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## Appeal Decision

Hearing held on 26 and 27 February 2014

Site visit made on 27 February 2014

**by M T O'Rourke BA(Hons) DipTP MRTPI**

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

**Decision date: 2 May 2014**

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**Appeal Ref: APP/R0335/A/13/2207932**

**Fairclough Farm, Newell Green, Warfield, Bracknell RG24 6AA**

- 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 Kitewood Investments Ltd and Cascade Partnerships Ltd against the decision of Bracknell Forest Borough Council.
  - The application Ref 13/00027/OUT, dated 11 January 2013, was refused by notice dated 29 April 2013.
  - The development proposed is erection of 40 dwellings and a 70 bed care home, with access, landscaping and parking.
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### Procedural and other matters

1. It was confirmed at the hearing that the application is in outline with all matters including access now reserved for future approval and drawing 4329-PL-050 Revision E showing the site layout is for illustrative purposes only.
2. A draft unilateral undertaking was provided by the appellants prior to the hearing and details of the obligations were discussed at the hearing. Subsequent to the hearing the appellants provided two completed undertakings, one executed by the landowners and the other executed by the appellants, having an option to acquire the site. Other than that, the undertakings are the same and provide for the payment of impact mitigation contributions. Although the submission of counterparts is contrary to the advice in The Planning Inspectorate's Good Practice Advice Note 16 on submitting planning obligations, I deal with the detail and the weight that should be given to the undertaking in my reasoning below.
3. On 25 February the appellants sent The Planning Inspectorate two draft Statements of Common Ground (SOCG), one purporting to be agreed with the Council, and one including matters of disagreement. Neither was signed. A bound copy of the unsigned SOCG including matters of disagreement was provided to me at the hearing and the Council identified various paragraphs on which it wished to comment so as to clarify its position.
4. The Planning Practice Guidance was published on 6 March 2014. I have considered its contents but in the light of the facts of this case, the Planning Practice Guidance does not alter my conclusions.

### Decision

5. The appeal is dismissed.

## **Main Issue**

6. The main issue is the impact of the development on the delivery of the Warfield development area allocation, having regard to:
  - (a) the policy requirement for a masterplan;
  - (b) the need for a care home;
  - (c) the provision of necessary infrastructure;
  - (d) the provision of affordable housing;
  - (e) biodiversity; and
  - (f) mitigation measures in respect of impacts on the Thames Basin Heaths Special Protection Area (TBHSPA) and provision of Suitable Accessible Natural Greenspace (SANG).

## **Reasons**

7. The site of some 1.58ha is broadly rectangular. It is bounded on the east side by the A3095 Newell Green and to the south and west by the Larks Hill open space. To the north along with Fairclough Farm there are a small group of dwellings fronting Watersplash Lane. Public footpaths run along the southern and western boundaries of the site. The eastern part of the site is a former pig farm with an open paddock to the west. There are boundary hedgerows on the south and east sides. The small settlement of Newell Green lies to the north and Newell Green (A3095) provides direct access to Bracknell town centre to the south.
8. The site is just within 5km of the nearest site of the TBHSPA to the south of Bracknell.
9. The appeal application was made in outline for 40 dwellings and a 70 bed care home. The illustrative layout submitted shows the care home located in the south east corner of the site and fronting Newell Green. Access to the site would be from Newell Green and a new road is shown on an east-west line with housing either side with the road then terminating at the north western boundary so as to allow for access to the paddock land beyond and future development to the north.
10. It is now proposed by the appellants that the development should in effect be phased. The first stage would be the care home and 20 units with a minimum area of 0.39ha on land at the western part of the site to be provided as SANG. This would be provided as a temporary measure awaiting the completion of permanent SANG provision at Cabbage Hill when the remaining dwellings would be constructed. I deal with this staged approach to development in my consideration of the issues below.

## **Policy background**

11. The statutory development plan comprises the saved policies of the Bracknell Forest Borough Local Plan (2002), the Core Strategy (CS) adopted in 2008, and the Site Allocations Local Plan, adopted in July 2013 after the refusal of the appeal application. In addition policy NRM6 of the South East Plan (SEP) still applies in respect of the TBHSPA. There are also relevant supplementary planning documents (SPDs). These include the Limiting the Impact of Development SPD (July 2007) the Warfield SPD (February 2012), and the TBHSPA Avoidance and Mitigation SPD (March 2012). The Council has also

produced guidance on car parking standards, designing for accessibility, sustainable resource management, and on streetscene. In its appeal statement the Council also referred to its Older Persons Accommodation and Support Strategy 2011-2026.

### ***The Warfield development area allocation***

12. CS policy CS1 sets out principles of sustainable development. Locational principles are set out in CS policy CS2 and development will be permitted within defined settlements and on allocated sites. The appeal site is within the defined settlement and part of an area of land north of Whitegrove and Quelm Park (parish of Warfield) identified in the CS through policy CS5 for a comprehensive, well designed mixed-use development. The land is allocated for residential and employment development and to provide social and physical infrastructure and measures to avoid and mitigate the impacts of the residential development upon the TBHSPA. Development is to be detailed through further policies for delivery in the period 2017 to 2026.
13. Further detail is provided in the SALP and in the Warfield SPD. SALP policy SA9 allocates the land at Warfield, including the appeal site, for a comprehensive well designed mixed use development to provide 2,200 residential units (including affordable housing), employment, neighbourhood centre, two primary schools, a multi-functional community hub and on site open space and SANG. The policy includes a long list of infrastructure requirements and refers to further details being found in the Infrastructure Delivery Plan and in the Warfield SPD.
14. The SPD provides further guidance on the development of the area and sets out a number of development principles. The first (W1) sets out the Council's expectation that planning applications will support the comprehensive development of Warfield, including accessibility and the delivery of infrastructure, and for partnership working between landowners, developers and infrastructure providers.
15. The appeal site falls within Block Area 1 of the Implementation and Sequence Plan (Figure 11 of the SPD). As this area includes the neighbourhood centre, the SPD sees it as coming forward as early in the development as possible to provide essential facilities at the heart of the development.

