



Appeal Decision

Hearing held on 20 June 2023

Site visit made on 21 June 2023

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 October 2023

Appeal Ref: APP/Y3940/W/23/3317362

Land West of Hillworth Road / John Rennie Close, Devizes, Wiltshire SN10 5HD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Philip Attwood, Square Bay (Property) Ltd against the decision of Wiltshire Council.
 - The application Ref PL/2022/00867, dated 1 February 2022, was refused by notice dated 4 November 2022.
 - The development proposed is an outline planning application for residential development of up to 59 dwellings together with access and associated works (mix of units to be determined by Reserved Matters) - All matters reserved except access.
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Decision

1. The appeal is allowed and planning permission is granted for an outline planning application for residential development of up to 59 dwellings together with access and associated works (mix of units to be determined by Reserved Matters) - All matters reserved except access at Land West of Hillworth Road / John Rennie Close, Devizes, SN10 5HD in accordance with the terms of the application, Ref PL/2022/00867, dated 1 February 2022, subject to the conditions set out in the attached Schedule.

Application for costs

2. An application for costs was made by Mr Philip Attwood, Square Bay (Property) Ltd against Wiltshire Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The application was submitted in outline form with all matters, other than access, for future consideration. Whilst an indicative masterplan has been submitted, I have considered this only as a potential way that the site could be developed.
4. A draft S106 planning obligation was available at the hearing. The Council indicated that subject to its completion, it no longer sought to defend reason for refusal 3. I agreed a period for the submission of the completed agreement following the close of the hearing. A signed and complete copy of the document has been submitted. I will return to this later in my decision.

Main Issues

5. The main issues raised are:

- Whether the proposed development accords with the spatial strategy of the development plan,
- The effect of the proposal on the character and appearance of the area, and
- Whether the proposal makes adequate provision for necessary infrastructure, including affordable housing, public open space, education, refuse facilities, and transport matters.

Reasons

Spatial Strategy

6. Core Policy 1 of the Wiltshire Core Strategy (the CS) (adopted January 2015) sets out a hierarchy of settlement types, which are Principal Settlements, Market Towns, Local Service Centres & Large and Small Villages. Market Towns, of which Devizes is one, are recognised as settlements that can support sustainable patterns of living through their current levels of facilities, services, and employment opportunities. It is further stated that at such locations, there is the potential for significant development that will increase jobs and homes to help sustain, and where necessary, enhance services and facilities.
7. Core Policy 2 establishes how development within Wiltshire will be delivered and establishes that within defined limits there is a presumption in favour of development. Outside of defined limits, development is not permitted, other than in circumstances endorsed by other policies of the Core Strategy. These are in respect of employment land, military establishments, development related to tourism, rural exception sites, specialist accommodation provision and developments which support rural life. Based on the information before me, the appeal scheme does not fall within any of these exceptions.
8. Core Policy 12 relates specifically to the Devizes Community Area and stipulates that development within this area should be in accordance with the strategy set out in Core Policy 1. It further refers to approximately 2500 new homes being provided across the area, of which about 2010 should be at Devizes.
9. Policy H1 of the Devizes Area Neighbourhood Plan (the NP) (adopted July 2015) defines the Settlement Framework Boundary, and this is intended to define the limit within which sustainable development should take place. Policy H3 of the NP establishes a number of sites that are allocated for new housing development. One of these allocations (Land off Hillworth Road) is allocated for 47 dwellings.
10. Part of the appeal site lies within the abovementioned allocated site, with the remainder lying outside the settlement boundary. That part of the proposed development within the allocation would accord with the policies of the development plan. However, part of the site also lies outside of the allocation and outside of the settlement boundary. As a result, there would be conflict with Core Policy 2, and consequential conflict with Core Policies 1 and 12 of the CS. The scheme would also conflict with policies H1 and H3 of the NP.

