



Appeal Decision

Site visit made on 23 May 2017

by **Richard Aston BSc (Hons) DipTP MRTPI**

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

Decision date: 4th July 2017

Appeal Ref: APP/L1765/W/16/3165007

Land at Church Lane, Church Lane, Colden Common SO21 1UN

- 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 Mr Richard Cutler (c/o Bloombridge LLP) against the decision of Winchester City Council.
 - The application Ref 16/00819/OUT, dated 17 April 2016, was refused by notice dated 30 June 2016.
 - The development proposed is described as 'A garden village comprising up to 13 open market and 8 affordable houses, including a community orchard and major new public open space'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline form and makes it clear that all matters are reserved. The appellant has provided an illustrative masterplan, along with a number of other concept plans to indicate in broad terms how the site could be developed. Because all matters are reserved I have determined the appeal on the basis that the plans are indicative.
3. Since the appeal was submitted, on 5 April 2017 the Council adopted the Winchester District Council Local Plan Part 2 – Development Management and Site Allocations ('LPP2') and I have been provided with a copy of the relevant policies as part of the appeal. I am required to determine this appeal on the basis of the development plan and national policy which are in place at the time of my decision and accordingly I have determined the appeal on that basis. Following this, the Council has also withdrawn the second reason for refusal. I have therefore not considered that matter any further.
4. A legal agreement made under s106 of the Town and Country Planning Act 1990 in the form of a Unilateral Undertaking, executed on 15 May 2017 ('UU') was submitted during the appeal process. This was in response to the Council's third and fourth reasons for refusal and I have had regard to this in my consideration and determination of the appeal.
5. The appellant has confirmed¹ that in light of the Inspector's findings for LPP2 and in 2 recent appeals², it is not in contest that the Council cannot

¹ Bloombridge LLP – Written Representations Appeal Response to Council's Statement – 17 May 2017.

² APP/L1765/W/16/3141664 and APP/L1765/W/16/3141667 dated 12 April 2017.

demonstrate a 5 year supply of housing land. On the evidence before me, I have no reason to conclude otherwise and I have determined the appeal on the basis that the Council can demonstrate a 5 year housing land supply.

Main Issues

6. The main issues are:

- Whether the appeal site would be a suitable location for the proposal with particular regard to the adopted housing strategy for the area and the effect of the proposal on the character and appearance of the area.
- Affordable housing and planning obligations.

Reasons

Suitable location

7. The Winchester District Local Plan Part 1 Joint Core Strategy 2013 ('LPP1') requires that the 'Market Towns and Rural Area' ('MTRA') should, to support economic and community development, make provision for around 2,500 new homes under Policy DS1. Apart from major developments of three strategic sites, the rest of the District, including the appeal site is located within the MTRA to which Policies MTRA1 to MTRA5 apply.
8. Policy MTRA2 of LPP1 requires provision for about 250 new homes in each of six settlements including Colden Common by 2031. It states that housing should be accommodated through development and redevelopment opportunities within existing settlement boundaries in the first instance. In addition, that sites outside settlement boundaries will only be permitted where, following an assessment of capacity within the built-up area, they are shown to be needed, or to meet a community need or realise local community aspirations identified through a Neighbourhood Plan or other process which demonstrates clear community support.
9. The appeal site is not located within the settlement boundary and does not fall within any sites allocated for housing in LPP2. Accordingly and for development plan purposes the site is within the countryside and does not appear to fall within any of the exceptions identified as being acceptable within Policy MTRA4. The proposal would therefore conflict with this policy.
10. As part of the preparation of LPP2, housing capacity within the existing settlement boundary was assessed and sites outside of the settlement boundary were considered as necessary to meet the requirement. This was undertaken in the context of work undertaken by the Colden Common Parish Council's appointed Community Engagement Group. The selected strategy for new housing settled on concentrating new housing on one main new site, plus another smaller one, rather than a more dispersed pattern of growth. Consequently, the LPP2 process identified 2 sites which have been formally allocated for housing to meet the needs of Colden Common, at Sandyfields Nursery and Clayfield Park.
11. The appellant raises a number of concerns over the allocations, particularly in relation to Sandyfields. It is contended that there are issues of deliverability and other constraints and that even if outline permission is forthcoming, this

