

Appeal Decision

Inquiry held on 2-12 August 2022

Accompanied site visit made on 4 August 2022

by Matthew Nunn BA BPL LLB LLM BCL MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th December 2022

Ref: APP/X0360/W/22/3295631

Land at and to the rear of 240 Nine Mile Ride, Finchampstead

- 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 on an application for outline planning permission.
 - The appeal is made by Kingacre Estates Ltd against Wokingham Borough Council.
 - The application Ref: 211889 was dated 27 May 2021
 - The development was originally described as 'outline planning permission with all matters reserved other than principal means of access from the existing highway of Nine Mile Ride for up to 32 dwellings, and associated infrastructure, landscaping and demolition of existing dwellings'.
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Decision

1. The appeal is allowed and planning permission granted for an outline application with all matters reserved other than principal means of access from the existing highway for up to 32 dwellings, and associated infrastructure, landscaping and demolition of existing dwellings on land at and to the rear of 240 Nine Mile Ride, Finchampstead, in accordance with the terms of the application, Ref: 211899, dated 27 May 2021, subject to the conditions set out in the attached Schedule.

Preliminary Matters

2. The application is made in outline with all matters except access reserved for subsequent determination. An Illustrative Master Plan¹ accompanied the application to show how the site might be developed, but this is indicative only. In addition to my accompanied site visit, I made a number of unaccompanied visits to the site and its surroundings before, during and after the Inquiry.
3. The Council failed to determine the application within the appropriate timescale. In the absence of a refusal notice, there was a discussion about the likely main issues at the Case Management Conference. The Council had originally set out five putative grounds in its Statement of Case², but these were not detailed or specific³. Further clarification was provided in a note

¹ Drawing AAL-21-113-P01

² Paragraph 1.1

³ It is accepted that the Statement of Case expands on these grounds in subsequent paragraphs

dated 15 June 2022⁴. The putative grounds in essence cited: (1) poor design, quantum and density of development and the relationship with the wider housing allocation; (2) the impact on trees, woodland and vegetation; (3) the impact on biodiversity and ecology; (4) concerns over the highway access arrangement.

4. The Council has confirmed, in respect of the fourth putative ground, that its concerns relate to a poor public realm, specifically what it regards as a long and narrow pedestrian footpath, segregated from the main vehicular access. However, no specific case on highway safety is advanced. In terms of the third ground, the Council states that sufficient information has now been provided to show there would not be an adverse effect on individual species, and any loss of habitat and biodiversity can be compensated for off-site. Nonetheless, the Council still considers the impact on Priority Habitat can be avoided and objects on this basis.
5. Other matters that would constitute reasons for refusal in the absence of a planning obligation included: (i) the effect on the Thames Basin Heaths Special Protection Area (SPA) without mitigation; (ii) the absence of an employment skills plan or financial contribution; (iii) the lack of a Travel Plan or a financial contribution to the 'My Journey' initiative; (iv) the lack of a mechanism for the long-term maintenance and management of highways and communal areas.
6. After some delay, a series of counterpart planning obligations have now been completed with the Council, dated 23 November 2022⁵. As a consequence, the putative refusal reasons identified above in Paragraph 5 have been withdrawn by the Council. I deal with the planning obligations in the body of my decision.
7. The lack of provision of affordable housing was also a putative refusal ground. However, this has fallen away as the parties both agreed its provision would not be viable.

Main Issues

8. In the light of the above, the main issues are:
 - i. the effect of the proposal on the character and appearance of the area, including the landscape;
 - ii. the impact on trees, woodland and vegetation;
 - iii. the effect of the proposal on biodiversity and ecology; and
 - iv. the acceptability of access arrangements to the site.

Reasons

Planning Policy Context

9. The relevant legislation⁶ requires that the appeal be determined in accordance with the statutory development plan unless material considerations indicate otherwise. The statutory development plan comprises the Wokingham Borough

⁴ CD 6.9

⁵ ID 24

⁶ Section 38(6) of the Planning and Compulsory Purchase Act 2004

Core Strategy ('the CS') adopted in 2010, the Managing Development Delivery Plan ('the MDD'), adopted in 2014; and 'saved' Policy NRM6 of the South East Plan relating to the Thames Basin Heath SPA.

10. The Council's remaining putative reasons for refusal cite the following CS Policies: CP1 (sustainable development), CP2 (inclusive communities), CP3 (general principles of development), CP6 (managing travel demand), and CP7 (biodiversity). The following MDD Policies are also cited: CC01 (presumption in favour of sustainable development), CC03 (green infrastructure, trees and landscaping), TB06 (development of private residential gardens), TB21 (landscape character), TB23 (biodiversity and development), SAL03 (allocated reserve housing sites).
11. The National Planning Policy Framework ('the Framework') sets out the Government's planning policies and is a material consideration in planning decisions. It is not disputed that the Council is unable to demonstrate a deliverable five-year supply of housing, as required by the Framework. The Council is prepared to accept that the deliverable supply of housing, plus a 5% buffer, is likely to be marginally less than 5 years⁷. In these circumstances, Paragraph 11(d) is clear that policies which are 'most important for determining the application' are rendered out of date⁸. The policies relied on in the Council's putative reasons for refusal must self-evidently fall within that category, and so must be considered out of date. Importantly, however, the Framework does not change the statutory status of the development plan for decision making, and the fact that policies are deemed out of date does not mean they should carry no weight or be disregarded.
12. The Framework is also clear at Paragraph 11(d)(ii) that in the absence of a five-year supply of housing, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
13. Of critical importance in this case is that the appeal site falls within a larger area identified within the MDD as a 'reserve site' for housing under Policy SAL03 for 'around 40 dwellings' (although the two accesses proposed in this scheme from Nine Mile Ride are excluded). Although that Policy states that no dwelling completions should occur before April 2026, the Council has already resolved to release all 'reserve sites' to boost housing supply⁹. Further guidance on the development of the site is provided at Appendix 12 of the MDD¹⁰. Therefore, and very importantly for this appeal, the principle of residential development has already been established on the site.