### ***Concept plan***

16. The SPD includes a Concept Plan at Figure 4 (reproduced in the SALP as Map 7). Whilst it is indicative the appeal is shown as being within an area of primarily residential development to include a landmark opportunity in the south east corner and indicative key frontages along the eastern Newell Green boundary and on the south eastern boundary facing Larks Hill open space. The Plan shows a new road through the site to link to the new north/south spine road to the west and the neighbourhood centre is depicted by a circle around the new junction on Newell Green. This is described as a focal point for the development incorporating retail and community facilities and a neighbourhood square and primary school are indicated opposite the site.
17. Further detail is provided in the SPD on the neighbourhood centre, expected densities of development and design principles for each of the character areas. More particularly it shows a building marked in red on the appeal site fronting

Newell Green to the south of the link road and shown as '*potential for flexible retail/community hub building*'.

18. The appeal site is well contained and no case was made by the Council that it was not capable of development. Whilst the application is in outline, it is acknowledged that the illustrative scheme has, in part, referenced and acknowledged the SPD, the Concept Plan and further work on the neighbourhood character area. What, however, is at the heart of the Council's objection is the timing of the application and concern about the impact that its approval would have on the comprehensive development and overall planning of this significant large allocation.

***Comprehensive development and the policy requirement for a masterplan***

19. The development plan is consistent in requiring that development at Warfield is carried out in a comprehensive way. Saved LP policy EN20(viii) states that applications should not be prejudicial to the proper future development of a larger area in a comprehensive manner. I agree with the Council that this is particularly important at Warfield not only because of its scale but also the diversity of land ownerships. Details were given of the permission granted for development at Manor Farm, Binfield, in advance of a masterplan. However that site is on the edge of the existing built up area and was always seen in the Warfield SPD as having the potential to come forward separately. I am not persuaded that there is a case here to treat the appeal site which is at the heart of the Warfield allocation in a similar way.
20. Evidence was provided for the hearing on land ownership in the Warfield allocation. Acknowledging the fragmented land ownership in parts of the Warfield development area and in support of the Council's requirement for schemes to come forward in a comprehensive manner, policy SA9 was modified at the SALP examination to include a requirement that: '*Prior to the submission of a planning application for any part of the site, masterplans will be prepared by the developer(s) and agreed with the Council in accordance with the requirements of policy SA9, CS policy CS5 and the Warfield SPD unless otherwise agreed with the Council. Once agreed by the Council they will be an important material consideration in the determination of subsequent planning applications.*'
21. It was argued for the appellants that this part of the policy had to be read in an objectively readable manner; the insertion of the comma after '*site*' indicated that it was not meant to be inflexible, and reference was made to the judgement in the case of *Tesco Stores Ltd v Dundee City Council* ([2012 UKSC 13]). However it seems to me that there is no need for any contortions as to the meaning of the policy - it is quite clear. The Council wants developers of the land at Warfield to produce masterplans. Once agreed, these masterplans are to provide the context for subsequent planning applications.
22. There was debate at the hearing as to whether this requirement is in fact not helping but hindering development and which it was said could not have been the intention of the policy. Although the SALP envisages the site starting to deliver housing in 2014/2015, and the Warfield Masterplan Brief referred to a Masterplan being in place by autumn 2012, there is as yet no masterplan in place for any of the Warfield allocation. Nor could any developer in Block Area 1 deliver the preferred SANG at Cabbage Hill, leaving them dependent on that

landowner to deliver the necessary TBHSPA mitigation before housing could take place elsewhere.

23. However rather than the complexity of development and its associated infrastructure requirements being a cause to reject the principle of masterplanning at Warfield and to go for an individual site approach, I share the Council's view that the problems that would result from such piecemeal development, reinforce the need for a comprehensive approach. I am satisfied that masterplanning is justified here if the development of 2,200 houses is to proceed in a proper phased manner and for the landowners/developers to act together to deliver a well planned urban extension that has the necessary infrastructure to include SANGs, new highways and new primary schools.

*Progress on the preparation of masterplans for Warfield*

24. It is clear to me that the Council has acted proactively in bringing the Warfield site forward and there is no reason to doubt that it will continue to do so. It has produced a full policy and guidance framework which has been subject to extensive consultation, assessment, appraisal and examination before adoption. Landowners and prospective developers have been consulted on the Masterplan Brief and the Council is working on a strategy to deliver key elements of the site, including dialogue with the Homes and Communities Agency and their ATLAS team, which is intended to be in place by mid-2014.
25. Landowners and developers are also working to progress their interests in the Warfield site. The appeal site lies within Block Area 1 where there are a number of individual owners and where a consortium representing landowners and developers for around half the area has been put in place. Barton Willmore acting for the consortium has prepared an early draft masterplan for Area 1 which it has shared with the appellants. The Council is now working with the consortium to finalise that and its supporting evidence base. Although a final masterplan has not been submitted to the Council for adoption, from what I heard at the hearing matters are well advanced and the Council is expecting significant progress to be made over the coming months.
26. It appears that initially the appellants did make overtures to join the consortium but in the end did not do so with various reasons, including the upfront cost, being given as to why not. Whatever the reason, and whilst acknowledging the significant efforts of the Council and others to progress development at Warfield, the fact of the matter is that at this time there is no masterplan for the area. The failure to comply with the requirement in policy SA9 that there should be a masterplan agreed prior to the submission of applications for any part of the site puts the appellants' proposal in clear conflict with the recently adopted development plan.
27. Planning law requires that applications must be determined in accordance with the development plan unless material considerations indicate otherwise. I now turn to consider those other matters.

