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## Appeal Decisions

Inquiry held on 9th, 10th and 11th April 2013

Site visits made on 8th and 10th April 2013

**by David Morgan BA MA (IoAAS) MRTPI IHBC**

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

**Decision date: 10 June 2013**

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### **Appeal no.1: Appeal Ref: APP/J1860/A/12/2187934**

#### **Land at Green Hedges, Claphill Lane, Rushwick, Worcester, Worcestershire WR2 5TP**

- 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 planning permission.
  - The appeal is made by CARLA Homes (Midlands) Ltd against Malvern Hills District Council.
  - The application Ref 12/00833/FUL, is dated 1 June 2012.
  - The development proposed is residential development of 31 dwellings, including 12 affordable dwellings with a new main vehicular and pedestrian access off Claphill Lane, and associated car parking arrangements.
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### **Appeal no.2: Appeal Ref: APP/J1860/A/13/2193129**

#### **Land at Green Hedges, Claphill Lane, Rushwick, Worcester, Worcestershire WR2 5TP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by CARLA Homes (Midlands) Ltd against the decision of Malvern Hills District Council.
  - The application Ref 12/01661/FUL, dated 30 November 2012, was refused by notice dated 7 February 2013.
  - The development proposed is residential development of 28 dwellings, including 11 affordable dwellings with a new main vehicular and pedestrian access off Claphill Lane, and associated car parking arrangements.
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## Decisions

### **Appeal no.1: Appeal Ref: APP/J1860/A/12/2187934**

1. The appeal is allowed and planning permission is granted for residential development of 31 dwellings, including 12 affordable dwellings with a new main vehicular and pedestrian access off Claphill Lane, and associated car parking arrangements at Land at Green Hedges, Claphill Lane, Rushwick, Worcester, Worcestershire WR2 5TP in accordance with the terms of the application, Ref 12/00833/FUL, dated 1 June 2012, subject to the conditions set out in the first schedule at the end of this decision.

**Appeal no.2: Appeal Ref: APP/J1860/A/13/2193129**

2. The appeal is allowed and planning permission is granted for residential development of 28 dwellings, including 11 affordable dwellings with a new main vehicular and pedestrian access off Claphill Lane, and associated car parking arrangements at Land at Green Hedges, Claphill Lane, Rushwick, Worcester, Worcestershire WR2 5TP in accordance with the terms of the application, Ref 12/01661/FUL, dated 30 November 2012, subject to the conditions set out in the second schedule at the end of this decision.

**Procedural matter**

3. The appellants submitted two signed and dated unilateral undertakings under section 106 of the Act facilitating the provision of affordable housing and financial contributions towards education, transport infrastructure, play facilities and public open space. The affordable housing provision is considered against the provisions of paragraph 204 of the National Planning Policy Framework<sup>1</sup>, whilst local infrastructure contributions are considered against the tests of the Community Infrastructure Levy Regulations 2010 (CIL) below.

**Application for costs**

4. At the Inquiry an application for costs was made by CARLA Homes (Midlands) Ltd against Malvern Hills District Council. This application will be the subject of a separate Decision.

**Planning context**

5. The site currently falls under the jurisdiction of policies DS1 and DS14 of the Malvern Hills District Local Plan (MHDLP), which seek to restrict development in the open countryside and safeguard the 'Significant Gap' (SG) designation securing degrees of separation between settlements. However, the site is allocated as a housing site in the emerging South Worcestershire Development Plan (SWDP) and the intention is to remove it from the defined SG designation. It is on this basis that the Council accept, notwithstanding Parish Council objection to the allocation of the site, that the principle of residential development is accepted. That said however, the saved policies of the MHDLP remain in place until superseded, and the proposals remain technically in breach of them as a consequence.
6. In evidence and at the Inquiry the Council accepted that it could not demonstrate a five year supply of housing land, asserting that this does not constitute a material issue in these cases. In accordance with the expectation of paragraph 49 of The Framework (notwithstanding the Council's view on the materiality of the supply issue) in these circumstances relevant policies for the supply of housing can no longer be considered up-to-date. The Council in part seem to accept this, opting not to cite saved policies DS14 and DS1 of the MHDLP in their deemed refusal notice. The acknowledged out-of-datedness of such policies in-turn triggers the consideration set out in the fourth bullet point of paragraph 14 of The Framework, which anticipates decision-makers granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in The Framework as a whole. It is in this context that those adverse impacts, or

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<sup>1</sup> Henceforth referred to as *The Framework*.

harm, are identified as main issues, which are in turn then considered against any identified benefits of the schemes, with the whole considered in a balancing exercise to conclude.

