



Appeal Decision

Inquiry held on 2-4 September 2014

Site visit made on 3 September 2014

by Paul Dignan MSc PhD

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

Decision date: 3 October 2014

Appeal Ref: APP/Y3940/A/14/2213225

Land south of Abberd Lane, Calne, Wiltshire.

- 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 Robert Hitchins Limited against the decision of Wiltshire Council.
 - The application Ref. 13/02833/OUT, dated 5 August 2013, was refused by notice dated 1 November 2013.
 - The development proposed is Residential development of up to 125 dwellings, including infrastructure, ancillary facilities, open space and landscaping, along with the demolition of existing buildings and construction of a new vehicular access off Sandpit Road.
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Decision

1. The appeal is allowed and outline planning permission is granted for Residential development of up to 125 dwellings, including infrastructure, ancillary facilities, open space and landscaping, along with the demolition of existing buildings and construction of a new vehicular access off Sandpit Road at Land south of Abberd Lane, Calne, Wiltshire in accordance with the terms of the application, Ref. 13/02833/OUT, dated 5 August 2013, subject to the conditions set out in the Schedule of Conditions attached to this decision.

The proposal

2. The site comprises 6.7 ha of undeveloped agricultural land on the eastern side of Calne. It is outside, but adjoining, the settlement boundary of Calne. There is residential development within the settlement boundary immediately to the west. To the north is a new residential development nearing completion. This development, allowed on appeal¹ in 2010, is outside the settlement boundary.
3. The application was made in outline, with all matters reserved aside from access to the site, which would be from Sandpit Road, which also serves the new estate to the north. A masterplan was submitted with the application which indicates the general form and layout that the appellants envisage for the site.

Procedural matters

4. Amongst the Council's reasons for refusal was that the proposal is premature to the progression of its Local Development Framework and the Wiltshire Core Strategy document for the area, and prejudicial to the Council's plan-led

¹ Ref. APP/Y3940/A/09/2108716

approach to sustainable development and the phasing of future growth. The Council confirmed at the opening of the inquiry that it no longer objected on this basis.

5. At the Inquiry The appellant submitted a signed and sealed Unilateral Undertaking (UU) dated 4 September 2014, made under section 106 of the Town and Country Planning Act 1990. This overcomes the Council's reason for refusal relating to the provision of affordable housing and the mitigation of impacts on relevant infrastructure. I comment on this UU below.

Main Issue

6. The development plan for the area includes Policy H4 of the North Wiltshire Local Plan 2011, adopted in June 2006 and subsequently saved by direction of the Secretary of State. This policy prevents development outside defined Framework Boundaries save for countryside purposes. For the purposes of Policy H4, the settlement boundary of Calne is the Framework Boundary. The site lies outside this boundary and the development is therefore contrary to Policy H4.
7. Planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) and the subsequent Planning Practice Guidance (PPG) are material considerations which can be accorded substantial weight. Amongst other things, the NPPF aims, within the context of a presumption in favour of sustainable development, to boost significantly the supply of housing. It requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements. If the local planning authority cannot demonstrate a five year supply of deliverable housing sites, relevant policies for the supply of housing should not be considered as up date. Subject to a proviso which does not apply here, where relevant policies are not up to date, the NPPF provides that planning permission for development should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits.
8. Both parties agree that Policy H4 is a relevant policy for the supply of housing. The Council's position is that it can demonstrate a five year supply of deliverable housing sites. However, if that is found not to be the case, it considers that Policy H4 should be considered as out of date, the appeal should be allowed and planning permission granted. The appellant argues that the Council cannot demonstrate a five year housing supply, but it considers that even if it can, planning permission should be granted in view of the strong presumption in favour of sustainable development and what it considers to be the absence of demonstrable harm.
9. Against this background I consider the main issue to be whether or not there are material considerations that outweigh the conflict with development plan policy. Central to this is the question of the five year supply of housing.