*The appeal scheme*

28. The appeal scheme is in outline with all matters reserved and it includes many of the elements identified on the Concept Plan and in the consortium's early draft masterplan including the proposed east west link with a future connection to the paddock land to the north west. The appellants argue that the site can come forward independently of other development and bringing it forward early

would be beneficial to the delivery of the overall scheme. However the road line shown on the illustrative plan suggests that the parcel fronting Watersplash Lane would be left with little developable area and the Council is justified in its concern that without a proper equalisation agreement in place land might be left undevelopable, reducing the capacity of the area to provide the necessary housing numbers that the Council is seeking to achieve at Warfield.

29. The site is shown on the Concept Plan as being a key frontage, forming the western edge of the neighbourhood centre and square, and a strategic location, both in terms of the facilities that would be provided and in design terms. The Warfield SPD envisages the centre including some retail and residential units and providing a community hub facility. I am not persuaded that a care home on the site, despite there being some advantages for it to be close of a neighbourhood centre, would act as a hub for the new community. Rather the siting of a large care home on the corner of an identified key frontage could undermine the delivery of community facilities essential to serve the new neighbourhood, and pre-empt the design process to plan for the neighbourhood centre and square as one space, even if delivery is by separate landowners.
30. On the appellants' figures in its grounds of appeal, the provision of the care home would also reduce by some 16 units the capacity of parcel 'm' as identified in the SPD. The density map may only be indicative of potential housing numbers, but if this were to be repeated throughout the allocation it could seriously undermine the planned housing delivery. In terms of the overall housing number at Warfield, a reduction of 16 units may not be significant on its own and I accept that other sites may provide more, as for example has been shown at Manor Farm.
31. However if that does not happen there is a risk that those sites coming forward later will be expected to make up the housing numbers. In the absence of any suggestion from the appellants as to where those units not being provided as a consequence of this development might be made up and without a masterplan to consider all of Block Area 1 together, a piecemeal approach could lead to inappropriate layouts and densities on individual sites, numbers in the wider area not being achieved and failure to maintain a 5 year housing land supply. Just looking at the appeal site and the total amount of development proposed, it would be reliant on other land providing the necessary SANGs and passive open space of public value, unless developed at an unacceptably high density.

#### *Infrastructure delivery*

32. The NPPF supports the inclusion of robust and comprehensive policies in local plans that set out the quality of development that should be expected. Policy SA9 and the SPD list essential infrastructure requirements including the provision of on-site in-kind open space of public value. Whilst the UU offers a financial contribution in lieu of on site provision in accord with the Limiting the Impact of Development SPD, this leaves unanswered the question as to where that provision is to be made within the wider Warfield area. As yet there is no costed scheme for open space provision. Similar issues arise in respect of the SALP requirement for '*on-site in-kind provision of two primary schools*' which I consider below.
33. In the absence of agreement and some form of equalisation of values, I agree with the Council that this could lead to an unfair distribution of uses and

another developer coming forward later being asked to provide more than is justified by their own development. This could make some parcels unviable and risk necessary infrastructure not being provided. Allowing the appeal scheme on this basis could set an unfortunate precedent which could put at risk the delivery of on site requirements. In my view it confirms the value and importance of masterplanning for a site of this scale and where there are multiple owners/developers to allow for the early discussion, negotiation and an agreed resolution of these types of issues.

### *Conclusion*

34. I conclude that the appeal proposal would harm the delivery of a comprehensive development for Block Area 1. As such it represents a piecemeal approach to the delivery of development. This is contrary to design principle W1 of the Warfield SPD and LP policy EN20(viii) which requires that development should not be prejudicial to the proper future development of a larger area in a comprehensive manner. These objections reinforce my conclusion set out above that the proposal is not in accord with policy SA9 of the SALP as it precedes the agreement of a masterplan.

### ***The need for a care home***

35. I have already noted above that the provision of a care home on the site would reduce the capacity of the site for residential development. Whilst the reduction is not large, the Council identifies this as a serious concern given the need for housing in the borough and if repeated on other sites throughout the Warfield allocation could diminish the housing numbers that would be delivered. It is also the Council's case that, contrary to the appellants' assertion, there is no qualitative or quantitative need for new care homes in the borough.

36. An updated Care Needs Assessment was submitted with the appeal and the appellants referred to a recent appeal decision for a care home in the borough (APP/R0335/A/12/2189707) where it was said that the Inspector whilst dismissing the appeal '*recognised that there was an urgent and pressing need for a care home in Bracknell*'. Further evidence on this matter was presented by both parties in their appeal statements and at the hearing.

37. In terms of quantitative need, the borough's elderly population is increasing in size and is forecast by ONS to grow by 29% between 2012 and 2020. Whilst the appellants referred to research identifying a current undersupply of beds in care homes in the borough, this was contrary to the Council's evidence that there was no shortage of beds and that two homes in the borough had closed recently due to lack of demand. The Council places considerable weight on its Older Persons' Accommodation and Support Strategy 2011-2026 which is in line with national guidance and policy to promote more support for older people to enable them to stay in their homes for longer and so there would be less rather than more need for beds in care homes. In any event, it was argued that adequate provision is already being made to meet demand in the future with permissions granted for care homes in Crowthorne and on the TRL site (subject to a Section 106), with a second SALP allocation at Broadmoor.