Emerging Policy

14. Work has started on a Local Plan Update (LPU) but this is still at an early stage. The draft LPU does not propose carrying forward the allocation, although the Council has not sought to object to the principle of housing on this basis. In any event, there is considerable uncertainty regarding the updated LPU's final

⁷ Paragraph 8, Housing Statement of Common Ground

⁸ By reference to footnote 8

⁹ Decision of Council's Executive in July 2017

¹⁰ Although a capacity of 70 units is cited in this Appendix, this is confirmed by the Council to be incorrect; see Paragraph 4.8 of Mr Croucher's Proof

format. In these circumstances, and in accordance with the Framework¹¹, I consider little weight can be given to the LPU at this time. Finchampstead Parish Council are in the process of producing a Neighbourhood Plan, but this is in draft form, having recently been subject to consultation. However, it has yet to be formally examined, and is subject to change. Again, in accordance with the Framework, I consider this document attracts little weight at this time.

Character and Appearance, including Landscape

15. The appeal site comprises a broadly oblong area of land to the south of Nine Mile Ride. It forms the central portion of an irregularly shaped wider housing allocation that extends to the east and west. The site includes two substantial detached properties (Nos 238 & 240) set on generous plots that are positioned behind the frontage residential development along Nine Mile Ride. Two separate accesses serving these existing properties pass between the dwellings fronting the road and also form part of the site. To the south, also included in the appeal site, behind the two dwellings is an extensive area of woodland covered by a TPO. This comprises primarily deciduous species including chestnut, oak, birch, but also Scots Pine. This woodland area extends southwards to Wick Hill Lane, marking the southern boundary of the site.
16. Nine Mile Ride is a long avenue, one of the historic linear rides formed through the previous Royal Forest. There is housing both sides of the road in the vicinity of the appeal site. The houses vary in style and design, comprising predominantly detached dwellings, although some are semi-detached. Most are set back from the road, with substantial front gardens, attractively landscaped with hedges and shrubs. Overall, the locality has an attractive verdant appearance because of the presence of many mature trees, both within the residential plots and lining the road. The main part of the appeal site is not directly visible from the road, as it is set behind the existing residential frontage development, although some of the trees within it are visible from the road, forming an attractive backdrop.
17. The appeal scheme proposes the demolition of the two dwellings (Nos 238 & 240) set behind the frontage housing and the removal of a substantial section of the woodland (around 0.53 hectares) covered by a TPO and its replacement with up to 32 houses. The area to be developed with housing would essentially comprise the central wedge of the larger plan allocation. The main vehicular access would be provided by what is currently the tree-lined driveway to No 238, with a separate access for pedestrians and cyclists via the current paved driveway to No 240.
18. The Council's objections relate to the scale and quantum of development, and the implication for trees. It argues that because of the quantum of development proposed on the site, there is no reasonable prospect to 'design out' the cramped character of scheme at reserved matters stage. In particular, the Council objects to how much development is proposed on an area comprising less than half of the allocated site: namely up to 32 dwellings against around 40 dwellings for the whole housing allocation.

¹¹ Paragraph 48

19. Importantly, Policy SAL03 does not prescribe parts of the allocated site where development may or may not take place. The only real guidance regarding the allocation relates to the landscaping along the southern boundary, requiring any removal of it to be justified having regard to its role in contributing to the character of the area¹². There is nothing within either Policy SAL03 or Appendix 12 that directs development to certain areas, or precludes it from others. There is no basis for stating parts of the allocation are simply undevelopable as that position was not established within Policy SAL03 or the Appendix at plan making stage. Although the Council highlights that the number of units envisaged in the MDD allocation is lower than its original notional capacity because of the constraints within it¹³, I consider Policy SAL03 effectively establishes the acceptability of the principle of development across the allocation.
20. The Council says the density of development on part of the allocation would be at odds with the surrounding area and would create a backland 'self-contained mini housing estate' at odds with the general development in the area¹⁴. However, the character of the wider area is mixed, with the presence of higher density cul-de-sac and backland type developments. The appellant has identified densities as ranging from 11 dwellings per hectare (dph) up to 30 dph to the west of Finchampstead Road. The Design and Access Statement cites the appeal scheme as comprising 26 dwellings per hectare (dph)¹⁵ and the appellant considers the nearby 'Bankside', a cul-de-sac, at 27 dph as the relevant comparator¹⁶.
21. There was much debate about the appropriate comparator in terms of housing densities. It seems to me that 'average densities' in an area will vary widely depending on how individual areas are defined – what housing is included or excluded. This can distort any comparison. I do not consider that density, of itself, to be necessarily a good indicator of whether a scheme blends into its surroundings or not. At 26 dph, it is certainly higher than the immediate area. However, the proposed density is not unusually high, and I see no reason why a scheme of this type could not be adequately assimilated in the locality, subject to careful design at reserved matters stage.
22. In terms of the landscape, at a national level, the appeal site lies within NCA Profile 129: Thames Basin Heath. Within the Wokingham Borough Landscape Character Assessment (2019), the appeal site falls primarily within Landscape Character Area (LCA) M1: Finchampstead Forested and Settled Sands¹⁷. This is identified as having a densely wooded context which creates a strong sense of enclosure, with low density settlement arranged along linear historic rides or within the settlements of Finchampstead or Crowthorne. Parts of this particular landscape designation are regarded by the Council as being 'valued landscapes' in terms of the Framework¹⁸ although the appeal site itself is not defined as

