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## Appeal Decision

Hearing opened on 12 February 2014

Site visit made on 18 March 2014

**by R J Marshall LLB DipTP MRTPI**

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

**Decision date: 20 June 2014**

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**Appeal Ref: APP/L1765/A/13/2209444**

**Parklands, Thompsons Lane, Denmead, Waterlooville, PO7 6NB**

- 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 Mrs L Offord and family against the decision of Winchester City Council.
  - The application Ref 13/01531/OUT, dated 11 July 2013, was refused by notice dated 9 October 2013.
  - The development proposed is outline application for the development of the site with up to 10 dwellings.
  - The hearing sat for 2 days on 12 February 2014 and 17 March 2014.
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### Decision

1. The appeal is dismissed.

### Background

2. On this outline application the only detailed matter for which permission is being sought is access. Appearance, landscaping, layout and scale are reserved for later consideration.
3. The Council's reasons for refusal included reference to a lack of financial contributions towards off-site public open space and improvements to the transport and highway network. However, on 7 April 2014 the Council introduced a Community Infrastructure Levy (CIL) charging regime. It is satisfied that this overcomes the necessity to seek the aforementioned contributions through a Section 106 Agreement. The Council's initial concerns regarding contributions are therefore no longer a matter for consideration.
4. The Council has a recently adopted development plan, the Winchester District Local Plan Part 1 - Joint Core Strategy (JCS) (2013), which covers the period 2011-2031. This was the subject of a High Court challenge (Zurich Assurance Limited v Winchester City Council and South Downs National Park Authority), in part on the grounds that the Inspector made a methodological error in his assessment of the proposed housing requirement. The challenge was dismissed and the JCS remains part of the development plan.

### Main Issues

5. The main issues in this appeal are: **first**, whether being outside the settlement boundary for Denmead, the proposed development is contrary to the

development plan; **second**, the sustainability of the proposed development in locational terms and its effect on the character and appearance of the surrounding area; and **third**, if harm arises on the above 2 issues whether it is outweighed by 5 year housing land supply considerations

6. The issues differ somewhat from those given at the hearing in light of all I heard and read.

## **Reasons**

### ***Development beyond settlement boundary***

7. Denmead is a large village. It is comprised of a small central area, containing shops and other facilities, and extensive housing. The housing in the main comprises substantial housing estates but remnants of ribbon development remain. The appeal site lies in the vicinity of Anthill Common. This is an area to the north west of the main part of the settlement and is largely separated from it by countryside.
8. The Winchester District Local Plan Review (WDLR) (2006) drew a settlement boundary tightly around existing development in Denmead. That part of the settlement in the vicinity of Anthill Common was incorporated within this boundary. However, the countryside separating it from the main part of the village is outside the settlement boundary and in open countryside in policy terms. The appeal site is a rectangular parcel of land to the rear of a ribbon of development. It is in the countryside albeit abutting the settlement boundary on 2 sides.
9. The JCS requires that the "Market Towns and Rural Area" should, to support economic and community development, make provision for around 2,500 new homes (Policy DS1). To assist in achieving this JCS Policy MTRA2 requires the provision of about 250 new homes in Denmead. These will be delivered through a combination of development within the existing defined built-up area and planned greenfield releases or other allocations. The need for any greenfield sites will be assessed, and allocations undertaken as necessary, through a Neighbourhood Plan for Denmead. Existing settlement boundaries will be maintained in the meantime. Under JCS Policy MTRA4 housing, other than for farmworkers or affordable housing, is not permitted outside the built up areas of settlements.
10. In March 2014 the Denmead Parish Council, following close collaboration with the District Council, published the Denmead Neighbourhood Plan 2014-2031 Pre-Submission Plan (DNPPSP). Amongst other things this allocates land for the required number of houses under JCS Policy MTRA2 and re-draws the development boundary accordingly. In this plan the appeal site remains outside the development boundary. At this stage only limited weight can be attached to the Neighbourhood Plan. However, from my reading of the JCS it is clear that in accordance with JCS Policy MTRA2 the existing settlement boundary remains in force until such time as the Neighbourhood Plan is adopted and JCS Policy MTRA4 still strictly limits development outside the built-up area.
11. The appellants argue that JCS Policy MTRA4 cannot be applicable as any proposal for housing outside the settlement boundary is by definition in the countryside for the purposes of this Policy. The implication behind this I take

as being that this would stifle any new housing development. However, JCS Policy MTRA2 makes it clear that planned greenfield releases or other allocations will be made where they would be necessary and by implication the development boundary would be redrawn to accommodate this. Thus JCS Policy MTRA4 is clearly applicable.

