



Appeal Decision

Site visit made on 13 October 2015

by David Spencer BA (Hons) DipTP MRTPI

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

Decision date: 27/10/2015

Appeal Ref: APP/E2205/W/15/3067543

Highmead House, Hythe Road, Willesborough, Ashford, Kent TN24 0NE

- 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 Mr Andrew Higgins against the decision of Ashford Borough Council.
 - The application Ref 14/00255/AS, dated 28 February 2014, was refused by notice dated 10 December 2014.
 - The development proposed is a residential development for the retention of Highmead House and the construction of 28 residential units comprising 1x1 bed, 6x2 bed, 1x3 bed, 13 x 4 bed, 7 x 5 bed, with vehicular access in 2 x phases from A20.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Andrew Higgins against Ashford Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application was originally submitted in outline with all matters reserved except for access and layout. The original description for the proposal was for 37 dwellings and I have noted the formal request from the appellant dated 8 October 2014 that the description is amended to that given above. From the Council's committee report and decision notice I am satisfied that they have considered the appeal proposal on the basis of the amended description and so shall I.
4. The appellant has also requested in correspondence dated 7 November 2014 that layout should be a reserved matter. Again, I am satisfied that the Council's consideration of the appeal proposal was on this basis, including the submitted plans which clearly state an 'indicative layout'. Accordingly, I too have dealt with the appeal proposal on the basis it is in outline with all matters reserved except for access.
5. The appellant has submitted a draft and unsigned legal agreement under the auspices of Section 106 of the Town and Country Planning Act 1990 (the Act) which would provide for various planning obligations. There are a number of intricate matters relating to the planning obligations which I deal with in detail in my decision, having regard to the statutory tests set out in the Community Infrastructure Levy (CIL) Regulations 2010.

Main Issues

6. The main issues in this appeal are as follows:
- i. Whether or not residential development would represent, in principle, an acceptable use for the site in planning terms;
 - ii. The effect of the appeal proposal on the character and appearance of Highmead House and its surroundings, with particular reference to the effect on the trees on the site;
 - iii. Whether or not adequate arrangements are made for the disposal of surface water from the site;
 - iv. Whether or not the appeal proposal would provide for an appropriate mix of affordable housing; and
 - v. The effect of the proposal on the provision of infrastructure and facilities as part of the planned expansion of Ashford, including whether the proposal would make adequate provision for any additional need for infrastructure, services and facilities arising from the development.

Reasons

Principle of residential development

7. The appeal site forms part of a wider allocation identified as Site U14 'Land at Willesborough Lees' as set out in the Ashford Local Development Framework Urban Sites and Infrastructure Development Plan Document 2012 (the USIDPD). The USIDPD has been adopted in accordance with the National Planning Policy Framework (NPPF) and encompasses the presumption in favour of sustainable development at Policy U0. Accordingly, I attach significant weight to the contents of the USIDPD.
8. The accompanying policy for Site U14 is unambiguous that the allocation is for residential development with an indicative capacity of 200 dwellings. The policy sets out criteria to manage how the allocation will come forward but neither the proposals map nor the wording of the policy or the supporting text indicate that the appeal site is to be differentiated in any way in terms of land use from the wider residential allocation. Accordingly, the appeal site is explicitly allocated for housing in a development plan prepared and adopted by the Local Planning Authority (LPA).
9. I note that the appeal site was subject to a lengthy pre-application process including a design workshop with local councillors, residents and other stakeholders in November 2013, the outputs of which were reported in January 2014. The design workshop forum involved group working and I am mindful of the appellant's submission that the recommendation for a care home and/or sheltered housing was not a universally shared vision for this site. This is reflected in the main outcomes¹ which refer principally to new housing on site with only one the outcomes referring to the possibility of an opportunity for a care home and/or sheltered accommodation. Accordingly, the design workshop did not provide a consensually conclusive alternative to housing on the appeal site.