¹² Appendix 12, Criteria f

¹³ The site was originally identified as potentially accommodating 120 units and the SHLAA identified it as having the potential to deliver 84 units.

¹⁴ Ms Crafer's Proof, Paragraph 4.1.5

¹⁵ CD 4.9, Page 23

¹⁶ Planning Statement, Page 18, CD 4.8

¹⁷ A small part of the southernmost part of the site, comprising entirely woodland, falls within 'N2: Finchampstead Pastoral Sandy Lowland'

¹⁸ Paragraph 174

such. The appeal site is not covered by any landscape designations that specifically restrict development.

23. Whatever character 'label' is attached, the character of the site and surroundings is clear from site inspection. From my own observations, it is clear that the gardens of the two dwellings are attractively landscaped and contain mature trees, covered by TPOs, and ornamental shrubs. The gardens have a secluded character with dense woodland beyond. That said, the site's character is affected to an extent by adjacent development: in particular, Nine Mile Ride is a straight, relatively busy road, with housing on both sides. Road infrastructure and noise from passing traffic provides an urbanising influence.
24. The site is very well contained, with a high degree of physical and visual containment, and a strong sense of enclosure. Views across and into the site are heavily restricted, including from the footpath running along the southern boundary of the site. There are very limited public views into the site. The most visible parts of the site from the public realm are the existing driveways fronting Nine Mile Ride. There is no public access. The site is primarily seen in the context of the existing suburban setting along Nine Mile Ride in fleeting or glimpsed views. All these factors mean the effect on the landscape would be very localised.
25. The appellant has assessed the landscape effect¹⁹ on the appeal site itself as 'moderate major' but this is inevitable where new housing is proposed. The appellant states the effects on the immediate setting are assessed as 'minor adverse' to 'negligible adverse'. No wider landscape effects are predicted because of the relatively small scale of the development and high degree of enclosure. I agree with those assessments: the effects beyond the site boundary are very limited, apart from the changes required to upgrade existing accesses from Nine Mile Ride.
26. Drawing all these matters together, in terms of character and appearance, I consider that the appeal scheme would have a very localised impact on the character of the area. It would have negligible effects on the wider landscape because of the site's self-contained nature. The proposal would certainly result in the loss of attractive landscaped gardens, with associated trees and shrubs and an area of woodland, and the new housing would undoubtedly create a more suburban appearance. To that extent, there would be some conflict with Policy CC03 of the MDD which requires development, amongst other things, to protect and retain existing trees hedges and landscape features. There would also be a degree of conflict with Policy TB21 of the MDD which requires proposals to retain or enhance the condition, character and features that contribute to the landscape.
27. On the other hand, and importantly, the principle of development has already been accepted as part of the reserve allocation created by Policy SAL03. This is an outline application, and I am satisfied that the proposed dwellings could be designed to be of a high quality and of an appropriate scale, and that the palette of materials and design of the buildings could blend with those of the existing locality. This would ensure compliance with Policy CP1 of the CS which amongst other things requires development to maintain or enhance the high

¹⁹ Landscape and Visual Appraisal, EDP, May 2021 & March 2022 (CD 4.12 & CD 5.8) and Mr Chard's Proof

quality of the environment; and Policy CP3 of the CS which requires proposals to be of an appropriate scale of activity, mass, layout, built form and height, with a high quality of design.

28. Whilst the Council cites a conflict with Policy TB06 of the MDD in its putative reasons for refusal relating to development of residential gardens, the principle of development has been established through the allocation. However, I see no reason why, through careful consideration of the reserved matters, the scheme should not comply with the individual criteria of that policy, including making a positive contribution to the character of the area, and integrating with its surroundings.

Effect on trees, woodland and vegetation

29. The appeal site is subject of two separate Tree Preservation Orders (TPOs). The first covers the woodland in the southern portion of the site²⁰. The second includes trees around the borders of the dwellings at No 238 & 240, as well as trees in the existing tree-lined access to No 238²¹. A wooded area to the west, but outside the appeal site is also covered by a TPO²². The scheme would result in the loss of protected woodland (around 0.53 ha) as well as protected groups of trees (at least 85 individual trees²³). Trees would be removed along the eastern, western and northern boundaries, along with the main vehicular access to Nine Mile Ride. The submitted Arboricultural Impact Assessment (AIA) identifies existing trees at the appeal site, including which trees are to be removed.
30. The most publicly visible impact from Nine Mile Ride would be along the main vehicular access to the proposed dwellings. At present the access provides an attractive sylvan avenue to the house beyond. On a sunny day the dappled shade cast by these trees is pleasing. The scheme will require all trees along the eastern side of the access to be removed, along with certain identified trees along the western side. The Council has raised concerns that further trees may also need to be removed following the proposed amended access arrangement²⁴. Even if that is not the case, the loss of trees identified in the AIA along the proposed access will significantly reduce the density of trees and diminish its attractive wooded appearance. On the other hand, these are mainly transient and incidental views from Nine Mile Ride and are largely incidental, and do not provide an intrinsically important component of the character of the locality. Furthermore, the unchallenged highway evidence of the appellant is that direct access from Nine Mile Ride is preferable as compared with an access off Wick Hill Lane or Heath Ride. As a result, it seems to me some tree loss is inevitable.
31. There was a debate at the Inquiry regarding the quality and value of the trees identified for removal. The Council's witness felt that not all the trees had been fairly categorised, with a concern that some had deliberately been downgraded to 'Category C' to facilitate the development. The appellant strongly disputed this and highlighted that the Council's witness was not a qualified arboricultural