38. The SALP Inspector did not preclude specialist accommodation coming forward within other allocated sites. Arguing a forecast shortfall of around 300 beds by 2020, the appellants contend that the allocations made would only scratch the

surface and demand would continue to outstrip supply particularly for the very elderly frail and those suffering dementia. The quality of provision was also seen as an issue with a significant proportion of the existing stock not meeting the standards expected of new registrations, including twin rooms and shared bathrooms. However advice from the Care Quality Commission was that this did not mean those rooms had to be upgraded or the homes to close.

39. With a significant proportion of residents being self funded, choice will play a part in decisions as to where elderly people needing care want to live. Evidence was given at the hearing of interest in the site from a national care home operator and of there being latent demand in the market for more high quality bed spaces. On the other hand, the Council pointed to the fact the 60 bed home at Crowthorne granted permission in 2011 has still not come forward. Various reasons were put forward as to why that might be, though without any supporting evidence, and it may just be that the market is not quite as strong as the appellants suggest.
40. I give little weight to the argument that provision of more care home beds must be a good thing as it releases housing stock. No empirical evidence was presented to support that proposition. Often there will be a partner who continues to live in the family home. Many older people will have already moved from a large property to a smaller house or flat rather than move straight into a care home and I was told of increasing interest from older people in new housing development offering independent but supported living.

#### *Conclusion*

41. Like the Inspector in the Eagle House Field appeal, I find that there are substantive differences between the parties on the question of need. In making allocations in the SALP for future provision the Council is delivering on CS policy CS16 and the policy in the NPPF at paragraph 50 to plan for a mix of housing to meet the needs of different groups including older people. It has made allocations on sites that it considers are better suited for this particular form of development. I have already set out above my concerns on land use and urban design grounds to the siting of the proposed care home and to the loss of residential units. Given the disadvantages that the development of a care home on this site would bring and having regard to existing capacity and planned provision, I am not satisfied that there is a need, rather than a demand, for new care facilities in the borough that is such as to outweigh the harm that I have identified would arise here. Accordingly I conclude that the care home would conflict with the objectives of CS policy CS5, SALP policy SA9 and the SPD for Warfield.

#### ***The provision of necessary infrastructure***

42. In order to deliver sustainable development at Warfield, CS policy CS5 and SALP policy SA9 require that appropriate infrastructure is provided alongside the new development to deal with impacts arising from the development. Ways to limit the impact of development are set out in policy CS6 and include on-site provision or, in agreement with the Council, contributing to additional or expanded provision on a different site or a mix of on and off site provision. The 2007 SPD on Limiting the Impact of Development provides guidance on the mitigation and the calculation of contributions.



43. In respect of Warfield, an Infrastructure Delivery Plan was prepared to support the SALP, updated in October 2012, and the relevant schedule (of the original) was attached as Appendix 2 to the Warfield SPD. The infrastructure required to support the development is listed in policy SA9 and includes on and off site transport measures, a new north-south link road, on-site in-kind provision of two primary schools and financial contributions towards secondary education and special educational needs places. The policy also requires on-site in-kind provision of a multi-functional community hub, as well as on-site in-kind open space of public value and measures to avoid and mitigate the impact upon the TBHSPA. On-site in this context means within the wider Warfield area.
44. The appellants accept that the development should provide or pay a fair contribution towards these elements and their case at the hearing was that the potential future impact of the development on services and infrastructure could be successfully mitigated. By providing an essential part of a new link road, it was argued that the scheme would deliver a significant contribution in terms of transport infrastructure and other infrastructure requirements would be met via the payment of appropriate contributions. In that regard, the signed UU provides for contributions in respect of transport facilities, a link road contribution, open space and recreational facilities, built sport facilities, education facilities, and library and community facilities. It also provides for affordable housing and for TBHSPA avoidance and mitigation.
45. I am satisfied that adequate evidence has been provided to show that the obligations in the UU in respect of the strategic transport package, built sports, secondary education, post-16 education, special education needs and library facilities are necessary to make the development acceptable in planning terms, are directly related to the development and fairly and reasonably related in scale and kind. They meet the tests of Regulation 122 of the Community Infrastructure Regulations 2010 (CIL).
46. In respect of the third reason for refusal, the Council's statement only referred to objections to contributions to education and the TBHSPA. However paragraph 9.3 of the unsigned SOCG set out the Council's disagreement to proposed contributions in the UU in respect of primary education, open space and recreation, and community facilities, and the Warfield North-South Link Road *'due to CIL Regulation 123 pooling restrictions and deliverability'*.
47. The UU provides for financial contributions to be made towards the provision of these facilities, in a similar manner to the obligations agreed by the Council in respect of Manor Farm. However Manor Farm has always been identified as a one-off stand alone development, whereas the appeal site is an integral part of the Warfield allocation, albeit on the northern edge. The primary school, open space and community requirements set out in policy SA9 are for comprehensive provision to be made off-site elsewhere in the wider Warfield allocation. As yet no decision has been made as to where that provision might be made and there is currently not a certain scheme secured that this development could contribute to at this time.

#### *CIL pooling*

48. The argument in respect of CIL pooling was developed at the hearing. The Council is currently progressing work on its CIL charging schedule and on its Regulation 123 list. Its concern in respect of this application appears to be that nationally from April 2015, or earlier if the levy is agreed and introduced, the

CIL regulations restrict the use of pooled contributions towards items, like the primary schools at Warfield, that may be funded via the levy. At that point, no more may be collected through a section 106 undertaking if five or more obligations for that project or type of infrastructure have already been entered into since 6 April 2010, and it is a type of infrastructure that is capable of being funded by the levy.