### **Main Issues**

7. These key main issues are therefore identified as a) whether or not both proposals, in design terms, constitute high quality inclusive developments conducive to a quality living environment for future occupiers, b) whether or not both development proposals would provide an appropriate mix of dwelling types and sizes so contributing to the delivery of a mixed market housing stock across the district and c) whether both proposals constitute sustainable development.

### **Reasons**

#### *Design*

8. Although the Council cite policy QL1 of the MHDLP in their deemed reason for refusal, their critique of the design of both schemes is presented very much through the lens of *Buildings For Life 12 (The Sign of a Good Place to Live)* (BFL), published by Buildings For Life Partnership in 2012 and the policies relating to design set-out in The Framework. The former document, endorsed by Government, is described as a tool to 'help structure discussions between local communities, the local planning authority, the developer of a proposed scheme and other stakeholders', to 'help local authorities assess the quality of proposed and completed developments' and act as 'a point of reference in the preparation of local design policies'. The intent of the document is clearly to leverage an improvement in housing design through the whole process, facilitating an optimal result with sign-up from all parties<sup>2</sup>.
9. As an endorsed Government publication supported by key players in the housing design and construction business BFL merits significant weight. However, it seems to me that an over-reliance on the *questions* of the document, applied exclusively to a post-refusal assessment of both schemes, especially unsupported by formal local endorsement as a development control approach and in the absence of contextual supplementary design guidance or documents, is in my view a miss-application of the document. This conclusion qualifies the weight that may be apportioned it in this case. Nevertheless, insofar as the criteria are consistent with those design objectives of Framework and policy QL1 of the MHDLP, they remain relevant to the judgement.
10. When applying the document, key areas of harm are identified through the award of 'red' marks in respect of each key consideration; these are addressed below in respect of each scheme. That question relating to housing mix in both cases is considered under the second main issue *Housing mix* below. 'Amber' marks signal an acceptance of constraints or relate to issues that could be addressed (such as cycle parking) through condition, and are not addressed explicitly below.

#### *Appeal no.1*

11. Whilst the Council accept the design of the Claphill Lane frontage, they take issue with the internal layout, referred to as an 'ordinary cul de sac'

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<sup>2</sup> There is clear reference to adjudication by 'a BFL professional' in cases where the parties cannot agree.

necessitated by the dominant number 'large market dwellings proposed'. This has a concomitant effect on character, precluding the provision of open space. However, given there is only one access to the site available, and the layout has to respond to the constraints of a functional highway, a cul de sac, or no-through-lane, appears to me to be the only realistic format for such development. That said, the house numbers in this scheme do impose a dominance of built form on the site, and the arrangement at 'T' junction towards the south of the approach road would appear constrained and visually congested, to the detriment of the character of this element of the site. Such a layout also precludes a definitive 'marker' for this part of the development which, I acknowledge, diminishes its legibility to a degree. The turning head serving plots 10-20 is terminated to north and south by parking spaces. However, it would be wrong to conclude on this basis that the pedestrian experience here has been 'overlooked'; traffic speeds would be low and the space would still have the capacity for shared communal use. On balance therefore, I conclude that there are identified deficiencies in the scheme in respect of character and legibility that miss the opportunities to create a positive sense of place and local character in accordance with criterion b) of policy QL1, the relevant design policies of The Framework and the aims of BFL. This does equate to a measure of harm that I judge as moderate when considering in relation to the scheme as a whole, and which must be weighed against the proposals in the planning balance.

*Appeal no.2*

12. This revised scheme seeks to address the design issues identified above. The number of units is reduced by three, loosening the layout in the south west corner of the site and facilitating an area of open space to the west of the 'T' junction at the south of the lane or approach road. These amendments in my view satisfactorily address the shortcomings identified above. The reduction in numbers relieves the visual congestion to the west of the 'T' junction, whilst the open space, with the potential for a specimen tree, offers a point of arrival at the epicentre of the development and builds on the more open aspect facilitated by the looser dwelling configuration to the west. The result is a tangible improvement in legibility and the establishment of a space that begins to define the character of the estate as its own. The scheme therefore accords with policy QL1, with BFL and with the relevant design policies of The Framework. Such a positive design outcome may legitimately be apportioned substantial weight in favour of the proposals in the planning balance.

