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# Appeal Decision

Hearing held on 9 July 2013

Site visit made on 8 July 2013

**by P E Dobsen MA (Oxon) DipTP FRGS**

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

**Decision date: 13 August 2013**

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**Appeal Ref: APP/Y3940/A/13/2192250**

**The former nursery, Marsh Road, Hilperton Marsh, Trowbridge, Wiltshire BA14 7PJ**

- 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 Ashford Homes (South Western) Ltd. against the decision of Wiltshire Council.
  - The application (Ref: W/12/01840/OUT), dated 1 October 2012, was refused by notice dated 12 December 2012.
  - The development proposed is "the erection of 30 dwellings and associated works".
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## Decision

1. The appeal is dismissed.

## The application

2. The application is in outline, with all detailed matters reserved except for access and layout. The application plans include 1032/001 (site plan), 3011/12 (site layout plan) and 516/5199/1 (topographical survey).

## Preamble to main issues – including the planning policy context:

3. At the time of this hearing the only component of the development plan was the saved policies of the West Wiltshire District Plan (WDP) 1<sup>st</sup> Alteration, adopted in 2004. This includes proposals maps showing Village Policy Limits (VPL). The Trowbridge inset plan shows the VPL for Hilperton and Hilperton Marsh [Doc 3].
4. It is agreed that the appeal site lies outside (adjacent to the north of) the VPL for Hilperton Marsh, which largely follows the line of Marsh Road. Thus the application is agreed to be contrary to policies C1 (headed "countryside protection") and H19 ("development in open countryside") of the WDP, both concerning the location of new housing development.
5. At the time of the hearing the Wiltshire Core Strategy (CS) was in the process of a lengthy public examination. Thus it is an emerging plan which in due course will supersede the WDP. I was told that the CS Inspector is expected to report on the examination in the Autumn of 2013, some time after this appeal decision is issued.

6. The Regional Spatial Strategy for the South West (RSS) was never adopted and therefore, unlike other RSSs, technically has not needed to be revoked, but equally will never proceed to adoption.
7. Although the site still contains some dilapidated structures and hard standings from its former plant nursery use, and has also been in unauthorised use for the open storage of building materials<sup>1</sup> etc. it is agreed that no part of it is previously developed (brownfield) land, as defined in the National Planning Policy Framework (the Framework). The Framework contains various policies relevant to the appeal, including its section 6, *Delivering a wide choice of high quality homes*, with its reference to the need to provide a 5 years' housing land supply. It also contains (at para. 14 etc.) a presumption in favour of sustainable development.
8. Prior to the hearing the appellant submitted a signed and executed unilateral planning obligation concerning the provision of 12 dwellings (40% of the total) as affordable housing, and the payment of financial contributions towards various items of local community infrastructure [Doc 4]. I return to this briefly below.

### **Main Issues**

9. With the above policy context and other points in mind, I consider that there are 2 main issues in the appeal. The first is whether the acknowledged policy conflict with the WDP, and any harm to the character and appearance of the site and locality, is outweighed by considerations of housing land supply (i.e. whether there is a demonstrable and significant shortfall in the Council's 5 year land supply); and second, whether or not the proposed development should benefit from the Framework's presumption in favour of sustainable development.
10. A further, but to my mind subsidiary issue, is whether the proposed development would entail any significant planning benefits which should weigh in favour of a grant of outline planning permission.

### **Reasons**

11. *The site and its surroundings:* The appeal site, which is about 0.8 ha. in size and approximately square in shape, lies to the north of Marsh Road on the northern edge of Hilperton, a large village<sup>2</sup> which itself forms an outlying part of the wider urban area of Trowbridge. The site falls within a linear area of fragmented, discontinuous, and mainly old established residential development which backs onto the more open and undeveloped countryside to the north. There are adjacent dwellings and their residential curtilages both to the west and to the east, and 2 isolated dwellings (a former farmhouse) to the north; thus the site, although outside the VPL, is not in the open countryside proper but is partially surrounded by existing development.
12. Its character is that of an abandoned and overgrown former plant nursery. Apart from the dilapidated remnants of small nursery buildings, it is largely covered by vegetation, and is fringed by many mature trees and shrubbery on all sides. Thus it forms a notable green gap (although not formally designated

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<sup>1</sup> A written representations appeal by the same appellant for this use is currently pending, but is agreed to have no particular bearing on the housing appeal, the subject of this hearing.

<sup>2</sup> As defined in the emerging Wiltshire CS

as such) within the sporadic linear development on the north side of Marsh Road.