Character and appearance

11. The appeal site comprises an area of grassland, located to the western edge and abutting the settlement of Devizes. It is bordered to the east by John Rennie Close, a small cul-de-sac of dwellings, and to the north by a dwelling set within spacious grounds. To the south and west are further field enclosures, as well as areas of dense and mature vegetation to the south. Further to the west, the landscape is generally open and typically rural.
12. Topography within the site comprises a relatively flat area at its northern extremity. From here, ground levels fall away significantly to the south and west, falling to the valley beyond. As a result, there are expansive views of the surrounding landscape from within the site, and consequent views of the site also from the surrounding countryside. The eastern-most part of the site is located within the settlement boundary and forms a site allocated for residential development. A significant portion of this allocation is located on steeply sloping ground, with a drop of over 16 metres.
13. The application was supported by an illustrative layout plan showing dwellings arranged in a roughly semi-circular form, centring on the northern-most and highest part of the site, with the development extending down the hillside to the south. The matter of access is for determination at this stage, and details show a new vehicular access leading from the adjacent John Rennie Close, running west into the appeal site.
14. A substantial number of the dwellings proposed, as shown in the illustrative layout, would be located within the allocated site that lies within the settlement. Consequently, there would be no harmful effect arising from this part of the development, given the established acceptance that this part of the site can be developed for residential purposes. This is accepted within the Council's reason for refusal, which refers only to that part of the development that lies within the "open countryside" resulting in an adverse impact. I agree with this point.
15. The harm that is alleged therefore relates to that part of the development that lies outside of the settlement boundary. In this regard, the proposed scheme would extend development in a westward direction away from the existing built-up development within the settlement. It would cover an area that is currently undeveloped and part of, albeit on the edge of, the rural landscape that surrounds Devizes, as well as extending somewhat downslope. Consequently, there would be a loss of countryside resulting in a diminution of the green and verdant setting of the town, which would be particularly so due to the lack of any existing development that would directly border the proposed scheme. The scheme would therefore be an urban intrusion into the landscape, extending away from existing built form.
16. In terms of the visual effect of the proposal, I note that given the topography of the site, the appeal scheme would be visible from vantage points within the surrounding area, and it would be viewed at an elevated position, sitting above the adjacent valley. However, the harm in this respect would be tempered by the fact that other existing development present nearby is also visible from surrounding vantage points. This would be particularly so in the winter months when existing trees are not in leaf. Where visible, the development would be viewed in the general context of the settlement and the development within. Thus, while it would be a new feature that would extend into the countryside,

its effect would be restrained by not appearing completely isolated from existing development.

17. The site lies within an area of land to the west of Devizes Castle and there is a historical association with this feature. The Council clarified at the hearing that it is not alleging any harm to a heritage asset or its setting, but rather it is the general contribution that the site makes to the surrounding historic landscape over which it raises concern. Specifically, the area to the west of Devizes comprises part of historic parkland that was historically associated with the castle, referred to as the Great Park. However, there have been several interventions into the parkland previously. The Council contended that this was mostly for agricultural development, yet this fails to recognise a large sewage treatment works that lies within the area. Furthermore, the appeal site is located distant from the castle, beyond a large swathe of existing residential development. There is also a significant delineation between the parkland to the north and west due to the appeal site occupying a position at a higher ground level, whereas the parkland is predominantly appreciated as lying within the valley. With this in mind, I do not consider that the scheme would harmfully erode any historical association with the surrounding landscape.
18. From close-up views, the scheme would be most evident from the adjacent Hillworth Road. From views in close proximity to the site, it would be a new addition within its context, however from this position any development within the allocated site would also be plainly evident. Thus, I do not consider that there would be any unacceptable visual effect from Hillworth Road.
19. There would likely be a loss of some trees, hedging and vegetation to accommodate the development. However, a large amount of these features is shown to be retained within the submitted illustrative layout. As such, I am confident that at reserved matter stage, an acceptable scheme of landscaping can be achieved that would ensure that any loss of vegetation necessitated by the development can be satisfactorily mitigated for. In this respect I am satisfied that any loss of vegetation cover would not result in adverse effects.
20. It has been raised by the Council that the proposed illustrative layout of the site is unsatisfactory and is indicative of poor place making. However, little information was provided at the hearing to demonstrate this. Indeed, I note that the reasons for refusal do not relate to the layout of the development. Moreover, the Council's Committee Report outlines that the illustrative layout is a potential solution that responds to the constraints of the site. The final detailed layout would be determined under a future reserved matters application. However, given that there is variety within the layout of nearby development, I find no reason to infer that the layout of the final detailed scheme would not be appropriate for the location.
21. I therefore find that the scheme would be harmful to the character and appearance of the area, due to extending into the countryside, beyond the settlement boundary and the area allocated for new residential development. Thus, the scheme conflicts with Core Policies 51 and 58 of the CS. Together, and amongst other things, these policies seek to ensure that development protects, conserves and where possible enhances landscape character.