12. The appellants also argue that that the preceding Policy to MTRA2, by referring to some development being delivered through the development management process, explicitly anticipates that some of the required new homes in the "Market Towns and Rural Area" will be delivered through planning application sites outside any plan led process. However, my reading of all the MTRA Policies taken a whole is that this should be taken as referring to developments within settlements, or limited development such as affordable housing, in accordance with Policy MTRA4 and not general housing beyond development boundaries.
13. Unlike the appellants I attach little weight to the fact that the Council alleges no conflict with JCS Policy CP1. This Policy sets out the total number of houses required in the Council area for the plan period. Whilst it says that the "Market Towns and Rural Area" should accommodate 2,500 of these houses it is left to the later Policies referred to above to establish how this should be achieved. It is thus against these Policies that the proposed development should properly be assessed.
14. I am in no doubt, drawing together my views on the above, that the proposed development, being outside the settlement boundary of Denmead, is contrary to the development plan.

#### **Character and appearance/sustainability**

15. JCS Policy DS1 says that the 2,500 homes in the "Market Towns and Rural Area" must be provided for in the most sustainable and accessible locations which maintain their rural character and individual settlement identity. This is reinforced by this JCS Policy MTRA2 which requires that the 250 houses in Denmead should be in locations that conserve the settlement's identity and countryside setting particularly as identified in District Landscape Assessments or other guidance.

#### *Character and appearance*

16. The Council's concern on this matter in its reason for refusal relates largely to the layout of the proposal. However, given all that I heard it is clear that its concern extends also to the principle of housing on this site. I consider this to be justified. Along with adjoining land the appeal site has been identified in the Council's *Landscape Sensitivity Appraisal*, produced to inform the Local Plan Part 2 (LPP2), as a site highly sensitive in terms of impact on landscape character as part of the wider context and setting off Anthill Common and Denmead Village. I appreciate that this study has not been subject to consultation. However, the site's location on high land rising up from School Lane and its proximity to pleasantly undulating and wooded countryside justifies the Council's assessment. Although bordered to the north by residential gardens these are so substantial and well landscaped as to ensure that the site retains a rural character.

17. The proposed development of up to 10 dwellings on the appeal site would be an unacceptable intrusion into this area detracting from its pleasing rural character. It would be seen from adjoining housing and in the winter months in particular would be noticeable in views across open countryside from School Lane. Land the south of the appeal site is identified in the DNPPSP for potential recreational use. However, it seems likely to me that such a use would retain the land largely open and thus this allocation does not at present alter my views above.

#### *Sustainability*

18. Although concerns about the sustainability of the site in locational terms were not included in the reasons for refusal the Council, correctly in my view, raised them at the hearing. As part of the Strategic Housing Land Availability Assessment (SHLAA) process the Council undertook a transport assessment to provide an accessibility rating for sites around Denmead including the appeal site. The findings for this site are that although access to bus services is adequate in terms of distance the pedestrian links are poor and that access to the local centre/shops/facilities and local primary schools are poor being at 2000m and 2800m away respectively.
19. The appellants have concerns over the assessment given the way in which nearby sites scored more favourably. However, these sites are located to the highway in a way that would ensure shorter links to facilities on foot. In any event they are only graded adequate, leading to a recommendation that other sites with better accessibility credentials are to be preferred. The appellant is also concerned about the lack of justification for choosing an over 1600m distance as comprising poor accessibility. However, in my experience such a figure is not uncommonly used and having walked from the appeal site to the local centre and primary school I am in no doubt that the distances involved would discourage many from walking. The absence of pavements adjoining the highway may well discourage adults allowing children to walk in the area especially at night. What I saw supports the findings of the transport assessment.

#### *Conclusion*

20. In conclusion on this issue I consider that proposed development would be insufficiently sustainable in locational terms and detract from the character and appearance of the surrounding area. As such it would be contrary to the objectives of JCS Policies DS1 and MTRA2 in so far that they seek to ensure that new development in Denmead is acceptable in these terms.

