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## Appeal Decision

Hearing held on 25 June 2014

Site visit made on 25 June 2014

**by R C Kirby BA (Hons) DipTP MRTPI**

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

**Decision date: 4 August 2014**

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**Appeal Ref: APP/J3720/A/14/2217247**

**Land south of Campden Road and west of Oldbutt Road, Shipston on Stour, Warwickshire CV36 4EG**

- 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 Banner Homes (Midlands) Ltd against the decision of Stratford on Avon District Council.
  - The application Ref 13/02571/OUT, dated 6 November 2013, was refused by notice dated 31 March 2014.
  - The development proposed is described as outline application for up to 70 dwellings (Class C3) with public open space; landscaping; all associated works and all matters reserved.
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### Decision

1. The appeal is allowed and outline planning permission is granted for up to 70 dwellings (Class C3) with public open space; landscaping; all associated works and all matters reserved at land south of Campden Road and west of Oldbutt Road, Shipston on Stour, Warwickshire CV36 4EG in accordance with the terms of application Ref 13/02571/OUT, dated 6 November 2013 and subject to the 15 conditions in the attached Schedule.

### Preliminary Matters

2. The application was submitted in outline and the application form makes it clear that all matters are reserved for future consideration. At the Hearing the appellant submitted a plan showing access from Campden Road. However, the appellant made it clear that the plan was for illustrative purposes only. This is the basis upon which I have determined the appeal.
3. The Planning Practice Guidance (PPG) came into force on 6 March 2014. The content of the guidance has been considered, but in the light of the facts in this case, the PPG does not alter my conclusion.
4. An executed Deed of Agreement under Section 106 of the Town and Country Planning Act between Timothy James Harper, Mark Jonathan Patrick Harper, Banner Homes Central Limited, Stratford on Avon District Council and Warwickshire County Council was submitted at the Hearing. This agreement is considered later in my decision.

5. My attention has been drawn to policies within the Intended Proposed Submission Core Strategy (SCS). Both main parties agreed that given the early stage that the SCS is at, limited weight should be attached to the policies therein. I have no reason to reach a different conclusion in this respect.

### **Main Issue**

6. A Statement of Common Ground (SOCG) was agreed prior to the Hearing in respect of various matters. Accordingly, the main issue in this case is whether new housing in this location is acceptable having particular regard to the principles of sustainable development.

### **Reasons**

7. The appeal site is located within the open countryside on the edge of the town of Shipston on Stour. The town centre is approximately 0.8 kilometres to the east of the site, where there is a range of shops and services.
8. It is common ground that the Council cannot currently demonstrate a five-year supply of deliverable housing sites. Paragraph 49 of the National Planning Policy Framework (the Framework) states that in such circumstances relevant policies for the supply of housing should not be considered up-to-date; housing applications should be considered in the context of the presumption in favour of sustainable development. Paragraph 14 further states that where relevant policies are out-of-date permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted.
9. The Framework, at paragraph 7 identifies three dimensions to sustainable development – economic, social and environmental. The 3 roles should not be undertaken in isolation, because they are mutually dependent.

### *Sustainable Development*

#### *The economic dimension*

10. In terms of the economic dimension to sustainable development, house building is recognised as an important driver of economic growth and there would be economic benefits to the construction industry from the proposed development. In the longer term, the level of disposable income in the local area would also be increased with some commensurate growth in the demand for goods and services.
11. I heard no evidence at the Hearing that the proposed development would result in any adverse economic impacts and I conclude that, for this dimension of sustainable development, the balance must clearly be in its favour.

#### *The social dimension*

12. The proposal would add to the supply and mix of housing in the town, including 35% of the dwellings being affordable, secured by the Section 106 Agreement. This would contribute to social cohesion and boost the supply of both market

and affordable housing in the area. Furthermore, the site is located only a short distance from the town centre, such that the local shops and services would be accessible.

13. Local residents raised concern about possible nuisance from noise and dust during the construction stage. At the Hearing, the Council considered that such matters could be addressed through the implementation of an approved Construction Method Statement. This could be addressed through the imposition of a suitably worded planning condition.
14. The provision of new dwellings in a District with an identified shortfall carries significant weight, and outweighs any short term impacts to the social role of sustainability during construction, which could in any event be suitably mitigated. Furthermore, the provision of affordable housing provides some additional weight in support of the proposal.