¹ Section 7.4, pages 29-30 Design Council/CABE Highmead House Workshop report 28 January 2014

10. I understand that there may well be practical planning reasons for seeking such a use on the appeal site given the adjoining Pilgrim's Hospice and the potential to integrate such a use around the grand Edwardian house and within its sylvan setting. However, the site is not allocated in the USIDPD for a C2 residential institution use². The principle of housing on the appeal site has been established and the NPPF emphasises the importance of a plan-led system³. Such an approach provides certainty to local communities and to those making investment decisions in development and infrastructure. I appreciate the design workshop process was intended to assist the preparation of detailed plans for the development of the appeal site, however, I do not consider the outcomes of workshop sufficiently indicate otherwise than the principle of the appeal site for housing would be acceptable as set out in the adopted development plan.
11. I therefore conclude that the proposed residential development would represent, in principle, an acceptable use for the site in planning terms. The proposed land use would be in accordance with Policy U14 of the USIDPD. The appeal proposal would also accord with the core planning principles at paragraph 17 of the NPPF insofar as they relate to the objectives that planning should be genuinely plan-led and that sufficient land should be allocated to meet the housing needs in the area.

Character and Appearance

12. Highmead House is an imposing 2½ storey Edwardian residence of principally red brick and tile construction and generous vertical proportions. It is approached from the A20 Hythe Road through a gateway entrance with a small lodge dwelling to the west of this entrance. The appeal site is not in a conservation area or covered by any special landscape designations. Highmead House is generally not visible from the A20 or in long distance views from Hinxhill Road or Bockham Lane due to its broadly central position within its sizeable 2.32 hectare plot and surrounding maturing vegetation. The grounds to the house include formal lawn areas, a lawn tennis court, a walled kitchen garden, areas of grassland and a notable number of trees and hedges.
13. The appellant has submitted a detailed arboricultural assessment of the site identifying approximately 100 individual trees. An appreciable number of these trees are protected⁴ including 3 impressively tall Wellingtonia specimens along the driveway approach, a small group and individual trees to the north-west of the house, a group near the lodge and a notable woodland group to the south-east of the site adjacent to the A20. A number of trees on the site, which is slightly elevated above the A20 and the undulating farmland to the north, are conspicuous in the wider landscape and skyline, including the 3 Wellingtonias⁵, a Turkey Oak on the northern boundary⁶, and specimens within the woodland group in the south-east corner of the site.
14. The submitted indicative layout and details of the access arrangements show that approximately half of the trees on the site would need to be removed to facilitate the proposed scale of development. Additionally, access would be required across the root protection areas of several trees, notably to the south-

² As defined in The Town and Country Planning (Use Classes) (Amendment) (England) Order 2015

³ Paragraphs 2, 11 and 12, NPPF

⁴ Tree Preservation Order No.4 2010

⁵ Trees T47, T49, T56 on Tree Survey Plan;

⁶ Tree T32 on Tree Survey Plan

west of Highmead House. I have little evidence to dispute that the arboricultural assessment has not correctly applied the relevant standards⁷ in categorising the quality of the trees on the site. Accordingly, a significant number of the trees and hedges proposed for removal would be of low quality and value. I noted this would include the removal of scots pines and apple trees to the north-west of the house and some specimens (mainly Leyland Cypress) within the small Group G2 of the 2010 Tree Protection Order (TPO) to the west of the house. There would also be the removal of a number of lower grade Scots Pines and a Sycamore within the woodland area of the TPO to enable the construction of Plot 16. However, from my observations on site I am satisfied that the removal of these lower quality specimens would not harm the character and appearance of the appeal site. They are not especially established specimens, a number have defects⁸, and they have a particularly low public amenity value given their position within the site.

