
Appeal Decision

Inquiry held on 4 March 2015

Site visit made on 3 March 2015

by P W Clark MA MRTPI MCMi

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

Decision date: 08 June 2015

Appeal Ref: APP/J3720/A/14/2221748

Land North of Campden Road, Shipston-on-Stour, Warwickshire

- 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 Ainscough Strategic Land against the decision of Stratford on Avon District Council.
 - The application Ref 14/00318/OUT, dated 31 January 2014, was refused by notice dated 27 June 2014.
 - The development proposed is the erection of 143 residential dwellings (C3 Use Class) and 72 Extra Care apartments (C2 Use Class) and any associated highway, landscaping and engineering works.
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of 143 residential dwellings (C3 Use Class) and 72 Extra Care apartments (C2 Use Class) and any associated highway, landscaping and engineering works on Land North of Campden Road, Shipston-on-Stour, Warwickshire in accordance with the terms of the application, Ref 14/00318/OUT, dated 31 January 2014, subject to the nineteen conditions appended to this decision.

Procedural Matters

2. The application is made in outline form but with details of access provided for consideration now. Details of appearance, landscaping, layout and scale are reserved for later consideration.
3. An unaccompanied site visit was made on the day prior to the Inquiry. All parties present at the Inquiry agreed that a further, accompanied, site visit was not necessary.

Main Issues

4. There were originally only two points at issue between the main parties. The first is the effect of the proposal on the character and appearance of the area in terms of its visual impact and impact on landscape character. By the time of the Inquiry, the Council had decided to offer no evidence on this matter but a third party pursued it.
5. The second issue is the effect of the proposal on housing land supply. Although the parties continue to dispute the size of the shortfall, both now agree that the

Council lacks an identifiable supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements together with an appropriate buffer in the way sought in paragraph 47 of the National Planning Policy Framework (the NPPF). In consequence, the existence or otherwise of a housing land shortfall does not need to be determined in this appeal but it is to be taken into account in the overall balance.

6. Although the main parties are agreed upon the effects of the proposal on infrastructure, the South Warwickshire NHS Foundation Trust raises the issue of the effects of the proposal on the demand for and supply of Health Services to serve the development. This was pursued at the Inquiry.

Reasons

Landscape impact

7. Shipston is a small town of about 5,000 people. It is situated on the west bank of the river Stour. It extends for about two kilometres north-south, broadly parallel to the river and for about 800-900m east-west, rising about 20m or so up the lower slopes of the hills which surround it and which provide a backdrop to the town when viewed from the east.
8. This pattern of development matches that described in the third bullet of paragraph 4.2.13 of the Council's District Design Guide of April 2001 (the Design Guide); "Valley bottom settlements adjacent to a river tend to sit on a terrace above the river level and extend along the line of the river or at right angles to it, depending on the direction of the main route. Settlements that contour a river tend, secondarily, to extend away from the river, more or less at right angles to the main route. With the exception of the larger towns such as Stratford and Southam, settlements tend to remain on one side of the river or stream."
9. The Design Guide advises that "New development should follow these tendencies in the respective types of development." Shipston's existing development extends at right angles to the river and already reaches the 85m contour in places.
10. The appeal site abuts the western edge of the town. Across Campden Road to its south, permission has been given for a housing development which would extend the built development of the town westwards and upwards to a field boundary which happens more or less to correspond with the 85m contour.
11. Shipston Town Council recommends, in its draft Shipston Town Design Statement of 2014 that no future development should be permitted to exceed a limit of 85m but that contour appears to reflect historical happenstance rather than visual analysis. There is no field boundary or any other physical feature marking that contour on the appeal site.
12. Although the advice in paragraph 4.2.6 of the Design Guide is that "valley bottom settlements should, on the whole, remain below a given level" and (in paragraph 4.2.14) that new development should follow a settlement's existing tendencies, the succeeding paragraph warns that even a quick look at actual settlements will show that there are many exceptions to these tendencies due to the need to balance the range of considerations.

