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## Appeal Decision

Site visit made on 28 May 2019

**by Thomas Bristow BA MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 02 July 2019**

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**Appeal Ref: APP/Z3825/W/18/3212294**

**Old Reservoir Farm, East Street, Billingshurst RH14 9DA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant outline planning permission.
  - The appeal is made by Mr Simon Blackburn of Simon Olivers Holdings Ltd. against the decision of Horsham District Council.
  - The application Ref DC/18/0458, dated 28 February 2018, was refused by notice dated 30 May 2018.
  - The development proposed is described on the application form as 'redevelopment to provide up to 10 no. dwellings and access'.
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### Decision

1. The appeal is dismissed.

### Preliminary matters

2. Application Ref DC/18/0458 was made in outline aside from in respect of access (with matters of appearance, landscaping, layout and scale reserved for future consideration, 'reserved matters'). I have therefore treated any details of the reserved matters in the supporting plans or other documentation as illustrative. The proposed scheme has been somewhat amended since that originally proposed. Principally, as opposed to the initial intention to provide two socially rented units, no affordable housing provision would now be made (as defined in the glossary to the National Planning Policy Framework updated 19 February 2019, the 'NPPF'). There is also updated evidence in respect of access arrangements and ecology.<sup>1</sup>
3. An appeal should not be used to evolve a proposal. Nevertheless revisions to the development proposed and supporting evidence relate to the Council's reasons for refusing permission, or to changes in planning policy since the application was determined. The scheme remains for up to 10 dwellings within the same site, and there has been the opportunity to comment on the present scheme at appeal. There is therefore no reason on grounds of procedural fairness to discount amendments and updated evidence from my assessment of the appeal.
4. Moreover, subject to adherence to the mitigation and enhancement recommendations of the supporting Ecological Addendum, which could be secured via suitably worded conditions were the development otherwise

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<sup>1</sup> A Stage 1 Road Safety Audit produced by JB Road Safety Consultancy Ltd., dated August 2018, supplemented by a document entitled 'Safety Audit Designers Response' by Journey Transport Planning, dated September 2018 and an 'Ecological Addendum' prepared by AAe Environmental Consultants, dated September 2018.

acceptable, the Council no longer maintains an objection to the proposal in respect of demonstrating that ecology would be suitably safeguarded (the fifth reason given in their decision notice). There is nothing to indicate otherwise.<sup>2</sup>

### **Planning context**

5. Each proposal must be determined on its merits in accordance with the development plan unless material considerations indicate otherwise. In this instance the development plan includes policies of the Horsham District Planning Framework (adopted 27 November 2015, the 'HDPF'). The Parish of Billingshurst was designated on 30 December 2015 as an area for the purposes of preparing a neighbourhood plan, however I understand that work has yet to reach a sufficiently advanced stage to be accorded significant weight. I have also had regard to various other material considerations including the NPPF and the Planning Practice Guidance ('PPG').
6. The planning history to the site relates chiefly to an existing residential property, which I understand originated through the conversion of a former reservoir building in association with the agricultural use of surrounding land (as indicated in its name).<sup>3</sup> However whilst enclosed on three sides by the appeal site which otherwise includes various dilapidated buildings and miscellaneous items openly stored, the existing property is not part of it. I also understand that at some point the agricultural use of the surrounding land and appeal site ceased, giving way to a 'modest commercial enterprise'.<sup>4</sup> That does not appear to be in dispute.
7. Objective 7 and paragraph 3.22 of the HDPF encourage appropriate re-use of previously developed or brownfield sites. Similarly NPPF paragraph 117 explains how planning policies should seek to make 'as much use as possible' of brownfield land. NPPF paragraph 68 further sets out how smaller sites can make an important contribution to meeting local housing requirements and are often built-out relatively quickly. Buildings formerly in commercial use at Old Reservoir Farm could fall within the definition of brownfield land.
8. However there is no formal planning history to a commercial use here. Buildings at the appeal site are no longer in active use, its untended state showing that it has been left to its own devices for some time. There is moreover no substantive evidence as to the intensity of any commercial enterprise, of its relative significance to other uses (agricultural, residential or otherwise), or of the duration for which that use continued. Land occupied by agricultural buildings is excluded from the definition of brownfield land, and much of the appeal site is simply open land.
9. Therefore given the lack of substantive evidence, at best the weight that can be accorded to the re-use of brownfield land is limited. Moreover the support given to brownfield redevelopment in the HDPF is conditional on such sites being suitably located, and the NPPF should be read as a whole. At a strategic