Reasons

10. The emerging Wiltshire Core Strategy (CS) is at an advanced stage of preparation. The examining Inspector proposes to hold a final 1 day hearing session into two outstanding issues before concluding on the content of the CS

with regard to the tests for soundness. The outstanding issues concern justification for the Council's Housing Land Supply Statement (July 2014 version) and whether some 900 houses permitted in Wiltshire, but on the edge of Swindon, should be included in the housing supply requirement for Wiltshire. These are matters which bear on the question of housing land supply for the purposes of this appeal, but which are unresolved. Recent housing completions and the likely contributions to housing land supply from various large sites are also in dispute.

11. The NPPF requires local planning authorities to use their evidence base to ensure that their Local Plan, the emerging CS in this case, meets the full, objectively assessed needs (OAN) for market and affordable housing in any specific Housing Market Area (HMA), as far as is consistent with other NPPF policies. In December 2013 the CS examining Inspector wrote² to the Council to indicate that his interpretation of the available evidence was that the objectively assessed housing need across the three HMA's within Wiltshire would be in the region of 44,000 homes over the plan period (2006-2026). Acknowledging that this might be undeliverable, he suggested that the CS housing requirement figure be expressed as a minimum figure towards the upper end of the range 35,800-42,100. In response the Council proposed an overall requirement for the plan period of 42,000, which the Inspector considered to be reasonable. Disaggregated to the HMA level, this equates to a requirement of 24,740 for the appeal site HMA, North and West Wiltshire (NWWHMA), set out in Policy C2 of the emerging CS.
12. On the publication of the PPG, the examining Inspector asked the Council to consider its implications for the emerging CS. In respect of housing requirements, the Council's view was that the PPG methodology for calculating OAN supported its earlier approach of using the DCLG 2011-based Interim Household Projections, which suggested a starting point of 39,400 dwellings. It committed, nonetheless, to the 42,000 requirement figure.
13. Turning to the 900 houses with planning permission on the west side of Swindon. The housing sites fall within the Wiltshire Council administrative area, but the Council has agreed with Swindon Borough Council that they should be counted as contributing to Swindon's five year housing land supply. This does not prevent them from being included in the Wiltshire OAN so long as it is clear that that is for accounting purposes only. To an extent that is what has occurred here. In the submission draft the CS accounted separately for housing requirements in the three identified HMAs along with an 'allowance' for the west of Swindon. That added up to 37,000, a figure which the examining Inspector considered to be too low. The 'allowance' in the 37,000 was 200 houses, but by the time the proposed OAN of 44,000 was disaggregated to the three HMAs, this had risen to 900. Clearly the examining Inspector would have been aware of the 200 'allowance' for the West of Swindon. What I cannot be certain about is whether he had the full 900 in mind when he concluded on an OAN of 44,000 across the three HMAs. However, the examining Inspector seemed content with the methodology³ for allocating the increased housing requirement to 42,000, which explicitly excluded the 900 houses from disaggregation to the Wiltshire HMAs. On this basis I am prepared to accept,

² Letter of 2 December 2013

³ Methodology for disaggregation of increased housing requirement to community area and housing market area level – Wiltshire Council January 2014

for the purposes of this appeal, that the figures I need to consider can be taken as including the 900 permitted houses.