13. *Conclusions on the first main issue - a) character and appearance:* The proposed development would comprise a small/medium sized estate of 30, mainly 2 storey dwellings. It would be a novel and atypical form of development in the area north of Marsh Road, which hitherto has been fragmented and narrowly linear, with no substantial development in depth away from the road.
14. With a density of about 38 dwellings/ha. it would also be essentially urban in character, thereby contrasting with the quasi-rural established character of development in that area. Thus it would represent the spilling-out of the urban area, hitherto limited to the southern side of Marsh Road, into the rural area to the north of it. Objectors say that to allow it would set a precedent, opening up other sites on either side. I agree with them and with the Council that these effects would tend to harm the existing character of the land north of Marsh Road - in effect, to "urbanise" it. While the detailed design of the scheme would await the reserved matters stage, it is difficult to see how the submitted layout could depart from a markedly urban, estate form. This counts against a grant of outline permission, but on its own it is not decisive in the appeal. This brings me to the question of housing land supply.
15. *Conclusions on the first main issue - b) housing land supply:* The Framework contains a presumption in favour of sustainable forms of housing, as an important part of its general presumption in favour of sustainable development. It advises at para. 49 that "*housing applications should be considered in the context of (that presumption). 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*".
16. In a nutshell, the appellant argues that the Council cannot show a five year supply, whereas the Council maintains that it can. While the appellant's most up to date assessments and calculations<sup>3</sup> purport to show only a 4 years' supply, the Council's<sup>4</sup> purport to show a 5.8 years' supply (or 5.25 years' including the 5% buffer or contingency specified in para. 47 of the Framework).
17. Leaving aside some disagreements between the parties over the potential contribution of windfalls and the deliverability of certain larger housing sites, the discrepancy arises largely because the appellant relies upon the housing land requirement in the draft South West Plan (the RSS), while the Council relies upon the requirement in its emerging CS.
18. The difficulty is that neither requirement can be considered to be authoritative. The South West Plan, while never adopted was in effect revoked before this hearing, and is not a part of the development plan, nor (according to the Council) is even a material consideration in the appeal. For its part, the emerging CS has not yet completed its public examination; therefore its housing requirement remains in draft, is currently being challenged by various parties through the examination process, and may be altered prior to its eventual adoption.

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<sup>3</sup> Stated in a letter by GL Hearn dated 5 July 2013. This also calculates a housing land supply of 4.4 years on the basis of the emerging CS.

<sup>4</sup> As detailed in the Council's hearing rebuttal statement (Mr. Tiley) dated 25 June 2013.

19. In these circumstances - which are not unusual around the country in the wake of regional strategy revocations, and delays in the adoption of local development frameworks - and in the context of a hearing into just one proposal, I am not in a position to prescribe (or even offer an opinion upon) what "should be" Wiltshire's housing land requirement at the present time. That is properly a task for the CS examination Inspector. But I note the advice in para. 216 of the Framework, which addresses the weight to be given to emerging plans. With this in mind, on balance I lean towards the Council's view, detailed in Mr. Tiley's evidence, that for the purposes of this appeal more weight should be given to the emerging requirement in the CS, because it is based on more up to date national and local information and housing needs assessments, than to that in a plan which has now been entirely superseded, and, arguably, is only of historic relevance.
20. It follows that the Council can currently demonstrate a five year land supply; or, to put it another way, the appellant cannot show persuasively that there is no such supply in place, nor that there is a demonstrable and significant shortfall in supply.
21. Furthermore, in that situation I do not regard the VPL for Hilperton as being out of date; instead, I consider it to be still relevant to the location of new housing development (as indeed is reaffirmed by its retention in the emerging CS).
22. On the first main issue, therefore, I conclude that the proposed development's acknowledged conflict with the WDP, together with the harm it would do to the character and appearance of the site and the locality, are not overcome by considerations of the five year housing land supply. That tells strongly against a grant of outline planning permission in this case.
23. *Conclusions on the second main issue - sustainable development:* The Council maintains that the site's location outside (albeit, only just outside) the Hilperton VPL makes the proposed development, by definition, "unsustainable". That is clearly stated in the reason for refusal.
24. I agree however with the appellant that it is a somewhat over-simplified view, as it assumes that adjacent sites on either side of the VPL - or, presumably, any VPL - can be described as sustainable (if inside the VPL) and unsustainable (if outside it). To my mind, the concept of sustainability, in all its economic, social and environmental dimensions<sup>5</sup>, is more complex and nuanced than that. However, the Council's view on this point has some validity, in that significant urban growth outside the VPL would be likely to stretch the limited village services and facilities of Hilperton, and also be dependent upon the private car for most journeys and thereby encourage out-commuting to larger urban centres. For those reasons, I agree with the Council that to place such a substantial new housing development in a very peripheral village fringe location is not a good or clear example of sustainable development.
25. On the other hand, the site is accessible by bus services, albeit few and infrequent. And a few local facilities are accessible to it on foot and by bicycle. In addition, the site is certainly better placed to use and be served by facilities and services in the Trowbridge urban area than other, more obviously rural locations in or around smaller settlements.