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<sup>2</sup> Noting the protections that apply independently under the Wildlife and Countryside Act 1981, and that there is no indication that the site is within or close to an area formally protected on account of its ecological value.

<sup>3</sup> Planning permission Ref BL/40/84 indicates that permission was originally granted for a bungalow in agricultural occupation, although there is nothing to suggest that the property remains tied in that way. Planning permission Ref BL/86/90, for a polythene tunnel structure similarly suggests an agricultural use remaining here around 1990 (although is not conclusive evidence of such).

<sup>4</sup> Appellant statement of case, paragraph 7.0.1.

level the HDPF seeks to distribute development broadly in line with the scale and function of settlements in the District. HDPF policy 3 therefore supports appropriate levels of development within the defined built-up area of Billingshurst, a larger rural settlement, which acts as a hub for smaller dispersed villages.

10. Some settlement expansion is also permissible under HDPF policy 4 subject to various criteria being met, to which I will return. At present the Council explain that the appeal site falls some 350 metres away from the eastern extent of the established Billingshurst settlement boundary. However planning permission was granted in 2014 for a substantial extension to Billingshurst including up to 475 dwellings (Ref DC/13/0735, the '2014 permission'). The 2014 permission relates to land which extends to the western boundary of the appeal site and projects from the established built form of Billingshurst along the opposite side of the A272 by the appeal site. Construction was underway at the time of my site visit. In that context the site cannot be said to be isolated according to its ordinary meaning of 'far away from other places, buildings or people; remote'.
11. I understand that the Council are refreshing settlement boundaries as part of a wider review of the HDPF currently underway, albeit that at this juncture their position is that the future limit for Billingshurst should align with the boundaries of the 2014 permission. Implementation of the 2014 permission is therefore a relevant material consideration in respect of the policy and physical context of the appeal site, notwithstanding that at present the appeal site falls outside of the settlement boundary set via the development plan.

### **Main issues**

12. Given the context above, and based on all that I have read and seen, the main issues are (i) the effect of the development proposed on landscape character, (ii) whether or not it has been demonstrated that access arrangements would be safe and suitable, and (iii) whether or not appropriate provision is made for affordable housing. In the event that I find that harm would result, I will then gauge whether any material considerations in favour of the proposal would nonetheless justify allowing the appeal.

### **Reasons**

#### **Character and appearance**

13. In brief HDPF policies 25, 32 and 33 seek to ensure that development integrates appropriately with its surrounding context. That includes protecting the character of the countryside and natural environment. HDPF policy 26 accordingly limits permissible development outside of settlement boundaries to certain types, of which market housing is not expressly one. There is some overlap between criterion HDPF policy 26 and NPPF paragraph 79, which seeks to guard against the development of isolated homes.
14. However HDPF policy 26 has a broader scope related to its purpose of checking effects on the rural surroundings to settlements and is therefore not as limited as NPPF paragraph 79. In any event, setting aside its accessibility and effects on character and appearance, as set out above the appeal site cannot reasonably be described as isolated. Broadly reflective of the principles in those development plan policies, NPPF paragraph 170 sets out that planning should

recognise the intrinsic character and beauty of the countryside. The PPG similarly explains how landscape setting should inform the design of a scheme.<sup>5</sup> Statute also requires the removal of certain redundant agricultural buildings in specified circumstances.<sup>6</sup>