13. I prefer the approach taken in paragraph 9 of appeal decision APP/J3720/A/12/2181956 (relating to land west of Hornsby Close in Shipston-on-Stour) that it is the skyline rather than any particular contour which is of significance. I concur with the view expressed in paragraph 55 of appeal decision APP/J3720/A/13/2194850 (relating to an earlier appeal on the present site) that reference to the 85m contour in appeal decision APP/J3720/A/14/2217247 (relating to land on the south side of Campden Road) is as a matter of fact rather than as an endorsement of its importance.
14. Permission has been given in the earlier appeal on the present site for a mixed development which would extend the development of the town westwards and upwards near to the 100m contour where permission already exists for the redevelopment of a previously isolated factory for a housing development abutting the western edge of the appeal proposal. In principle, the current appeal scheme would have an equally acceptable impact on the landscape setting of the town.
15. The main parties agree a set of viewpoints around the town from which the appeal scheme should be evaluated. Some of these, such as that from Upper Brailes, are quite distant. In these the site would scarcely figure in the general view of Shipston set out in a wide panorama against a backdrop of hills and trees which would continue to rise up behind the development.
16. From some nearer viewpoints, the concept of Shipston set in a bowl of hills whose ridges form the skyline, can be seen to have been compromised by the extensive rooflines of the Shipston industrial estate to the north of the town. The appeal proposal, particularly if the heights of its buildings were limited in the way suggested by the submitted illustrative parameters plan and if the woodland planting rising towards the ridge behind the site were strengthened, would not have that disruptive effect. The height limitation can be imposed by condition; the local authority should be able to secure the strengthened planting through consideration of the landscaping proposals which are a reserved matter.
17. In the national context, Shipston sits within National Character Area Profile 96, Dunsmore and Feldon, though, in truth, this comprises two distinct areas with differing characteristics. The key facts of this document tell me that the mean average elevation is 87m above sea level and that the Feldon (which includes Shipston) is closely associated with a broad belt of Lower Lias clay which forms a gently rolling tableland some 100 to 150m AOD. None of this suggests that the topographical elevation of the site would have any significance in the context of the wider landscape character area.
18. The description of Dunsmore and Feldon within the National Character Area Profile clearly includes built development as part of the landscape; Shipston is mentioned by name. As was agreed by all parties at the Inquiry, none of the defined Key Characteristics of the Dunsmore and Feldon character area would be compromised by the appeal development, nor would the development prejudice any of the opportunities identified in the document's Statements of Environmental Opportunity.
19. Similarly, the Warwickshire Landscapes Guidelines published by the County Council and the Countryside Commission includes a description of the built environment of villages and towns, with a specific mention of Shipston, in its description of the landscape of Feldon on page 28. In its foreword, it is at

pains to point out that the Guidelines do not propose that development is never appropriate. Its advice on page 63 makes specific reference to the two market towns of Southam and Shipston and advises that major new development away from these existing centres would weaken the region's distinctive rural character. This does not lend support to the idea that the development proposed in this appeal, adjacent to and extending the existing town of Shipston, would do any harm to the landscape of the Feldon area.

20. In 2011, the local authority commissioned White Consultants to undertake landscape sensitivity assessments to assist the Council identify the most appropriate locations for development to be identified in the Local Development Framework. The study examined 141 land cover parcels or zones. It reports that 75% of these had high/medium sensitivity to housing development. None had a low sensitivity to housing development. Five had medium/low sensitivity. Twenty-nine, including the appeal site, had medium sensitivity to housing development. The site is therefore somewhat rare in the local authority's area for its relative lack of landscape sensitivity to housing development.
21. I conclude that whether this issue is examined from a national, county, district or local perspective, the development of this site would be fully acceptable in terms of its effects on the character and appearance of the area, visual impact and impact on landscape character. It would therefore comply with policy PR1 of the Stratford-on-Avon District Local Plan Review 1996-2011, adopted in July 2006. This requires all proposals to respect and, where possible, enhance the quality and character of the area. Similarly, the proposal would comply with those parts of Local Plan policy DEV1 which are applicable at this outline stage. It too requires development proposals to have regard to the character and quality of the local area. These policies are consistent with the fifth of the twelve core planning principles set out in paragraph 17 of the NPPF.