14. The next matter I need to consider is the OAN. I have referred above to the examining Inspector's most recent assessment of 44,000, and the view of the Council that the subsequent publication of the PPG added weight to its own estimate of 39,400. The appellant submits that the Council's estimate must be 'subjective' rather than 'objective' because it has not been the subject of consultation. However, it is the methodology and its inputs that determine whether or not a figure is arrived at objectively. Having said that, as the PPG makes clear, there is no single approach that will provide a definitive answer, and the processes of consultation and examination enable weight to be attributed to estimates as appropriate. In this case the Council's estimate of 39,400, as a starting point, was among others that were before the examining Inspector when he concluded that the need would be in the region of 44,000 homes over the plan period. In evaluating the alternatives, the degree and extent of scrutiny can be relevant to the attribution of weight. The Inspector's letter of 2 December 2013 explains how he came to his conclusion, looking across various alternatives and considerations. I consider it unlikely that he came to his conclusion largely on the basis of reducing the weight attributable to DCLG's 2011-based Interim Household Projections. Whilst I accept that the examining Inspector has not reached a final conclusion, I consider that the best estimate of OAN at present is 44,000.
15. The Council accepts that the housing requirement in the adopted Local Plan is not up to date. Recent case law⁴ has clarified that where there is no Local Plan, which is effectively the case here in respect of housing supply, then the housing requirement for a local planning authority for the purposes of paragraph 47 of the NPPF is the full OAN. The issue of the weight which can be attributed to emerging CS Policy C2, against which the Council considers it can demonstrate a five year housing land supply, does not arise. The Council accepts that it cannot demonstrate a five year supply of deliverable housing sites to meet the full OAN, even looking solely at the NWWHMA. In these circumstances paragraph 14 of the NPPF provides that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the NPPF policies taken as a whole.
16. The NPPF promotes sustainable development, which has economic, social and environmental dimensions. The Council accepts that Calne is a sustainable location for further housing development, that the appeal site itself is sustainably located in terms of access to services and facilities, and that no site specific harm would arise from the proposed development. The loss of countryside would cause some environmental harm, although it is likely that some greenfield land would be required in any case to meet the full OAN, and the Council has expressed reservations about the impact of unplanned growth on its overall spatial strategy, which seeks to focus growth on Chippenham. These are matters that weigh against the proposed development, but the economic, social and environmental dimensions of sustainable development are not to be taken in isolation. When assessed against the policies in the NPPF taken as a whole, factors such as additional affordable housing, and economic benefits, both in the construction phase and in the local economy in the longer

⁴ Gallagher Estates Ltd v Solihull MBC [2014] EWHC 1283 (Admin)

term, must also be weighed in the overall balance. When they are, I am satisfied that the proposal amounts to sustainable development. The adverse impacts would not significantly or demonstrably outweigh the benefits when assessed against the NPPF policies taken as a whole, and I conclude accordingly that the appeal should succeed.

The Unilateral Undertaking

17. I have considered the submitted Unilateral Undertaking (UU) in the light of the NPPF and the statutory tests introduced by Regulation 122 of the Community Infrastructure Levy (CIL) Regulations, 2010. The Council has provided a Statement of Compliance setting out the justification for the detailed obligations, along with a breakdown of the calculations where relevant. It has liaised with the appellant in the drafting of the UU. The UU makes provision for a minimum of 30% affordable housing, which is in line with LP Policies C2 and H5, on-site open space, off site highways improvements, a travel plan, and financial contributions towards local cemetery provision, the continued maintenance of the on-site open space, off-site transport and highways improvements, off-site sports provision, primary school infrastructure and travel plan monitoring, all legitimately required by LP Policies C2, CF1, CF2, and CF3. I am satisfied that these are directly related to the proposed development, fairly and reasonably related to it and necessary to make it acceptable in planning terms.

Conditions

18. In addition to standard conditions regarding the submission of further details and the commencement of development, I shall limit the scale of development and require compliance with relevant application plans, in the interests of good planning. A Flood Risk Assessment and Drainage Strategy was submitted with the application and I shall require the development to accord with this to minimise the impact on the fluvial floodplain and the flood risk to the site and surrounding area. The proposal will result in the loss of existing habitats, and this should be mitigated in the interests of conservation. Timely provision of highway works is necessary in the interests of highway safety and sustainable travel, while details of landscaping and tree protection are necessary to protect local character and amenity. Details of external materials and children's play areas should also be detailed in the interests of amenity and local character. Details of waste management are required in the interests of sustainability and local amenity. Where necessary, for clarity or to avoid duplication, I have modified the suggested wording.