²⁰ TPO: 683/1994

²¹ TPO: 1800/2021

²² TPO: 479/1989

²³ Mr Croucher's Proof, Paragraph 5.48

²⁴ As shown in 'Rev F' of Access Plan 70070533-SK-006. The Arboricultural Impact Assessment preceded the amended access arrangement

consultant. There is clearly a difference in opinion between the appellant and Council on trees as evidenced by the decision of the Council to make a TPO on trees within the gardens of Nos 238 and 240 Nine Mile Ride. This was because the Council considered the trees made an important contribution in terms of providing a verdant backdrop in views from public locations. Ultimately, it seems to me that categorising trees is a matter of professional judgement about which reasonable people may disagree. From my own observations on site, it is clear that many good quality trees will be lost, with a consequent harmful effect on the character of the locality.

32. That said, and crucially, the Council was aware of the allocation's constraints, including the presence of trees, and likely environmental impacts of development when it designated the site as an allocation. It seems to me that a significant loss of trees to facilitate development is an inevitable consequence of the allocation. The requisite quantum of development for this allocation ('around 40 dwellings') simply cannot be brought forward without a material impact on trees and the landscape.
33. I acknowledge there may be different ways of developing the site and the Council has suggested alternatives. The Council has, for the purposes of this appeal, identified 'developable areas' within the larger allocation²⁵. However, even this approach would result in the loss of trees. Moreover, I am not convinced of the practicability of developing the allocation in this way, especially in terms of accessing the site. The reality is no other alternative larger scale proposals have come forward, notwithstanding the allocation having been released five years ago. In any event, I am concerned with the merits of the current planning application. Importantly, as mentioned above, there is nothing within Policy SAL03 or Appendix 12 that prescribes where development may or may not take place. Both are silent on this matter. The development plan has already, in effect, established the principle of housing development across the allocation, with the consequent loss of trees.
34. To sum up, there would clearly be a conflict with Policy CC03 of the MDD which requires, amongst other things, the protection and retention of existing trees, hedges and other landscape features. It would also conflict with Policy TB21 of the MDD which requires proposals to retain or enhance the condition, character and features that contribute to the landscape. The conflict with these policies must be considered in the overall planning balance, including with Policy SAL03 which allocates the site for housing.

Effect on Biodiversity and Ecology

35. The Council's ecologist was initially concerned there was insufficient information regarding the impact on dormice, bats, breeding birds and reptiles. However, as the appeal progressed, further information regarding protected species was provided by the appellant. In the light of this, the Council is satisfied that there would not be an adverse impact on individual species.
36. It has also been agreed between the parties that compensation for the loss of 0.53 ha of woodland (a Habitat of Principal Importance) could be provided in the form of off-site woodland creation. It is proposed that the compensation

²⁵ Mr Croucher's Proof, Paragraph 5.6 and Figure 2

would be provided off-site in the form of an Suitable Alternative Natural Greenspace (SANG) together with additional planting to meet the requirement for biodiversity net gain of approximately 10%. That is proposed to be secured through the planning obligations.

37. What remains at issue for the Council is focussed more narrowly on the concept of the 'mitigation hierarchy': namely the concept of 'avoidance' of significant harm, followed by 'mitigation', and as a last resort, 'compensation', a principle the Council argues is reflected in Policy CP7 of the CS. The Council's says that this principle has not been complied with since there would be a loss of 'Habitat of Principal Importance'²⁶ which it argues could have been avoided if the site allocation were to be developed differently. The Council argues that the removal of priority habitat is not necessary to deliver housing in accordance with SAL03.
38. Despite identification as a 'Priority Habitat', the appellant's ecologist states that the woodland is of low biodiversity value²⁷. Ancient woodland indicators are largely absent (an indicator for woodland botanical value) with non-native invasive species and 'garden escapes' being frequently present. The evidence is that without intervention, the prospects of developing notable biodiversity interest are limited, even in the medium term. The lack of any ongoing management is leading to a continued decline in woodland quality. The heavy shade will continue to exclude woodland flora and fauna. These findings were not countered by any substantive ecological evidence from the Council. The scheme would secure an ecologically led management regime, to improve the biodiversity of the woodland with an outline of the proposed prescriptions set out within the Landscape and Woodland Management Plan. This would be secured through the planning obligations.
39. Policy CP7 relating to biodiversity requires that development will only be permitted if it has been clearly demonstrated that the need for the proposal outweighs the need to safeguard the site's nature conservation importance, and that no alternative site resulting in less or no harm is available that will meet the need. In my judgement, that initial assessment and balance was effectively struck through the site allocation process, and it follows that some woodland loss is inevitable as a consequence. The final part of Policy CP7 (i) and (ii) can be satisfied by mitigation or appropriate compensation. As previously mentioned, the proposal would secure a Woodland Management Plan for its future maintenance and enhancement, as well as appropriate compensation measures to offset any loss of woodland. Taking all these matters into account, I am therefore satisfied that overall there would be no conflict with Policy CP7.