#### **5 year land supply considerations**

21. The appellants say that the Council cannot demonstrate a National Planning Policy Framework (the Framework) compliant 5-year supply of deliverable housing sites to meet the requirements of the District as a whole or the needs of Denmead in particular. They conclude that as such paragraph 49 of the Framework is engaged and that the proposal falls to be determined in accordance with the presumption in favour of sustainable development in paragraph 14 of the Framework. This is strongly contested by the Council.
22. I turn first to the housing requirements of the District as a whole. As set out above this is dealt with by JCS Policy CP1. This requires that over the Plan

period provision is made for 12,500 houses District wide to be distributed in 3 spatial areas. The JCS makes no allocation for houses beyond a few strategic allocations. The LPP2 will deal with the lesser allocations. The Council contends, by reference to its Annual Monitoring Report 2013 that in the period 2014-2019, agreed by the parties as the relevant 5 year period, there would be a District housing land supply of 6.64 years compared with the 5.25 years required having regard to the need for a 5% buffer as outlined in the Framework. By contrast the appellant says that there is 4.47 year supply set against the need for a 6 year supply given what is contended to be the need for a 20% buffer in accordance with the Framework's requirement when there has been a record of a persistent under delivery of housing.

23. The difference in view between the two parties arises primarily on disagreements on the following: whether the provision of the 12,500 houses district wide over the plan period should be spread evenly over every year or provided for on the basis of the Council's housing trajectory (linked into this is a dispute on whether to use the Liverpool or Sedgefield methodologies for assessing 5 year land supply); whether the Council has a record of persistent under delivery of housing; and how realistic the Council's estimates are of future housing completions.
24. On the first of the above matters the appellants' assessment uses the Sedgefield methodology which frontloads shortfall of provision into the next 5 year period. The appellants' approach is based on a need to provide for 625 houses annually, ie 12,500 houses divided by the plan period. The Council contends that such an approach is at odds with its housing trajectory provided as an appendix to the JCS. This indicates that in the first 4 years of the plan projected completions would be below the figure of 625 houses and would rise fairly substantially thereafter. Unlike the appellant I consider that the Council is entitled to have regard to its housing trajectory in assessing its 5 year housing land supply. It is an updated trajectory provided at the Local Plan Inspector's request and based upon those that were before him at the Local Plan inquiry. Its provision is entirely in accordance with his reference to a delivery rate of 625 dwellings per year on average and to the explanatory text of JCS Policy CP1 which refers to housing delivery not being even over the plan period. This being so I consider that Council's approach using the Liverpool methodology, whereby unmet requirements from previous years are spread over the remaining plan period, is a more accurate assessment than that provided by the appellant. I consider this to be so notwithstanding a preference in some appeal decisions for the Sedgefield methodology on the grounds of it being more closely aligned with the Framework requirement to boost significantly the supply of housing. The approach adopted should relate to the particular circumstances of the case. Nor do I consider the Council's approach need be inconsistent with the JCS seeking to meet affordable housing needs in the first 10 years of the plan. I note finally, that the Council's 2013 annual monitoring report shows a housing provision trajectory with a slightly lower provision of houses in the first 5 years of the plan than that in the trajectory appended to the JCS. However, the 2 trajectories are sufficiently aligned to cause no concern at present.
25. In placing weight on the trajectory I appreciate, having regard to the Zurich Assurance judgement, that neither the JCS or the trajectory were being put forward by the Council as elements of its Local Plan which would meet the requirements of the second bullet point of paragraph 47 of the Framework.

Both the Council and the Local Plan Inspector contemplated that these requirements would in due course be met in the LPP2. However, what the trajectory does do, as the judgement makes clear, is provide assurance that the suggested number of new homes over the plan period were realistic and deliverable and provided comfort to the Local Plan Inspector that if the JCS were adopted other development plan documents which would meet the requirements of the second bullet point of paragraph 47 could be adopted. This being so I consider that the Local Plan Inspector was satisfied that the approach in the trajectory would enable the requirements of the second bullet point in paragraph 47 of the Framework to be met.

