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## Appeal Decision

Hearing held on 5 April 2017

Site visits made on 4 and 5 April 2017

**by Neil Pope BA (Hons) MRTPI**

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

**Decision date: 2<sup>nd</sup> May 2017**

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**Appeal Ref: APP/C1760/W/16/3159869**

**Land at Holly Lodge and the rear of Heathfield, Chilworth Road, Chilworth, Hampshire, SO16 7JZ.**

- 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 Mr Bailey of Alfred Homes Ltd against the decision of Test Valley Borough Council (the LPA).
  - The application Ref. 16/00755/FULLS, dated 30 March 2016, was refused by notice dated 30 June 2016.
  - The development proposed is the erection of 18 dwellings comprising 13 four bedroom houses and 5 two bedroom apartments with associated access, garages, parking and landscaping.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. As part of the appeal the appellant has submitted a Unilateral Undertaking (UU) under the provisions of section 106 of the above Act. This includes financial contributions towards the cost of mitigating the impact of the development upon European protected sites<sup>1</sup> and a contribution towards the cost of-site affordable housing provision. The UU also includes provision for managing open space to be provided within the site. The LPA informed me that the provisions relating to European protected sites overcome its concerns set out within reason for refusal (RfR) no.5. I shall return to the UU below.
3. In August 2016, the LPA adopted its Community Infrastructure Levy (CIL) Charging Schedule. As a consequence, the LPA has informed me that its concerns regarding off-site open space provision (part RfR no.6) and highway infrastructure (RfR no.7) would now be addressed through the CIL charging regime. The LPA also informed me that its concerns regarding the potential impact upon dormice (part RfR No.2) had been addressed through the appellant's updated ecology report.
4. The appellant and the LPA have agreed a Statement of Common Ground (SoCG). Amongst other things this identifies those matters not in dispute and those which are. This was amended and signed by both main parties after I had opened the Hearing.

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<sup>1</sup> The New Forest Special Protection Area (SPA) and the Solent and Southampton SPA.

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5. At the Hearing I was also provided with an agreed SoCG in respect of affordable housing viability. However, as I had not received this document or any 'viability evidence' from the LPA before opening the Hearing, I informed the parties that as this remained a matter of dispute between the main parties there would be insufficient time to consider this matter, including undertaking the necessary inquisitorial approach, during the scheduled one day Hearing. I also informed the main parties that if they wished me to consider the LPA's evidence on affordable housing viability and the appellant's 'Affordable Housing Viability – Supplementary Information', which I also did not receive before opening the Hearing, then a further sitting day would need to be arranged.
6. At the request of both main parties I held a Hearing on 5 April 2017 to consider, with the exception of affordable housing viability, those matters in dispute by the main parties. This Hearing was then adjourned at the end of the day to allow the LPA additional time to consider whether or not a further sitting day should be arranged to consider its evidence on affordable housing viability. I was subsequently informed by the LPA that it was content for me to determine the appeal without considering any of the viability evidence that was presented to me on 5 April 2017. The Hearing was closed on 11 April 2017.
7. On behalf of the appellant, some additional drawings, including proposed street scenes were submitted as part of the appeal. Both the LPA and the Parish Council were aware of these additional drawings and informed me that they would not be prejudiced if I were to take them into account in determining the appeal. As these drawings do not amend the proposed development and were available on the LPA's website for a considerable period of time before the Hearing opened I have taken them into account in determining the appeal. I have treated the proposed street scenes as illustrative only.

### **Main Issues**

8. The three main issues are: firstly, the effect upon the character and appearance of the area, having particular regard to the Chilworth Residential Area of Special Character (RASC); secondly, the effect upon nature conservation interests, having particular regard to bats and the neighbouring Chilworth Common Site of Importance for Nature Conservation (SINC) and; thirdly, whether the proposal should include some on-site provision for affordable housing and, if not, whether the proposed off-site affordable housing contribution would be appropriate.

### **Reasons**

#### *Planning Policy*

9. The development plan includes the Test Valley Borough Revised Local Plan (LP), which was adopted in 2016. The most relevant policies to the determination of this appeal are: COM2 (settlement hierarchy<sup>3</sup>), COM7 (affordable housing), E1 (high quality development), E4 (RASC) and E5 (biodiversity).
10. The Chilworth Village Design Statement was adopted by the LPA as a Supplementary Planning Document (SPD) in 2006. Amongst other things, it identifies a number of key points for the future of the village. These include

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<sup>2</sup> Part of Chilworth, including the appeal site, is identified within the development plan as a RASC.