Highway and Access

40. Following the provision of further information, the Council was satisfied that the design of the main access is safe for vehicles, meaning highway safety concerns have been addressed. However, at the Inquiry, the Council made clear this was predicated on the main access being used solely for vehicles and the second access for pedestrians. The Council highlights the scheme was

²⁶ As defined by the Natural England and Rural Communities Act 2006

²⁷ Proof of Dr Lee, Page 15

presented on this basis in the Design and Access Statement²⁸ as well as in other submissions including the Transport Statement²⁹. The appellant, by contrast, says it was always intended that the main access would be a 'shared surface' additional to the pedestrian access, and this is shown on various drawings. Although the Council acknowledges the WSP access drawing shows 'shared space' on the Rev F³⁰ drawing, it argues the junction markings are inconsistent with it being laid out as such.

41. There is clearly a difference of opinion on this matter. Whatever the position, the Council has nonetheless confirmed it does not seek to raise a highway objection on this basis. I agree with the Council that if the main vehicular access is to be shared, it is very important that a Road Safety Audit (RSA) is undertaken to ensure it can provide safe access for pedestrians. The Council considers that this could be dealt with by a condition, and I concur with that view. In terms of the junction markings, it seems to me these are largely detailed technical matters that can be clarified in due course, following the RSA, and are not a reason for the appeal to fail.
42. The Council's other concern is that the separate pedestrian access would result in a poor public realm. It is argued that it is a long and narrow route, poorly overlooked, with limited passive surveillance. The Council mentions that Manual for Streets states that pedestrians and cyclists should usually be accommodated on streets, rather than being segregated from motor traffic³¹. Thames Valley Police (Crime Prevention) has also raised concerns about poor surveillance and potential issues arising in terms of lighting the access and the impact on the existing adjacent properties either side.
43. Whilst the access is reasonably long, I note that the width at around 3 metres exceeds the minimum of 2 metres that was requested by the Council's Highway Officer³². It also exceeds the requirement within 'Manual for Streets' which states that 'in lightly used streets (such as those for a purely residential function) the minimum unobstructed width for pedestrians should generally be 2m'³³. From my site visit, I noted the access is overlooked by adjacent residential properties on either side providing surveillance, and it is straight with no hidden spots. Appropriate lighting could be installed along the route, avoiding obtrusive glare to adjoining properties. This could be secured by a condition.
44. Overall, whilst a segregated pedestrian access is perhaps not the best solution, I note that they have been used elsewhere within the borough³⁴. On balance, I consider that an objection on the basis of a poor public realm cannot be sustained and is not a reason for the appeal to fail. This is especially so if it is intended that this pedestrian access is to be ancillary to the main access, which would be a 'shared surface', subject to a satisfactory RSA. Accordingly, I am satisfied the proposal would not conflict with Policy CP6 of the CS.

²⁸ Design & Access Statement, Page 14, CD 4.9

²⁹ Transport Statement (May 2021), Paragraph 3.3.6, CD 4.16

³⁰ WSP Drawing 70070553-SK-006 Rev F, Transport Technical Note 1, CD 7.1

³¹ Paragraph 4.2.4

³² Attached at Appendix A of Transport Technical Note 1, CD 7.1

³³ Paragraph 6.3.22

³⁴ Examples provided in Appellant's Highway Rebuttal Proof

Special Protection Area

45. The appeal site is within a 5km 'Zone of Influence' for the Thames Basin Heath SPA and comprises development that would involve the provision of 'one or more' dwellings. The relevant Regulations³⁵ require that if development is likely to have a significant effect on internationally important features of a European Site (either alone or in combination with other plans or projects), it is necessary to conduct an Appropriate Assessment, having regard to the site's Conservation Objectives, and having regard to advice from Natural England. Development can only proceed if it can be ascertained that the proposal would not adversely affect the integrity of the European Site.
46. The conservation objectives of the SPA are to ensure that the integrity of the site is maintained or restored, and to ensure that the site contributes to achieving the aims of the Wild Birds Directive. These objectives are achieved by maintaining and restoring the extent, habitats, and population of the qualifying features, namely populations of European Nightjar, Woodlark and Dartford warbler.
47. In this instance, mitigation is proposed through the planning obligations in the form of a Strategic Access Management and Monitoring Contribution (SAMM). This would be used for on-site SPA access measures and monitoring. A Suitable Alternative Natural Greenspace (SANG) contribution would also be secured by the obligation. This is the standard strategic approach agreed by Natural England and the Council, and is reflected in Paragraph 4.49 of the CS, the supporting text of Policy CP8 (Thames Basin Heaths SPA), and SAL05 of the MDD (Avoidance Measures for the Thames Basin Heaths SPA) which allocates a number of sites as SAMMs.
48. Natural England³⁶ has advised it raises no objections to the scheme subject to the above mitigation. In the light of Natural England's advice, I am satisfied the measures proposed above would address recreational disturbance to the Thames Basin Heaths SPA. In carrying out an Appropriate Assessment, I am satisfied that the evidence before me demonstrates that sufficient mitigation would be provided such that the development would not adversely affect the integrity of the SPA, including its qualifying features, nor would its conservation objectives be undermined. Therefore, there would be no conflict with Policy CP8 of the CS.