Conclusion

19. Having considered all other matters raised, I conclude that the appeal should be allowed.

Paul Dignan

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Hugh Richards	Of Counsel, instructed by Legal Services, Wiltshire Council
He called	
Mark Henderson	Senior Planning Officer, Monitoring and Evidence Team, Wiltshire Council
BSc(Hons) MA MRTPI	
Carolyn Gibson BA (Hons)	Team Leader Spatial Plans, Wiltshire Council

FOR THE APPELLANT:

Anthony Crean QC	Instructed by Pegasus Group
He called	
Mervyn Dobson MA	Pegasus Group
MPhil MRTPI MRICS	

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Signed Statement of Common Ground: Housing Land Supply.
- 2 High Court Judgements [2014] EWHC 570 (Admin) and [2014] EWHC 2636 (Admin) submitted by the appellant.
- 3 Appeal decision APP/D0840/A/13/2209757, submitted by the appellant.
- 4 Housing Land Supply Statement April 2014, Wiltshire Council.
- 5 Opening statement, appellant.
- 6 Opening statement, Wiltshire Council.
- 7 High Court Judgement [2013] EWHC 3719 (Admin) submitted by the Council.
- 8 Cross examination note, submitted by Mr Crean.
- 9 Completed s106 unilateral undertaking, submitted by the appellant.
- 10 List of conditions.
- 11 Council's closing submissions
- 12 Appellant's closing submissions.
- 13 Statement of Compliance of UU, submitted by the Council.

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale of any development within each phase of the development hereby permitted (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before that part of the development begins. The development shall be carried out as approved.
- 2) 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.
- 3) The development hereby permitted shall begin no later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) No more than 125 dwellings shall be constructed on the site pursuant to this planning permission.
- 5) The development hereby approved shall be carried out in accordance with the following approved plans and documents:
 - Site Location Plan- CMP-22 Rev A
 - Layout Plan showing Proposed Access- H446/3 Rev A
- 6) No work to construct any building shall commence on site until details and samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) The development hereby permitted shall be carried out in accordance with the approved Flood Risk Assessment and Drainage Strategy (FRA) dated 17 July 2013 by Phoenix Design Partnership Limited. The mitigation measures for each catchment area shall be fully implemented prior to the occupation of the first dwelling within that catchment.
- 8) There shall be no development, ground raising or other alteration on land with an existing ground level of 71.88m AOD or below except for the drainage works detailed on the Drainage Strategy Plan ref. 330-002. Prior to the commencement of any such drainage works further details of those works including a programme for implementation shall be submitted to and approved in writing by the local planning authority. This land shall otherwise remain undeveloped and shall form unobstructed public open space.
- 9) No development shall take place until a surface water run-off limitation scheme, broadly according with the submitted 'Flood Risk Assessment and Drainage Strategy' by Phoenix Design Partnership Ltd dated July 2013 including Drainage Connection Plan MBA.C2.DCP.01, has been submitted to and approved in writing by the local planning authority. The scheme shall include details of ownership of land and maintenance provision of all on-site and off-site drainage works serving the site. Development shall be carried out in accordance with the approved scheme and maintained thereafter in accordance with the approved programme and details.
- 10) Prior to or alongside the submission of the first application for approval of reserved matters an Ecological Management Plan shall be submitted to and approved in writing by the local planning authority. The Plan shall include details of surveys carried out not more than 12 months prior to submission of the plan. If these surveys reveal the presence of protected

species, no development shall take place until details of mitigation measures to ensure the preservation of the protected species' populations have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the Ecological Management Plan and the approved mitigation measures.