49. Undertakings have already been agreed for Manor Farm and from the discussion at the hearing I understand the Council's concern to be that if other small applications are made with undertakings, like that for the appeal site, which only provide for contributions towards primary education, it could find itself unable post April 2015 to secure through a section 106 undertaking land at Warfield on which to build the school. Similarly in respect of the provision of open space and community facilities and the link road. With the number of individual landowners with interests in Warfield, the Council saw the appeal, if allowed, as setting a worrying precedent that could prejudice its aims to secure a comprehensive planned development at Warfield. On the other hand, if it were to be refused it would send out a strong signal to other parties to engage in the masterplanning process and progress larger combined schemes.
50. Policy SA9 requires that prior to the submission of a planning application for any part of the site, masterplans should be prepared and it was clear at the hearing that the Council's preference would be to see just one application and one section 106 for Area 1. However it cannot rule out more than one application being made and I can understand the Council taking a pessimistic view in respect of the potential consequences of Regulation 123 in terms of pooling restrictions and the implications for the deliverability of infrastructure. These will be matters which it will have to consider when drawing up its Regulation 123 list. However in terms of my decision, what I have to consider is whether what is being offered by way of the UU is capable of making what would be an otherwise unacceptable development acceptable in planning terms and would meet the Regulation 122 tests. I now turn to address those matters.

#### *Education contributions*

51. In respect of the proposed education contributions in the UU, it is not disputed that the development is likely to generate demand for school places. In respect of secondary provision, the SALP identifies a new secondary school with a sixth form at Blue Mountain, which will also have a new SEN facility, and the Council is progressing proposals for that site with a planning application anticipated early in 2015. For that reason no objection is made by the Council to contributions being made by the developer for secondary, post 16 and SEN education or to the formulae for the calculation of these contributions.
52. In respect of primary education, there are not yet any formal proposals for the development of either of the two primary schools proposed at Warfield. Although their locations are indicated on the Concept Plan, the land for the schools is to be identified through the masterplan process and secured through planning permission, none of which are yet in place. In the absence of certainty as to the delivery of the land and the construction of one or both new primary schools, it was argued for the Council that planning permission should not be granted on this site as it would further compound the prejudice to the delivery of a comprehensive development across the wider Warfield site, contrary to the CS, SALP and SPD.

53. The appellants referred to the Schools Places Plan which acknowledges a statutory requirement on the Council to provide sufficient school places and that discharging this duty could involve opening new schools or adding places to existing schools. However it was clear to me at the hearing that this is not a case where the Council is seeking to shirk or evade its responsibilities. The Warfield allocation recognises the need for two new primary schools to serve the future residents of the 2,200 homes and for them to be provided within the site. One of the purposes of the masterplanning process is to decide where they might be best located and engage with landowners to bring those sites forward in a timely way to serve the new developments. Manor Farm is different in that there is adequate capacity at Meadow Vale primary school to serve the development,
54. I accept that in cases where large scale development is being progressed it is almost inevitable that there will be a need to make temporary provision at existing schools in the area whilst waiting for the completion of the new schools. However evidence from the Council's education planning adviser was that there is currently no capacity at either Warfield or Whitegrove Primary Schools to serve the appeal site with other nearby schools also at capacity. Both schools are historically over-subscribed. Whitegrove already has a surge classroom. Warfield does not have a surge classroom but I was told that it physically has no space to provide one. Detailed pupil forecasts in the School Places Plan 2013-2018 indicate that the position will not change over the next 5 years with a growing deficit of places available at the two schools, both throughout the school and in the intake year, consistent with the national surge in demand for school places and the new housing proposed in the Borough.
55. It was confirmed at the hearing that the school places forecasts factor in the housing trajectory for Warfield, with 50 units estimated to be delivered in 2014/15 and 150 the next year. However if there is any lag, which now appears to be likely, this would just move the deficit on by a year. The proposals by Berkeley Homes for Block Area 2 are for around 750 dwellings and include a 2 form entry primary school, which the Council did not dispute is usually considered suitable to serve 1000 dwellings. This suggests that there might be spare capacity available there to serve the appeal site rather than bus children to schools with capacity further away. The appellants provided a housing trajectory, based on the indicative phasing in the planning statement that accompanied the Berkeley Homes' application, indicating that the school might be completed by 2015/16. However those proposals are still at an early stage and I consider it would be unwise to rely too much on projections as to when any extra school places might be available there. Moreover before the school would be built and open, there would be primary age children living in new houses on that development who would also need school places, further exacerbating pressure on the local schools.
56. The NPPF advises that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. The UU includes a primary education contribution that is intended to mitigate the impact of the development which would generate a demand for school places. However the evidence from the Council is that there is no mechanism in place to use that contribution to provide for those school places. Existing schools are full, there is no scope for temporary classrooms and new schools to serve the Warfield area need to be

considered in a comprehensive manner to ensure that the land is secured and the delivery of this important infrastructure can be guaranteed.