Other Matters

49. Objectors have raised concerns regarding the effect of the scheme on residential properties, especially those adjacent to and facing the proposed pedestrian and vehicular accesses, in terms of noise and disturbance. Other concerns relate to overlooking and loss of privacy at adjacent properties. The Council has not raised any objections on these grounds³⁷. After careful consideration, and acknowledging the local environment would change, I see no reason to take a different view from the Council. Concerns have also been raised regarding the overburdening of local services, including medical and

³⁵ The Habitats Regulations 2017

³⁶ Email from Marc Turner dated 8 August 2022, ID15

³⁷ Council's Statement of Case, CD 6.2, Paragraph 7.1

educational facilities. The Council has not objected on this basis, and I again see no reason to take a contrary view.

Planning Obligations

50. The appellant and Council have now executed a series of counterpart planning obligations, dated 23 November 2022. These are identical in all respects except that each is signed by different parties. I reluctantly agreed to accept counterpart obligations as the only practical option in this instance as it was proving difficult for all the necessary parties to sign the same document resulting in long delays. The Council has confirmed that it is satisfied that the obligations in their current form are acceptable³⁸. The Council has also confirmed that while the deed may be executed in counterparts, each shall be deemed to be an original (or duplicate original), but all of them taken together constitute one and the same agreement³⁹.
51. The obligations include provisions relating to ongoing maintenance and management of the estate roads within the development, the open space and the woodland area, as well as the establishment of a management company on terms agreed with the Council. They also include provisions for providing off-site biodiversity habitat, payment of an employment skills contribution or the delivery of an employment skills plan; a 'My Journey' contribution which is a borough-wide initiative seeking to encourage residents to make use of various transport options; and SAMM and SANG contributions in respect of the SPA. There are also Council's covenants to ensure the monies are used for the specified purpose.
52. I have no reason to believe that the formulae and charges used to calculate the various contributions are other than soundly based and the obligations are justified. I am satisfied that the provisions of the obligations are necessary to make the development acceptable in planning terms, that they directly relate to the development, and fairly and reasonably relate in scale and kind to the development, thereby meeting the relevant tests in the Framework⁴⁰ and the Community Infrastructure Levy Regulations⁴¹. I have taken the planning obligations into account in my deliberations.

Overall Conclusions and Planning Balance

53. The relevant legislation requires that the appeal be determined in accordance with the statutory development plan unless material considerations indicate otherwise. In this instance, the appeal proposal conflicts with certain policies of the development plan but complies with others. It would cause some limited harm to the landscape and would result in the loss of a significant number of trees, many of good quality, as well as an area of woodland. In these respects, there would be clear conflict with Policies CC03 and TB21 of the MDD.
54. On the other hand, and very importantly, the proposal would comply with Policy SAL03 of the MDD which specifically allocates the site for housing. This policy is an important mechanism for delivering the overall vision, aims and objectives of the CS. This policy enshrines the principle that certain sites are

³⁸ Note from Council's solicitor dated 24 November 2022, ID21

³⁹ ID 25

⁴⁰ Paragraph 57

⁴¹ Regulation 122

allocated for residential development and should only be used for that purpose. It is imperative that these sites are delivered to achieve the necessary provision of housing across the district.

55. As previously mentioned, in situations where Councils are unable to demonstrate a five year supply of housing, Paragraph 11 of the Framework states that the most important policies for determining the application are deemed out of date. However, even where policies are rendered out of date, they remain potentially relevant and they should not be disregarded. In this case, given their general congruence with the Framework, I find the cited policies continue to carry weight in the planning balance. The Framework also explains that an absence of a five year housing supply means permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
56. In this case, the additional housing would be a very weighty benefit for the area, by introducing much needed housing for local people: some 32 new units are proposed. It would boost the supply of housing in accordance with the Framework in an area where there is an ongoing housing shortfall. It would create additional choice and competition in the housing market. It would create investment in the locality and increase spending in local shops. It would create jobs and investment during the construction phase, albeit for a temporary period. It would deliver a housing allocation specifically identified within the development plan, thus fulfilling the Government's aim that the planning system should be genuinely plan-led⁴².
57. Whilst the development would result in the loss of attractive landscaped gardens and a significant number of trees, including an area of woodland, the site is physically well contained, and largely hidden from public view. There is the potential for biodiversity enhancement through careful management of the retained woodland area. Indeed, the evidence indicates that the proposal would result in improvements to biodiversity with a net gain of in excess of 10%, exceeding policy requirements.
58. Careful assessment of the detailed reserved matters can ensure that the dwellings are of a high quality, of an appropriate design and scale, and that they employ a varied and attractive palette of materials. This would ensure compliance with Policy CP1(1) of the CS which requires development to maintain and enhance the high quality of the environment, and CP3(a) of the CS requiring an appropriate scale of activity, mass, layout, built form, height, materials, and a high quality design. I am satisfied that the planning obligations accord with the Framework and the relevant regulations, and I have taken them into account in my deliberations. I have carefully considered the serious concerns voiced by local residents, but these do not alter my overall findings.
59. To sum up, the proposal would accord with the allocation within the development plan as envisaged by Policy SAL03. This policy specifically proposes residential development of 'around 40 dwellings' for the whole allocation. This scheme would deliver 32 dwellings on part of the allocation,

⁴² Paragraph 15 of the Framework

well within that capacity. Given that the proposal complies with the strategic approach of the development plan in terms of delivering dwellings on an identified site for housing, and notwithstanding some conflict with certain policies, I consider the proposal would comply with the development plan taken as a whole. In these circumstances, the Framework is clear that development should be approved without delay⁴³. Even if that is not the case, and the proposal is considered to conflict with the development plan, I find that in applying the so called 'tilted balance', the adverse impacts of the development would not significantly and demonstrably outweigh the benefits⁴⁴. On either basis, I conclude that the appeal should be allowed.

