54%), part of the site is of better quality being either grade 2 or subgrade 3a.
23. Paragraph 112 of the Framework indicates that the account should be taken of the economic and other benefits of the best and most versatile agricultural land and, where significant development of agricultural land is demonstrated to be necessary, areas of lower quality land should be used in preference to that of higher quality.
24. While the illustrative layout shows that the southern part of the site would be laid out as open space, including partially as an attenuation basin. This would mean it could, in theory, be reutilised as agricultural land. However, the reality is that once permitted any residential development would need to be

drained removing this part of the site from being potentially reutilised. Similarly, there would be the need to ensure an appropriate landscape setting for the site.

25. There is no definition of 'significant' in this context in the Framework so each case needs to be judged on its own individual merits. In my view within the context of the village Whitchurch the development of this site would be significant and I am therefore satisfied that this proposal would be 'significant development' and, consequently, development on lower grade land should be used in preference. While the appellant has submitted information on a broad scale over the quality of agricultural land in the Whitchurch area, this does not necessarily mean that high quality land should be lost.
26. There would therefore be the permanent loss of a small amount of the best and most versatile agricultural land, but given the area of this land which would be lost this can only be given limited weight. However, as it would result in the loss of some of this land it would be contrary to paragraph 112 of the Framework as set out above.

#### *Affordable housing and infrastructure*

27. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (the CIL Regulations) states a planning obligation may only constitute a reason for granting planning permission if the obligation passes three requirements. This is reiterated in paragraph 204 of the Framework. These requirements are that the Obligation is necessary to make the development acceptable in planning terms, that it is directly related to the development and fairly and reasonably related in scale and kind to the development.
28. Regulation 123 of the CIL Regulations also states a planning obligation may not constitute a reason for granting planning permission for the development to the extent that the obligation provides for the funding or provision of relevant infrastructure where five or more separate planning obligations provide for the funding or provision of that project or provide for the funding or provision of that type of infrastructure.
29. The Planning Obligation provides for the provision of 18 of the dwellings to be Affordable Housing. Policy GP.2 of the AVLP requires that a minimum of 20% and up to 30% of the dwellings within a development of 25 or more dwellings should be affordable. I am therefore satisfied that the provision of affordable housing is necessary, and is directly related and fairly and reasonably relates to the development. By providing just over 30% of the dwellings as affordable this would more than comply with the minimum requirement as set out in Policy GP.2 and as such adds significantly to the benefits of the development. Affordable housing does not represent infrastructure as regards the CIL Regulations and as such Regulation 123 is not engaged.
30. Secondly the Planning Obligation makes provision for open space, including a Locally Equipped Area of Play (a LEAP) to be provided on site, along with a Bond to ensure its delivery. It also provides for sports and leisure contributions. Policies GP.86, GP.87, GP.88 and GP.94 of the AVLP seek outdoor play space, children's play areas, sports fields and their delivery. I am satisfied that the Obligation is necessary to ensure that the occupiers of the

development would have appropriate facilities, that the obligations are directly related to the development and fairly and reasonably related in scale and kind to the development. The on-site open space provision would be the first Obligation towards its provision and, for the others I am advised that in no case would the Obligation breach the pooling restrictions of Regulation 123.

31. Thirdly, the Planning Obligation makes provision for a contribution towards education facilities provision. Again this is needed to ensure that the additional population which would occupy the development is provided for as set out in the Obligation. It is therefore directly related to the development, and is set out so that it fairly and reasonably relates in scale and kind to the development. I am advised that this Obligation would not breach the pooling restrictions of Regulation 123.
32. The Planning Obligation makes provision for a Sustainable Drainage Scheme (SuDS). This is seen as a necessary requirement in the Flood Risk Assessment submitted with the application. I am therefore satisfied that it is necessary in order to ensure proper drainage of the proposal.
33. Finally, the Planning Obligation makes provision for a contribution towards two Real Time Passenger Information boards for the two bus stops outside the appeal site, and the provision of a zebra crossing on Oving Road and widened footpaths and other highway works set out in the Obligation. These are necessary to ensure that the site is made accessible to the village centre and alternatives to the car promoted. They fairly relate to the development and are of an appropriate scale and kind.
34. Looking at the Obligations in the round, all but the provision of affordable housing are part of the proposed scheme and mitigate its effects. They are therefore neutral in the overall balance. However, in that the provision of affordable housing is above the minimum level set out in the AVLP this provides a significant benefit to be weighed in the final balance.
35. Overall, therefore, I consider that all the contributions are necessary and should be taken into account. The provision of affordable housing would more than comply with Policy GP.2 of the AVLP as set out above. The contributions towards open space, including a LEAP to be provided on site, along with a Bond to ensure its delivery, together with sports and leisure contributions would comply with Policies GP.86, GP.87, GP.88 and GP.94 of the AVLP as set out above. The provisions dealing with a contribution towards education facilities and highway works, and delivery and maintenance of SuDS are also necessary to ensure a satisfactory development. The provisions would also comply with paragraph 204 of the Framework and the requirements of the CIL Regulations as set out above.

#### *Other material considerations*

36. The Council has confirmed that it does not have a five year supply of housing land. Therefore in line with paragraph 49 of the Framework relevant policies for the supply of housing should not be considered up-to-date. In this situation, following paragraph 14 of the Framework, planning permission should be granted for the development unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.