57. As it seems unlikely that additional primary school provision could be made available in the short term, in the absence of appropriate mitigation measures I agree with the Council that the development would have the adverse effect of exacerbating problems of overcrowding at the nearby schools or causing primary age children to be bussed to more distant schools, assuming any have capacity. The fact that a contribution is proposed to be made to the Council, but which could not be spent in a way that would generate more capacity to mitigate the unacceptable adverse pressure on primary education facilities, would not meet the Regulation 122 test that an obligation is necessary to make the development acceptable in planning terms as the development would still have unacceptable impacts.
58. For these reasons I give very little weight to the contribution towards primary education proposed in the UU. It would not be capable of mitigating the impact of the development which would unacceptably increase pressure on education services in the area. This further confirms my conclusion set out above that allowing this development in advance of the preparation of a masterplan for Block Area 1 would result in piecemeal development and would undermine the delivery of a comprehensive development across the wider Warfield area, contrary to the objectives of the CS and SALP.

*Open space and recreation and community facilities*

59. The occupants of the proposed development would increase pressure upon local open space facilities. Standards require the provision of 0.4ha of open space in addition to any SANG provision. Whilst the UU provides for a contribution towards open space of public value on a similar basis to that agreed at Manor Farm, there are currently no proposals before the Council to deliver an off-site solution. Nor would on site provision be appropriate. If it were to be repeated elsewhere it could result in lots of small spaces scattered throughout the allocation and a fragmented and uncoordinated approach to the provision of open space for the wider Warfield site contrary to the objectives of the masterplanning exercise. Thus whilst open space is necessary to make the development acceptable in planning terms, the proposed contribution would not secure the desired outcome and thus would not meet the Regulation 122 test of necessity. I have reached similar conclusions in respect of the proposed contribution towards community facilities and I give them little weight.

*North-south link road*

60. A new north-south link road is part of the infrastructure required to support the Warfield development listed in policy SA9. The UU provides a contribution towards the link road. However the Council argued that because of the pooling restrictions it could not accept a link road contribution for this site in isolation because if 3 further sites were to come forward which also make contributions towards the link road, no further planning obligations could be sought from subsequent applications made within the policy SA9 allocation area.
61. It appears from the schedule appended to the unsigned SOCG that the Council has costed the link road which is needed to serve the whole Warfield development and which would be progressed following agreement of the masterplan for that part of the allocation. I am satisfied from what I heard

that the new link road is necessary to serve the allocation and the appeal site, is directly related to it and the obligation is fairly and reasonably related in scale and kind and the Council accepted at the hearing that it meets the Regulation 122 tests. As such it is a matter that I can take into account in determining the appeal.

### *Conclusion*

62. The proposal is for piecemeal development that is contrary to policy in advance of agreement of a masterplan. The UU provides through contributions to mitigate the impacts of the development. However in respect of primary education, open space and community facilities, there are as yet no proposals to which those contributions could be directed and used in a comprehensive manner to secure the mitigation of those adverse impacts. Thus the proposals would unacceptably increase pressure upon local open space, primary education and community facilities that could not be adequately mitigated through the obligations in the UU.

### ***Impact on affordable housing***

63. The application scheme is for 40 units, of which 25% are proposed to be affordable housing, comprising 7 units social rented and 3 units of intermediate housing. The UU makes provision for the phased delivery of the affordable housing. It was confirmed at the hearing that the Council was now satisfied that appropriate provision could be made for affordable housing, in accord with the provisions of policy H8 of the LP and policy CS16 of the CS.

### ***Impact on biodiversity***

64. In refusing the application, the Council had concerns that there was insufficient information to demonstrate that the development would not have an unacceptable adverse impact on biodiversity. Since then additional information had been submitted by the appellants and further survey work undertaken.
65. It was confirmed at the hearing that the Council was now satisfied that with suitable mitigation the development would not have an adverse impact upon biodiversity. The unsigned SOCG includes agreed conditions covering the timing of site clearance to avoid the main bird nesting season, the submission and approval of habitat creation and ecological management plans and a wildlife protection plan during construction, as well as a condition to protect the existing trees and hedgerows around the boundaries of the site.
66. The ecological reports recommend proposals including additional hedgerow planting that would enhance the biodiversity of the site and which could be brought forward in any reserved matters application. I am satisfied that subject to the imposition of appropriate conditions on any permission granted, the development would not conflict with the biodiversity objectives of saved LP policies EN3 and EN20, CS policies CS1 and CS7, with policy SA9 of the SALP and with the Warfield SPD.

### ***Impact on the Thames Basin Heaths Special Protection Area***

67. The site is located approximately 4.8km from the boundary of the TBHSPA and CS policy CS14 states that proposals leading to a net increase in residential dwellings, within a straight line distance of 5km from the SPA boundary, are likely to have a significant effect. It requires that effective avoidance and/or

mitigation must be secured prior to approval being given. Whilst the site is on the edge of the 5km zone of influence, I do not agree with the appellants' ecologist that residents would be unlikely to drive across Bracknell to the nearest SPA, a drive distance of 5.3km, to walk their dogs and thus the development would not have a significant effect on the SPA. I also note that paragraph 6.15 of the unsigned SOCG states that '*satisfactory avoidance and mitigation measures are required for the residential element of the scheme*'. However it is agreed that no special mitigation measures would be required for the care home.