- only confirms 'up to' 165 units, effectively to be finalised at the reserved matters stage.
12. The Council has provided additional details relating to Sandyfields during the course of the appeal and I gave the appellant further opportunities to comment. These confirmed that outline planning permission was granted on 19 May 2017³ for up to 169 dwellings with an accompanying legal agreement to secure, amongst other things, affordable housing and open space.
 13. Many of the concerns raised by the appellant in terms of achieving the number of units at Sandyfields appear to have been addressed in the Inspector's report into LPP2⁴. The Inspector did not appear to have any doubts about the appropriateness of its inclusion and on the evidence before me, I have no reason to conclude otherwise. I also do not consider the findings of a Design Review Panel to be more persuasive or decisive in this regard. Land at Clayfield Park is allocated for development of about 53 dwellings and I also note the finding of the Inspector's Report for LPP2 that it is readily available and deliverable over the plan period.
 14. None of the evidence before me leads me to believe that those sites will not come forward for development during the plan period or that they will not necessarily deliver the number of dwellings envisaged. In any event, at this stage and in the context of there being a National Planning Policy Framework ('the Framework') compliant supply of housing land only minimal weight should be given to the appellant's concerns in this regard.
 15. The appellant also refers to a 10% flexibility given the use of the term 'about' in terms of the 250 figure. I am not persuaded that this is not simply intended to take account of the actual provision that may result at the planning application stage as opposed to justifying allowing additional market housing on sites outside the development boundary to be permitted.
 16. Ultimately, in the context of a local policy priority for new housing to be within the settlement boundary and because of the recent allocations in LPP2 it has not been demonstrated that there is a proven local need for this proposal in Colden Common now or that the proposal would meet a local community aspiration or has clear community support in the terms of Policy MTRA2. In my view, it is simply not necessary or appropriate at this time to take any presently undeveloped peripheral Greenfield sites for new development when already allocated sites can realistically provide the necessary number of new dwellings by 2031. A situation which I am also mindful is due to be reviewed in the short term.
 17. However, even if I were to agree with the appellant that some flexibility is required a key objective of the development plan is that development must also maintain and enhance important local character and built or natural features, whilst retaining the identity of the settlement. This is matter which I now turn to.
 18. The appeal site is a broadly rectangular field on the edge of Colden Common and is part of a larger field that lies to the south of Church Lane. There is some sporadic development along Church Lane leading outwards from the village, but when approaching Colden Common the site appears as an open field, with

³ 14/01993/OUT and 16/01588/OUT.

⁴ Paragraphs 138-143 of Report to Winchester City Council dated 31 January 2017.

the rooftops of detached single storey dwellings within the settlement visible above a mature hedgerow along the eastern boundary. From Church Lane the site has an open and rural character and appearance, bordered by mature hedgerows interspersed with mature trees. A public footpath also runs to the south of the site⁵.