Infrastructure contributions

22. As mentioned above, following the hearing a signed and completed S106 planning obligation has been submitted. This obligation secures (based on the 59 properties envisaged at this stage):
- 30% of the total dwellings to be provided to be affordable housing, comprising 60% Affordable Rented Units and 40% Shared Ownership Units. Of the total affordable housing provided, 10% are to be Adapted Units. The mix of the units, in terms of their size, is to be submitted at the time of the future Reserved Matters application,
 - £10,000 to encourage pedestrian and cycle trips to destinations within Devizes,
 - £122,654 towards early years education places,
 - £24,213 towards the provision of and/or upgrading of playing pitches and ancillary services at Green Lane Sports Club and Devizes School,
 - £7,500 towards the cost of monitoring the travel plan required as part of the development,
 - £1,800 per unit as a contribution towards the delivery of walking and cycling schemes identified in the Devizes Local Cycling, Walking and Infrastructure Plan,
 - £91 per unit towards the cost of providing adequate waste and recycling bins (with increasing amounts where flats or larger groupings of dwellings are proposed),
 - The provision of green travel vouchers towards sustainable transport in the sum of £300 per unit (or £150 where an occupant is entitled to concessionary travel),
 - The provision of on-site open space and equipped play area, to include landscaping and maintenance arrangements.
23. Prior to the hearing, I asked that the parties submit a detailed justification for the contributions that were being sought and following this a Community Infrastructure Levy (CIL) Compliance Statement was submitted. This document set out the background to each of the contributions, together with the detailed rationale for each of them.
24. Having reviewed this information, I am satisfied that the contributions that are secured by the S106 planning obligation accord with the planning obligation tests as laid out in paragraph 57 of the National Planning Policy Framework (the Framework) and Regulation 122 of the CIL Regulations, in that they are necessary to make the development acceptable in planning terms, directly related to the development, as well as fairly and reasonably related in scale and kind to the development. The Council also confirmed at the hearing that the completion of the planning obligation would result in it no longer pursuing the reason for refusal in respect of this matter, I find no reason to disagree with this stance.
25. Accordingly, the scheme makes adequate provision for necessary infrastructure, including affordable housing, public open space, education, refuse facilities, and transport matters. Thus, there would be no conflict with Core Policies 3, 43, 45,

51 and 52 of the CS, nor with policy HC34 of the saved Kennet District Local Plan (adopted April 2004), in respect of securing the necessary contributions towards affordable housing and infrastructure. There would also be no conflict with the relevant paragraphs of the Framework.

