
Appeal Decision

Hearing held on 17 November 2015

Site visit made on 17 November 2015

by Robert Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI

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

Decision date: 09 December 2015

Appeal Ref: APP/H1840/W/15/3131722

Land at The Holloway, Pershore, WR10 1HP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Fortis Living against Wychavon District Council.
 - The application Ref W/15/01018/OU, is dated 28 May 2015.
 - The development proposed is an outline application for the erection of '38 No. Dwellings'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The outline application includes the described number of dwellings and the access location from The Holloway but does not include matters of appearance, landscaping, layout or scale which are all reserved for subsequent determination.
3. The Appellant is a housing association. The application form originally stated that there would be 22 market houses and 16 affordable houses. However, following negotiations on viability, by the time of the hearing the Appellant and the Council had agreed that there would be 26 market dwellings and 12 affordable dwellings.
4. The Council reports that had it been in a position to determine the application planning permission would have been refused for the following reasons (in summary):
 - (i) The site is in open countryside outside the defined settlement boundary of Pershore where development would contravene saved Policy GD1 of the adopted Wychavon District Local Plan 2006 (the LP). Neither is the site likely to be allocated for development in the emerging South Worcestershire Development Plan (the SWDP).
 - (ii) The proposed development would harm the intrinsic rural character and appearance of the site contrary to saved LP Policy ENV1. The dense housing would be at odds with the character and appearance of the area. It would not provide any of the green infrastructure sought

by the emerging South Worcestershire Development Plan to help mitigate the loss of open rural land.

- (iii) The proposal lacks the planning obligations requested by the LPA which include infrastructure contributions and affordable housing and which are considered by the LPA to be necessary, fair and reasonable subject to viability considerations on which the LPA had not then formed a view.
- (iv) The proposal would therefore fail to comply with various policies of the Local Plan and the emerging SWDP and in the terms of the Framework this would not be a sustainable development. It fails to benefit from the Framework's presumption in favour of such development and the harm would outweigh any benefits of the scheme.

5. The Council and the Appellant have signed a Statement of Common Ground which identifies those matters which are or are not at issue.

Main Issues

6. Having regard to the above matters it is considered that the main issues are:
- (a) the principle of the residential development of the appeal site with respect to adopted planning policy for the supply of housing and to other material considerations including national policy and guidance and emerging local policy;
 - (b) the effect of the type and density of development on the character and appearance of the site and its surroundings;
 - (c) whether the completed planning obligation would make appropriate provision for affordable housing and infrastructure having regard to considerations of need, planning policy and viability; and
 - (d) whether this would be a sustainable development as defined in national policy.

Policy Context

7. The appeal is required by Section 38(6) of the Planning and Compulsory Purchase Act 2004 to be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise. The relevant development plan mainly comprises the saved policies of the LP. The LP was written to provide for development up until the year 2011 but a saving direction was issued by the Government in 2009. That saved identified policies for an indefinite period whilst also urging their prompt replacement. Of particular relevance to the main issues are saved Policies GD1 and ENV1. Policy SR1 set out a housing supply target but that only applied to the period from 1996-2011 and is now out of date. Saved Policies SR5, GD2, GD3 and COM12 are of relevance to the planning obligation issue.
8. Material considerations in this case can include the National Planning Policy Framework (the Framework) and Planning Practice Guidance, local guidance, other appeal decisions on similar issues, and the emerging development plan – the SWDP.

9. The SWDP is at an advanced examination stage with the recent public publication for consultation of the draft schedule of modifications. It is possible that the plan will change as the result of that consultation. The weight to be accorded to the SWDP remains less than for an adopted plan but nonetheless significant. It is anticipated that the Examining Inspector's Report will be received in February 2016 and that the Plan will be adopted in Spring 2016 when it will replace the LP.

The Site and Surroundings

10. The appeal site is an area of sloping scrubland fronting The Holloway on the south western edge of the built up area of the attractive market town of Pershore. It faces suburban housing development on the opposite north side of The Holloway and adjoins other low density suburban housing to the east. There is a single detached house on the adjoining land to the west, beyond which is open farmland. To the south the site adjoins open land with some trees. The appeal site was formerly an orchard but the trees have been grubbed out. Some hedgerow trees remain on the site boundaries and especially on the site frontage. The site has long been disused. At the hearing it was said that attempts to develop it for housing date back some 30 years and included a previous dismissed appeal in the 1980s, the details of which are not before me. In any case that appeal would have long predated current local and national planning policy.