37. Policy RA.14 is a relevant policy for the supply of housing and thus must be considered out-of-date. However, Policies RA.8 and GP.35, along with the policies referred to in relation to the Planning Obligation, are not policies which restrict housing *per se*. Policies RA.8 and GP.35 relate to developments wherever they are located, and rather seek to ensure development is appropriately designed in itself. In any event, I have concluded that the proposal complies with Policy RA.8. Similarly the policies considered in relation to the Planning Obligation deal with the effects of development wherever located.
38. The Council has recently published a draft Vale of Aylesbury Local Plan (VALP) for public consultation. This plan is at an early stage in the process towards adoption. In light of this early stage, in accordance with paragraph 216 of the Framework, very little weight can be given to this plan as it may well change.
39. Although the VALP, as I understand it, indicates that Whitchurch will have a housing requirement, local residents indicate that they believe the nature of the village has been overstated and housing should be located elsewhere. Whether the VALP will include housing in Whitchurch at the quantum currently indicated is not for this appeal. This means that the analysis of various sites around the village undertaken by the appellant, seeking to show that the appeal site is the most suitable and efficient site for housing, cannot be of any substantive weight in considering this appeal. For a similar reason I cannot give substantive weight to the conclusions of the Council's Housing and Employment Land Availability Assessment (HELAA) which indicates that the site and adjoining land is not deliverable, as this has been objected to by the current appellant.
40. The appellant has referred to alleged inconsistencies as regards decision making for other sites with the District. As I do not have full details of these I am unable to take these into account, rather I must determine this appeal on the basis of its individual merits.
41. The appellant has set out a number of benefits which it considers the development would deliver. Economically this would be the employment during construction process and from the on-going future expenditure within the village. I agree that these represent benefits of the development and they should be given significant weight as they would ensure that Whitchurch continues to thrive and would assist in supporting services in the village in line with paragraph 55 of the Framework.
42. Socially the proposal would deliver new housing and affordable housing which I have already concluded should be given significant weight. I also accept that the proposal could be delivered relatively quickly and that this adds slightly to the weight that I am able to give to these benefits.
43. Environmentally the appellant accepts that there would be harm to the character and appearance of the area, but not to the extent that I have identified. The appellant has also indicated that there would be a net gain in biodiversity and a comprehensive landscaping scheme, but these are an inherent part of the scheme rather than being an additional benefit. Consequently, I cannot give any additional weight from these considerations in the final balance.

## **Other matters**

44. Local residents have expressed concerns about the effect of traffic on the local highway network. I note that a Transport Statement was submitted with the application which indicated that the development could be appropriately accommodated and the Highways Authority has raised no objection to the proposals subject to conditions and the Planning Obligations referred to above. I am therefore satisfied that the proposal would have a safe and secure access and that the residual cumulative impacts of the development would not be severe, which is the case if development is to be refused in line with paragraph 32 of the Framework.
45. Concerns have also been raised about flooding and drainage issues. As noted above a Flood Risk Assessment was prepared as part of the proposals which indicated, again subject to conditions and the Planning Obligations, that the site could be adequately drained. I note that both Thames Water and the Local Lead Flood Authority have raised no objection subject to these conditions and the Obligation. I am therefore satisfied that development could be adequately drained.
46. While there would inevitably be noise and disturbance during the construction period, I am satisfied that an appropriate Construction Management Plan, including when hours of work and deliveries could take place, secured by condition, could satisfactorily mitigate the effects on local residents.

## **Planning Balance**

47. The site lies outside the village of Whitchurch where the policies in the AVLP restrict housing. However, as there is no five year supply of housing land these policies are out-of-date. Therefore in line with paragraph 14 of the Framework planning permission should be granted unless the impacts of doing so would significantly and demonstrably outweigh the benefits.
48. Paragraphs 7 and 8 of the Framework make clear that sustainable development has three roles, economic, social and environmental and that these roles should not be undertaken in isolation as they are mutually dependent.
49. There are a number of economic benefits of the proposed development which weigh significantly in favour of the development but these are tempered slightly by the limited loss of a small amount of the best and most versatile agricultural land. In addition there would be the social benefits of the new housing and the affordable housing. Given the quantity of affordable housing is above that necessary to make the scheme policy compliant I give these benefits significant weight. The other contributions, however, are only needed to mitigate the effects of the development and are neutral in the overall balance.
50. However, there would be harm to the environment. There are three harms, two of which are significant and one of which I have identified as very significant. The first is to the character and appearance of area through the urbanisation of the site and the second is the effect on users of the extensive rights of way network in the near vicinity. However, the greatest harm relates to the nature of the development in depth on the site. The nature of Whitchurch as I identified is predominantly of frontage development, or at least development which does not extend in depth. In developing the appeal site to



the numbers proposed would inevitably result in development in depth. This would be significantly and demonstrably harmful to the nature and environment of the village.

51. Overall, I consider that these harms to the environment are such that they significantly and demonstrably outweigh the benefits of the development and consequently the proposal does not represent sustainable development.

**Conclusion**

52. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

*RJ Jackson*

INSPECTOR

Richborough Estates