68. Policy NRM6 of the South East Plan sets out the approach to be taken to the TBHSPA. It requires that in order to deliver a consistent approach to mitigation, a zone of influence is established 5km from the SPA boundary where mitigation measures, based on a combination of access management and the provision of SANG, will be delivered prior to the occupation of new residential development. Core Strategy policy CS5 and SALP policy SA9 both require that development at Warfield includes measures to avoid and mitigate the impact of new residential development on the SPA to include provision in perpetuity of on-site bespoke SANG of at least 8ha per 1,000 new population. Further advice on SANGs is contained in the TBHSPA Avoidance and Mitigation SPD and in the Warfield SPD.
69. The appellants have not done their own site specific appropriate assessment of the proposal, either alone or in combination with other plans or projects. An appropriate assessment was carried out for the CS, SALP and the Warfield allocation and it was concluded only on the basis of appropriate provision being made for an in-perpetuity SANG that the policy allocation would not have a significant effect on the SPA. The SALP preferred solution for Warfield is for a SANG at Cabbage Hill, which is intended to be brought forward through the mechanism of the masterplan and policy SA9 but no firm indication could be given at the hearing as to when that might be.
70. Natural England (NE) objected to the appeal application as contrary to the SALP and Warfield SPD and unacceptable in the absence of a permanent SANG solution for the wider Warfield area having been secured. In that the proposal for 40 dwellings would not be in accord with the development plan and the delivery framework for Warfield, and would be likely to increase visitor pressure on the SPA, I consider that it would be likely to have a significant effect on the SPA, either alone or in combination with other plans and projects. I am not satisfied that it can be ascertained, in the absence of satisfactory avoidance or mitigation measures, that the proposals for 40 dwellings would not adversely affect the integrity of the SPA. There are clearly alternative solutions for the provision of housing and no argument of imperative reasons of overriding public interest that would justify the grant of permission. Thus in the face of this clear and overriding objection, the appeal application should be refused.

#### *Temporary SANG*

71. However the appellants put forward in their grounds of appeal an alternative solution offering an area of at least 0.39ha in the south west corner to be set aside for use as a temporary SANG with provision in the UU for contributions towards the Strategic Access Management and Monitoring (SAMM) programme for the TBHSPA. It was argued that the temporary SANG would be adequate to serve the first 20 units of the development, until a permanent SANG is in place.

- There would be no further development until an alternative SANG solution to serve the whole site was agreed and this could be secured by the imposition of a Grampian condition on the outline permission.
72. In support of this approach the appellants referred to recent appeal decisions in Guildford (Document 10) where pre-conditions in respect of SANGs had been accepted by the Inspector. In its statement, NE accepts that the provision of existing open space may be considered being used as temporary SANGs until permanent SANGs are delivered and it did not object to the use of Grampian conditions to secure that. However in the Council's view such an approach would be unlawful having regard to the Habitat Regulations as no assurance could be given that there would be no harmful impact on the SPA as a result of development or that it could be mitigated.
73. In considering whether an individual plan or project would adversely affect the integrity of the European site, the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it is proposed that permission should be given. Like NE whilst I consider that the imposition of Grampian conditions may in certain circumstances be acceptable, much would depend on the detail of the scheme and what is known about permanent solutions likely to come forward. Unlike the Guildford appeals where no development would take place until the Council had secured a SANG, the appellants are asking here for part of the development to take place on the basis of a temporary solution, but one which could end up being permanent if a permanent SANG is not delivered elsewhere.
74. The proposed temporary SANG would be next to and could be used with the adjoining Larks Hill SANG sharing the same facilities in terms of car parking and signage. With a public footpath adjoining the eastern and southern boundaries of the site, a further footpath through the temporary SANG would link to this. The land is currently paddock land and the TBHSPA SPD is clear that open land to avoid and mitigate adverse effects on habitat protected by the SPA is not the same as open space provision to meet recreational needs. It refers to key enhancements such as having well designed circular walks of more than 2.3km and semi-natural habitats to enhance the visitor experience and deflect visits away from the SPA. I heard nothing to indicate that either would be achievable here, particularly not if the intention is to build on it later.
75. Whilst the UU provides for contributions to be made towards Strategic Access Management and Monitoring (SAMM), there is no detail of how the land would be maintained and managed so as to ensure that it would perform effectively as a SANG, whether on a temporary or permanent basis and in the latter case how it would be secured in perpetuity. In my view it would be inappropriate to leave such detail to be submitted later in compliance with a condition as it is the detail of these measures for avoidance and mitigation that determine whether or not there would be any adverse impact on the integrity of the SPA.
76. In order to bring forward the whole scheme for 40 dwellings and the care home the appellants are relying on there being a comprehensive masterplan and other sites providing the preferred SANG solution. I share NE's and the Council's concerns that a temporary solution, however secured, would only be acceptable if the provisions of the permanent solution are known at the time of the grant of permission and there is some prospect of it being implemented. As yet there is no identified permanent SANG solution. Until the masterplan process is complete, it cannot be known how much it will cost to deliver the

SANG, including land acquisition, with no effective mechanism in place to which this proposal could make an effective contribution. I am not persuaded that this is a matter that can be left to a condition as it would defer to a later stage the submission and assessment of the details of proposals for the provision, management and maintenance of SANG sufficient for 40 dwellings on land that would be outside the appellants' control and there would still be uncertainty as to the acceptability of the impact on the SPA.

### *Conclusion*

77. I conclude that the application does not make adequate provision for SANG and therefore would be likely to have an adverse effect on the integrity of the SPA, contrary to the Habitat Regulations. As a piecemeal site it is not in accordance with the preferred SANG solution for the TBHSPA set out in the SEP policy NRM6, CS policies CS5 and 14, SALP policy SA9 and the TBHSPA SPD. In such circumstances, paragraph 119 of the NPPF is relevant and the presumption in favour of sustainable development does not apply. I do not find that the appellants' phased approach satisfactorily addresses concerns about the likely effects on the SPA for either 20 dwellings or 40 dwellings. This further reinforces my conclusion that the development is premature in advance of agreement on the masterplan.