Reasons

Principle of Housing Development in this Location

11. Saved LP Policy GD1 seeks to accommodate most new development within the built-up area of the District's 3 towns (including Pershore) and some villages. It defines a development boundary for Pershore and for the other settlements. The policy also sets out a sequential approach for development 'at' the three towns whereby preference will be given first to the re-use of previously developed land, then to urban greenfield land without significant value, and finally to land adjacent to the development boundary of the largest town (Evesham) if that is required to meet strategic development needs.
12. The supporting text to GD1 at paragraph 2.3.2 states that the aim of the strategy is to further sustainability objectives including: '*reducing the need to travel*'; '*making best use of existing infrastructure*'; and the '*long-standing national policy of safeguarding the countryside for its own sake*'.
13. The appeal site is outside but adjoining the GD1 development boundary. It is therefore in the countryside. Pershore is not identified as a location for meeting strategic development needs outside that boundary. The Appellant agreed at the hearing that the development would contravene Policy GD1 but argues that there are material considerations which indicate that the policy should be set aside in this instance or that it should attract reduced weight.
14. Principally the Appellant maintains that Policy GD1 is 'out of date' for the purposes of paragraph 14 of the Framework because it was only intended to provide for housing needs up to 2011. In that regard a significant amount of housing development has since been permitted by the Council or on appeal outside the GD1 boundaries of Pershore and other settlements in order to maintain a sufficient supply of housing. With regard to paragraph 215 of the

Framework, the Appellant also considers that the GD1 policy's sequential approach is inconsistent with the Framework because the Framework does not contain the same policy.

15. On the matter of consistency I note that the Framework's 12 Core Planning Principles at paragraph 17 include: '*encouraging the effective use of land by reusing land that has been previously developed*'; '*actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable*'; and '*recognising the intrinsic character and beauty of the countryside*'. Paragraph 111 also provides that: '*Planning policies and decisions should encourage the effective use of land by re-using land that has been previously developed.*' I do not consider that Policy GD1 is inconsistent with those objectives.
16. I acknowledge that another core principle of the Framework includes that: '*Plans should ... set out a clear strategy for allocating sufficient land which is suitable for development in their area, taking account of the needs of the residential and business communities.*' Policy GD1 may be inconsistent with that principle and also out of date inasmuch as, since 2011, its literal interpretation would have prevented the allocation and development of sufficient land to meet identified needs. However the Council has embarked on the allocation of additional land outside GD1 boundaries through the SWDP (which is now at an advanced stage). Moreover planning permissions have already been granted by the Council or at appeal for development on sites outside GD1 boundaries in advance of the adoption of the SWDP. These are now included in the supply of identified housing land.
17. As matters now stand the Council can demonstrate a supply of housing land to meet identified needs which is well in excess of the 5 year requirement in Paragraph 46 of the Framework and which includes a 20% buffer in respect of past under-delivery. That supply is not disputed by the Appellant. On adoption in the Spring of 2016 the SWDP is expected to include the allocated sites within the development boundary for the purposes of the policy SWDP2 (which will replace LP Policy GD1 in this regard). However there is no evidence before me that the development boundary is likely to be altered in the vicinity of the appeal site.
18. In these circumstances, where there is sufficient land to meet currently identified needs, I conclude on this issue that the Policy GD1 development boundary continues to merit the full weight of an adopted development plan policy except in those locations where it has been made out of date as the result of previous planning permissions to allow development. That does not apply to the appeal site and its development would remain contrary to this adopted development plan policy.
19. My attention has been drawn to a number of previous appeal decisions in Wychavon which relate to the application of Policy GD1. In particular at Pulley Lane, Droitwich, the Secretary of State endorsed a recommendation to permit housing development contrary to Policy GD1; which policy the Inspector had concluded to be out of date¹. However that was at a time when the Council could not demonstrate a 5 year housing supply and when Policy 49 of the Framework in consequence explicitly stated that housing supply policies should