15. I also noted that the proposed access would result in the removal of a notable length of hedging and smaller tree specimens along the boundary to the south-west corner of the site and at the road frontage onto Hythe Road. This area is indicated on the allocations map for U14 as the point of access for the link road through the allocation to the William Harvey hospital site. Consequently, it was foreseen in preparing the allocation that the present verdant character of this location would change. Given the superstore delivery area opposite and the urbanised approach to the roundabout on this part of Hythe Road including streetlighting, bus stops and signage, I do not consider the loss of this low quality and value vegetation to be especially harmful.
16. Of more significance is the evidence that to facilitate the proposed development it would be necessary to remove a small number of B category trees (moderate quality and value) including individually protected specimens⁹. I have considered carefully the appellant's evidence and whilst I note there are no sound arboricultural reasons for their removal, I nonetheless find that the proposed removal of these specimens would not significantly harm the character and appearance of the site by virtue of their relatively modest individual and cumulative contribution to the verdant qualities of the site. Their removal would not significantly denude any part of the site such that the dense tree coverage to the Hythe Road frontage would remain, as would the wider wooded amenity value of the site.
17. Importantly, the proposed layout would retain those trees of a high quality and value on the site, as well as a notable of other trees, with potential for further landscaping. These are positive factors in favour of the appeal proposal. A number of these trees would be retained in a proposed 'green corridor' through the centre of the site. I note the Council has reservations that this would be the visual result, however I find the proposed retention of the Wellingtonias within an open space with a footpath connecting the former driveway entrance to Highmead House would be a positive feature to the scheme and would make a notable contribution to retaining the context of the original approach to Highmead House, thus, in some small way preserving a part of its setting.

⁷ BS5837:2012

⁸ As detailed at Appendix 2 to Arboricultural Impact Assessment 2786_RP_005 Rev A

⁹ TPO tree T7 (Tree Survey T30), Scots Pine in TPO G2 (Tree Survey T41); Scots Pine in Woodland Area (Tree Survey T102)

18. The proposed layout would require access across the root protection areas (RPA) of those trees shown to be retained to the immediate south-west of Highmead House including two of the visually important protected Wellingtonias. From the evidence before me I am satisfied that the proposed incursion into the RPA would be acceptable in principle subject to incorporating and renewing the existing hard surfacing of those parts of the driveway already in situ and careful construction methods including a cellular confinement system to spread the surface pressure. I note the LPA's concerns regarding whether refuse and other heavy vehicles can be accommodated on cellular systems but I accept the appellant's submission that technical details could be provided prior to any commencement. As such I am satisfied that these necessary measures could be precisely secured by condition.
19. I also note the submissions that 28 dwellings would represent an overdevelopment of the site. The indicative layout demonstrates that this quantum of housing could be accommodated on the site and I consider the impact acceptable given the layout retains those tree specimens of highest arboricultural and amenity value. I also find the proposed layout would retain sufficient separation to provide an appropriately spacious setting such that the scale and architecture of Highmead House would not be oppressively enclosed by the surrounding residential development. In particular the retention of the outbuildings to Highmead House and open garden areas to the east would assist in preserving the immediate setting of the house. Furthermore, as I have set out above, the proposed green corridor to the south of the house would make a very positive and significant contribution to retaining the verdant context to the southern approach to Highmead House.
20. I find the proposed scale and density would reflect the outcomes of the design workshop¹⁰ for generally low density development around Highmead House with higher density adjacent to the A20. I am satisfied the proposed layout would secure the high quality of development sought by the design workshop and would successfully integrate with those landscape features on the site which merit retention, as espoused at paragraph 6.119 of the USIDPD. Matters of layout and design would be reserved and in this way the LPA would retain control on the detailed design response to the qualities of Highmead House.
21. Overall, the residential allocation of the site in the USIDPD would inevitably result in a change of the verdant character of the appeal site. I note neither the supporting text nor Policy U14 of the USIDPD contain specific provisions for new development to retain Highmead House. In my view the proposed indicative layout reflects an appropriate net developable area and would secure a suitable density of development. It would strike the correct balance of delivering new housing in a sustainable location whilst allowing for the design and construction quality of Highmead House and its landscaped grounds as an example of grander Edwardian domestic architecture to be more widely appreciated.
22. I have noted the proximity of the Lacton Green Conservation Area and the nearby Grade II listed building at Summerhill on Hythe Road. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires me to pay special regard to the desirability of preserving a listed building or its setting. Similarly Section 72(1) of the Act requires me to pay