19. The appeal site lies within the 'Durley Claylands' Landscape Character Area as defined by the Winchester Landscape Character Assessment 2004 ('LCA'). Key characteristics of the area include low lying, gently undulating landscape consisting of arable and pasture agriculture with a strong hedgerow and woodland network and long views from elevated positions across farmland, together with shorter views enclosed by woodland and strong hedgerow boundaries. The LCA also identifies that a key issue is suburbanisation and urban fringe encroachment and a 'Built Form Strategy' seeks to '*conserve the nucleated form of Colden Common and Bishops Waltham*'.
20. The site has been identified in the Council's Landscape Sensitivity Appraisal, produced to inform LPP2 as a site highly sensitive in terms of impact on landscape character as part of the wider context and setting of Colden Common. Whilst I accept this may not have been subject to public consultation and the appeal site is not protected by any particular landscape quality designation, having visited the site I consider that the Council's assessment is justified and that such an area of landscape can be 'valued' whilst not necessarily being 'designated'.
21. I have been provided with a Landscape and Visual Impact Assessment⁶ by the appellant. In character terms and given the wider scope of such an assessment the effects on tranquillity and the landscape as a resource would be minimal and somewhat localised. However, the introduction of the development onto an undeveloped site would alter its character as a site that provides an important and valuable contribution to the open and undeveloped landscape setting of the settlement.
22. Turning to visual effects, the visual receptors include the surrounding Public Right of Way Network, nearby residential properties and the footpath that runs alongside Church Lane. In shorter views, the appeal site is clearly visible through field access points. The indicative plan shows that around 21 dwellings could be located on the appeal site and reference is also made to single storey development which would be set back from the verge. A landscape buffer is proposed along the eastern and western boundaries and I am mindful that at reserved matters stage careful consideration would no doubt be given to the scale, layout and design of the development along with details of landscaping.
23. Nevertheless, the local topography would mean that any development would be clearly visible on the approach along Church Lane in both directions and there are a limited number of ways in which the appeal site could be developed for 21 dwellings. Moreover, such buildings are highly likely to be sited uncharacteristically beyond the existing building line on this side of Church Lane and the proposal would result in an unacceptable suburbanisation of the appeal site that would fundamentally change the character and appearance of the rural setting of the village.

⁵ Colden Common Footpath 21.

⁶ Cordle Design April 2016.

24. Apart from VR9 on Church Lane the proposed mitigation would limit the visibility of the proposal from a number of viewpoints⁷. However, it would also take a substantial amount of time to mature and be dependent on a number of factors to be successful. Moreover, I am not persuaded that it would fully mitigate the visual impacts and in my view, the LVIA's overall conclusion that there would be a 'Moderately Beneficial Landscape Impact' and a '*Slight Beneficial Visual Impact*' somewhat underestimates the effects.
25. The view of a previous workshop⁸ that the appeal site is a '*natural extension to the village*' is not determinative as the existing housing to the west already gives a strong edge to built development in this part of the village. On the contrary it would be a harmful encroachment into the countryside and the rural character of the eastern approach would be irrevocably changed and harmed through the loss of this open land.
26. For these reasons, the proposal would not provide a suitable location with regard to the housing strategy for the area and would cause substantial harm to the character and appearance of the area. Accordingly, it would conflict with Policies MTRA2, MTRA4 and CP20 of the LPP1 and Policies DM1, DM15 and DM16 of LPP2. Amongst other things, these require new development to conserve each settlement's identity and countryside setting, to protect and enhance the District's distinctive landscape and its setting with particular emphasis given to local distinctiveness, in terms of built form and layout, sense of place and setting. The planning balance and benefits put forward by the appellant in the written submissions is a matter to which I return to below.

Affordable Housing and planning obligations

27. In accordance with Policy CP3 of LPP1, the UU makes provision for a scheme for 40% of the total number of dwellings in the appeal proposal to be approved by the Council before development commences. In addition, that because this would equate to 8.4 dwellings a contribution of £47,200 for the 0.4 is included. The Council have confirmed that subject to some minor amendments, which I consider can be secured by the requirement within the UU for a scheme to be agreed, the UU is acceptable and addresses reasons for refusal 3 and 4.
28. The UU also provides for a contribution of £108,694 for education contributions to be put towards additional places at Colden Common Primary School, in accordance with Policy CP21 of LPP1. Having regard to the development plan and on the evidence put before me by the parties, I consider that these obligations would meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 ('the Regulations') and the tests for planning obligations set out in the Framework. I have therefore taken them into account.
29. The Council also contend that the inclusion of open space to the south of the appeal site is additional to the requirements for the scale of development proposed and goes beyond what is reasonable in the terms of the limitation on the use of planning obligation imposed by the Regulations.
30. For reasons already given in this decision I am not persuaded that Sandyfields and the associated open space will not come forward at the predicted rate,

⁷ VR12, VR15, VR16, VR17, VR18, VR19, VR20, VR25, VR26, VR27, VR28, VR36, VR37, VR38, VR40, VR41, VR43 and VR45.