¹ APP/H1840/13/2199085 & APP/H1840/13/2199426

be considered out of date. That does not apply now. In the subsequent appeal decisions concerning Policy GD1 of which I am aware and in which a 5 year housing supply could be demonstrated, no Inspector has determined that Policy GD1 is out of date or that it should otherwise be disregarded. However they have considered whether or not conflict with that policy may be outweighed by other material considerations, as statute allows. That has led to the dismissal of some appeals and to others being allowed. At each appeal site the particular circumstances were different from the current appeal. Also the SWDP has now advanced closer to adoption and merits more weight than in some of the earlier appeals.

Character and Appearance

20. LP Policy ENV1 generally seeks that development proposals are informed by and sympathetic to landscape character and that they safeguard, restore or enhance the character of the natural and built environment in which they are proposed. That is consistent with the Framework.
21. The appeal site has long been disused for agriculture and is apparently divorced from any agricultural holding, being in the ownership of a private developer. There is apparently a long history of applications for its development. The site and its boundary enclosures have a neglected appearance but the site retains an open and rural character, as does the land to the rear. Beyond the neighbouring house to the west the southern frontage to The Holloway is open land that is actively farmed with well-maintained hedgerows. The Holloway as a whole is thus partly suburban in character and partly rural.
22. The submitted Landscape and Visual Impact Assessment (LVIA) concludes that this part of the Severn and Avon Vales Character Area is of low to medium sensitivity and that the site is separated by topography and landscape features such that it sits well within the wider landscape. It would be prominent from that part of The Holloway that is otherwise mainly characterised by suburban development. In the typically long distance views from the wider countryside it would also usually be seen in the context of adjacent suburban built development.
23. I generally agree with the LVIA assessment except that the claimed woodland feature to the south of the site is more in the nature of sparse scrub with few mature trees and it consequently provides little screening. Also, whilst the LVIA claims that the site's strengthened hedgerows and new trees would restore the boundary character and thereby contribute positively to the area's landscape character, that is not demonstrated by the indicative layout. A number of existing trees are recommended for removal in the tree survey and the layout lacks space for significant new tree planting. Also, by generally placing the boundary hedges and trees within private gardens the future retention and appropriate management of these features is not assured and may conflict with the preferences of the resident occupiers. That the developer intends to retain a 0.5m ransom strip outside the appeal site along its eastern, southern and western boundaries would further complicate the ownership and maintenance of the site boundaries, particularly if they are to be enclosed by hedgerows (as the LVIA recommends) in order to complement the area's landscape character.

24. Some of these drawbacks might be addressed in a revised layout at the reserved matters stage. That could include communal green space along the southern boundary where it might include the community orchard suggested by the Appellants at the hearing. Such provision would also be more likely to comply with objectives of the emerging SWDP to include 20% green infrastructure land in developments of this scale. The Framework at paragraph 58 also provides that planning decisions should aim to ensure that (amongst other things) developments incorporate green and other public open space and are visually attractive as a result of good architecture and appropriate landscaping.
25. The indicative site layout does not appear to have had full regard to the significant slope across the site. Little space has been allowed to accommodate the necessary cut and fill and the slopes or retaining walls that would be necessary to address the changes in level and to create level development platforms. That matter could also be addressed at the reserved matters stage but would be likely to require significant layout modifications which would affect the type and density of development.
26. The Council has been critical of the indicative scheme's departure from the pattern of relatively low density frontage development along The Holloway. Careful attention would be needed to how the development appeared from The Holloway. However the site's depth, the need to use land efficiently, and other desirable objectives such as the retention or replacement of the frontage trees and the inclusion of much needed affordable housing at reasonable cost all indicate that it would be inefficient and unrealistic to seek to replicate the mid 20th century pattern of suburban development and garden sizes seen elsewhere on The Holloway. It would be appropriate to develop the site in depth and at increased density but with particular attention to the scale and disposition of the frontage dwellings so that they complement the suburban street scene.
27. However it is material that emerging Policy SWDP 5 seeks 20% green infrastructure on sites of less than 1ha and that is consistent with an objective of the Framework to incorporate green space. To try to accommodate 38 dwellings on only 80% of the 0.98ha appeal site implies a net density of 47.5 dwellings per hectare (dph) even without allowing for any extra space to accommodate the level changes. That would be high for a sloping edge of settlement site adjacent to much lower density housing. Notably it would also significantly exceed the 30dph net density sought in Pershore by Policy SWDP 13 (as proposed to be modified).
28. At the hearing the Appellants claimed that the dwellings could be accommodated on such a reduced net area by substituting terraced houses and by increasing the proportion of flats. However adding storeys to the buildings to accommodate more flats would be harmful to landscape character and visual amenity on the edge of the urban area. Substituting terraced houses would also be difficult to accommodate on the sloping land. Whilst it might be possible to reduce the site area occupied by roads and footpaths, it would remain necessary to accommodate adequate space for car parking, cycle storage and refuse storage.
29. It should be possible to design a housing scheme for the appeal site which has a satisfactory impact on the character and appearance of the area. However that has not been demonstrated by the indicative layout and a scheme with