*Housing mix*

13. The Council accept, in relation to both appeals, that the 4X3 bed/8X2 bed and 6X3 bed/ 5X2 bed mix for the affordable house allocation is acceptable. However, they maintain the 4X5 bed/11X4 bed/4X3 bed and 5X5 bed/11X4 bed/1X3 bed mix for the market housing fails to make a positive contribution to the delivery of a mixed market housing stock across the district, citing saved policy of CN1 of the MHDLP and policy SWDP14 of the emerging SWDP.
14. Policy CN1 of the MHDLP comes under the heading 'Affordable Housing', the sub-heading 'Dwelling Mix'. Its key requirement is that development proposals of 5 or more dwellings provide 'a mix of dwelling types and sizes that addresses the housing needs of the district'. It seems to me that the purpose of the policy is to ensure a mix of house types and sizes across the development as a whole; the mix being calibrated by local housing need, site

constraints, existing development patterns and the character of the area. The fact of the matter is that both appeal proposals deliver, through the provision of market and affordable units, a mix of dwelling types and sizes, covering the spectrum of 2 to 5 bed dwellings as either detached, semi-detached or terraced structures, including bungalows, which in my view do respond to the broadly identified housing needs of the district and reflect the character of development in the village.

15. It is the case that the Worcestershire Strategic Housing Market Assessment (WSHMA) concludes that continued demand for smaller properties, based on demographic trends, 'is likely'. However, the section of the Main Report relating to *Estimating Future Demand for New Housing* concludes by also acknowledging that 'in order to accommodate demand and the aspirations of householders new supply of this type and size of dwelling of housing (larger family house types) will be required over the plan period'. Moreover, when addressing the future requirements for affordable housing, the same document also states that a mixture of sizes of properties are needed across each of the Worcester authorities, though also stating that demand for 1 and 2 bed properties is acute across all, but with specific regard to affordable housing. Whilst this clearly underpins the necessity for such provision in any affordable housing component of a proposal, using this as justification for the same such emphasis in relation to market sector provision is, in my view, more qualified.
16. Policy SWDP14 does make reference to the need for more 'affordably sized homes and bungalows' (although 'affordably sized homes' is not defined) and this is reflected in the supporting text which suggests there is a need to focus on delivering 2 and 3 bed properties. However, this text also states that house sizes required to address identified needs range from 1 bed to 4/5 bed properties. Again therefore, there is scope within the policy for accepting mixes of house types and sizes within a given scheme. Both proposals would deliver between 42% and 53%<sup>3</sup> 2 and 3 bed dwellings, with the remainder being 4 and 5 bed. In my view, this does amount to an acceptable degree of 'focus', allowing a measure of flexibility to account for market choice anticipated by The Framework and to fulfil other identified need in the area. Even if both proposals were held to contravene SWDP14, it constitutes a policy itself subject to objection and a component of an emerging plan yet to be examined, found sound or formally adopted; necessarily this limits the weight that may be apportioned to in any judgement on the current proposals.
17. There was also debate over the traction of policy CN1 in relation to the paragraph 49, test of The Framework, or whether it should be considered not up-to-date as a policy relevant to the supply of housing. In my view regulating the mix of housing size and type is in part a qualitative tool; this is reflected in sensitivities in CN1 about the character of an area and of the street scene and may consequently be considered not relevant to housing supply. However, such a policy is also about defining the physical structure, make-up and ultimately market value of a site. Where there is an overt prescription of the housing mix, which may for example restrict the provision of the, size and number of specific house types or conversely require a house type affecting the overall value or profitability of a scheme, this may, in my view, be held to be relevant to the supply of housing. However, there is limited purpose in perusing the nuances of this debate as, on a reasonable interpretation of the

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<sup>3</sup> Paragraph 18, Council's Closing.

policy, I have found that both schemes are in accordance with its expectations, which are that a mix of dwelling types and sizes that addresses the housing needs of the district will be provided. On this basis both the proposals accord with policy CN1 of the MHDLP and with policy SWDP14 of the SWDP.

#### *Sustainable development*

18. Rushwick is defined as a category 1 village, which recognises its accessibility in relation to local services, employment opportunities and transport nodes; in these terms it may reasonably be considered locationally sustainable. Sustainable development, as defined in The Framework, is set out in tripartite terms: economic, social and environmental. On the basis of the above, the proposals would bring economic benefits, delivering homes in reasonable proximity to jobs, and provide shorter term employment opportunities during construction. Both developments would provide homes, including affordable homes where there is a demonstrated unmet need and help consolidate and nurture local village services, fulfilling a social function. Although in both cases they would result in the development of a green field site, there would be no significant loss of biodiversity and the residential environment created would complement and respect the character of the existing settlement; on this basis it can be considered environmentally sustainable in the context of The Framework.