*The environmental dimension*

15. With respect to the environmental dimension of sustainable development, the element that I consider to be especially relevant to the proposed development is landscape impact. The objective of saved Policy PR.1 of the Stratford-on-Avon District Local Plan Review 1996-2011 (LPR) is that development should respect, and where possible enhance the quality and character of the area. This policy is in broad accordance with the core planning principle of the Framework which requires that account is taken of the different roles and character of different areas, promoting the vitality of our main urban areas, recognising the intrinsic character and beauty of the countryside and supporting thriving communities within it.
16. There would inevitably be an impact on the landscape from a development of up to 70 houses; the character of the appeal site would be changed from undeveloped farmland to a residential estate. That would be true irrespective of what mitigation is sought at reserved matters stage by means of layout or landscaping to reduce the proposed development's impact. The issue is how significant that impact would be and whether it would represent substantial material harm.
17. There is no dispute that the site lies outside the built up area of Shipston on Stour and that it is open countryside. However, I find that the recent granting of permission at the Norgren site to the north west of the appeal site, and the site's proximity to the town centre results in the appeal site not being isolated, even if still in open countryside.
18. There have been various landscape assessments made in respect of the site over recent years, and different conclusions reached about its suitability for development. However, the most recent study undertaken in 2011 by White Consultants is the most relevant. This study identified land zoned as Sh09 to the west of the town (of which the appeal site formed part) as having a medium landscape sensitivity to housing development. This zone was described as forming a prominent rural backcloth to the settlement. The sensitivity of the area was primarily related to its visual prominence as well as hedges and trees.

19. The study found that housing development no higher than two storeys could be accommodated discreetly below the break of slope (around 85 metres above ordnance datum (AOD)) in a few lower fields either side of the main public right of way rising up the hill. It considered that housing in the fields adjacent to the B4205 (Campden Road) would be too prominent and would adversely affect the setting of, and approaches to the settlement as a whole. In this respect the development of the appeal site would conflict with the findings of this study, being sited adjacent to the B4205.
20. The site is situated below Hanson Hill and slopes from an approximate height of between 77-80 metres in its northwest corner to between 84-87 metres in its southwest corner. On my site visit, I observed that the appeal site was well contained by mature hedgerows. Although the hedgerows are prominent in the wider landscape, the agricultural field is not. I accept that residential development on the site would be more prominent than the existing field as a result of its built form.
21. However, the new housing would be viewed in the context of existing buildings within Shipston on Stour, particularly when viewed from Campden Road, from the footpaths within the vicinity of the site and from the Shakespeare Way. Looking towards Hanson Hill, the housing would be read against existing vegetation with the slope of the hill rising above development on the site. Consequently the development would not be overly prominent in the wider landscape. In addition, the site could be developed in such a way that the existing vegetation would be largely retained, save for an access point. As part of a reserved matters application there would be the opportunity to reinforce the well-defined boundaries, and provide appropriate landscaping to ensure that the development satisfactorily integrated into the wider landscape. Furthermore, as part of the consideration of layout, scale and appearance, there would be the opportunity to address the constraints set out within the White Consultants report relating to the 85 metre contour line and the scale of development.
22. The Council is concerned that the appeal proposal would result in an overdevelopment of the site which would be out of keeping with the character of the area. There is no dispute between the parties that 70 dwellings on the site would result in a density of 26 dwellings per hectare. However, from the evidence before me, this density would not be dissimilar to that of neighbouring development, which has previously been considered acceptable by the Council. The appellant has indicated that a range of densities across the site could be employed to reflect the landscape and townscape character of the area. Such an approach would provide opportunities to provide a softer edge to the new development than exists at present on the western edge of the town. These matters would be considered as part of a subsequent reserved matters application on the site.
23. Although concern was expressed by the Council at the Hearing that the site should not be considered in isolation from the fields to the south, I am obliged to determine the appeal on the merits of the case. In light of the foregoing, the development of the site with up to 70 dwellings would be harmful to the current undeveloped character of this area of countryside. However, the harm would not be substantial given the number of dwellings proposed, the enclosed nature of the site, the level of the site in relation to Hanson Hill and its relationship to the town. The upper slopes of Hanson Hill would be unaffected

by the appeal proposal. They would continue to form the rural backcloth to residential development of the town, much as they do today.