Infrastructure

22. The appeal is accompanied by a s106 agreement. This provides for 35% of the floor area of the development to take the form of affordable housing; restrictions on the occupation of the Extra Care apartments to those qualifying to do so; the laying out of open space and a children's play area and transfer either to the local authority or to a management company; and for the maintenance of the Sustainable Urban Drainage System to be installed.
23. It also provides for financial contributions; to the provision of a footway on Campden Road east of Sadler's Avenue, in the event that such is not previously provided by another developer; to the provision of public transport serving the development and a sustainable travel pack for each dwelling; to the provision of acute health care services needed by the occupants of the development; towards the provision of Early Years, Primary, Secondary, Special Needs and Sixth Form education facilities serving the development; towards youth and adult public open space facilities; and towards the provision of Library services.
24. The costs of the footway, public transport and travel packs are known and so stated in monetary terms. Explanatory material shows that they are fairly and reasonably related in scale and kind to the development. Because the development is in outline, there is presently no certainty about the composition of the population likely to result from the development and so the education, open space and library contributions are stated as a population-based formula,

- which also ensures that the requirement of the CIL regulations for contributions to be fairly and reasonably related to the development in scale and kind is met.
25. For all but the health care contributions, the Council has provided evidence to show the necessity of the provisions to make the development acceptable in planning terms, directly related to it and fairly and reasonably related in scale and kind. It also indicates the ways in which the monies would be spent, which gives confidence that the s106 agreement would lead to an actual resolution of the matters which would otherwise be an objection to the development proceeding. This evidence is accepted by the developer. I too find it convincing.
26. The Council is not convinced that the health care contributions would comply with the CIL regulations and so does not support them. The appellant positively challenges them.
27. The appellant produced legal arguments about general taxation powers to which the Health Authority was not in a position to respond at the Inquiry. In effect, as the appellant's advocate confirmed, what it came down to was whether there is a planning case for the contributions sought, which simply reinforces the first test of the CIL regulations (and of the NPPF); is the obligation necessary to make the development acceptable in planning terms? Put this way, the Health Authority was able to respond to the argument.
28. Many matters routinely included in planning obligations could (and, some might say, should) be funded out of general taxation but, in reality, would not be and so necessitate a contribution from a developer. In this context, necessity may be established if the public authority funded by general taxation would not ordinarily or routinely otherwise have provided the services or facilities demanded as a result of the development.
29. Part of the appellant's argument was that it could not be demonstrated that the development would give rise to additional demand since potential future residents might already be clients of the Health Authority. That may be so but the development proposed would provide a general increase in the area's housing capacity. Insofar as it becomes occupied by residents who already live in the area, their previous homes could or would accommodate newcomers and so the development would, perhaps through a chain of transactions, give rise to an overall increase in demand for services.
30. In principle therefore, I do not exclude the possibility that the provision of health care facilities can fall within the ambit of the CIL regulations and the three tests set out therein. The Council rightly points me towards paragraph 70 of the NPPF which, amongst other matters, advises that in order to deliver the services the community needs, planning decisions should plan positively for their provision. Saved policies of its Local Plan align with those provisions of the NPPF.
31. In the present case, the South Warwickshire NHS Foundation Trust tells me that its hospitals are now at full capacity, operating for most of 2013/4 in excess of the optimal 85% bed occupancy rate recommended. It also tells me that the existing infrastructure for acute and planned health care is unable to meet the additional demand generated as a result of the proposed development. The Trust tells me that it has calculated future population growth and the infrastructure requirements they would give rise to and that it