#### **Other matters**

19. Concerns over the potential for flooding of the site or adjacent land, the effect of the developments on highway safety and their effect on the character and appearance of the area were raised by local residents. However, none of these concerns are supported by objection from formal consultees, or the Council and were not supported by substantive evidence at the Inquiry. In any event, I am satisfied that with the appropriate conditions in place in respect of site drainage, visibility splay and road layout, landscaping (including boundary treatments) and materials used in the construction of the developments, no material harm in respect of these matters would result.

#### **Unilateral undertakings**

##### *Affordable housing*

20. There is an established need for affordable housing in the area and in the district as a whole, as assessed by the Council. The proposed development would provide up to 40% (or 12 dwellings in respect of appeal no.1 and 11 dwellings in respect of appeal no.2) that would go towards addressing that need and would accord with the Council's policy objectives. Moreover, 9 of these dwellings would be for social rent and 3 of shared ownership in respect of appeal no.1 and 8 and 2 in respect of appeal no.2, providing a mix of tenure types in accordance with need. On this basis both obligations accord with the three criteria set out in paragraph 204 of The Framework.

##### *Local infrastructure*

21. Regulation 122 of the Community Infrastructure Levy requires that planning obligations are necessary to make the development acceptable in planning terms, that they are proportionate and that they are directly related to the development.

### *Education*

22. The appellant argues that Rushwick Primary school is below capacity in 3 years and relies on pupils from without its catchment to achieve its capacity. However, the Council suggests that 4 of the 7 years are at or above capacity and that other developments in the area, in conjunction with the appeal proposals, will sustain that level of demand. Whilst there may be a debate over the extent to which external pupil numbers sustain the school, it seems to me evident that the proposed developments would create an additional demand for places, and the local school is likely to be the overwhelming choice for future residents. The contributions set out in the undertakings are calculated to an adopted formula and would be directed at increasing the number of pupil places at the school although at this stage there are no approved plans for its enlargement, and this too is dependent on other development coming forward in the mid term to justify it. Notwithstanding this point, I conclude the contributions are necessary to make the respective developments acceptable in planning terms, are proportionate, being based on adopted guidance and are self-evidently directly related to the developments. The obligations therefore meet the regulatory tests and may duly be taken into account in respect of both cases.

### *Open Space*

23. The application of contributions for the maintenance of the Upper Wick Lane recreation facility to its 'current standard', as suggested by the Council's Community Services Manager, would not meet the criteria of the CIL Regulations. However, the proposed developments make no provision for recreation or play space within the site and it is beyond dispute that as such, the development would create a need for such a facility. Whilst no evidence has been presented to confirm that the existing facility is at or near capacity, it was evident to me that it was well used, and was likely to appeal to users from beyond its immediate catchment. Given the scale of development proposed and the size and apparent use of the facility, I conclude on balance the contribution is necessary to make the development acceptable in planning terms, that it is proportionate and directly related to the site. Similarly, increasing the capacity for people living in the proposed developments to participate in sports activities at the cricket club, apparently with the support of the Worcester Cricket Board, would also be consistent with the regulatory criteria. On this basis, and knowing both contributions (calculated at different amounts to reflect dwelling numbers) are calibrated in accordance with adopted Council guidance regulating their proportionality, these obligations also accord with the regulatory tests and may be taken into account.

### *Transport contribution*

24. The appellant argues that the Local Transport Plan, on which the contributions are both predicated and calibrated, is not part of the development plan and that the County Council already have Ministerial funding for strategic highway infrastructure improvements. Nevertheless, the Local Transport Plan, and the Worcester Transport Strategy that gives it local focus, is a formally adopted document that sets out in detail the rationale for seeking mitigative funding, its calibration and a justification for why such funding may be considered directly related to the development. The premise is that nearly all such development will have a cumulative deleterious impact on the highway network and with detailed modelling, this impact will increase unless mitigated. A formula is set

out which distils the per-dwelling requirement (calculated at different amounts to reflect dwelling numbers) with the net contributions being pooled and applied across the area network. This is, in my view a reasonable model, supported by local planning and strategy that accords with the three regulatory criteria of the CIL, determining these obligations may be taken into account.

#### *Highway works*

25. I also conclude that as future residents would anticipate pedestrian and non-ambulant access to the village and public transport nodes, improvements to local highway infrastructure, including the provision of propped kerbs, upgrading of cycle signage and improvements to existing bus stops would also be necessary to make the development acceptable in planning terms. The works have been costed and are clearly related to the development; the obligations therefore meet the regulatory tests and may duly be taken into account in respect of both cases.