that design and layout would conflict both with LP Policy ENV1 and with the emerging Policy SWDP 5. To be acceptable and compliant with those policies an amended scheme would require substantial changes to the type, size and disposition of the dwellings and would almost certainly require a reduction in dwelling numbers.

30. For these reasons I conclude on the balance of probabilities that it cannot be assured that the appeal site could accommodate as many as the 38 dwellings in the development description whilst also satisfying Policy ENV1.

Affordable Housing

31. LP Policy COM2 seeks that up to 30% of dwellings on schemes of this scale are to be affordable. There is a definition of affordability in the Framework. The Appellant is a registered provider of social housing and first submitted an application proposing over 50% provision of affordable housing but with no contribution towards infrastructure. However that application was not pursued to appeal. The application subject to the current appeal was submitted proposing 40% affordable housing provision and that figure was included with the appeal submission. That would be in excess of the LP requirement but in line with the 40% target provision of the emerging SWDP Policy SWDP 15 which is however subject to development viability. Nevertheless the District Valuer advised the Council that 40% provision would not be viable if infrastructure contributions were also required.
32. As a non-profit organisation the Appellant has a different approach to assessing profit. Neither has a land price yet been agreed with the landowner. Nevertheless, since the appeal was submitted, and using fairly standard assumptions about developer's profit and an assumed land value at which the site would be released for development, the Appellant and the Council have reached agreement that the development would be viable on the basis of 30% affordable housing in line with LP Policy COM2 (12 units) and a £100,000 contribution to infrastructure. Whilst it is claimed that 40% provision is being achieved elsewhere in line with the SWDP target, the parties agree that would not be viable here owing to the site's high abnormal development costs.
33. I have concluded above that the submitted indicative layout would not comply with Policy ENV1 and that it is unlikely that as many as 38 dwellings could be successfully accommodated together with the green infrastructure needed to safeguard landscape character. Even if that conclusion is wrong and a different scheme design did show that 38 dwellings could be successfully accommodated, the viability assessment has been based on that submitted indicative layout. It is thus uncertain what number of market and affordable dwellings would be viable in an amended scheme. It is possible that it would be necessary to renegotiate the number and tenure mix of the affordable dwellings.

Infrastructure

34. The completed S106 unilateral undertaking includes the following infrastructure contributions amounting to £100,000:
- £4,737.71 Cycling Contribution for defined measures to encourage cycling
 - £26,254.81 Off-Site Built Sports Facilities Contribution

- £45,008.25 Off-Site Formal Sports Contribution
 - £22,701.53 Off-Site Public Open Space Contribution
 - £1,297.70 Recycling Contribution
35. The Council has submitted a Community Infrastructure Levy Compliance Statement which relates the need for these contributions to LP Policies GD3, SR5, COM2 (and emerging SWDP Policy 15), and COM12, and to Waste Core Strategy Policy WCS17. I am satisfied that the contributions are necessary, directly related to the proposed development and fair and reasonable in terms of scale and kind. They are therefore compliant with Regulation 122 of the CIL Regulations 2010 (as amended). The Council provided assurance at the hearing that the Regulation 123 limit of 5 contributions for one item of infrastructure is not exceeded and the contributions would therefore also be compliant with regulation 123. They have been taken into account in this decision.