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<sup>5</sup> These are outlined in the Framework, para 7 ff.

26. In sum, the proposed development is neither a good example of sustainable development, nor of its antithesis. Instead, in a notional spectrum of "sustainability" through to "non-sustainability", it is somewhere in between. That being so, it seems to me only logical that it should not benefit from the Framework's presumption in favour of sustainable development.
27. *Conclusions on the subsidiary issue – planning benefits:* The appellant claims that the development would bring several benefits to the area. Among them, 30 new dwellings, 12 of which would be affordable; additional employment and economic activity during the construction phase; a new residential community which would help support local facilities; and income to the Council from the New Homes Bonus. It would also bring a neglected (but not a brownfield) site into beneficial use.
28. Clearly, additional housing - assuming it is well designed - is a public good in itself, but not necessarily if it is not well located, as would be the case here. Other claimed benefits such as construction jobs and activity would apply equally to any new housing anywhere. And while there might be some scope for an alternative beneficial use for the site, that is not a question for me to determine, and (as far as I am aware) Hilperon Marsh would not suffer any obvious or demonstrable harm or disadvantage if it were to remain undeveloped. Overall, I am not persuaded that there are any particular public benefits which would accrue from developing this particular site, as opposed to any other of comparable size.
29. So much for the main issues in the appeal. Having regard to the evidence to the hearing, and the criteria in para. 204 of the Framework, I am satisfied that the submitted planning obligation would be necessary to make the proposed development acceptable in planning terms, would be directly related to it, and also fairly related to it in scale and kind. It would meet the 3 statutory tests set out in regulation 122 of the Community Infrastructure Regulations 2010 (as amended). However, these considerations do not overcome the planning objections to the scheme, as previously discussed.
30. I have also considered the 15 planning conditions suggested<sup>6</sup> by the Council, to which the appellant has no particular or serious objection, but the same conclusion applies.
31. Owing to all the foregoing conclusions, I dismiss the appeal. I have considered all the other matters raised at the hearing, including the references to local drainage by 2 local residents, and to the need for affordable housing by a local county and parish councillor<sup>7</sup>, but they do not alter or outweigh my conclusions on the main town planning issues. Nor do both main parties' references to other housing appeal decisions in Wiltshire, chiefly following the publication of the Framework. These have occurred at different times in the plan-making process, and in the light of their own particular sets of circumstances, but they do not appear to me to point to any particular decision in this case, which I have addressed on its own merits in the light of the evidence to the hearing.

*Paul Dobsen* INSPECTOR

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<sup>6</sup> In the event of a successful appeal.

<sup>7</sup> Mr. Clark, who argued that any housing scheme for the site should comprise entirely affordable housing, and was therefore objecting to the proposed development.

## **APPEARANCES**

### FOR THE APPELLANT:

Mr. C. Beaver MRTPI	Planning Director, GL Hearn (Bristol)
Mr. D. Washington MRTPI	Senior Planner, GL Hearn
Mr. T. Griffiths	Ashford Homes (the appellants company)

### FOR THE LOCAL PLANNING AUTHORITY:

Mr. J. Taylor MRTPI	Senior Planning Officer, Wiltshire Council
Mr. N. Tiley	Manager, Spatial Planning Team (monitoring and evidence)

### INTERESTED PERSONS: (objecting to proposed development)

Mr. E. Clark	Wiltshire councillor (Hilperton division) and Chairman of Hilperton Parish Council
Mr. and Mrs. Havelock-Allan	Local residents, 302 Marsh Road, Hilperton Marsh BA14 7PL

## **DOCUMENTS**

- 1 List of persons present at the hearing
- 2 The Council's letter of notification of the hearing
- 3 Extract from Trowbridge Inset Plan No 3 (from West Wiltshire District Plan 2004)
- 4 Unilateral Planning Obligation, submitted by the appellants
- 5 Summary of updated land supply assessment, put in by the Council