¹⁰ Land at Willesborough Lees Highmead House Workshop CABE 28 January 2014

special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. These are stern tests which go beyond material planning considerations. However, given the urbanised character to the west of the appeal site on the A20 approach into Ashford, dominated by the superstore and associated infrastructure and the degree of separation of the appeal proposal to these heritage assets I am satisfied that there would be no harm to their respective settings.

23. I therefore conclude that the appeal proposal would not have a harmful effect on the character and appearance of Highmead House and its surroundings, with particular reference to the effect on the trees on the site. As such the objectives of Policies CS1 and CS9 of the Ashford Local Development Framework Core Strategy 2008 (the CS) Policy EN32 of the Ashford Borough Local Plan 2000 (the saved LP) and Policy U14 of the USIDPD would not be compromised insofar as they relate to character and appearance, securing design quality and protecting important trees and woodlands. The appeal proposal would also accord with the objectives of the NPPF to secure high quality design and to take account of the different roles and character of different areas.

Surface Water Disposal

24. The appeal proposal is supported by a detailed Flood Risk & Drainage Assessment (FRDA) and a Soakage Testing Report. The FRDA assessed that infiltration (soakaway) would be the most practicable solution for surface water drainage at the appeal site. This has confirmed by the soakage testing report which identifies that suitable percolation rates could be achieved over most of the site. I note the Environment Agency removed its objection to the scheme subject to a condition requiring a surface water drainage scheme for the site to be approved by the Agency and the LPA.
25. The Council's Sustainable Drainage Supplementary Planning Document (SPD) states that soakaways are low on the level of appropriateness for Sustainable Drainage Systems (SUDS) at the appeal location. I understand the submissions from the Council's engineer that a more strategic SUDS solution, would allow for attenuation and discharge into the Aylesford Stream, mimicking natural behaviours. The Council considers that this would be a more practicable solution for the wider Site U14 allocation, however, there is no policy requirement in USIDPD for strategic SUDS for the larger allocation although criterion i) requires a full flood risk assessment prepared in consultation with the Environment Agency.
26. The appellant's FRDA seeks to meet flood risk assessment requirements for the appeal site and I see no reason why flood risk should be assessed beyond the red line of the appeal site given that the soakage assessment has demonstrated that the geology underlying the site can allow for a contained soakaway solution for the appeal proposal. The Environment Agency has considered the appellant's evidence and I attach significant weight to the removal of the Agency's objection. There are matters of detail which remain of concern to the Council and although the layout is indicative at stage and has changed from that considered in the soakage testing report, I nonetheless consider there to be reasonable opportunities for the construction of the sizeable soakaways within the appeal proposal. As such details of the precise size and location of the soakaways could be reasonably conditioned as part of

the surface water drainage details to be approved by the Environment Agency and LPA. I also consider reserved matters and conditions to be appropriate mechanisms for the parties to explore other forms of surface water attenuation for the appeal proposal such as porous paving and water butts.

27. I therefore conclude that subject to conditions adequate arrangements could be made for the disposal of surface water from the site. Accordingly, the appeal proposal would not compromise the objective of Core Strategy Policy CS20 and the supporting Sustainable Drainage SPD for all development to include appropriate SUDS for the dispersal of surface water, so as to avoid any increase in flood risk or adverse impact on water quality. In this way the appeal proposal would also accord with the principles of the NPPF to take full account of flood risk and the requirement at paragraph 103 of the NPPF to ensure that flood risk is not increased elsewhere.