26. I turn now to whether there has been a persistent under delivery of houses in the past. This is pertinent to the question of whether a 5% or 20% buffer in accordance with the Framework should be applied. The appellant looks at the period 2002-2014. He finds that in the period covered by the Hampshire County Structure Plan, 2002-2006, for all but one of those years housing delivery exceeded the annual average requirement. However, in the periods said to be covered by the South East Plan, 2007-2011, and the JCS, 2012-2014, he finds there to be a shortfall. On this basis he determines that there has and will continue to be persistent under delivery.
27. However, for the JCS period he judges the shortfall by assessing housing delivery against an annual housing requirement of 625 houses and not the lower trajectory figure in the Plan. I have already found this to be an inappropriate approach. Assessing completions against the trajectory there is only a marginal difference between the two sets of figures. The shortfall found by the appellant in relation to the South East Plan period is based on assessing housing delivery against a requirement for 612 houses per annum. I have reservations about this approach given the Zurich Assurance judgement. The same point concerning shortfall of housing provision in this period was made by the claimant. It was held, albeit in the context of the challenge and not with specific reference to the need of otherwise for a 20% buffer, that the alleged shortfall was simply an artefact of making an assumption that the South East Plan assumed a straight-line allocation of new housing supply in the plan period at 612 new homes per year. However, in fact the housing requirement was stated as an annual average and thus not a required target year by year. A further substantial reservation I have on the assessment against the South East Plan figures is that they cover the period primarily during the recession when housing completions would most likely have been artificially low given the state of the economy.
28. Taking all the above into account, the Council's good performance assessed against the Structure Plan requirement, its acceptable performance to date against the trajectory in the JCS, the assessment in the South East Plan period being made in times of recession and my reservations on the appellant's approach to the assessment in this period given that Zurich Assurance judgement, I consider that the case for a 20% buffer has not been made out.
29. Finally I turn to the Council's estimates of future housing completions. The Council's identified supply for the 5-year period 2014-2019 is 4,538 dwellings. This is comprised of commitments (large) 3,536, commitments (small) 260, SHLAA sites 442 and windfall/LPP2 sites 300. By contrast, the appellant considers that the predicted supply should be around 3,688 dwellings.

30. The appellants do not contest the figures for the SHLAA sites and the small sites. However, he considers that the windfall/LLP2 sites, most which would arise from the LLP2, should not be taken into account as that plan is not yet adopted. They also consider that of the large commitments the Council is unrealistic in assuming 750 dwellings within the 5-year period from the strategic site at North Whiteley given that there are as yet no planning permissions for development on this land. The potential of this site is thus restricted to the delivery of 200 houses between 2014-2019.
31. The Framework says that to be considered deliverable sites should, amongst other things, be available now. However, according to the recently issued Planning Policy Guidance (PPG) *Housing and economic land availability assessment* planning permissions or allocations in a development plan are not prerequisites for sites being deliverable in terms of 5 year land supply. Robust and up-to-date evidence is required from Council's on deliverability and if there are no significant constraints, such as infrastructure, to overcome sites not allocated within a development plan or without planning permission can be considered as being deliverable within a 5-year timeframe.
32. Turning to North Whiteley, an allocated strategic site in the JCS, this was first promoted by the Council in 2007. It is in the control of a consortium of major developers, and has been so since well before this date. A Development Forum has been established since 2010 to work with the consortium and local communities. This follows a model which the Council's says it has used successfully to bring forward other major developments. Significant progress has already been made on submitting an outline planning application for 3,500 homes. Detailed work is well advanced on various matters including design and access statements. A Steering Group has been meeting to progress the application and additional staff taken on to manage it. Detailed technical drawings have been undertaken and discussions are underway concerning legal agreements and conditions. The Council's has adopted a more cautious delivery projection than the consortium which considers higher projections to be realistic. In my view all the factors referred to above justify the delivery figure provided by the Council and provide a reasonable prospect of the early submission and approval of detailed applications for housing.
33. Turning to supply from the LPP2, preferred locations for sites have been identified through initial community consultations. A total of 25 sites have been identified, mostly on Greenfield land. The Council considers, based on an adoption of the LPPT2 in December 2015, that the delivery of some of the sites could come forward from April 2016 onwards. There is substantial development interest in the allocations and planning applications or requests for formal pre-application advice have been received on 6 sites which would potentially provide 418 dwellings. Given this the Council considers its windfall/LLP2 figure for housing delivery to be realistic and most likely conservative. In the absence of more detailed evidence from the appellants on this I consider that the Council's observations above broadly support its stance. However, even if I were not of this view the removal of the 300 houses from this source would not be sufficient, when assessed against the housing requirement figure adopted by the Council, to prevent a 5 year housing land supply being achieved with the required 5% buffer.
34. Turning to the needs of Denmead in particular I am unaware of any requirement to assess this individually in terms of 5 year land supply. With the

recent publication of the DNPPSP I am satisfied that matters are sufficiently advanced for the provision of the required 250 houses in the village well within the plan period.