- proposes to meet these infrastructure requirements through three development projects. None of this is contested.
32. But it also tells me (the emphasis is the Trust's) that **the Trust is not seeking s106 contributions towards the above future infrastructure**. So, it is by no means clear to what purpose the contributions it seeks would be put or how they would resolve the problems to which this development would reportedly give rise. Without that, the necessity for these contributions is not demonstrated.
33. Furthermore, the formula by which the Trust has calculated its requested contribution appears to be based on its revenue costs for providing the services sought rather than on the capital costs of increasing its capacity to provide those services. The reason given for this approach is that the Trust is paid for the services it provides one year in arrears. It seeks the contribution to cover the year's delay in the payment it receives. But it is not suggested that the Trust will not eventually be reimbursed for the services it provides; just that the reimbursement will always be a year behindhand. There is therefore no basis for claiming that there is a shortfall in funding which the development must make good.
34. I conclude that the Healthcare Contributions of the s106 agreement do not comply with the CIL regulations. I take no account of them in my decision.
35. Subsequent to the conclusion of the Inquiry, transitional provisions to allow the pooling of financial contributions secured through planning obligations have come to an end and it is no longer permissible to take into account in my decision contributions made to a pool of more than five contributing developments. The Council has reviewed the planning obligations securing contributions to facilities in Shipston since April 2010 and confirms that, with the exception of contributions to Libraries and Secondary education, the pools for each proposed facility do not exceed five contributions. The County Council, which would be the beneficiary of the contributions to Libraries and Secondary education, demurs, on the basis that only one of the five known contributions to education provision within Shipston has been definitively allocated to a project, namely the construction of a teaching block at Shipston High School, now under way. The appellants also demur, providing information to suggest that contributions to primary education also exceed a pool of five contributions but they also point out that the point is academic, since the terms of the s.106 agreement bind them even if it does not comply with CIL regulation 123.
36. In view of the uncertainty, I take the precaution of excluding these items from my consideration of the benefits of the proposal. Although they would clearly contribute towards mitigating any adverse effects of the scheme in terms of the burdens placed on local infrastructure, the adverse effects of failing to compensate for these effects in particular would not be so great as to overturn the general balance in favour of the scheme.

Conclusions

37. It is common ground between the main parties that policy STR1 of the Local Plan outlines a hierarchy for development locations which includes Shipston but seeks to restrict housing to within settlement boundaries. (In fact it is policy STR4 which contains the latter provision). This policy for the supply of housing

is out of date both because the Local Plan is intended only to provide for the period up to 2011 and also because the Council cannot demonstrate a five-year supply of deliverable housing sites.

38. In such circumstances, I apply the presumption in favour of sustainable development advised by NPPF paragraph 14. For decision-taking, this means approving development proposals that accord with the development plan without delay and, where the development plan is absent, silent or relevant policies are out of date, granting permission 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 that development should be restricted.
39. In general terms it is agreed that Shipston is a sustainable location and that it is unlikely that the new development plan in preparation would change this recognition. I concur. There is no suggestion that the proposal would not contribute to the economic and social roles of sustainable development. Not only would it contribute to supplying the housing required but there is particular evidence that the extra care housing is much needed. This would also provide some employment to help redress recent job losses in Shipston.
40. I have examined the objections to its allegedly adverse environmental effects and have found that its effects would be fully acceptable. Subject to conditions, discussed below, the overall effect of the development is clearly a sustainable one. I have considered all the other matters raised by third parties but although a supermarket development on this site has been found to be acceptable in a previous appeal, there is no information before me to substantiate opinions that Shipston would be harmed if that did not proceed or that there is no other site in Shipston where such a development, if needed, could take place. For these reasons, those representations do not cause me to come to a conclusion other than that this appeal should be allowed.

Conditions

41. In the event of the appeal being allowed, the main parties suggested that twenty-five conditions would be necessary. I have considered these in the light of national Guidance and the model conditions attached to the now otherwise cancelled Circular 11/95 *the Use of Conditions in Planning Permissions*, preferring the wording of the latter where appropriate.
42. The reserved matters do not include details of any changes in levels or contours which might be required. As this is a sensitive matter, particularly towards the upper end of the site, a condition is required to ensure the submission of such details. Similarly, there is an absence of information about surface water drainage, foul drainage, refuse storage and collection and supplies of water for fire hydrants, which are not covered by reserved matters. The relevant authorities have made representations on these matters and so there needs to be a condition to secure the submission of details which can be shown to meet their requirements.
43. Archaeological work already carried out has indicated the need for further investigation, so a condition requires this to be done.
44. The appellant's lighting consultant makes general recommendations in the relevant section of the Environmental Statement but, as these are not

sufficiently specific to form the basis of a condition, a further submission of details must be required. The appellant's Phase 1 Environmental Assessment makes recommendations for a further survey to assess contamination and remediation requirements which needs to be secured by condition. Other consultants make specific recommendations which can be translated into requirements set by condition without the need for further submissions.