Affordable Housing Mix

28. The submitted indicative layout includes a schedule of accommodation which identifies plots 21-28 as affordable units, which is approximately 28.5% of total provision compared to 30% required by Core Strategy Policy CS12. At this outline stage the final mix of typologies would be a matter that can be dealt with at the reserved matters stage including the proportions of rent and shared ownership. I note the Council's enabling officer sought a mix of 5 smaller units (<2 bedrooms) and 3 medium/large units (>3 bedrooms). The appellant's indicative mix is 6 smaller units and 2 medium/large units. On this basis the appeal site would deliver a mix of affordable housing which would not be at significant variance to the findings of the most recent Strategic Housing Market Assessment 2014 at tables 43 and 60.
29. I am cognisant that the appellant has submitted a draft planning obligation in the form of a Unilateral Undertaking (UU) which reduces the affordable housing provision to 4 units (approximately 15%). Such an approach would be clearly contrary to Core Strategy CS12 and Council's Affordable Housing SPD 2009 and the appellant's late viability evidence is not before me. In any event I cannot attach weight to a legal document which is not signed or executed. The submitted plans that were before the Council and are now before me show an appropriate mix of affordable housing. I see no reason why details either as part of any planning obligation or through a condition requiring the submission of an affordable housing scheme would not secure an appropriate mix of affordable housing.
30. I therefore conclude that the appeal proposal would provide for an appropriate mix of affordable housing. Accordingly, the objective of Core Strategy Policy CS12 and the supporting Affordable Housing SPD 2009 in relation to the range of affordable dwelling types and sizes would remain uncompromised. The appeal proposal would also accord with the NPPF in terms of delivering a wide choice of high quality homes and creating inclusive and mixed communities.

Strategic Delivery and Local Infrastructure

31. The appeal site is only a small proportion of the wider allocation at Site U14 and I understand that the majority of the balance of the allocation is under option to a national house builder, Bellway Homes. One of the rationales for allocating site U14 is the delivery of a link road connecting the A20 to the William Harvey hospital site and thus helping to remove traffic from junction 10

of the M20. The allocation has an indicative capacity of 200 units which suggests some limited flexibility on the ultimate number of dwellings that may be yielded on Site U14. As such I do not accept submissions that the release of the appeal site would leave a prescribed reduced balance on the rest of the site upon which to fund and deliver the link road. Furthermore, I have very little firm evidence before me that the release of the appeal site as a separate scheme would fundamentally compromise the viability of the wider allocation to deliver the link road. In this regard I note the LPA has not sought at Table 1 of the Planning Committee report or in its comments on the appellant's draft UU in September 2015 a proportional financial contribution to the link road.

32. Paragraph 6.119 of the USIDPD states that the appeal site "...could be redeveloped as a separate scheme..." provided it is accessed through the new A20 junction and does not prejudice the main site access and the associated development. The policies map shows the access point for the new link road through Site U14 connecting to the A20 to the west of the Highmead House boundary. Access is not a reserved matter and the appellant has submitted detailed drawings of what would be a phased approach securing an initial self-contained access to the appeal proposal which could be reconfigured to enable the wider signalled controlled junction. This dual phase approach has been accepted by the Local Highway Authority, subject to conditions and provisions in terms of respective Section 106 and Section 38 mechanisms.
33. I have noted the concerns of Bellway Homes in respect of land controls and future highway infrastructure delivery. In response the appellant has submitted a revised draft Unilateral Undertaking (UU) which provides me with sufficient assurance that the appellant is willing to put in place those measures which Bellway Homes seeks in order to preclude the scenario of land ownerships frustrating future delivery at Site U14. Such an approach requires as a minimum a bi-lateral agreement given the land titles affected by the proposed two phase access arrangement and I accept the submissions of the LPA that it may well be necessary for the local highway authority to be a signatory to any such agreement.
34. I accept that this arrangement would be a convoluted approach but subject to the safeguards identified, I am not persuaded that the appeal proposal would unduly fetter or prejudice the phased delivery of the strategic link road or the implementation of an upgraded point of access onto the A20. In the absence of details as to the timeframe for the implementation of the wider allocation I do not find the appellant has been unreasonable, in principle, in seeking to bring forward at an earlier stage a small part of the allocation which is clearly identified in USIDPD as a separate land unit. I share the appellant's submission that the USIDPD allows for a compartmentalised approach and I find the appellant's Contextual Schematic Development Plan shows how the appeal proposal would successfully integrate with the wider allocation. As such, the appeal proposal, in isolation, would not conflict with the wider requirements identified in Policy U14.
35. The LPA has sought contributions towards a comprehensive list of local infrastructure as detailed in its reasons for refusal. The LPA position has been amplified in expansive schedules of comments which reference, amongst other things the various development plan policies and supplementary planning