#### **Planning balance and conclusions**

26. The Council argue that the absence of a five year supply of housing land is not germane to the case, stating that housing land supply and design should be considered 'hand in hand', with one not trumping the other. They conclude that 'regardless of the housing land supply position, the appeal proposals fail to accord with The Framework because they propose poor design'. Such an approach however fails to grasp the nature of the reasoning required in this case. Paragraph 49 of The Framework makes clear that where a Council cannot demonstrate a five year supply its relevant policies cannot be considered up-to-date. This in turn triggers the fourth bullet point of paragraph 14, which makes clear that for decision makers, in these circumstances, this means granting permission unless the adverse impacts of doing so significantly and demonstrably outweigh the benefits of the scheme. This exercise requires the identification of any benefits and disadvantages, an apportionment of weight to each in accordance with the extent of that betterment or harm, and a judgement made as to whether indeed the latter (the disadvantages or harm) significantly and demonstrably out-weigh the benefits. The Council has failed to undertake this task in respect of both appeals; I do so below.
27. Both proposals have established benefits. They would deliver a sustainable mix of market housing in an authority that has very significantly underperformed in that task on a persistent basis, and which presently cannot demonstrate a 5 year supply of housing land, all in the absence of a tested and adopted local development plan. In this context, both proposals would make a meaningful, deliverable contribution towards meeting that unmet need. The provision of market housing here therefore weighs very significantly in favour of both schemes in the planning balance.
28. Both proposals would also deliver near 40% affordable housing on the site, including a higher proportion of 2 bed units in accordance with anticipated demand, and in a sustainable location. Such provision also demands significant weight being apportioned in favour of both schemes in the planning balance.
29. Both schemes, across the board, would also deliver a mix of housing types and sizes that broadly respond to local need and respect local character and



the street scene in accordance with the policy of the development plan. Moreover, in respect of appeal no.2, the development would deliver a scheme of good design complementary to and respectful of the existing settlement; this too merits significant weight being apportioned in its favour.

30. Both developments would be neutral in terms of its impact on local services, which will be fully mitigated through the provisions of the section 106 unilateral undertakings.
31. I have though identified harm in respect of appeal no.1, insofar as it relates to design and layout. Here the southern part of the site would in my view appear visually congested, with limited markers and a consequent lack of distinctive character, sense of place or identity. That said, the degree of that harm is limited in extent, and I have defined it as moderate in relation to the scheme as a whole. I conclude therefore, that the moderate extent of this harm would not significantly or demonstrably outweigh the clear benefits of providing sustainable mixes of market and affordable homes in Rushwick. In the absence of identified material harm in respect of appeal no.2, and indeed the acknowledgement of its design quality, there is also no basis on which to resist the proposal.
32. The Council argue that if the appeals were dismissed with clear reasoning to identify the salient, significant and demonstrable harm, a revised scheme could come forward confident of the Council's support within four months or so – an acceptable scheme is, they assert, apparently within reach. This is not a convincing argument; there is no real assurance that an amended scheme could come forward quickly which would meet the requirements of the appellant in terms of numbers, layout and house type or the expectations of Council members in respect of the same. Such a conclusion anyway misses the point; The Framework is emphatic that sustainable development be brought forward without delay, thus the focus on deliverable sites being available now<sup>4</sup>. Such an imperative runs consistently with the preceding Ministerial Statement *Planning for Growth* which anticipates the planning system stimulating and proactively driving economic recovery and growth.
33. On the basis of the above therefore, and in accordance with paragraph 14 and the other relevant policies of The Framework and the development plan, I conclude planning permission in both cases should be granted, thus meaning both appeals should succeed.

## Conditions

34. The appeals being allowed, conditions are attached in both cases requiring that the development be carried out in accordance with the approved plans set out in the respective schedules in the interests of sound planning and for the avoidance of doubt. Conditions are also attached securing the provision of the necessary visibility splays to the site entrance, details of the roads and drains within the site, and provision, for their agreed construction and the delivery of secure cycle parking within the cartilage of specified dwellings, in the interests of highway safety and in the case of the latter to encourage and facilitate sustainable modes of transport.

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<sup>4</sup> Third bullet point of paragraph 14 of The Framework page 4, footnote 11 of The Framework page 12 and core principle 3 of paragraph 17 of the same, page 5.