Sustainable Development

36. Paragraph 14 of the Framework sets out a presumption in favour of sustainable development and then goes on to define what this means for decision taking. Firstly it provides that development proposals that accord with the development plan should be approved without delay. But I have concluded that the development does not comply with LP Policy GD1 and is unlikely to be capable of complying with LP Policy ENV1 at the reserved matters stage by reason of the number of dwellings proposed for the site in the outline application and the constraints to its development. Whilst it is compliant with other development plan policies I consider that there is overall conflict with the development plan such that this provision of the Framework is not applicable.
37. Paragraph 14 provides in the alternative that where relevant development plan policies are (amongst other things) out of date, permission should be granted: '*unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted*'. For the reasons given above I do not consider that Policy GD1 is out of date as it relates to the appeal site. Neither is Policy ENV1 out of date or inconsistent with the Framework. There is no reason in this case to reduce the weight to be accorded to these policies. However the duty in Section 38(6) of the Planning and Compulsory Purchase Act 2004 allows that other material considerations may still outweigh conflict with the development plan, as paragraph 12 of the Framework also acknowledges.
38. Given the emphasis on sustainable development in the Framework it is appropriate to consider whether the development would qualify as sustainable when examining whether any of the remaining material considerations cited by the Appellant would outweigh the conflict with the development plan.
39. At paragraph 7 the Framework describes the 3 dimensions of sustainable development as economic, social and environmental.
40. The development would have important economic benefits in terms of employment during construction, (including at suppliers of construction materials, fittings and furnishings) and in subsequent contributions by residents to the local economy. It is also significant that the development

would be carried out by a registered social housing provider that is likely to proceed quickly. The Government's overall aim to boost housing supply would be assisted by greater involvement by smaller providers such as this rather than by undue reliance on the major house-building firms. I am aware that past figures indicate that house-building rates were higher when more smaller developers were active in the market.

41. The provision of the market and social housing would provide important social benefits for the occupiers of those houses. There is a particular identified need for affordable housing in Pershore which the Council accepts will not be fully met by development on the allocated sites. That the SWDP does not provide for all the affordable housing needs of Pershore relates to viability considerations in mixed development. To provide for all the unmet needs by mixed development would require an unrealistic increase in the provision of market housing beyond the identified need for such development with potentially significant implications for the economy (if they are not developed) and for the environment (if they are).
42. Turning to the environmental dimension, any use of previously undeveloped open land in the countryside for housing will inevitably change its character and openness. However, the SWDP and previous planning decisions have already concluded that land in the countryside outside development boundaries needs to be released to provide for sufficient housing. Thus a strong enough need for housing on economic and social grounds could potentially outweigh those effects. However there is also some potential for social and economic harm (due to uncertainty) when there is a departure from the adopted development plan or emerging policy.
43. Whilst the Framework at paragraph 46 seeks to boost significantly the supply of housing it provides that this should be done by using the evidence base to ensure that the Local Plan meets the full, objectively assessed needs for market and affordable housing as far as is consistent with the policies set out in the Framework. In this case both need and land availability have been considered very recently by the SWDP examination which has not concluded that additional land needs to be released beyond that already proposed for allocation. It is likely to endorse the existing development boundaries that protect the countryside for environmental reasons, except in locations where development has already been permitted or is allocated in the Plan. The appeal site itself is neglected in appearance and has long been out of productive use for agriculture but that is not of itself a good reason to release it and to do so on those grounds would encourage the neglect and disuse of other edge of settlement land.
44. How the site is developed would be constrained by the site characteristics including: the site slope; the location on the edge of the open countryside; and the proximity to low density housing. In that context it is concluded above that there would likely be adverse environmental consequences from trying to accommodate as many as 38 dwellings if there is also to be a satisfactory scale, layout, appearance and landscaping to mitigate the loss of openness and rural character. The submitted scheme is therefore likely to result in unnecessary environmental harm.