- documents which underpin the LPA's approach on local infrastructure projects. This evidence is augmented by further submissions from Kent County Council¹¹.
36. Paragraph 204 of the Framework states that planning obligations should only be sought where they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. These tests are repeated in law at Regulation 122 of the CIL Regulations 2010.
37. I am not persuaded that contributions for adult social care, community learning, local health care and voluntary sector would meet the legal tests, especially in terms of being directly related. These would appear to be wider societal infrastructure for which other funding streams would contribute towards, including council tax revenue from the appeal proposal. I am also not persuaded that on-site parking controls and monitoring are necessary given distance of the site from the William Harvey hospital complex. Nor is a monitoring fee necessary given the Council's role as a local planning authority is to administer, monitor and enforce obligations.
38. I also note the submission of Bellway Homes that the appeal proposal should make a proportional contribution to the link road, irrespective of its omission from the LPA's reason for refusal. For the reasons set out above I am not persuaded that the link road is necessary or directly related to the appeal proposal. I also attach appreciable weight to the in-principle agreement of the local highway authority that the site can be safely and adequately served by the proposed access arrangement.
39. However, from the evidence before me I am satisfied that those contributions relating to allotments, the safeguarding of land for phase 2 junction for the wider allocation, carbon off-setting, capital costs for youth services, children's and young people's play space, natural green space, library books, outdoor sports pitches, primary and secondary education, strategic parks, public art and a proportional contribution towards M20 junction improvements would be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.
40. Accordingly, I find a number of local infrastructure provisions would be necessary to make the development acceptable in planning terms and as such the absence of a completed planning obligation to secure their delivery is a short coming that requires further consideration given that conditions cannot be used to secure the positive payment of monies. In examining the required contributions it seems reasonable to me that there is a likely prospect that one or more other developments in the Borough would have made financial contributions to what are generically defined local infrastructure projects. This is of concern given CIL Regulation 123(3)(b) as amended places a limitation on the extent to which planning obligations under Section 106 of the Act in respect of CIL liable infrastructure may constitute a reason for granting planning permission. I have very little evidence from either the LPA, the County Council, the appellant or third parties on whether pooling thresholds have been exceeded. Nevertheless, because the UU as drafted is incomplete and unsigned by the parties, I have not considered this matter further having

¹¹ Statement of 25 August 2015

regard to my findings below on whether a condition securing a planning obligation would be acceptable or not.