45. Some conditions, such as those requiring the provision of Renewable Energy, Lifetime Homes and of on-site play space are necessary to comply with Local Plan policies. A Construction Method Statement is necessary because of the proximity of existing dwellings and because Campden Road is one of the main approaches to the town and so there may be restrictions required on its use for servicing the site.
46. There is no information to show that a phasing plan would be necessary, nor to limit the numbers of dwellings, since that is already limited by the terms of the permission given. Detailed approval of the access is given as part of the permission; there is no information to show that the submitted drawing would be unacceptable or to require a further submission of detail.
47. Landscaping is a reserved matter, so the need for the conditions suggested can be considered when details are submitted.

P. W. Clark

Inspector

CONDITIONS

- 1) Details of 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.
- 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 not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The access to the development hereby permitted shall be carried out in accordance with the following approved plan: 0053-06.
- 5) No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any new construction begins. If any contamination is found during the site investigation, 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 new construction begins. If, during the course of development, any contamination is found which has not been identified in the site investigation, 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.
- 6) Notwithstanding the archaeological work which has already been undertaken on site, no development shall take place until a further programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
- 7) No development shall take place until details of existing and proposed site and ground floor levels for each building 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.
- 8) No development shall take place until details of a scheme of external lighting 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. No dwelling shall be occupied until the access to it has been provided with the approved lighting.
- 9) No development shall take place until a scheme for the provision of adequate water supplies and fire hydrants for fire fighting purposes has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the

- approved details. No dwelling shall be occupied until it is served by an operational fire hydrant.
- 10) No development shall take place until a scheme for the provision of facilities for the storage and collection of refuse, recycling and green waste has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details. No dwelling shall be occupied until its facilities have been made available for use.
- 11) 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 adhered to throughout the construction period. The Statement shall provide for:
- i) the parking of vehicles of site operatives and visitors
 - ii) loading and unloading of plant and materials
 - iii) storage of plant and materials used in constructing the development
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - v) wheel washing facilities
 - vi) measures to control the emission of dust and dirt during construction
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works.
- 12) Before the development begins a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of the development from decentralised and renewable or low carbon energy sources shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented and retained as operational thereafter, unless otherwise agreed in writing by the Local Planning Authority.
- 13) The details to be submitted in accordance with condition 1 shall comply with the maximum height limitations shown on submitted drawing figure 2.2 Parameters Assessment Plan.
- 14) The details to be submitted in accordance with condition 1 shall comply with the sound insulation recommendations of paragraphs 8.5.8, 8.5.9 and 8.5.10 of the submitted Environmental Statement.
- 15) The details to be submitted in accordance with condition 1 shall comply with the recommendations contained in section 6.7 of the Ecological Assessment report by Aspect Ecology Ltd dated October 2013 submitted with the application.
- 16) The details to be submitted in accordance with condition 1 shall identify not less than 50% of all Private Market Dwellings which will be constructed to comply with all relevant requirements of the Joseph Rowntree Foundation's "Lifetime Homes " standards (or any substitute therefore which may be published from time to time).

- 17) The details to be submitted in accordance with condition 1 shall include an area of equipped children's play space measuring a minimum of 744 sq m and a timetable for its provision.
- 18) No building hereby permitted shall be occupied until works for the disposal of sewage have been provided on the site to serve the development hereby permitted, in accordance with details to be submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until it has been provided with means to dispose of sewage in accordance with the approved details.
- 19) No building hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until it is served by surface water drainage in accordance with the approved details.

Richborough Estates

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

David Manley QC	Instructed by Macer Nash of Stratford on Avon District Council
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FOR THE APPELLANT:

Paul Tucker QC	Instructed by Shoosmiths Solicitors
He called	
Julian P Cooper	Director of Landscape Architecture, SLR
BSC(Hons) DipLD FLI	Consulting Ltd

INTERESTED PERSONS:

Michael Taylor	SHARD (Shipston Against Runaway Development)
Mel Duffy	Deputy Director of Business Development and Transformation, South Warwickshire NHS Foundation Trust

Additional DOCUMENTS submitted at the Inquiry

1. Revised Statement of Common Ground, signed 2 March 2015.
2. Note of relevance of DCLG 2012-based household projections.
3. Statement from SHARD community group.
4. High Court Judgment: Stroud District Council v Secretary of State for Communities and Local Government: [2015] EWHC 488 (Admin).
5. S106 agreement dated 4 March 2015.
6. Submissions on behalf of the appellant in respect of NHS Trust submission