15. The appeal site is an irregular parcel of land of approximately 0.73 hectares next to the A272 and accessed from it. Whilst HDPF paragraph 9.18 sets out that rural areas of the District are important elements of its overall character, the appeal site is not within a landscape that is formally protected in that respect. As set out above some of the appeal site is open land, some occupied by various outbuildings and items. Whilst the site is unkempt and buildings are utilitarian and dilapidated, on account of the hedgerow and boundary features along the A272 in this location, they are not visually prominent. The site is relatively contained within the landform and obscured by certain hedgerows and trees, including from along Wooddale Lane towards the east which is sunken in the topography. A sensitive approach to reserved matters, in respect of scale and landscaping in particular, could reduce visual effects.
16. Nevertheless the proposal would result in the introduction of significant built development and associated domestic paraphernalia, some of which would be on what is presently open land consistent with its surrounding rural context. Such development is highly likely to be visible, albeit fleetingly, from around the site access. That is particularly the case were the existing access to be altered and visibility from it increased as detailed below. I saw that there are also occasional views of the appeal site from a public footpath towards the north, albeit from some distance. Implementation of the 2014 permission alters the surrounding context to the site. Nevertheless there is an established hedgerow and line of mature trees along the western boundary of the appeal site, which in my view represents a substantial visual limit of the surrounding countryside. Moreover there is to be a significant landscape buffer zone adjacent to the appeal site and south of the A272 as part of the 2014 permission, with development close by at a lower density than elsewhere.<sup>7</sup>
17. There is no pavement running to the appeal site. That increases its visual disconnection from the settlement. There is also no clear demarcation of the appeal site towards the east, the appeal site appearing haphazardly cut out of a larger field. Although there is some variance in the scale and size of fields nearby, that artificial subdivision would not respect the existing pattern of woodlands, fields and hedgerows as set out in criterion 2 of HDPF policy 26. The development would not be contained by an existing defensible boundary, one of the criteria whereby a scheme may be acceptable as an extension to a settlement under HDPF policy 4.<sup>8</sup>
18. There are evidently various factors that would moderate the visual prominence of the proposal such that only limited harm to character and appearance would result. Nevertheless as reasoned above the proposal would represent a

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<sup>5</sup> Reference ID: 26-007-20140306.

<sup>6</sup> Schedule 2, Part 6 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

<sup>7</sup> As shown on page 3 of the supporting Design and Access Statement.

<sup>8</sup> Therefore clearly different to the circumstances in appeal Ref APP/W0530/W/18/3214057 brought to my attention by the appellant. In that case the inspector described the site as 'largely enclosed by existing development' and the route to be taken to the nearby village via a 'grass verge on either side of the access [that] was reasonably wide and capable of accommodating a footway'.

discordant intrusion of built development into the countryside that does not assimilate with existing character, thereby conflicting with the relevant provisions of HDPF policies 25, 26, 32 and 33 and NPPF paragraph 170.