<sup>3</sup> Chilworth is identified as a Key Service Centre.

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retaining the character of low density residential development in large plots to maintain and protect the spacious wooded appearance of the village. The SPD has been produced by local residents with the support of the Parish Council and it has been subject to a process of public consultation. It can be given considerable weight in the determination of this appeal.

11. My attention has also been drawn to the LPA's Planning Advice Note (PAN) 'Revised Local Plan Policy COM7 Affordable Housing Financial Contributions' which was published in 2016 as an interim note until an Affordable Housing SPD is produced. It is unclear if this PAN has been subject to a process of public consultation. It carries limited weight in this appeal.
12. The National Planning Policy Framework (the Framework) is an important material consideration that can also be given considerable weight.

### *Character and Appearance*

13. This 1.7 ha site lies within the settlement boundary for Chilworth as identified within the LP. The main body of the site is set back from Chilworth Road (the A27) and includes the property known as Holly Lodge, part of the neighbouring rear garden of Heathfield and numerous trees that are the subject of a Tree Preservation Order (TPO). The village hall and playing field lie to the west and the above noted SINC abuts the southern boundary of the site.
14. As I saw during my visits, the important and pleasing attributes of the village and RASC are derived primarily from the substantial houses which are set in generous plots with mature tree planting. As noted within the SPD, there are various house styles encompassing many periods of domestic architecture.
15. A few mock Georgian style houses can be found within the village. However, in the main, the dwellings within the RASC are large individually designed houses with brick walls and clay tile roofs. There are no mock Georgian housing estates or housing squares and no buildings that are designed to stand out as a landmark. The variation in the style of the buildings and the absence of formality in their design and layout adds to the attractive qualities of the RASC.
16. I concur with both main parties that in principle the appeal site is suitable/capable of accommodating some new/additional residential development. However, as set out within the development plan, the resulting sizes of the plots should not be significantly smaller than those in the immediate vicinity and the size, scale, layout, type, siting and detailed design should be compatible with the character of that in the RASC.
17. As noted by the Inspector who determined a recent appeal<sup>4</sup> for a dwelling on another site within the RASC, given the provisions of LP policy E4, it is appropriate to compare proposed plot sizes to those in the immediate vicinity. In this regard, the LPA has calculated the plot sizes of five properties on the opposite side of the A27 to the appeal site. As these are the nearest plots to the site that lie within the RASC this comprises a reasonable assessment of the immediate vicinity for the purposes of LP policy E4. It would be a misapplication of this policy to include plots which lie outside the RASC.
18. The LPA has calculated that the plot sizes of the five properties within the immediate vicinity of the appeal site vary between 0.1 ha – 0.4ha. It has also

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<sup>4</sup> APP/C1760/W/16/3159612

calculated that the plot sizes of the proposed properties would vary between 0.02 ha – 0.14 ha. The appellant has calculated that the smallest of the proposed plots would be 0.03 ha and I note that the remainder of the plots for Holly Lodge and Heathfield would be in keeping with the five plots on the opposite side of the A27. However, I concur with the LPA that the majority of the proposed plot sizes would be significantly smaller than those in the immediate vicinity. The proposal would erode the spacious settings of the dwellings within the RASC and conflict with LP policy E4(a) and the aims and objectives of the SPD. This weighs heavily against granting permission.

19. The proposed two and a half storey buildings would include a mix of detached, semi-detached houses and five apartments. The size (excluding plot size), scale and type of dwellings would not harm the special qualities of the RASC and these elements of the proposal would accord with aspects of LP policy E4(b). The design<sup>5</sup> of the proposed development was supported by the Test Valley Architect's Advisory Panel and I consider that the proposed buildings, which would include chimneys, setbacks for the roofs to break up the roofline, sash windows, stone canopies to entrance doors and stone surrounds to the windows would be designed to a high standard. In some parts of the country the proposal could comfortably fit and enhance townscape quality.
20. The proposed layout would be designed to represent a traditional Georgian Square with landmark buildings in the form of 'gateway houses' and a centrally positioned mansion block. This would be very different to anything else within the RASC or the village. Whilst being different does not necessarily equate to harm, the very formal layout of the proposed development, the inclusion of landmark buildings and the provision of 18 mock Georgian style dwellings on the site would contrast awkwardly with the more unassuming, individually designed houses and the 'looser' arrangement of buildings which contribute to the special qualities of the area. From the playing field alongside and sections of paths through the neighbouring woodland the proposal would appear as a discordant addition to the RASC. It would adversely affect the character and appearance of the area and be inappropriate in this village location. The failure to respect the character of the area would conflict with LP policy E1(a)
21. The proposal includes planting numerous trees. In all likelihood, it would take many years for these to establish and soften the impact of the new buildings. Moreover, many trees growing within the site would be felled to accommodate the proposed layout. These include a number of 'Category B' trees as defined within the relevant British Standard<sup>6</sup>. Whilst BS 5837 is not planning policy, it is widely used in the development industry and has been referred to by the appellant and the LPA. It is an important material consideration.
22. Amongst other things, BS 5837 recommends that tree surveys should be undertaken by an arboriculturist and made available to designers prior to any specific proposals for development. However, the appellant's arboriculturist informed me that before undertaking his survey he was provided with an indicative design layout. It is unsurprising therefore that all of the 'Category B' trees which it is proposed to fell have a recommendation to 'remove' from the appellant's arboriculturist. I concur with the LPA that the loss of many of these trees of moderate quality would erode the attractive sylvan qualities of the