*Conclusion on sustainable development*

24. In terms of the economic and social dimensions of sustainable development, I consider that there would be benefits from the proposed development. Although there is an issue over the use of land in the open countryside, the location of the appeal site is close to the town centre and the landscape to be lost is not so valuable as to fatally undermine the proposed development's sustainable credentials. Whilst the visual impact of housing development would be greater in the winter months when the trees and hedgerow were not in leaf, the adverse impact on the landscape character could be mitigated. Furthermore, the proposed scheme would provide much needed market and affordable housing in an area where there is an identified shortfall in the five years supply of housing land. The provision of up to 70 dwellings, of which 35% would be affordable, therefore represents a significant public benefit. This matter carries significant weight in support of the appeal proposal.
25. I therefore conclude that the development of the site would represent sustainable development in accordance with the Framework. The public benefits of the proposal would offset the limited harm to the landscape character of the area, in accordance with Policy PR.1 of the LPR. The findings of the Shipston Town Council Town Plan, which was published some time ago, do not alter the conclusion that I have reached.

*Infrastructure contributions*

26. The contributions and obligations contained in the Section 106 Agreement are required to comply with Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010. To be compliant, contributions must be necessary in planning terms, directly related to the development and fair and reasonably related in scale to it.
27. The Council has given its explanation of why it considers the contributions sought are necessary within its statement. I am satisfied that the affordable housing provision is in line with Policy COM.13 of the LPR and the Framework in this respect.
28. Warwickshire County Council has advised that the proposal would be likely to generate the need for 12 primary education places, 9 secondary education places and 2 sixth form education places. The financial contribution that would be payable is based upon a formula for each type of education establishment. Given that the dwellings are likely to be occupied by some families such contributions would be in accordance with saved policies DEV 6 and IMP.4 of the LPR.
29. The highway infrastructure contributions towards bus services, travel packs and the implementation of a 40 mile per hour speed limit in a westerly direction to the south-western extent of the former Norgren site are necessary given that the development would increase the population of the area and travel demand, including more cars using the local road network. The contribution towards improving footpaths within a 1.5 metre radius of the site is necessary and reasonable based on the additional use they are likely to have as a result of the proposal. Such contributions would accord with policies

- DEV4, COM.7 and IMP5 of the LPR and policies PTB4, LUT3, LUT9 and LUT10 of the Warwickshire Local Transport Plan 2011-2026.
30. Residents of the new houses would be likely to use the library facilities within the town. Accordingly a contribution to such facilities is reasonable having regard to policies DEV 6 and IMP.4 of the LPR. Policies COM.4 and COM.5 of the LPR relate to public open space and the requirement for provision on development sites to serve the recreational needs of the new residents. The financial contributions are based on a formula contained within the Council's Provision of Open Space Supplementary Planning Guidance and the issues identified within an Open Space Audit for the district. The S106 Agreement would also make provision for the management and maintenance of a sustainable drainage scheme upon the site and public open space. I find this aspect to accord with policies DEV.2(e) and DEV.7 of the LPR. In light of the above, I consider that the above contributions are CIL compliant.
31. However, the agreement also makes provision for a contribution towards healthcare following submissions made by the South Warwickshire NHS Foundation Trust and the Shipston on Severn Medical Centre, although the need for this is questioned by the appellant. Acute services are provided at Warwick Hospital and Stratford-upon-Avon Hospital. The Trust state that the hospitals are now at full capacity and that there are limited opportunities to further improve hospital capacity utilisation. The Trust considers that the proposed development would give rise to the need for further acute healthcare and community healthcare infrastructure and a charge based on a tariff per dwelling is therefore requested by the Trust.
32. The Shipston Medical Centre covers a wide catchment area and whilst it is still taking patients, it is close to capacity. At the Hearing I was told that the Centre hopes to relocate elsewhere in the town. Funds are required from developments to enable this to occur. However, at the time of the Hearing, no evidence was submitted to demonstrate that a suitable site had been identified and that planning permission had been granted for a new medical centre. Although Policy AS.6 of the SCS requires developments to contribute towards the provision of a new medical centre in the town, as stated earlier in this decision, the policies of the SCS carry limited weight because of the early stage that the Plan is at.
33. A contribution towards healthcare infrastructure at the hospitals referred to above is not identified within Policy AS.6. Whilst I do not dispute that residents of the new housing would be likely to use the local hospitals and the medical centre, I am not satisfied that the financial contribution sought by both the Trust and Medical Centre would comply with Regulation 122 of the CIL Regulations. The absence of an adopted CIL charging regime or current policy support for such contributions, along with the Council considering that such contributions would not be CIL compliant add weight to the position that I have taken in this respect. I therefore conclude that a contribution to healthcare provision is not reasonable in this case.
34. Notwithstanding this conclusion on healthcare provision, the other obligations of the Section 106 could be executed because of the drafting of the clause relating to healthcare with the agreement.