#### Access

19. Criterion 9 of HDPF policy 40 'Sustainable Transport' is that development should provide safe and suitable access for all users, whereas policy 41 concerns the adequacy of parking provision. The NPPF similarly sets out how development should be served by safe and suitable access and that unacceptable effects on highway safety should be avoided.<sup>9</sup> The onus is primarily on the applicant or appellant to demonstrate that development would be acceptable.<sup>10</sup> The Council's objection to the scheme centred around the absence of a stage 1 Road Safety Audit ('RSA') and the approach in the Transport Assessment to establishing the likely traffic generated by it relative to the adequacy of access arrangements and visibility.
20. As set out above the appeal site and an existing residential property are accessed directly via the A272. The alignment of the A272 curves gently in this location and the topography rises moderately from Wooddale Lane to the east and declines beyond the appeal site westwards. There is therefore reasonable forward visibility, despite the A272 having a rural character here by virtue of its enclosure by hedgerows and trees. The existing use of the appeal site will have generated some level of traffic, and I understand there have been relatively few recorded safety incidents in the vicinity. That is notwithstanding that, on account of the natural boundary features of the site and highway trees and hedges, visibility is sub-optimal by current standards.
21. Noting that the scheme is in outline, I accept in theory that it would be possible to secure the enlargement of the access to 6.0 metres to enable two vehicles to pass at a time, to create a 90 metre visibility splay in relation to oncoming traffic, and that tracking analyses show that access to and from the site is achievable by various vehicle types.<sup>11</sup> It may also, via Grampian condition and Traffic Regulation Order, be possible to specify that the development proposed may only be undertaken when certain alterations to the operation of the surrounding highway network have been made (such as the relocation of boundaries of speed limit zones).
22. Section 3 of the Transport Assessment sets out, based on Trip Rate Information Computer System data, that use of the site for B1(c) light industrial purposes would generate around 11 vehicular movements during the peak period of morning traffic and 10 in the afternoon. That compares to seven in each timeframe associated with a scheme of 10 dwellings. I accept those figures, in the context of the baseline level of traffic likely making use of the A272 here on a day-to-day basis, are relatively limited. However they are based on the active use of around 2,290 square metres of commercial floorspace on site. As set out above there is no robust evidence as to the nature or intensity of the former commercial concern. In that context the proposal would generate additional traffic compared to present circumstances, and would also likely generate

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<sup>9</sup> Paragraphs 108 and 109.

<sup>10</sup> Section 62(3) of the Town and Country Planning Act 1990 as amended (the '1990 Act'), subject to Section 62(4A).

<sup>11</sup> Drawings DR1, DR3, DR4.



additional traffic relative to the 'modest previous commercial use' which I am told previously occurred here.

23. With reference to the desirable minimum stopping distance as set out in Design Manual for Roads and Bridges ('DMRB'), the Transport Assessment indicates that a 90 metre visibility splay will be required at the access to the site.<sup>12</sup> However that is premised upon a 30 miles per hour ('mph') speed limit applying, where presently the stretch of the A272 by the site access is subject to the national speed limit. The appellant explains that the 2014 permission included provision to relocate the extent of the 30 mph speed limit zone that applies to Billingshurst eastwards, beyond access to the appeal site. The potential location of the 30mph limit in that context is shown on plan 2016-794-004.
24. However it appears that has not occurred. I saw that 30 mph signs are instead roughly level with the western boundary of the appeal site, such that a 60 mph limit remains by the site access. Observed vehicle speeds may clearly differ to the speed limit, for example where drivers instinctively take a precautionary approach on account of the rural character of roads. However there is no empirical data before me in that respect. Similarly there is no clear evidence that a Grampian condition relating to amending the boundary of the 30 mph speed limit would be achievable in practice.<sup>13</sup>
25. Paragraph 2.5 of the Access Appraisal Report explains that only one serious accident has occurred in the vicinity over the last five years, unrelated to use of the access.<sup>14</sup> However paragraph 1.2 of the Safety Audit Designers' response to the Road Safety Audit indicates that there have been three recorded accidents in this broad location over recent years, and recommends that details related to all are sourced such that 'a full analysis can be undertaken'. There is therefore some ambiguity as to the safety of this element of the highway network. Moreover it appears that tracking diagrams of certain larger vehicles, on account of the geometry of the A272 and access, would need to cross the centre line of the carriageway in order to effect a turn, thereby likely impeding the free flow of traffic on certain occasions.
26. There is no footway between the appeal site and the existing settlement boundary or extent of the 2014 permission site to the west, and no dedicated provision proposed. Given the boundary features to the site and the nature of the A272 there is very little informal space by the carriageway for pedestrians to take refuge from traffic. Consequently, and given my reasoning regarding vehicle speeds and safety, pedestrian use of the carriageway from the appeal site to reach the services and facilities of Billingshurst would be unwelcoming and may be unsafe. I therefore conclude that it has not been demonstrated that safe and suitable access to the site can be achieved for all users or that unacceptable effects on highway safety would not arise, in conflict with the relevant provisions of HDPF policy 40 and NPPF paragraph 108.