35. It is concluded that 5 year housing land supply considerations do not justify the proposed development beyond the settlement boundary for Denmead. Paragraph 49 of the Framework is not engaged and thus the Council's Policies on the supply of housing remain up to date.

**Other matters**

36. Despite some references to the programme for the Denmead Neighbourhood Plan I consider that it is progressing well. It is correctly seeking to make provision for the 250 houses required by the JCS, and to ensure that they are provided in sustainable sites well located to the local centre. Neighbourhood plans are supported by the Framework. They give communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need. There is a strong developer interest in sites around Denmead and allowing this appeal could make it difficult for the Council to resist further piecemeal releases of land that may well run counter to the shared vision for the community. This adds weight to the harm found on the main issues.
37. There is no substantial evidence to support local concerns on the impact of the proposed development on wildlife, highway safety and living conditions. Had I been minded to allow the appeal the Council's requirement for on-site affordable housing, and a range of dwelling sizes, could have been provided for by condition. However, these considerations do not make the proposed development acceptable given the harm found on the main issues.

**Conclusion**

38. For the reasons given above I conclude that the appeal should be dismissed.

*RJ Marshall*

INSPECTOR



## APPEARANCES

### FOR THE APPELLANT:

Mr P Collins BA Hons DipTP MRTPI	Of Strutt and Parker
Mr G Keen	Of Counsel (instructed by Strutt and Parker)

### FOR THE LOCAL PLANNING AUTHORITY:

Mr J Jenkison MRTPI	Principal Planning Officer
Mr G Williams BSc DipTP MRTPI	Principal Planner (Strategic Planning)
Miss E Dee BA Hons BTP MRTPI	Planning Officer (Strategic Planning)
Mr S Opacic MRTPI DipTP	Head of Strategic Planning
Mr S Dunbar Dempsies MLI	Open space officer
Mrs H Cann	Project manager – new homes delivery team
Miss Z James MSC RTPI (licentiate)	Planning Officer
Miss F Sutherland	Solicitor

### INTERESTED PERSONS:

Mr N Lander-Brinkley	Denmead Parish Council
Mr W Crowther	Local resident

## DOCUMENTS

- 1 Letter of notification of hearing and those notified.
- 2 Local Plan (2006) map.
- 3 Extract from "The Planning System: General Principles".
- 4 Joint Core Strategy – Introduction and Background.
- 5 Winchester District Local Development Scheme (2014).
- 6 Winchester District Local Plan Part 1 – Joint Core Strategy.
- 7 Appellant's appendix 6.
- 8 Map of landscape appraisal.
- 9 Extracts on CIL liability.
- 10 Policy H4 – Winchester District Plan Review.
- 11 Letter to PINS 4 March 2014 from Council's Assistant Director – Built Environment.
- 12 Extract from Secretary of State decision APP/C3105/A/12/2184094.
- 13 Extract from appeal decision APP/C3105/A/13/2201339.
- 14 Cotswold District Council v Secretary of State for Communities and Local Government.
- 15 St Albans v Hunston Properties Ltd.
- 16 South Northamptonshire v Secretary of State for Communities and Local Government and Barwood Homes.
- 17 Denmead Neighbourhood Plan Pre-Submission Consultation Plan.
- 18 Appellant's 6 March statement on contributions.
- 19 Appellant's 3 March 2014 statement on 5 year land supply and rebuttal of Council's statement.
- 20 Council's 4 March 2014 statement on 5 year land supply and rebuttal of appellant's statement.

- 21 Zurich Assurance Limited v Winchester City Council/South Downs National Park Authority.
- 22 Appellant's observations of 4 April to PINS on above judgment.
- 23 Council's observations of 4 April to PINS on above judgment.
- 24 Council's observations of 10 April to PINS on claimant's application to Court of Appeal for leave to appeal above judgment.

Richborough Estates