Other Matters

Highway safety

26. From the representations received, together with comments that were made at the hearing, it is clear that interested parties have substantial concerns in respect of the effect that the development could have on highway safety within the vicinity of the appeal site. The Council raise no concern in this regard, indeed the Highways authority do not object to the development. Nonetheless, I am keenly aware of the degree of concern that interested parties expressed.
27. Much of the concern is in respect of any increase in traffic utilising Hillworth Road. While this road is generally wide enough to accommodate two lanes of traffic, I observed that at several locations' vehicles park along the street, reducing its width to a single lane of traffic. However, I also observed that there were several opportunities for vehicles to stop to let approaching traffic pass safely. Also, visibility along the highway was good which allowed for approaching traffic to be visible from considerable distances. I am also conscious that a significant number of dwellings are accessed along Hillworth Road, and no information has been put before me that demonstrates that the road is unsafe.
28. I acknowledge that near the junction with Long Street, Hillworth Road narrows for a short section and there is concern over congestion at this point. Despite these concerns, in my view, the development would not lead to any unacceptable congestion, particularly considering the level of traffic that already uses this section of road. Also, in respect of possible congestion, the increase in traffic resulting from the development may result in an increased waiting time when exiting Hillworth Road at this junction. However, this would not be to any unacceptable degree and would not result in any deleterious effect on highway safety.
29. In coming to my view above, that the development would not result in any unacceptable increase in traffic, with any unacceptable effects, I am also mindful that part of the appeal site is allocated for development within the NP for up to 47 dwellings. This clearly indicates an acceptance, through the adoption of the NP, that the surrounding road network has the capacity to cater for the increase in traffic movements that would result from an additional 47 dwellings using the highway. The appeal scheme proposes an additional 12 over this allocated figure, which when taken in conjunction with the number of existing traffic movements and those that would result from the allocated 47 dwellings, would not in my view result in unacceptable effects and harm highway safety. Interested parties contended that the traffic survey was inadequate or flawed, however no substantive contrary evidence has been put before me to convince me of this.
30. The construction of the development would likely necessitate the use of Hillworth Road by construction traffic which, particularly at busy times of day, has the potential to increase traffic congestion to an unacceptable level. However, such situations can be satisfactorily mitigated by a suitable

Construction Management Plan (CMP), which can be secured by condition and agreed with the Council, to ensure that unacceptable impacts are avoided.

31. It was mentioned by interested parties that there was concern over the effect that construction traffic could have on a bridge that forms part of Hillworth Road. No substantive evidence was produced to convince me that this was the case. In respect of damage to the road surface, this matter can be addressed as suggested by the Council through the undertaking of a pre-condition survey which can be secured in the CMP. Any possibility of damage to private properties, which I consider to be unlikely, would be a private matter to be addressed between the relevant parties.
32. Turning to pedestrian safety, I observed that there were numerous pavements within the area, which ran the length of, and on both sides of, Hillworth Road. The surrounding streets also benefitted from pavements. As such, there is a good provision of pedestrian facilities to ensure that pedestrians should not need to travel within the road. I find nothing that convinces me that the development would reduce pedestrian safety within the vicinity of the site.

Other matters raised

33. In terms of access to services, it has been contended that the location is not sustainable and that there would be more than a 20-minute walk to access facilities. However, the Highways authority has commented that the location is within walking distances of bus services and the town centre, as well as within cycling distance of the vast majority of Devizes. It was put to me that the end of Hillworth Road closest to the appeal site has a gradient that would make it unattractive to cycle users. Having walked along this section however, the gradient is not so severe to appreciably discourage cyclists from using it.
34. An Ecological Impact Assessment was submitted with the planning application, and this has been subject to consultation with the Council's Ecologist. While this identifies that the site is used by some protected species, it is also concluded that sufficient mitigation, secured by appropriate planning conditions, can be put in place to ensure that there is no harmful effect that would result from the development. Despite concerns expressed by local residents, no substantive evidence has been put before me to show that this approach is not appropriate. As such, subject to appropriate mitigation, there is nothing that would lead me to conclude that there would be any unacceptable effect on matters of biodiversity importance.
35. It was put to me that there is no local requirement for development within Devizes. Nonetheless, the Council is currently unable to demonstrate a five-years supply of deliverable housing sites and thus there is a shortage of housing sites within the district.
36. It has been contended that there is a lack of need for housing in Devizes and that this negates the presumption in favour of sustainable development, or "tilted balance," as envisaged by paragraph 11 of the Framework. I find no basis however for finding that this is the case and have undertaken the balance of factors (the "Planning Balance") as set out below.
37. There is a sewage treatment works located to the northwest of the appeal site. In response to initial concerns in this respect, the indicative layout was amended to reduce the number of properties proposed, as well as to remove

any proposed dwellings from within a 250-metre buffer of the treatment works. Further investigation was also undertaken, which included an onsite 'odour sniff test.' Following these amendments, Wessex Water (the operator of the treatment works) has withdrawn its objection to the development, as it considers that there is adequate separation between the treatment works and the dwellings proposed within the scheme. The Council's Public Protection section is also satisfied that there would be no unacceptable effect on the occupiers of the proposed dwellings through proximity to the treatment works. With this in mind, together with having visited the site and that the surrounding area is an established residential area, I find that the nearness to the sewage treatment works is not likely to result in unacceptable living conditions for the occupiers of the proposed dwellings.