41. I accept there was nothing unreasonable in seeking to determine a planning application subject to the provision of a planning obligation through a Section 106 mechanism. However, there is particular guidance on planning obligations in respect of planning appeals as set out in procedural guidance¹² which is relevant to this appeal. The appeal proposal was formally determined by the Council on 10 December 2014 following its Planning Committee meeting on 19 November 2014. The appeal was submitted on 4 June 2015. The appellant subsequently informed the appeal process on 29 July 2015 that the appellant's mortgage provider does not, as a matter of principle, sign planning obligations. Against this context, and unable to secure an alternative mortgage provider, the appellant has submitted the draft and unsigned UU which does not specify the mortgage provider. The draft UU has however been further revised to take account of the submissions on behalf of the adjoining developer regarding wider highway infrastructure at the allocated site U14.
42. The amendments to the UU in respect of a second phase of site access to the wider allocation necessitate obligations that would need to be imposed on land beyond the control of the appellant. I accept this could be secured by way of a bi-lateral undertaking but this additional intricacy has come at a relatively late stage in the appeal process and has engendered detailed concerns from both the developer and the local highway authority¹³.
43. Given the practical issues around completing a mechanism under Section 106 of the Act the appellant requested that the matter of the planning obligation could be secured by way of a negatively worded (Grampian) condition. I am mindful that paragraph 203 of the NPPF encourages the use of conditions to enable development to come forward. However, the Planning Practice Guidance (PPG) elucidates that a negatively worded condition limiting that the development cannot take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases¹⁴.
44. The PPG does not exclude the use of such a condition and the approach submitted by the appellant is addressed more specifically in the PPG at what I will refer to in this decision as paragraph 10 of that guidance¹⁵. Paragraph 10 states that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk.
45. The appellant's circumstances are not exceptional. In advancing with the appeal, the procedural guidance is clear at Annex N, paragraph N.2.1 that executed and certified copies of planning obligations must be received no later than 7 weeks from the state date of the appeal in written representation cases¹⁶. The appellant could have been under no doubt during the planning application process and in the Council's reasons for refusal that a planning obligation would be required were an appeal to be pursued. Given this clarity

¹² Procedural Guide: Planning appeals – England. Planning Inspectorate 31 July 2015

¹³ Documents 2 and 3 appended to LPA final comments on Draft UU

¹⁴ Planning Practice Guidance ID 21a-005-20140306 and 21a-010-20140306

¹⁵ Planning Practice Guidance ID 21a-0010-20140306

¹⁶ The method sought by both parties in this appeal.

and the intervening 6 months between the Council's decision and appeal start I find the relatively late discovery that the appellant's mortgage provider would not sign a planning obligation is a far from an exceptional occurrence and one which could have been managed with timely preparation.

46. Admittedly, the additional complexity arising from a second land ownership in respect of the twin phase access arrangement represents a more involved scenario. However, I am not persuaded it means that the appeal proposal constitutes a "complex and strategically important development" as envisaged by paragraph 10 and therefore exceptional circumstances for a negatively worded condition. As I have set out above Policy U14 of USIDPD and the supporting text at paragraph 6.119 do not frustrate the appeal site coming forward in isolation of the wider allocation. The proposed 28 dwellings on the appeal site could be delivered without a strategic requirement to complete the link road to the hospital and the appeal proposal is not contingent on delivering the link road.
47. It would appear to be the environmental constraints along the site frontage of the appeal site to the A20 Hythe Road that have necessitated a phase 1 access point proximate to the position where a more strategic junction would be later required for the link road. Any complexity in terms of the appellant's access details stems from these locational constraints and matters of timing in terms of seeking to deliver a smaller, independent scheme on the Highmead House site in advance of the wider allocation coming forward. I have little evidence that a strategic junction to the wider site onto the A20 would require land on the appeal site or that the scale of the appeal proposal would significantly deduct from the 200 dwelling indicative capacity such that it would make a strategic contribution towards the delivery of the allocation or housing numbers more generally in the Borough. Accordingly, the appeal site and the appeal proposal would not represent the more complex and strategically important development envisaged by paragraph 10 of the PPG and I am therefore not persuaded a negatively worded condition would meet the tests at paragraph 206 of the NPPF.
48. As such I place weight on the general guidance in the PPG that it is typically better to finalise a planning obligation before planning permission is granted. Such an approach provides certainty that development would be deliverable. Whilst I accept the appellant is willing to resolve the planning obligation matter, the late uncertainties over viability indicated by the appellant and the notable degree of ambiguity in how the UU as currently drafted would be executed¹⁷, including the vital involvement of third parties, leads me to be significantly concerned that were a condition imposed it would not be resolved and discharged within a reasonable timeframe.
49. Similarly, I have very little evidence that the appellant has proactively taken steps, again, at a very late stage in the process, to secure an alternative mortgage provider. I also have serious concerns, given the submissions on behalf of the adjoining developer interest and lack of detailed engagement with the local highway authority¹⁸, that a bi-lateral agreement could be completed, particularly given the submissions on equitable contributions to the wider link road. This adds to my concerns that a negatively worded condition, along the