⁸ Community Engagement Workshop on 10 September 2013.

public access to Strattons Copse has been secured in the accompanying legal agreement and it is also accessible to residents in the southern part of the village. Accordingly, there would not appear to be shortfalls that will not be resolved in the near future and regardless of whether or not the Council is correct in respect of this obligation, I therefore only attach minimal weight to it.

Other Matters

31. I have had regard to the appeal decisions⁹ put before me by the appellant insofar as some of the general issues they raise may be applicable to this appeal. However they are also from different local authority areas and clearly required different judgements to be made. I do not find that they are determinative to my considerations of the main issues within this appeal and my decision has been made on the basis of the evidence, as put to me solely by the parties. Consequently, they do not alter my findings in relation to the main issues and in any event each case must be determined on its own merits.

Planning balance and overall conclusion

32. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. This is reaffirmed at Paragraph 12 of the Framework which states that development proposals which conflict with an up-to-date Local Plan should be refused unless other material considerations indicate otherwise.
33. I have found that the proposal would conflict with Policies MTRA2, MTRA4 and CP20 of LPP1 in terms of the conflict with the Council's housing strategy and would cause substantial harm to the character and appearance of the area. This is fundamental as the strategy is a central plank to realizing the overarching spatial vision which the plan as a whole is seeking to deliver whilst seeking to protect the character and identity of the district. Consequently I attach significant weight to this conflict.
34. In the context of a genuinely plan-led planning system and given the Council can demonstrate a five year supply of deliverable housing sites, in accordance with Paragraph 49 of the Framework, these policies can be regarded as being up-to-date and I afford them full weight. This in turn means that the second part of Paragraph 14 of the Framework is not engaged.
35. Nonetheless, there are a number of considerations which weigh in favour of the proposal. The proposal would provide a modest amount of additional homes and whilst I note the appellant's arguments in relation to past delivery of housing within the district, I am also mindful that past accuracy is not determinative in terms of future delivery. The Council is able to demonstrate a 5 year supply of deliverable housing land, which indicates to me that housing land supply is not restricted and this will also yield additional affordable housing.
36. However, taking into account wider issues of general affordability, the apparent need for affordable housing within the district and the requirement within the Framework to '*boost significantly the supply of housing*', the provision of 13

⁹ APP/N1730/W/15/3127952 and APP/W0340/A/14/2228089.

additional units, including 8 affordable units weighs substantially in favour of the proposal.

37. The proposal would also help to support local services and facilities, albeit that there would also be some conflict with the economic dimension of sustainability which seeks to ensure, among other things, the delivery of housing land in the right place and at the right time. These would represent minor benefits in terms of the social and economic dimensions of sustainable development to which I attach minimal weight.
38. I give very little weight to the economic benefits of construction jobs and the additional patronage of village services during construction, given their short term nature. I also give minimal weight to the additional open space that the proposal would provide. Whilst there is a lack of objection in other regards¹⁰ the absence of harm and mitigation in terms of education only weigh neutrally in the planning balance. I also acknowledge the appellant's contention that the development could be commenced soon after any planning permission is granted and that the site is in a relatively accessible location.
39. Drawing my conclusions together, the benefits do not outweigh the significant weight I give to the harm and conflict with an up to date development plan in terms of its adopted housing strategy and the substantial harm to the character and appearance of the area that I have identified. The proposal would not accord with an up to date development plan and as such it would not therefore be the sustainable development for which the Framework indicates a presumption in favour.
40. For the reasons set out above, the proposal would conflict with the development plan, when read as a whole and the Framework. Material considerations do not indicate that the proposal should be determined other than in accordance with the development plan and having considered all other matters raised, I therefore conclude that the appeal should be dismissed.

Richard Aston

INSPECTOR

¹⁰ Paragraph 2.01 of Appellant's Statement