Conditions

60. An agreed schedule of suggested conditions was provided and discussed at the Inquiry. Commencement conditions are necessary to comply with the relevant legislation (1, 2, 3). A condition requiring compliance with the submitted plans is necessary for certainty and the avoidance of doubt (4). Conditions requiring full details of the specification and implementation of the accesses from Nine Mile Ride to the site are necessary in the interests of highway and pedestrian safety, including the provision of visibility splays, (5, 6, 7). A condition requiring a Stage 1 Road Safety Audit in relation to Plan Ref 70070533-SK-006 Rev F is necessary for the same reasons (8). A condition requiring a Construction Method Statement is necessary to minimise disturbance to local residents and ensure highway safety (9).
61. Although there are no records to indicate the land may be contaminated, I note the comments of the Environmental Health Officer (EHO) that the site is close to an old gravel pit. Therefore, as a precautionary measure, and in line with the EHO's advice, a contamination condition is imposed (10). A condition is necessary to ensure adequate drainage of the scheme and to prevent flooding (11). In line with Berkshire Archaeology's advice, a condition requiring an archaeological evaluation be undertaken is imposed, given the unknown archaeological potential of the site (12).
62. Conditions relating to tree protection and retention are necessary to ensure high quality landscaping and to protect the biodiversity of the site (13, 14). A condition requiring a scheme to maintain the ecological permeability of the site is necessary to enhance biodiversity (15). A Construction Environmental Management Plan is required to minimise disruption to biodiversity and the environment (16).
63. A number of the conditions relate to pre-commencement activities. In each case, the requirement of the condition is fundamental to make the scheme acceptable in planning terms. Subject to the imposition of these conditions, I conclude that the appeal should be allowed.

Matthew Nunn

INSPECTOR

⁴³ Paragraph 11(c) of the Framework

⁴⁴ Paragraph 11(d) of the Framework

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for the approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site Location Plan: AAL-21-113-P03
 - Parameter Plan: AAL-21-113-P02 Rev A
 - Site Access Plan: 70070533-SK-006 Rev F
- 5) No building shall be occupied until both accesses from Nine Mile Ride have been constructed in accordance with the details hereby approved.
- 6) Prior to the commencement of development, full details of the construction of the approved accesses from Nine Mile Ride, including levels, widths, construction materials, depths of construction, surface water drainage, boundary treatment, landscaping and lighting shall be submitted to and approved in writing by the local planning authority. The details shall be implemented as approved.
- 7) The approved visibility splays shown on Plan Ref 70070533-SK-006 Rev F shall be implemented prior to first occupation of the dwellings and retained and kept clear of any obstruction above a height of 0.6 metres.
- 8) No development shall take place until a Stage 1 Road Safety Audit on Plan 70070533-SK-006 Rev F in accordance with the Design Manual for Roads and Bridges has been carried out to the satisfaction of the local planning authority. The agreed details and any recommendations made for road safety reasons shall be financed and implemented by the developer prior to the occupation of the first dwelling on the site.
- 9) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the demolition and construction period. The statement shall include details of the following:
 - i. Construction of a suitable works access;
 - ii. The parking of vehicles of site operatives and visitors;
 - iii. The loading and unloading of plant and materials;
 - iv. The storage of plant and materials used in constructing the development;

- v. Measures to prevent mud from vehicles leaving the site during construction;
 - vi. Measures to control the emission of noise, dust and dirt during construction;
 - vii. A scheme for recycling / disposing of waste resulting from demolition and construction works;
 - viii. Hours of construction;
 - ix. Hours of delivery of plant and materials to the site;
 - x. The routes to be used to access the development site;
 - xi. Site construction office, site compound and ancillary facility buildings.
- 10) No development shall take place until an assessment of the risks posed by any contamination has been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner in accordance with British Standard BS 10175: Investigation of Potentially Contaminated Sites – Code of Practice and the Environment Agency’s Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on site, whether or not it originates on the site.
- No development shall commence where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme for such land has been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion, the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The remediation shall be carried out in accordance with the approved remediation scheme and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before any dwelling is first occupied.
- 11) No dwelling shall be occupied until surface drainage works which serve that dwelling have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority. An assessment of the potential for disposing of surface water by means of a sustainable drainage system shall be carried out and the results of the assessment submitted to the local planning authority. The drainage system should be based on sustainable drainage principles if the assessment shows this is practicable.
- 12) No development shall take place until the appellant or their agents or successors in title have secured the implementation of a programme of archaeological work (which may comprise more than one phase of work)

in accordance with a written scheme of investigation, which has been previously submitted to and approved by the local planning authority. The development shall take place in accordance with the approved scheme.