## **Other Matters**

### *Effect on highway safety*

35. I note the concerns raised by local residents about the local highway network. However, although an indicative access to the site shows one being provided off Campden Road, this matter is not before me as access is reserved for future consideration. Notwithstanding this, the highway authority raised no objection to the application and I am therefore satisfied that there is likely to be an access solution for the site which would not result in harm to highway safety.

### *Prematurity*

36. Local residents have raised concern that the application is premature pending the adoption of the Council's Core Strategy. Within its Committee Report the Council considered that no objection could be raised on grounds of prematurity having regard to the early stage the SCS was at. It is not due to be submitted for Examination until September 2014. I have no reason to reach a different conclusion to the Council in this respect.

### *Effect on drainage and flooding*

37. Local residents, the Town Council and Stretton on Fosse Parish Council have raised concern about drainage and flooding. Whilst I note these concerns, the site is located within Flood Zone 1. In the absence of substantive evidence to demonstrate otherwise, I conclude similarly to the Council that the site could be suitably drained to prevent flooding elsewhere. In reaching this conclusion I have had regard to the Environment Agency and Severn Trent Water raising no objection to the proposal.

### *Effect upon wildlife*

38. Although concern has been raised about the proposal affecting wildlife in a pond upon the site, no substantive evidence has been submitted to demonstrate this. Indeed at the Hearing the Council stated that they had no concerns in this regard. I have no reason to disagree with the Council in this respect.

### *Conclusion on Other Matters*

39. In light of the foregoing, I conclude that none of the other matters raised constitute adverse impacts that would significantly and demonstrably outweigh the benefits of the proposed development.

## **Conditions**

40. The Council has suggested a number of conditions in writing which it considers would be appropriate were I minded to allow the appeal. The conditions, with the exception of ecology conditions were agreed between the 2 main parties within the SOCG. I have considered the suggested conditions below, in accordance with the advice on conditions within the PPG.
41. A condition is necessary to ensure that the development is carried out in accordance with the approved plans. Conditions requiring the submission of reserved matters are necessary as no details are approved at this stage. For

- clarity, a condition is necessary limiting the maximum number of dwellings on the site. A condition requiring the protection of existing hedges and trees upon the site is necessary in the interests of the character and appearance of the area and biodiversity. A levels condition is necessary to ensure that the development is in keeping with the character and appearance of the area.
42. In order to comply with the Council's open space policies, a condition is necessary requiring the provision of children's play space. To ensure that the living conditions of local residents are protected a condition requiring the submission of a Construction Method Statement is necessary. In the interests of public safety, conditions are necessary requiring facilities to be provided for fire fighting purposes on the site, and for further site investigation to determine the nature and extent of any contamination and any associated mitigation.
43. Although the site has already been the subject of an ecological appraisal it is necessary for biodiversity reasons, in the light of comments from Warwickshire County Council Ecology and as accepted by the appellant, that a combined ecological and landscape management plan should be submitted, agreed and implemented before any works commence. In the interests of sustainable development conditions relating to on-site renewables, the submission of a sustainable drainage scheme relating to surface water, the submission of a foul drainage scheme, and the construction of a percentage of the dwellings to 'Lifetime Homes' standards are necessary. However, for clarity, and to ensure compliance with the PPG, I consider that some of the Council's suggested wordings need to be amended.
44. Conditions relating to the provision of a footway connection and visibility splay are not necessary at this stage as such matters would be the subject of a reserved matters application. Similarly conditions relating to hard and soft landscaping condition and associated management plans are not necessary, as such matters are reserved for future consideration. A condition relating to external lighting and street lighting is not necessary at this outline stage as layout and external appearance has not been considered.
45. The provision of a Design Code prior to the submission of any reserved matters application is not necessary as such matters would form part of a subsequent application. As layout is reserved, conditions requiring the submission of details of sub stations and pumping stations, the provision of water butts, refuse and recycling facilities are not necessary. The code level of buildings is covered by the Building Regulations and is therefore not necessary.

### **Overall Conclusion**

46. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

*R C Kirby*

INSPECTOR



## **APPEARANCES**

### FOR THE APPELLANT

Mrs Rachel Best	Stansgate Planning
Mr Robert Hughes	Tyler Grange
Mr Paul McCann	Banner Homes

### FOR THE COUNCIL

Mrs Philippa Jarvis	Planning Consultant
Mr Jeremy Sacha	Tyler Grange
Mr Neil Hempstead	Case Officer
Ms Lucy De Domenico	Administrative Officer