38. It has been contended that the site lies within the Green Belt, however this is not the case. There was also concern that the development would consist of executive housing, and not affordable units. However, the submitted planning obligation secures the appropriate provision of affordable housing within the scheme. Similarly, there is adequate mitigation for the effect of the proposal on local infrastructure, i.e., education, open space. There is no evidence before me to demonstrate that further mitigation is needed in respect of health facilities.
39. The appeal site is located near to existing residential development, with several roads also within the area. In this light, the scheme would not result in unacceptable levels of noise, such that there would be a harmful effect on the living conditions of nearby occupiers. Similarly, there is no substantive evidence of significant additional pollution resulting from the development. Moreover, sustainable travel options are to be encouraged through the contribution of green travel vouchers contained within the planning obligation. Given the location at the edge of the settlement, there is potential for there to be an impact through an increase in light pollution. However, this matter can be satisfactorily addressed by planning condition. It has been contended that the development is out of scale for the location, however given the extent of residential development nearby I do not agree.
40. It was put to me at the hearing that the NP was flawed and that the boundaries within, particularly in respect of the allocation which comprises part of the appeal site, make no sense. It was also contended that it was not possible to get 47 dwellings on the area of land that is allocated. Nonetheless, it is not for me when considering this appeal to revisit the extent of the allocated site. There was also concern from interested parties about the turnout at the time of the referendum of the NP, as well as advice given during its production. Notwithstanding, as this is now a made neighbourhood plan it is part of the development plan. I have considered the scheme on this basis.
41. I am aware that other developments within the Devizes area have been permitted. However, this does not dissuade me that the development on this site would be acceptable.
42. Several additional matters have also been raised in respect of the development and these include concerns over inadequate sewerage capacity to cater for the development, that the site sits on a principal aquifer and that the site is subject to contamination. The Council has not raised any objection to the proposal on these grounds and there is no substantive evidence before me that would lead

me to conclude that there would be any deleterious effect in respect of these issues. As such, they have little bearing on my decision.

43. Some concern was raised in respect of the surface water drainage arrangements associated with the development, including a possible increased risk of groundwater flooding, as well as flooding from watercourses downstream from the development due to increased surface water drainage flows. I note that the application was accompanied by a Flood Risk Assessment (FRA), which set out that should infiltration not be a viable method of drainage, discharge to a watercourse would be required. The FRA sets out that should this occur, that discharge rates would be attenuated to provide a 20% betterment over greenfield rates. The detailed design of this system is proposed to be controlled by planning condition, to ensure that satisfactory details are submitted, and that the drainage scheme is constructed in accordance with these. Subject to such a condition, I find that the proposed development would not have any unacceptable effect on the drainage regime within the vicinity of the site or further downstream.
44. There is reference from interested parties that the site is located within a nitrate vulnerable zone. However, no evidence has been submitted to demonstrate this and the Council do not raise this as an issue. This therefore has little bearing on my decision.
45. Given the separation distance between the appeal site and existing dwellings within the vicinity, there would be no unacceptable effect on the privacy or outlook of existing residents. There is also nothing before me to convince me that the development would harmfully impact on the security of existing nearby occupiers.
46. There was also the suggestion that to allow the appeal would prejudice the emerging NP and emerging Local Plan. No timescale was provided for when these would be produced, and I was informed that the emerging Local Plan is not yet at deposit stage. As such, I find that there would not be any prejudice to these future documents, and I have considered the appeal on the basis of the development plan in force at this time.
47. Within its statement of case, the Council refers to a nearby application where it was found by the Council that landscape effects of that development were not acceptable, this included the historic park land area, as well as concern over tranquillity and lighting. However, I do not consider that the two sites are comparable. The nearby application was located some distance to the west of the appeal site, within a much more open, rural landscape, away from any other built development. The topography of the land was also distinctly different at that site. As such, the contexts for considering each scheme are markedly different and no useful comparisons can be drawn between the two schemes.
48. Mention was made of a recent increase in anti-social behaviour in the area. There is nothing that persuades me that the proposed development would have an effect on this. There is also no substantive evidence that there would be any unacceptable effects in respect of the loss of agricultural land or foul water drainage.