35. Conditions are also attached requiring the submission of a Method of Construction Statement and a restriction on the hours of site activity and construction, all in the interests of safeguarding the living conditions of adjacent occupiers during the course of construction.
36. Conditions are also attached requiring the submission of materials for the external facing of the development, details of fenestration, finished slab levels, boundary treatments, landscaping (and its ongoing mid term management) and a condition attached withdrawing permitted development rights in respect of new boundary treatments to the plots, all to ensure a satisfactory appearance to the development.
37. Conditions are attached requiring the submission of details of a scheme for the foul and surface water drainage of the development to ensure full and proper consideration of the drainage provision for the site. Conditions are attached requiring the developments to be carried out in accordance with the submitted habitat survey in order to safeguard habitats for protected species and to enhance the biodiversity of the site. Conditions are also attached requiring the submission of a tree protection plan and method statement to the local planning authority and provision made for the installation of tree and hedge protection measures on the site, all to safeguard existing trees and hedges. Finally, conditions are attached requiring the submission of scheme of archaeological investigation and post-excavation assessment, all to safeguard any archaeological remains on the site and secure an understanding of their significance.
38. Conditions have been suggested by the Council in respect of both schemes seeking the submission of a renewable energy plan for the development. However, the relevant policy of the MHDLP has not been saved and policy SWDP27 of the SWDP, as yet untested at Examination in Public or formally adopted, can at this time only be afforded little weight. In the absence of adopted policy or Supplementary Planning Documents, there is no local policy-based justification for the condition, and on this basis I have determined it would be unreasonable to apply it.
39. For the reasons given above and having considered all matters raised in evidence and at the Inquiry, I conclude that both appeals should be allowed.

*David Morgan*

**Inspector**

*Conditions overleaf*

## Schedule of Conditions

### First Schedule

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans set out in the schedule of drawings entitled '31 Dwelling Scheme – 12/00833'.
- 3) Before any works hereby approved are commenced, visibility splays shall be provided from a point 0.6m above ground level at the centre of the access to the application site and 2.4 metres back from the near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 59 metres in each direction along the nearside edge of the adjoining carriageway. Nothing shall be planted, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility described above.
- 4) Development shall not begin until the engineering details and specification of the proposed roads and highway drains have been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until the scheme has been constructed in accordance with the approved drawings.
- 5) The Development shall not be occupied until the roadwork's necessary to provide access from the nearest publicly maintained highway have been completed in accordance with details submitted to and approved in writing by the Local Planning Authority.
- 6) Prior to the first occupation of dwellings 9 to 20 inclusive, secure cycle parking for 2 shall be provided within the curtilage of each dwelling and these facilities shall thereafter be retained for the parking of cycles only.
- 7) No development shall take place until a Method of Construction Statement, to include details of:
  - a) parking of vehicles of site personnel, operatives and visitors
  - b) loading and unloading of plant and materials
  - c) storage of plant and materials within the site
  - d) programme of works (including measures for traffic management)
  - e) provision of boundary hoarding behind any visibility zones
  - f) the provision of wheel cleaning apparatus for site traffic
  - g) means of vehicular access for construction traffic from the A44 and Claphill Lane onlyhas been submitted to and approved in writing by the local planning authority. Only the approved details shall be implemented during the construction period.
- 8) The external facing and roofing materials to be used in the construction of the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

- 9) All details of fenestration, including windows and doors, used in the construction of the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 10) Prior to the commencement of development details of all boundary treatments to be erected shall be submitted to and approved in writing by the local planning authority. These details shall include a plan (at a minimum scale of 1:500) detailing the position of all proposed boundary treatments and annotated or accompanied by a schedule specifying type, height, composition, colour and appearance of boundary treatments throughout the site. The approved boundary treatments shall be erected before the development is first brought into use and thereafter retained in that form, notwithstanding the provisions of Schedule 1, Part 2 of the Town and Country Planning (General Permitted Development) Order, 1995 (or any Order revoking or re-enacting that Order with or without modification).
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order, 1995 (or any Order revoking or re-enacting that Order with or without modification) no new boundary treatment shall be erected between the dwellings and the highway without the submission and subsequent approval of a separate application for planning permission.
- 12) Prior to the commencement of development, full details of all foul and surface water drainage systems shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before the first use of the dwellings hereby permitted and shall be retained thereafter.
- 13) Prior to the commencement of the development a detailed plan showing the levels of the existing site, the proposed slab levels of the dwellings hereby approved and a datum point outside of the site, shall be submitted to and approved by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
- 14) Prior to the commencement of development a scheme of landscaping, including details of all hedgerows to be retained and removed, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out concurrently with the development and completed to a timeframe submitted to and agreed in writing by the local planning authority. The landscaping scheme shall include the provisions set out in the following schedule:
  - planting specification
  - cross section drawings at 5.0 metre intervals depicting the ground levels to Claphill Lane and within the site, indicating the location of existing and proposed trees and hedgerows;
  - native hedgerow planting to the western and eastern site boundaries;
  - soft and hard landscaping to the all external public spaces and the private gardens of the dwellings;
  - details and specification of hard surfacing to the bin collection area;
  - the location and type of all means of enclosure *I* boundary treatments and their colour finishes, including all gates, walls, fences and railings.