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<sup>12</sup> Paragraph 3.15 of the Transport Assessment explaining also that the visibility standards under Manual for Streets, in particular table 7.1, would not be appropriate on account of the function of the A272 compared to DMRB.

<sup>13</sup> With regard to NPPF paragraph 55 and PPG Reference ID 21a-009-20140306.

<sup>14</sup> Prepared by Journey transport planning, February 2018.

## Affordable housing

27. Criterion 3.b. of HDPF policy 16 'Meeting Local Housing Needs' sets out that on sites providing between 5 and 14 dwellings, 20% of dwellings should be affordable (or equivalent contribution made under certain circumstances). No affordable housing is now proposed, on the basis that the HDPF pre-dates case law which gave effect to the Ministerial Statement of 28 November 2014.<sup>15</sup> That Statement set out where planning obligations, including those related to affordable housing, should not be sought given the 'disproportionate burden of developer contributions on small scale developers'. That position has since filtered into NPPF paragraph 63 which sets out that 'provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas' and is reflected in the PPG.<sup>16</sup> The appeal site is not within a rural area designated under section 157 of the Housing Act 1985 as amended.
28. However the NPPF does not alter the statutory position that decisions must be taken in accordance with the development plan unless material considerations indicate otherwise, notwithstanding NPPF paragraph 213. The weight accorded to other material considerations is a matter of planning judgement. Furthermore at paragraphs 9, 57 and 59 the NPPF sets out that planning should reflect the needs and opportunities of each area; that it is for appellants to demonstrate what has changed in respect of viability to justify departing from relevant development plan provisions, and that planning should contribute towards boosting the supply of homes including those meeting the needs of groups with specific housing requirements.
29. Affordable housing needs in the District are significant, being between 225 to 404 annually relative to the HDPF requirement for 800 homes a year.<sup>17</sup> Housing affordability is decreasing.<sup>18</sup> Smaller sites make a significant contribution to housing provision in the District.<sup>19</sup> There therefore remains compelling justification for seeking to secure affordable housing provision in Horsham. I note that the appellant's statement of case refers to the original intention of providing affordable housing as responding positively to 'the significant need as evidence[d] locally'.
30. As defined in the glossary to the NPPF, major development is 'where 10 or more homes will be provided, or the site has an area of 0.5 ha or more'.<sup>20</sup> Therefore at around 0.73 hectares the scheme would represent major development (whereby the provisions of NPPF paragraph 63 would not apply). I have also noted earlier how the Transport Assessment, amongst other evidence, is based on a scheme of 10 dwellings rather than fewer. In that eventuality it would be appropriate to require provision of affordable housing. I note that NPPF paragraph 64 sets out the expectation that where major development involving the provision of housing is proposed, at least 10% should be made available for affordable home ownership.

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<sup>15</sup> Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441; Official Record CWS50, 28 November 2014.

<sup>16</sup> Reference ID: 23b-023-20190315.

<sup>17</sup> Paragraph 38 of the examining inspector's report into the HDPF of 8 October 2015.

<sup>18</sup> As evidenced in the median workplace-based affordability ratios (PPG reference ID: 2a-004-20190220).

<sup>19</sup> As set out in appendix 1 and 2 of the Council's Authority Monitoring Report 2017/18.

<sup>20</sup> Accepting that there is a qualifier in Article 2(1)(c)(ii) in this regard in the Town and Country Planning (Development Management Procedure)(England) Order 2015 as amended.