Planning Balance

49. It is common ground between the main parties that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites. While the appellant considers there to be a 4.17-year supply, the Council contend that there is a 4.6-years supply. Given that both figures are below the required five-year supply, it is not necessary for me to explore this further. The lack of a five-year supply of deliverable housing sites results in the presumption in favour of sustainable development, as envisaged by paragraph 11 of the Framework being engaged.
50. I have identified that the scheme would conflict, in part, with the locational strategy of the development plan and result in harm to the character and appearance of the area. However, as I have outlined above, this harm is tempered in that it would only exist in respect of that part of the site not within the settlement boundary and allocation, as well as that the site would not be viewed in isolation but in the context of the nearby settlement. I am also conscious that it is agreed between the parties that the development on the proposed site can be delivered in a less intrusive way than would be the case if the development was restrained to the allocated site. With these factors in mind, I accord moderate weight to the harm that would result from the development.
51. To be balanced against this harm are the benefits that would accrue. The benefits that are agreed between the appellant and the Council are set out in the Statement of Common Ground. These include the creation of residential development at a sustainable location, the provision of 59 new dwellings, using a partly allocated site, the delivery of a policy compliant provision of affordable housing units, the creation of publicly accessible open space and a managed drainage system which would result in a betterment over the existing situation. There would also be economic benefits through the construction of the development and support for local business through an increase in the population of the area.
52. Overall, I consider that the package of benefits that would result from the development should be given significant weight in the planning balance, particularly as the appeal scheme would deliver new housing, including affordable units. As I have identified above, I accord moderate weight to the harms that would result. Accordingly, in my judgement the negative factors resulting from the proposals, which include conflict with locational policy, harm to the character and appearance of the area, do not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Thus, the planning balance indicates that a decision should be taken other than in accordance with the development plan and that the appeal should be allowed.

Conditions

53. When considering the conditions suggested by the parties, I have borne in mind the tests laid out in paragraph 56 of the Framework.
54. I have imposed the standard conditions for an outline planning permission. In the interests of certainty, I have also imposed a plans condition, albeit that I have removed some stated extraneous plans that were suggested. To ensure that the development is carried out having regard to matters of ecological

importance, I have also included a condition requiring compliance with the submitted ecological information, as well as requiring an Environmental Management Plan and details of ecological management.

55. To inform the future reserved matters applications, a condition is necessary to ensure that development takes place in accord with the broad principles set out at this stage. In the interests of flood prevention, a condition is necessary to require the submission of a detailed drainage scheme and SUDS features.
56. So that the scheme does not result in any unacceptable effects on the highway network or the living conditions of nearby occupiers, I have included a condition in respect of a Construction Management Statement. To encourage travel other than by the private car, a travel plan condition is required. To ensure that there would be no undue impact on character and appearance, a condition in respect of external lighting is necessary.
57. Conditions were suggested in respect of external materials and details of landscaping; however, these are to be approved under future reserved matters applications and as such conditions are not necessary in these regards. Additionally, a condition is suggested limiting the hours of construction, however this matter is covered by the Construction Management Statement.

Conclusion

58. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be allowed.

Martin Allen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Thea Osmund-Smith	Barrister
Alan Pearce	Planning Consultant, Pearce Planning
Nicola Sully	Planning Consultant, Pearce Planning
Gail Stoten	Heritage Consultant, Pegasus Group
Andrew Cook	Landscape Consultant, Pegasus Group
Tom Vaughan-Jones	Square Bay (Property) Ltd

FOR THE COUNCIL:

Andrew Burgess	Planning Consultant, Andrew Burgess Planning
Charles Potterton	Landscape Architect
Johnathan James	Wiltshire Council

INTERESTED PARTIES, INCLUDED:

Cllr Richard Almerod	Devizes Town Council
Cllr Ian Wallis	Councillor – Devizes North & Chair of Devizes Area Board
David Howes	Local Resident
Derick Bevan	Local Resident
Jason Hughes	Press, Wiltshire Gazette

Further interested parties also made comments during the discussions at the hearing.