- 15) If within a period of five years from the date of the planting of any tree planted pursuant to condition 13 that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written approval to any variation.
- 16) No works shall commence until a tree protection plan and arboricultural method statement have been submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details.
- 17) No demolition, site clearance or building operations of any type shall commence until a protective fence (of at least 2 metres in height and in all other respects in accordance with BS 5837 (2012) and previously approved in writing by the Local Planning Authority), has been erected along the boundary of the Claphill Lane hedge, around the trees to be retained within the site and around those trees outside the site whose Root Protection Areas (RPA) (as defined in SS 5837 (2012)» fall within the site, at the outer limit (or beyond) of the their RPA or in a position agreed in writing by the Local Planning Authority. This tree protective fencing should remain in place until all construction and associated ground-works have been completed.
- 18) The development hereby approved shall be carried out in accordance with the recommendation set out in the submitted 'fpcr - Phase 1 Habitat and Preliminary Protected Species Survey' dated, November 2012.
- 19) No development shall take place until a programme of archaeological work, including a Written Scheme of Investigation, has been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions; and:
  1. The programme and methodology of site investigation and recording.
  2. The programme for post investigation assessment.
  3. Provision to be made for analysis of the site investigation and recording.
  4. Provision to be made for publication and dissemination of the analysis and records of the site investigation.
  5. Provision to be made for archive deposition of the analysis and records of the site investigation.
  6. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
  7. No development shall take place other than in accordance with the approved Written Scheme of Investigation.
- 20) The development shall not become first occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition 19 of this permission and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

- 21) Demolition/ground works/construction work shall not take place outside the following hours:  
Monday to Friday: 07.30-19.00 hrs  
Saturdays: 07.30-13.00hrs

There shall be no such works on Sundays or Public Holidays.

### **Second Schedule**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans set out in the schedule of drawings entitled '28 Dwelling Scheme - 12/00661'.
- 3) Before any works hereby approved are commenced, visibility splays shall be provided from a point 0.6m above ground level at the centre of the access to the application site and 2.4 metres back from the near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 59 metres in each direction along the nearside edge of the adjoining carriageway. Nothing shall be planted, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility described above.
- 4) Development shall not begin until the engineering details and specification of the proposed roads and highway drains have been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until the scheme has been constructed in accordance with the approved drawings.
- 5) The Development shall not be occupied until the roadwork's necessary to provide access from the nearest publicly maintained highway have been completed in accordance with details submitted to and approved in writing by the Local Planning Authority.
- 6) Prior to the first occupation of dwellings 8 to 18 inclusive, secure cycle parking for 2 shall be provided within the curtilage of each dwelling and these facilities shall thereafter be retained for the parking of cycles only.
- 7) No development shall take place until a Method of Construction Statement, to include details of:
  - h) parking of vehicles of site personnel, operatives and visitors
  - i) loading and unloading of plant and materials
  - j) storage of plant and materials within the site
  - k) programme of works (including measures for traffic management)
  - l) provision of boundary hoarding behind any visibility zones
  - m) the provision of wheel cleaning apparatus for site traffic
  - n) means of vehicular access for construction traffic from the A44 and Claphill Lane only

has been submitted to and approved in writing by the local planning authority. Only the approved details shall be implemented during the construction period.