- 11) No development shall commence on site until details of a pedestrian/cycle link through the site linking Abberd Lane with the development site have been submitted to and approved in writing by the local planning authority. No more than 50 dwellings shall be occupied until the access link has been completed in accordance with approved details and has been brought into use.
- 12) No dwellings hereby permitted shall be occupied until the improvements to the junction of Abberd Lane with Sandpit Road (Drawing No. H446/3 Rev A), including street lighting and footways, have been completed. A detailed scheme for the improvement works shall be submitted to and approved in writing by the local planning authority before the works commence.
- 13) Reserved matters applications submitted pursuant to condition 1 shall include details of the location, size/extent, and specification of children's play areas.
- 14) No development shall commence on site until a Green Travel Plan has been submitted to and approved in writing by the local planning authority. The Travel Plan shall include details of implementation and monitoring and shall be implemented in accordance with these agreed details. The results of the implementation and monitoring shall be made available to the local planning authority on request, together with any changes to the plan arising from those results.
- 15) Landscaping reserved matters details submitted pursuant to condition 1 shall include:
 - location and current canopy spread of all existing trees and hedgerows on the land;
 - full details of any to be retained;
 - a detailed planting specification showing all plant species, supply and planting sizes and planting densities;
 - finished levels and contours;
 - means of enclosure;
 - vehicle and pedestrian access and circulation areas;
 - all hard and soft surfacing materials;
 - minor artefacts and structures (e.g. furniture, play equipment, refuse and other storage units, signs, lighting etc);
 - proposed and existing functional services above and below ground (e.g. drainage, power, communications, cables, pipelines etc indicating lines, manholes, supports etc).
- 16) All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the dwellings or the completion of the development whichever is the sooner, or in accordance with a programme to be agreed in writing

with the local planning authority. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the local planning authority.

- 17) No demolition, site clearance or development shall commence on site until an Arboricultural Method Statement (AMS) prepared by an arboricultural consultant providing comprehensive details of construction works in relation to trees has been submitted to, and approved in writing by, the Local Planning Authority. All works shall subsequently be carried out in strict accordance with the approved details. In particular, the method statement must provide the following:-
- A specification for protective fencing to trees during both demolition and construction phases which complies with BS5837:2013 and a plan indicating the alignment of the protective fencing;
 - A specification for scaffolding and ground protection within tree protection zones in accordance with British Standard 5837: 2012;
 - A schedule of tree works conforming to British Standard 3998: 2010;
 - Details of general arboricultural matters such as the area for storage of materials, concrete mixing and use of fires;
 - Plans and particulars showing the siting of the service and piping infrastructure;
 - A full specification for the construction of any arboriculturally sensitive structures and sections through them, including the installation of boundary treatment works, the method of construction of the access driveway including details of the no-dig specification and extent of the areas of the driveway to be constructed using a no-dig specification;
 - Details of the works requiring arboricultural supervision to be carried out by the developer's arboricultural consultant, including details of the frequency of supervisory visits and procedure for notifying the local planning authority of the findings of the supervisory visits; and
 - Details of all other activities, which have implications for trees on or adjacent to the site.
 - In order that trees to be retained on-site are not damaged during the construction works and to ensure that as far as possible the work is carried out, no demolition, site clearance or development should commence on site until a pre-commencement site meeting has been held, attended by the developer's arboricultural consultant, the designated site foreman and a representative from the local planning authority, to discuss details of the proposed work and working procedures.

- Subsequently and until the completion of all site works, site visits should be carried out on a quarterly basis by the developer's arboricultural consultant. A report detailing the results of site supervision and any necessary remedial works undertaken or required should then be submitted to the local planning authority. Any approved remedial works shall subsequently be carried out under strict supervision by the arboricultural consultant following that approval.
- 18) a) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the prior written approval of the local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998 (Tree Work).
- b) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species and shall be planted at such time, as may be specified in writing by the local planning authority.
- In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs (a) and (b) above shall have effect until the expiration of five years from the first occupation or the completion of the development, whichever is the later.
- 19) No development shall commence on site until a Waste Minimisation and Waste Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Waste Minimisation and Waste Management Plan shall include details of the volume and type of waste to be generated; re-use of materials and proposals for on and off site recycling; storage of re-cycling and waste collection facilities; proposals for and implementation of waste reduction; and proposals for the review and updating of the Waste Management Plan.