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<sup>5</sup> The Panel made it clear that 'density' was a separate matter of planning policy rather than design.

<sup>6</sup> BS 5837:2012 'Trees in relation to design, demolition and construction – Recommendations'.

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RASC and the village. The proposed layout and siting conflicts with LP policy E4(b). This also weighs heavily against granting planning permission.

23. I conclude on the first main issue that the proposal would harm the character and appearance of the area.

#### *SINC*

24. The SINC extends to 12.26 ha. I understand that this comprises low lying heath vegetation with mixed deciduous woodland and conifers. At the Hearing I was also informed that the nature conservation interest of this area comprises heathland habitat and a mosaic of lowland woodland which supports species of plants and populations of invertebrates and reptiles.
25. I note the concerns of the County Council's Ecologist regarding the proximity of some of the proposed buildings to the SINC and the potential for fly tipping/garden waste to be deposited within this neighbouring area of importance for nature conservation and degradation of habitat. In this regard, during my accompanied site visit, I noted several deposits of leaf litter within the SINC and in close proximity to the boundary fence of the appeal site.
26. Whilst I recognise the importance of safeguarding nature conservation interests within the SINC it is not unusual to find residential properties in close proximity to the boundaries of areas of nature conservation interests/importance. Moreover, separate powers exist to control unauthorised fly tipping/deposits of garden waste. A planning condition could also be attached to a permission requiring a suitable barrier, such as a tall hawthorn hedge, to deter any future residents from undertaking such activity.
27. Two of the trees growing within the site and identified for removal have also been identified as having a high potential to be used by roosting bats. Bats and their roosts benefit from legal protection. Any loss or disturbance to bat roosts would be likely to have an adverse effect upon this European protected species. Circular 06/2005<sup>7</sup> states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by a proposed development, is established before planning permission is granted.
28. The appellant's ecologist<sup>8</sup> surveyed the trees in July 2016 and did not observe any fresh bat droppings. An evening emergence survey on 12 September 2016 also failed to reveal any bats emerging from these trees. In addition, during my accompanied site visit the appellant's ecologist inspected both trees using an endoscope and informed me that there was no evidence of bats roosting within either tree. Whilst this tends to support the appellant's argument that bats would not be adversely affected by the proposal the emergence survey occurred towards the end of the bats' active season (May to September) and the investigation that was undertaken during my visit fell outside this season.
29. On balance, there is insufficient survey information before me to establish the likely effect upon bats. Whilst this could be resolved through additional survey work during the bats' active season, there are no exceptional circumstances to justify addressing this matter by way of a planning condition. I therefore concur with the County Council's ecologist that it would be inappropriate to grant planning permission at this time.

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<sup>7</sup> Biodiversity and Geological Conservation – Statutory obligations and their impact within the planning system.

<sup>8</sup> Possessing a Bat Licence registered with Natural England.

30. I conclude on the second main issue that the proposal could have an adverse effect upon bats and would be at odds with the objectives of LP policy E5.