- 8) The external facing and roofing materials to be used in the construction of the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 9) All details of fenestration, including windows and doors, used in the construction of the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 10) Prior to the commencement of development details of all boundary treatments to be erected shall be submitted to and approved in writing by the local planning authority. These details shall include a plan (at a minimum scale of 1:500) detailing the position of all proposed boundary treatments and annotated or accompanied by a schedule specifying type, height, composition, colour and appearance of boundary treatments throughout the site. The approved boundary treatments shall be erected before the development is first brought into use and thereafter retained in that form, notwithstanding the provisions of Schedule 1, Part 2 of the Town and Country Planning (General Permitted Development) Order, 1995 (or any Order revoking or re-enacting that Order with or without modification).
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order, 1995 (or any Order revoking or re-enacting that Order with or without modification) no new boundary treatment shall be erected between the dwellings and the highway without the submission and subsequent approval of a separate application for planning permission.
- 12) Prior to the commencement of development, full details of all foul and surface water drainage systems shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before the first use of the dwellings hereby permitted and shall be retained thereafter.
- 13) Prior to the commencement of the development a detailed plan showing the levels of the existing site, the proposed slab levels of the dwellings hereby approved and a datum point outside of the site, shall be submitted to and approved by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
- 14) Prior to the commencement of development a scheme of landscaping, including details of all hedgerows to be retained and removed, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out concurrently with the development and completed to a timeframe submitted to and agreed in writing by the local planning authority. The landscaping scheme shall include the provisions set out in the following schedule:

- planting specification
  - cross section drawings at 5.0 metre intervals depicting the ground levels to Claphill Lane and within the site, indicating the location of existing and proposed trees and hedgerows;
  - native hedgerow planting to the western and eastern site boundaries;
  - soft and hard landscaping to the all external public spaces and the private gardens of the dwellings;
  - details and specification of hard surfacing to the bin collection area;
  - the location and type of all means of enclosure / boundary treatments and their colour finishes, including all gates, walls, fences and railings.
- 15) If within a period of five years from the date of the planting of any tree planted pursuant to condition 13 that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written approval to any variation.
- 16) No works shall commence until a tree protection plan and arboricultural method statement have been submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details.
- 17) No demolition, site clearance or building operations of any type shall commence until a protective fence (of at least 2 metres in height and in all other respects in accordance with BS 5837 (2012) and previously approved in writing by the Local Planning Authority), has been erected along the boundary of the Claphill Lane hedge, around the trees to be retained within the site and around those trees outside the site whose Root Protection Areas (RPA) (as defined in SS 5837 (2012)» fall within the site, at the outer limit (or beyond) of the their RPA or in a position agreed in writing by the Local Planning Authority. This tree protective fencing should remain in place until all construction and associated ground-works have been completed.
- 18) The development hereby approved shall be carried out in accordance with the recommendation set out in the submitted 'fpcr - Phase 1 Habitat and Preliminary Protected Species Survey' dated, November 2012.
- 19) No development shall take place until a programme of archaeological work, including a Written Scheme of Investigation, has been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions; and:
1. The programme and methodology of site investigation and recording.
  2. The programme for post investigation assessment.
  3. Provision to be made for analysis of the site investigation and recording.
  4. Provision to be made for publication and dissemination of the analysis and records of the site investigation.
  5. Provision to be made for archive deposition of the analysis and records of the site investigation.
  6. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.



7. No development shall take place other than in accordance with the approved Written Scheme of Investigation.
- 20) The development shall not become first occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition 19 of this permission and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.
- 21) Demolition/ground works/construction work shall not take place outside the following hours:  
Monday to Friday: 07.30-19.00 hrs  
Saturdays: 07.30-13.00hrs

There shall be no such works on Sundays or Public Holidays.

Richborough Estates

*Appearances overleaf*

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Hugh Richards of Counsel

He called

Mrs Rosie Murray BA  
(Hons) MRTPI

Mr Simon Jones BA  
(Hons) Dip TP MRTPI

### FOR THE APPELLANT:

Mr Satnam Choongh of Counsel

He called

Mr Philip Rowle BA  
(Hons) Dip TP MA MRTPI

Mr AC Bateman BA  
(Hons) TP MRICS MRTPI  
MCMi MIOd

Mr Malcolm Payne Dip  
Arch RIBA IHBC

### INTERESTED PERSONS:

Mrs Rodway

### **Documents presented at the Inquiry**

1. Unilateral undertaking – Appellant
2. Revised layout plan – Appellant
3. X2 urban design photographs – Appellant
4. Letter from PINS relating to Appeal decision – 2174450
5. Openings – Appellant
6. Openings – Council
7. Revised Statement of Common Ground – Appellant
8. Appendix 3 of SHMAA – Appellant
9. Bound copy of Mr Payne's proof – Appellant

10. Plan illustrating site services – Appellant
11. X2 schedules of drawings – Appellant
12. Policy objections to local plan by appellant – Appellant
13. Application for costs – Appellant
14. Appendix to appendix 13 Mr Bateman’s proof – Appellant
15. letter to Council 12 Oct 2012 – Appellant
16. Response to application of costs – Council
17. List of conditions – revised – Council
18. Fenestration condition – Council
19. Closings – Council
20. Closings - Appellant

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