### **Conclusion**

78. I see no mismatch between the aspirations of Government for the delivery of housing and those of the Council to progress a well planned comprehensive development at Warfield, nor between the Council's objectives and those of the appellants and landowners to develop their site. Where there is a difference with the latter is in the timing of the delivery of development at the site. This is not a case where the Council is being difficult or procrastinating to put off development that it does not want to see or to try and deliver the 'perfect' scheme that is unachievable. Its objectives for Warfield have been consistently expressed through the CS, SALP, SPD and the Masterplan Brief. Its requirements are realistic, practical and from work already undertaken on the masterplan and the submission of proposals by Berkeley Homes are capable of delivering to the timetable in the SALP.

79. I consider that the Council should be supported in its efforts to discuss and negotiate with willing landowners and developers to deliver a comprehensive scheme at Warfield. It has previous experience of delivering a large urban extension. To allow the appeal scheme on a piecemeal basis could encourage others to pursue similar schemes on the smaller parcels of land, undermining the masterplanning process and prejudicing the delivery of a comprehensive scheme and the good planning of the area including the delivery of housing.

80. I am not satisfied that by limiting the first phase of the development to 20 dwellings so as to provide a temporary SANG on-site the appellants have been able to address the conflict with SEP policy NRM6 and satisfactorily mitigate the adverse impact on the TBHSPA. Whilst the Council is now satisfied in respect of biodiversity and affordable housing, the proposed contributions towards primary school education and open space would not overcome the unacceptable planning impacts of the development.

81. As the NPPF succinctly states planning law requires that applications for planning permission must be determined in accordance with the development



plan unless material considerations indicate otherwise. Policies in the development plan, which are relevant and up to date, are clear in seeking a comprehensive scheme at Warfield. The appeal site would prejudice its achievement, contrary to those policies, and I have not found that there are any material considerations of such weight as to indicate otherwise.

82. I have taken into account all other matters raised but for the reasons given above I have concluded that the appeal should be dismissed.

*Mary O'Rourke*

Inspector

Richborough Estates

## APPEARANCES

### FOR THE APPELLANTS:

|                 |                          |
|-----------------|--------------------------|
| Kevin Leigh     | Of Counsel               |
| Valerie Scott   | Director CgMs            |
| Summer Wong     | CgMs                     |
| Paul Watkins    | Kitewood Investments Ltd |
| Toby Hart       | UES                      |
| Jeremy Cashmore | Christie and Co          |
| Adrian Ball     | Kitewood Investments Ltd |

### FOR THE LOCAL PLANNING AUTHORITY:

|   |   |
|---|---|
| Alex Jack LLB                                 | Borough Solicitor   |
| Martin Bourne BA MA MSc<br>MRTPI              | Team Manager, Development Management                      |
| Max Baker MA DipTD DipUD<br>DipMgt IHBC MRTPI | Head of Spatial Policy                                    |
| Simon Cridland BA DipTP                       | Team Leader, Spatial Policy                               |
| Ann Groves BSc DipUD                          | Urban Design Officer                                      |
| Julie Gil BA MSc AIEMA                        | Senior Environmental Policy Officer                       |
| Matt Lunn BSc MSc                             | Planning Officer  |
| Sue Scott                                     | Development Plan Team Leader, Spatial Policy              |
| Nick Griffin BSc DipTP HND<br>MRTPI           | Planning consultant – Children, Young People and Learning |
| Dan Carpenter BSc PhD                         | Biodiversity Officer                                      |
| Glyn Jones BA(Hons) CQSW<br>MBA               | Director of Adult Social Care                             |
| Lynne Lidster LLB(Hons)                       | Head of Joint Commissioning, Adult Social Care            |

### INTERESTED PERSONS:

|               |                         |
|---------------|-------------------------|
| Neil Harrison | Warfield Parish Council |
|---------------|-------------------------|

## DOCUMENTS HANDED IN AT THE HEARING

- 1 Council's letter of notification of the hearing and list of those notified
- 2 Unsigned Statement of Common Ground (including Matters of Disagreement) dated February 2014 submitted by the appellants
- 3 Draft Unilateral Undertaking with track changes dated 25 Feb 2014 and handed in on the first day of the hearing
- 4 Draft Unilateral Undertaking with handwritten comments of the Borough Solicitor, handed in on the second day of the hearing
- 5 School Places Plan 2013-2018 with attached detailed pupil forecasts by school and planning area 2013-2018
- 6 Email from Marc Turner Natural England to Simon Cridland (BFBC) dated 17.2.14
- 7 Email from Barton Willmore to Simon Cridland (BFBC) dated 14.2.14
- 8 Land ownership plan of the Warfield allocation with attached email between Council officers dated 14.2.14
- 9 Legal submissions of Bracknell Forest Borough Council relating to the Habitats

- Regulations
- 10 Appeal decisions APP/Y3615/A/13/2198634 and 2200458, submitted by the appellants
  - 11 Draft Grampian style conditions to address the SANG issue, submitted by the Council
  - 12 Extract from Glanville's planning statement setting out the indicative construction programme for the Berkeley Homes' application, submitted by the appellants
  - 13 CgMs' housing trajectory for land at Warfield 2014-2026, using information in Document 11 about the phasing of Berkeley Homes' development
  - 14 Closing statement of Bracknell Forest Council
  - 15 Counterpart unilateral undertakings dated 14 March 2014

## **PLANS**

- A Application drawing 4329-PL-001 Location Plan and Site Survey
- B Illustrative site layout 4329-PL-050 Revision E
- C A3 concept plan from the Warfield SPD
- D Early draft of the Masterplan for the central area prepared by Barton Willmore for the consortium
- E Detail of Barton Willmore Masterplan showing the appeal site

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