- 13) No development shall take place until an Arboricultural Method Statement has been submitted to and approved in writing by the local planning authority. This shall include details of existing trees and hedges to be retained in the submitted Arboricultural Impact Assessment in line with British Standard BS 5837:2012 and shall include details of:
 - i. Any proposed topping or lopping of any retained tree within or adjacent to the site;
 - ii. Any proposed alterations to ground levels within the Root Protection Area or Crown Spread (whichever is the greater) of any retained tree, within or adjacent to the site;
 - iii. The specification and position of fencing and of any other measures required for the protection of any retained tree before or during the course of development. The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved details before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any area of protective fencing nor shall any excavation be made or ground levels altered without the written consent of the local planning authority.
- 14) No trees, shrubs or hedges within the site which are shown as being retained on the submitted plan Ref DPA-9071.01 Rev D shall be felled, pruned or removed without the prior consent of the local planning authority. Any trees, shrubs or hedges removed without consent, or that die, are damaged or become seriously diseased within 5 years from the completion of the development hereby permitted shall be replaced with trees, shrubs or hedge plants of a similar size and species, unless the local planning authority agrees to any variation.
- 15) No development shall take place until a detailed scheme to maintain the ecological permeability of the site (especially with regards to reptiles, amphibians and hedgehogs) and to provide species enhancements through the provision of bat and bird boxes at a minimum ratio of one per dwelling shall be submitted to and approved in writing by the local planning authority. The enhancement measures specified within the scheme shall be implemented in accordance with a timetable agreed in writing with the local planning authority.
- 16) No development shall take place (including demolition, ground works, and vegetation clearance) until a Construction Environmental Management Plan (CEMP): Biodiversity has been submitted to and approved in writing by the local planning authority. The CEMP: Biodiversity shall include details of the following:
 - i. Risk assessment of potentially damaging construction activities;

- ii. Practical measures to avoid or reduce impacts during construction (these may be provided as a set of method statements);
- iii. The location and timing of sensitive works to avoid harm to biodiversity features;
- iv. The times during construction when specialist ecologists need to be present on site to oversee works;
- v. Responsible persons and lines of communication;
- vi. The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
- vii. Use of protective fences, exclusion barriers and warning signs.

The approved CEMP: Biodiversity shall be implemented in accordance with the approved details and adhered to throughout the construction period.

APPEARANCES

FOR THE COUNCIL:

Jacqueline Lean	of Council, instructed by Wokingham Borough Council
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She called

Brigitte Crafer	Landscape & trees
Mark Croucher	Planning

FOR THE APPELLANT:

Heather Sargent	of Counsel, instructed by Nexus Planning
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She called

Matthew Chard	Landscape & visual matters
Roger Tustain	Nexus Planning

The following also participated in the Inquiry Round Table Sessions:

Phil Courtney	Director, Kingacre Estates Ltd
David Dixon	Highways (appellant)
Colin Lee	Ecology (appellant)
Joseph Kent	Design (appellant)
Mykena Mortimer-Davies	Senior Planner (appellant)
David Partridge	Trees (appellant)
Robert Waite	Solicitor - Planning obligation (appellant)
Lyndsay Jennings	Solicitor – Planning obligation (Council)
Duncan Fisher	Ecology (Council)
Gordon Adam	Highways (Council)

INTERESTED PERSONS

Rebecca Margetts	Councillor
Charles Margetts	Councillor
Mark Porch	Local resident

Roger Marshallsay	Parish Councillor
David Fenton	Local resident
Ian Haywood	Local resident
James Melville	Local resident
Tom Davies	Local resident
Jonathan Edwards	Local resident
David Atkinson	Local resident
Elizabeth Ince	Local resident

Richborough Estates

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Opening Statement on behalf of the Appellant
2. Opening Statement on behalf of the Council
3. Statement of Councillor Rebecca Margetts
4. Statement of Councillor Charles Margetts
5. Statement of Mark Porch
6. Photographs submitted by Roger Black
7. Submission from Finchampstead Parish Council
8. Submission from David Fenton (via email sent to Mr Croucher)
9. Photographs from Elizabeth Ince
10. Walking route for site visit
11. Appeal decision APP/X0360/W/16/3155455 (Barkham Road, Wokingham)
12. Draft Planning Obligation (dated 2 August 2022)
13. Draft Conditions Schedule for discussion including consultation responses from: Berkshire Archaeology and Council's Environmental Health Officer
14. Updated response from Natural England (email dated 8 August 2022)
15. Site plans for appeal APP/X0360/W/19/3238048 (Land North of Nine Mile Ride)
16. Submission from Councillor Peter Harper
17. Updated planning obligation, received 11 August 2022
18. Updated planning conditions
19. Closing Statement on behalf of the Council
20. Closing Statement on behalf of the Appellant

DOCUMENTS SUBMITTED FOLLOWING THE CLOSE OF THE INQUIRY

21. Email from appellant regarding the planning obligation enclosing letter dated 2 November 2022 from Nexus Planning with legal advice from Gateley Legal
22. Email response from Council dated 7 November 2022
23. Note to Inspector regarding planning obligation from Lyndsay Jennings, Wokingham Borough Council, received 25 November 2022
24. Certified copies of the counterpart planning obligations, dated 23 November 2022
25. Email from Council dated 25 November 2022 confirming that the obligation, whilst executed in counterparts, is deemed to constitute one and the same agreement