#### *Affordable Housing*

31. Where development would result in a net gain of 15 or more dwellings LP policy COM7 requires the LPA to negotiate provision for up to 40% of dwellings to be affordable. In assessing the suitability of sites for affordable housing provision this policy also requires the LPA to take into account, amongst other things, the economics of provision. Developments should also provide for the appropriate integration of affordable and market housing.
32. I note from the SoCG on affordable housing viability that the appellant considers that the proposed development would be unable to support on-site affordable housing provision but could support an off-site contribution of £425,000 in lieu of on-site affordable housing. The LPA, using methodology based on its PAN, has argued that the development could support on-site affordable housing and if an off-site contribution is necessary this should be about £1.3m.
33. Both main parties have employed the services of those with expertise in undertaking viability assessments. However, as set out above, I only have before me the appellant's assessment/appraisal of affordable housing viability<sup>9</sup>. However, this reveals a residual land value of just over £1.6m and identifies an off-site payment of £160,000. Whilst this is different to what is set out within the SoCG (and the completed UU) and would need to be explored with the appellant if I was to allow the appeal, I have no cogent evidence from the LPA to substantiate its argument on this matter and to refute the appellant's appraisal. There is a greater weight of evidence before me to indicate that the development could not support on-site affordable housing provision and that the financial contribution towards off-site affordable housing provision should be not less than £160,000.
34. I conclude on the third main issue that it would be inappropriate for the proposed development to include on-site affordable housing provision and the proposed off-site affordable housing contribution would be appropriate. The development would accord with the provisions of LP policy COM7.

#### *Other Matters*

35. The proposed development would add to the supply and choice of housing within the Borough. Occupiers of the dwellings would also have convenient access to services and facilities. In addition, the proposal would provide some support to the construction industry. These matters can be given limited weight within the planning balance.
36. The appellant's CIL Regulation 122 Compliance Statement, the various consultation responses, the LPA's Regulation 19 Pre-Submission Habitat Regulations Assessment document and the answers that I was given at the Hearing on behalf of the main parties lead me to find that the obligations contained within the UU comply with the provisions of paragraph 204 of the Framework and the provisions of the Community Infrastructure Levy Regulations 2010 (as amended). I have therefore taken them into account.

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<sup>9</sup> This comprises Appendix 7 to the Appellant's Supplementary Appeal Statement dated 3 February 2017 and received well in advance of the opening of the Hearing.

37. I note the findings of the Inspector who allowed an appeal for four detached houses on another site in Chilworth (ref. APP/C1760/W/16/3152135). However, that development was very different to what is before me and each case must be determined on its own merits. This previous decision does not set a precedent that I must follow.
38. Whilst I note the other concerns of some interested parties they do not lend weight to the arguments for withholding permission.

*Planning Balance / Overall Conclusion*

39. My findings in respect of the third main issue and the other matters above do not outweigh the harm that I have found in respect of the character and appearance of the area. Furthermore, although the appeal site lies within the settlement boundary the conflict with LP policies E1, E4 and E5 leads me to find that the proposal would also be at odds with LP policy COM2 and in conflict with the development plan as a whole. The proposal would fail to satisfy the environmental dimension to sustainable development, as defined within the Framework. I therefore conclude that the appeal should not succeed.

*Neil Pope*

Inspector

Richborough Estates

## **APPEARANCES**

### FOR THE APPELLANT:

Mr C Rees	Director of Planning, Savills
Ms L Lowans BSc (Hons), MCIEEM	Lowans Ecology & Associates
Mr B Draper BSC (Hons) Arb, TechCert (ArborA), CertArb(RFS)	Ecourban Ltd
Mr M Sturman MRICS	Intelligent Land

### FOR THE LOCAL PLANNING AUTHORITY:

Ms A Jahn MA, MRTPI, MCMi	Senior Planning Officer
Ms L Ward BA (Hons) LA, Dip LA, CMLi	Landscape Architect
Ms J Ryan MRTPI	Planning Policy Officer
Mr J Owen MRTPI	Development Manager
Mr D Cox DipArb, RFS, FArbA	Tree Officer
Ms J Windebank	Housing Development Manager
Mr A Eggesfield	Senior Ecologist, Hampshire County Council
Mr R Miller MRICS	Partner, Vail Williams

### INTERESTED PERSONS:

Mr M Gilks Cllr Mrs A Finlay	Solicitor for Chilworth Parish Council Chairman, Chilworth Parish Council
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### DOCUMENTS SUBMITTED AT THE HEARING:

Document 1	Amended Draft UU
Document 2	Signed and amended SoCG
Document 3	The LPA's updated/amended Statement of Case
Document 4	Plans to Ms Ward's proof of evidence
Document 5	SoCG (Affordable Housing)
Document 6	Suggested planning conditions
Document 7	The appellant's CIL Reg 22 Compliance Statement
Document 8	A1 sized copies of tree protection drawings
Document 9	Completed UU