DOCUMENTS SUBMITTED AT THE HEARING

1. Copy of maps and photographs produced by Cllr Almerod

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
2. 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.
3. Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
4. The development hereby permitted shall be carried out in accordance with the following approved plans/documents:
 - Site Location Plan, Dwg No. 21453/1000
 - Site Plan, Dwg No. 21453/1030C
 - 'Highway Access Plan,' Dwg No. 01-PHL-101 Rev C
5. The development shall be carried out in strict accordance with the following documents:
 - Ecological Impact Assessment (Tyler Grange, 31st January 2022 Report Reference: 13131_R04_GE_CW)
 - Ecological Parameters Plan (Tyler Grange 21st June Drawing reference: 13131/P013)
6. Applications for the approval of the Reserved Matters shall be in accordance with the principles and parameters described and illustrated in the Design and Access Statement (Revision B, June 2022) and the principles indicated within the Illustrative Masterplan (Drawing number 21453/33211/D). A Design Compliance Statement shall be submitted with each Reserved Matters application which demonstrates this by way of comparison.
7. No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the access/driveways), incorporating sustainable drainage details, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.
8. Notwithstanding the information shown on the supporting plans, no dwelling shall be commenced until a section drawing of the SUDs structures with details of appearance of any above ground structures (i.e., inlets, barriers, retaining structures) or amenity features (i.e., seating, natural play, bridges, recreational platforms) have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

9. No development shall commence on site (including any works of demolition, ground works/excavation, site clearance and boundary treatment works), until a Construction Management Statement, together with a site plan, which shall include details of the following:
- the number of movements associated with, and the parking of, vehicles of site operatives and visitors,
 - the routing of, as well as number, frequency, and size of delivery vehicles/ construction vehicles,
 - loading and unloading of plant and materials,
 - storage of plant and materials used in constructing the development,
 - wheel washing facilities,
 - measures to control the emission of dust and dirt during construction,
 - a scheme for recycling/disposing of waste resulting from demolition and construction works,
 - hours of construction, including deliveries,
 - pre-condition photo survey – any damage related to the development to put right within 6 months of the development completion,
 - a Traffic Management Plan (including signage drawing(s))
 - any temporary/permanent Traffic Regulation Orders required,
 - a phasing plan for the development,
- has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement.
11. No development shall commence until a Full Travel Plan has been submitted to and approved in writing by the Local Planning Authority. No part of the development shall be occupied prior to the implementation of the Travel Plan, (or implementation of those parts capable of being implemented prior to occupation). Those parts identified for implementation after occupation shall be implemented in accordance with the timetable contained therein and shall continue to be implemented as long as any part of the development is occupied.
12. Prior to the commencement of works, including demolition, ground works/excavation, site clearance, vegetation clearance and boundary treatment works, a Construction Environmental Management Plan (CEMP) shall be submitted to the local planning authority for approval in writing. The Plan shall provide details of the avoidance, mitigation, and protective measures to be implemented before and during the construction phase, including but not necessarily limited to, the following:
- Identification of ecological protection areas/buffer zones and tree root protection areas and details of physical means of protection, e.g., exclusion fencing.
 - Working method statements for protected/priority species, such as nesting birds and reptiles.
 - Mitigation strategies already agreed with the local planning authority prior to determination, such as for great crested newts, dormice, or bats; this should comprise the preconstruction/construction related elements of strategies only.

- Work schedules for activities with specific timing requirements in order to avoid/reduce potential harm to ecological receptors; including details of when a licensed ecologist and/or ecological clerk of works (ECoW) shall be present on site.
- Key personnel, responsibilities and contact details (including Site Manager and ecologist/ECoW).
- Timeframe for provision of compliance report to the local planning authority; to be completed by the ecologist/ECoW and to include photographic evidence.

Development shall be carried out in strict accordance with the approved CEMP.