45. It is concluded that the likely scale of environmental harm here outweighs the other dimensions such that this would not be a sustainable development and the Framework presumption in favour of such development should not apply.

Other Matters

46. I have had regard to all other matters raised by interested persons.
47. One of the local Councillors with experience of drainage matters expressed particular concern about surface water drainage. As an open but sloping greenfield site it is likely that the ground will currently absorb some rainfall but that water will also drain from the site at varying rates. The rate of run-off would increase in high rainfall conditions when the ground is saturated. The Councillor and local residents spoke of past instances of run-off into adjacent gardens and also to local flooding downstream when the public surface water sewer is overwhelmed. Those conditions are likely to reoccur if the site is not developed. The objective should therefore be to manage surface water so as not to make matters worse as a result of the development and preferably to improve conditions off-site.
48. The Council consulted its own land drainage engineer who is satisfied that the matter can be adequately addressed by means of on-site storage and other means to attenuate the flow of water from the site. The Council has proposed a condition to this effect which, before development could commence, would require written approval of a scheme to allow for 1 in 100 year weather events plus a 30% allowance for climate change. That may require underground storage of surface water or possibly above ground storage in an area of open space in an amended layout. In any event with such a scheme it is likely that the proposed development would not worsen, and may well improve, the existing rate of run-off such that there would be no increased risk of local surface water flooding.
49. In relation to traffic and access, local residents express concern about traffic from the development adding to flows on this suburban side road. I saw that the road is popular as a rat run, particularly during the morning and evening peak hours when there is queuing at traffic lights on the main road. However traffic is light at other times. The site is within walking and cycling distance of the town's amenities, there is a convenient bus service, and Pershore also has a rail service. Therefore this would be a sustainable location where residents would not need to use a car for all journeys. There is no objection from the local highway authority who must therefore consider that the residual traffic can be accommodated on the local network without unacceptable or severe harm to safety or traffic flow. I have no reason to disagree.
50. Planning conditions could be used to address other concerns such as archaeological investigation and construction management.
51. Neither these nor the other matters raised outweigh my conclusions on the main issues or would of themselves warrant the dismissal of the appeal.

Conclusions

52. For the above reasons it is concluded that the development would be in overall conflict with the development plan. In particular it would conflict with Policy GD1 and is likely to lead to conflict with Policy ENV1. It would also be in conflict with the development boundary that is likely soon to be confirmed in

the emerging SWDP. The likely environmental harm outweighs the identified social and economic benefits and there is not sufficient evidence to support an overriding need for additional housing at this location. Therefore the material considerations are not sufficient to indicate that a decision should be made other than in accord with the provisions of the development plan and the appeal should be dismissed. Neither the planning obligation nor the suggested planning conditions would overcome these reasons for dismissing the appeal.

RPE Mellor

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

Ms Sian Griffiths	Director RCA Regeneration
Mr Mark Ramdehal	Fortis Living
Mr Richard Grounds	Fortis Living

FOR THE LOCAL PLANNING AUTHORITY:

Ms Heather Pearson	Principal Planning Officer, Development Management, Wychavon District Council
Ms Denise Duggan	Senior Planning Officer, Policy Team, Wychavon District Council
Ms Rebecca Burrridge	Planning Officer, Policy Team, Wychavon District Council
Ms Heather Peachey	Projects and Development Officer, Wychavon District Council

INTERESTED PERSONS:

Cllr Tony Rowley	Local Ward Member, Wychavon District Council
Cllr Val Wood	Local Ward Member, Wychavon District Council
Cllr Charles Tucker	Local Ward Member, Wychavon District Council
Mr & Mrs Stiles	Local Residents
Mr Christopher & Mrs Maureen Meredith	Local Residents
Mrs W Perks	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

1. Affordable Housing Supplementary Planning Guidance
2. SWDP Policy SWDP 15
3. SWDP Policies Map for Pershore (Submission version)
4. SWDP Policies Map for Pershore (with proposed modifications)
5. District Valuer Service Viability Report 21 September 2015
6. WDC Comments on the Unilateral Undertaking dated 11 November 2015
7. S106 Unilateral Undertaking dated 11 November 2015 (Signed after the hearing)