31. A scheme of up to 10 dwellings may, of course, be for fewer than 10. That level of development would likely fall somewhere within the middle of the 5 to 14 home range set in HDPF policy 16, as opposed to at the lowest end as was the case in respect of a scheme for five units at 1a Clarence Road brought to my attention by the appellant.<sup>21</sup> There is, however, nothing to indicate that the provision of a policy-compliant level of affordable housing would render the proposal unviable or represent a disproportionate burden.
32. Similarly there is no evidence before me suggesting that affordable housing pressures are abating, or by consequence that viability considerations have altered significantly since the adoption of the HDPF. Furthermore, in summary, criterion 4. of HDPF policy 16 explains that if development arranged so as to avoid the threshold where affordable housing contributions would apply, an appropriate level of provision will nevertheless be sought. I do not suggest that has occurred, however both the HDPF and NPPF explain how development should optimise the potential of sites.<sup>22</sup>
33. 10 homes on a site of approximately 0.73 hectares would result in density of approximately 14 dwellings per hectare. That would allow for spacing between properties and a transitional level of density to the rural surroundings of Billingshurst, however that is a low level of density in absolute and relative terms, including relative to the 2014 permission where 475 homes, a primary school, non-residential uses and strategic landscaping elements are proposed based on an original application site area of 35.27 hectares. Furthermore the eastern boundary of the appeal site does not readily align with an existing field boundary or other natural feature, and I have not been made aware of any ownership constraints. There is therefore little by way of justification for the density or site boundary proposed.
34. Whilst I acknowledge the inconsistency between HDPF policy 16 and NPPF paragraph 63, there remains significant local need for affordable housing, and development of sites of this scale represents an important component of local housing delivery. Irrespective of whether or not the proposal amounts to major development, there is little substantive justification for the site boundaries, development density, or in respect of viability. Therefore in the absence of affordable housing provision, and robust evidence in support of that position, I conclude that the proposal conflicts with the approach in criterion 3.b. of HDPF policy 16 and NPPF paragraphs 9 and 59.

### **Other matters and planning balance**

35. I have set out how harm would result from the proposal in respect of character and appearance, regarding the safety and suitability of access provision, and in relation to the absence of affordable housing provision. In each main issue there are factors which qualify the extent of harm arising, or matters which are inadequately justified based on the evidence before me. Nevertheless for those reasons the proposal conflicts with various provisions of HDPF 4 related to where settlement expansion may be acceptable.

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<sup>21</sup> Ref APP/Z3825/W/17/3179462 a proposal for the redevelopment of a vacant storage building within an otherwise predominantly residential location relatively central to Horsham distinguishing it from the context here.

<sup>22</sup> HDPF policy 32 and NPPF paragraph 127.



36. Nevertheless the proposal would have certain benefits. It would result in an addition to local housing stock, support employment during construction, and future occupants would make use of local services and facilities at Billingshurst and elsewhere. The proposal would also make use of an unkempt and under-used site, albeit that the weight that can be accorded to the re-use of brownfield land is limited.
37. However the benefits of up to 10 homes would be modest, particularly compared to the annual HDPF requirement for around 800 dwellings. I acknowledge that, in line with the aim of boosting significantly the supply of housing, neither the development plan nor existence of a five year land supply of deliverable sites relative to needs ('5YLS') precludes other sustainable development from coming forward. However there is no dispute that the Council can demonstrate a robust 5YLS, nor evidence before me from their Monitoring Report or Housing Delivery Test data to indicate otherwise. Consequently, and given my reasoning in respect of the policy context above, the provisions of NPPF paragraph 11.d) do not apply.
38. Moreover neither the general support in the HDPF nor NPPF for new housing, including in relation to windfall provision, is at the expense of ensuring that all development integrates appropriately with its surrounding context. Consequently no other matters in favour of the proposal, individually or collectively, are sufficient to outweigh the harm arising by consequence of the conflict with the development plan. That reasoning is arrived at independently from the other appeals brought to my attention by the Council, in respect of which in all instances the nature of the development proposed and its particular surrounding context differs.<sup>23</sup>

### **Conclusion**

39. For the above reasons, having taken account of the development plan as a whole, the approach in the NPPF, and all other relevant material considerations, I conclude that the appeal should be dismissed.

*Thomas Bristow*

INSPECTOR

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<sup>23</sup> Appendices F to N of the Council's statement of case.