¹⁷ Summarised in Blake Morgan letter dated 7 September 2015, Document 2 to LPA final comments on draft UU

¹⁸ Correspondence from KCC Legal Services 18 September 2015 at Appendix 4 to LPA response to draft UU.

lines suggested by the appellant, would not be reasonable in all other respects as required at paragraph 206 of the NPPF.

50. I therefore conclude that the appeal proposal can acceptably come forward in independently of the wider allocation and that the appellant has satisfactorily demonstrated how the appeal proposal would integrate to adjoining development. I am also satisfied that the appeal proposal would not prejudice the phased delivery of the link road in terms of viability or for other reasons. However, the appeal proposal would result in demands on local infrastructure where measures including financial contributions would be necessary and would meet the various requirements of paragraph 204 of the Framework and CIL Regulation 122.
51. I have concluded that the appeal proposal does not constitute exceptional circumstances as defined in paragraph 10 of the PPG such that a condition should be imposed requiring a planning obligation. Accordingly, without provisions in place I conclude that the effects of the proposal on local infrastructure, including open spaces, youth services, education facilities, libraries, public art and local transport infrastructure would be harmfully unacceptable. The proposal would therefore fail to comply with Core Strategy Policies CS1, CS2, CS8, CS9, CS10, CS18, USIDPD Policy U24 and saved LP Policy CF21 as well as the provisions of the Public Green Spaces and Water Environment and Affordable Housing SPDs which seek the provision or payment for all services, facilities and other improvements directly related to the development. It would also fail to accord with the objective of the NPPF to deliver sufficient community and cultural facilities and services to meet local needs.

Conclusions

52. I have found that the principle of the appeal proposal would be acceptable in planning terms and that it could acceptably come forward independently of the wider allocation at Site U14 of the USIDPD, that it would not harm the character and appearance of the appeal site, and that adequate surface water drainage and an appropriate mix of affordable housing could be secured by condition. In this way the appeal proposal would represent many attributes which are encompassed in the presumption in favour of sustainable development as set out in Policy U0 of the USIDPD and the NPPF.
53. However, the NPPF states that sustainable development is not narrowly defined and that its characteristics must be secured jointly and simultaneously. The economic dimension of sustainability refers to the identifying and coordinating development requirements, including the provision of infrastructure. The social dimension of sustainability includes communities having access to local services. This is further reflected in the 12 core planning principles of the NPPF including that planning should deliver sufficient community and cultural facilities and services to meet local needs.
54. In the absence of a completed planning obligation to secure identifiable and necessary local infrastructure, and my conclusions that there are not exceptional circumstances to justify the use of a negatively worded condition, the appeal proposal would place a harmful burden on local infrastructure. This would be contrary to the holistic approach of the adopted development plan and NPPF which seek to ensure that the additional infrastructure demands arising from new development are met. As such the appeal proposal would not

constitute sustainable development in that the harm arising from the lack of contributions towards local infrastructure outweighs the benefits that have been identified and accordingly it should not succeed.

55. I have had regard to all other matters raised, but have found nothing to change my conclusion that this appeal should be dismissed.

David Spencer

INSPECTOR.

Richborough Estates