13. Prior to the commencement of development, a Landscape and Ecology Management Plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority. The LEMP will include long term objectives and targets, management responsibilities and maintenance schedules for each ecological feature within the development site, together with a mechanism for monitoring success of the management prescriptions, incorporating review and necessary adaptive management in order to attain targets.

The LEMP shall also include details of the legal and funding mechanism(s) by which long-term implementation of the plan will be secured. The LEMP shall be implemented in full and for the lifetime of the development in accordance with the approved details.

14. No external lighting shall be installed on-site until plans showing the type of light appliance, the height and position of fitting, illumination levels and light spillage in accordance with the appropriate Environmental Zone standards set out by the Institution of Lighting Professionals in their publication "The Reduction of Obtrusive Light" Guidance Note 01/21 (reference GN01/21), have been submitted to and approved in writing by the Local Planning Authority. The approved lighting shall be installed and shall be maintained in accordance with the approved details and no additional external lighting shall be installed.

(End of Schedule)



Costs Decision

Hearing held on 20 June 2023

Site visit made on 21 June 2023

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 October 2023

Costs application in relation to Appeal Ref: APP/Y3940/W/23/3317362 Land West of Hillworth Road / John Rennie Close, Devizes, Wiltshire SN10 5HD

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Philip Attwood, Square Bay (Property) Ltd for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal of planning permission for an outline planning application for residential development of up to 59 dwellings together with access and associated works (mix of units to be determined by Reserved Matters) - All matters reserved except access.
-

Decision

1. The application for an award of costs is refused.

Preliminary Matter

2. The application for costs and the response by the Council, as well as the final comments by the applicant, were all submitted in writing following close of the hearing.

Reasons

3. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. The applicant, seeking a full award of costs, principally relies on the Council having prevented or delayed development that should clearly have been permitted. This follows a positive recommendation to approve the planning application by officers to the Council's Planning Committee, but which the committee then decided to refuse. It is contended that the reasons for refusal do not withstand scrutiny. The applicant also asserts that the Council's evidence conflates heritage matters with landscape and visual concerns.
5. I note that the committee departed from the officer's recommendation, and it is clear from the evidence submitted that there was concern in respect of the effect of the proposal on the character and appearance of the area, due principally to the extension of development into the countryside, outside of the settlement boundary and beyond the part of the site that was allocated for residential development. In my view, that is a view that the Members on the committee were entitled to reach. They are not bound to accept the

recommendation of the officer, provided they can show good reason for departing from it. The evidence submitted and discussed at the hearing, adequately establishes the basis on which the scheme is resisted.

6. There is also mention of the Landscape evidence seeking to introduce a heritage reason for refusal, in respect of the effect on the historic parkland. The reason for refusal is clear that harm to a historic landscape is alleged. The statement of common ground sets out that no harm is claimed in respect of any designated heritage asset. I further clarified with the Council's Landscape consultant at the hearing that the harm relied on was in respect of the relationship of the site to an area of historic parkland and the contribution that it makes to the wider landscape. It was categorically stated that the Council was not relying on harm to any designated or non-designated heritage asset, and this is once again confirmed within the Council's response to the application for costs. I therefore consider that the Council have not been unreasonable in this respect.
7. The applicant contends that the evidence put before me exhibits "mission creep," with it being the case of the Council's landscape consultant, not the Council's. However, as I set out above, the reason for refusal did refer to the historic landscape. The consultant was entitled to refer to, rely on and expand upon this matter, when stating their case. The consultant expressed their professional view, based on the reason for refusal as set out by the Council, expanding on matters that they considered to be relevant. The discussion at the hearing, together with the agreed Statement of Common ground, establishes the scope of the matters with which the Council, through its consultant, take issue. Following departing from an officer's recommendation to a committee, there is bound to be some amplification of the stated reasons, and this has what occurred in this case. This does not in my view rise to the level of unreasonable behaviour.

Conclusion

8. The Council identified harm resulting from the development. I have agreed with this to some extent. I do not therefore consider that the Council, or its consultant have been irrational in their approach.
9. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Martin Allen

INSPECTOR