### INTERESTED PARTIES

Cllr Richard Cheney	District Councillor
Cllr Simon Jackson	District Councillor
Dr Jane Gilder	Shipston-on-Stour Medical Centre
Mrs Rachel Vial	Shipston-on-Stour Medical Centre
Mr R G Harper	Local Resident
Mr David Pickford	Pegasus
Mrs Mel Duffy	South Warwickshire NHS Foundation Trust
Ms Kathryn Seward	PINS
Ms Sarah Stevens	PINS
Mr Mark Caine	PINS
Mrs Olivia Spencer	PINS

## **DOCUMENTS SUBMITTED AT THE HEARING**

1. DWG-02 Rev A showing indicative access and visibility splays
2. Copy of Tyler Grange Photoviewpoints 1, 7 and 14
3. Copy of proposed condition 17 submitted by the appellant
4. Copy of Policy CS 16 of the Stratford-on-Avon Draft Core Strategy 2012

5. Copy of Coventry & Warwickshire Joint Strategic Housing Market Assessment Final Report (November 2013)
6. Copy of document entitled Update to Review of Housing Requirements for Stratford-on-Avon District Council (18 December 2013)
7. Copy of Section 106 Deed of Agreement dated 23 June 2014
8. Copy of Secretary of State's decision in respect of APP/J3720/A/13/2202101 and APP/J3720/A/13/2205529
9. Copy of appeal decision APP/J3720/A/13/2205108 (relevant paragraphs 96-102)
10. Copy of site layout plans for Norgren site
11. Copy of proposed timetable for the production and adoption of the Core Strategy DPD

Richborough Estates

## Schedule

### Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plan: Site Location Plan Dwg No. LOC-01.
- 2) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 3) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 4) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 5) A maximum number of 70 dwellings shall be constructed on the site.
- 6) The development hereby permitted shall not be commenced and no equipment, machinery or materials brought onto the site until an Arboricultural Method Statement, to include tree and hedgerow protection, has been submitted to and approved in writing by the local planning authority and implemented in accordance with the approved details.
- 7) No ground clearance or development shall be commenced until a protected species contingency plan and an ecology and landscape implementation and management plan, have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.
- 8) The development hereby permitted shall not be commenced until a scheme for the provision of energy from on-site renewable sources sufficient to replace a minimum of 10% of the predicted carbon dioxide emissions from the total energy requirements of the development has been submitted to and approved in writing by the local planning authority. The design features, systems and equipment that comprise the approved scheme shall be fully implemented in accordance with the approved plans and particulars prior to the development first being brought into use, or alternatively in accordance with a phasing scheme which has been agreed in writing by the local planning authority, and shall thereafter be retained in place and in working order at all times unless otherwise agreed in writing with the local planning authority.
- 9) The development hereby permitted shall not be commenced until a scheme for all drainage works (foul and surface), based on sustainable drainage principles has been submitted to and approved in writing by the Local Planning Authority. The approved drainage works shall be carried out prior to first occupation of the dwellings.

- 10) The development hereby permitted shall not be commenced until a scheme for an area of equipped children's play space has been submitted to and approved in writing by the local planning authority. The approved scheme shall be completed in accordance with the approved details.
- 11) At least 50% of the dwellings hereby permitted shall fully comply with the relevant requirements of the Joseph Rowntree Foundation's 'Lifetime Homes' standards (or any substitute which may be published from time to time). The details of which dwellings are to comply with the "Lifetime Homes" standards shall be submitted to the local planning authority at reserved matters stage, and those dwellings so identified shall be constructed in accordance with the said standards.
- 12) The development hereby permitted shall not be commenced until detailed plans and sections showing existing site levels and proposed finished floor levels of the dwellings have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 13) No development shall take place until site investigations have been carried out, in accordance with a methodology based on a Phase 1 assessment and conceptual site model, detailing the nature and extent of contamination of the site. The results of the site investigations shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigations, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins. If, during the course of development, any contamination is found which has not been identified in the site investigations, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.
- 14) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The approved Statement shall be implemented throughout the construction period. The Statement shall provide for:
  - a. the parking of vehicles of site operatives and visitors
  - b. loading and unloading of plant and materials
  - c. storage of plant and materials used in constructing the development
  - d. the erection and maintenance of security hoarding including decorative displays, facilities for public viewing, and where appropriate wheel washing facilities
  - e. measures to control the emission of dust and dirt during construction, and a scheme for recycling/disposing of waste resulting from construction works
  - f. hours of construction works.

- 15) No development shall take place until a scheme for the provision of a water supply and fire hydrants necessary for fire fighting purposes at the site has been submitted to and approved in writing by the local planning authority. The development shall not be occupied until the approved scheme has been implemented and retained as operational thereafter, unless otherwise agreed in writing by the local planning authority.

Richborough Estates