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## Appeal Decision

Site visit made on 15 January 2025

by **J Hobbs MRTPI MCD BSc (hons)**

an Inspector appointed by the Secretary of State

Decision date: 05 March 2025

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**Appeal Ref: APP/M2840/W/24/3344219**

**Land at Former Rushden Hospital Site, Catlin Way, Rushden**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
  - The appeal is made by Mr Andrew McLester of Northamptonshire Healthcare NHS Foundation Trust against the decision of North Northamptonshire Council.
  - The application Ref is NE/22/00716/OUT.
  - The development proposed was originally described as "Outline application for residential development for up to 27no. dwellings, with all matters reserved except access"
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### Decision

1. The appeal is dismissed.

### Applications for costs

2. An application for costs has been made by Northamptonshire Healthcare NHS Foundation Trust against North Northamptonshire Council. This is the subject of a separate decision.

### Preliminary Matters

3. The revised National Planning Policy Framework (the Framework) was published on 12 December 2024. I sought submissions from the parties on this matter. I have considered their additional submissions alongside the original representations when determining the appeal. On the same date the Government published the results of the 2023 Housing Delivery Test (HDT). Over the preceding three years 113% of the Council's housing requirement was delivered, this has increased from 101% which was the measurement within the 2022 HDT. Consequently, it was not necessary to consult the parties on the result of the HDT as the position with regard to the overperformance has not changed, and the result is not materially different.
4. The planning application subject to this appeal was an outline planning application with all matters reserved for subsequent approval, other than access. Amended plans were submitted at the application stage which reduced the number of dwellings to 22 and introduced an area of public open space. Moreover, the appellant has indicated within their Appeal Statement that the internal highway layout would be considered at the reserved matters stage. As such, my determination of the appeal is based upon the revised scheme and the internal road layout being indicative.

## Background and Main Issue

5. The appeal is against the non-determination of a planning application. Following a review of the Proposed Access Arrangements drawing<sup>1</sup>, the Local Highway Authority (LHA) has confirmed it has no objection to the proposal. The Council has confirmed in writing that it is supportive of the proposal subject to agreeing a planning obligation under Section 106 of the Town and Country Planning Act 1990. The Council assert that the submitted Unilateral Undertaking (UU) is not sufficient for multiple reasons.
6. As such, the main issue of the appeal is whether the planning obligation is necessary and effective in securing an adequate provision of affordable housing, appropriate contributions toward measures to reduce car use and library services, and a biodiversity net gain (BNG).

## Reasons

### *Affordable housing*

7. Policy 30 of the North Northamptonshire Joint Core Strategy 2011-2031, July 2016 (JCS) indicates that the Council will seek provision of 30% affordable housing in Rushden in proposals of 11 or more net dwellings. JCS Policy 30 goes on to explain that the precise proportion and tenure mix of affordable housing will take into account the need identified in an up-to-date local assessment and the viability of the development.
8. Within the submitted UU the Owner of the appeal site covenants with the Council to not commence development until an Affordable Housing Scheme has been approved pursuant to a Reserved Matters approval. The UU defines the Affordable Housing Scheme as a written scheme which sets out the number, size, tenure and location of the affordable housing units. The UU also explains that the Scheme will comply with a tenure mix agreed with the Council as part of the reserved matters approval and an overall provision of 30% affordable housing.
9. The submitted UU does not secure the tenure mix of the affordable housing as part of this planning application. Accordingly, it has not been demonstrated that the proposal would meet an identified need. Moreover, the UU does not include a clause which would allow the provision and/or tenure mix of affordable housing to be altered if the proposal was deemed to be unviable. Therefore, I cannot be certain that the UU would comply with JCS Policy 30 or accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations (Reg 122).
10. There is also no clause within the UU that indicates when the affordable housing would be delivered, with reference to the delivery of market housing, or secures the affordable housing in perpetuity. Therefore, I have no assurance that the proposed affordable housing would be delivered and retained.
11. I acknowledge that the appeal relates to an outline application and that further details with regard to affordable housing provision could be secured as part of a reserved matters approval. Notwithstanding this, if allowed the appeal would result in a grant of planning permission. It is therefore necessary to seek assurance that the proposal would comply with the development plan. The submitted UU does not provide sufficient assurance that the proposal would comply with JCS Policy 30.

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<sup>1</sup> Drawing No: CTP-20-586-SK01 Revision A

Consequently, it has not been demonstrated that the planning obligation would secure an adequate provision of affordable housing.

*Bus passes*

12. JCS Policy 10 states that development should seek to minimise increases in the demand for infrastructure and services including through measures to encourage a reduction in car use. The LHA indicated that in developments of less than 50 dwellings it requires the provision of a 4-week or one month bus ticket for the local area, one per dwelling on first occupation.
13. Within the submitted UU the Owner of the appeal site covenants with the Council to pay the bus pass contribution prior to the first occupation of a dwelling. The contribution is indexed linked, and the Council has not disputed the amount of the contribution. I therefore conclude that the bus pass contribution would be sufficient to purchase a 4-week or one month bus ticket for the local area, one per dwelling on first occupation.
14. Notwithstanding this, the contribution would be paid to the Council and would go toward the issuing of tickets. The Council has indicated that it does not have the resource for such an endeavour. Therefore, it has not been demonstrated that future occupiers would receive a bus ticket and that measures to reduce car use would materialise. As such, the UU does not include sufficient provisions to ensure that the proposal would comply with JCS Policy 10 or accord with Reg 122.
15. The appellant has indicated that the wording used in the submitted UU largely mirrors that used in a legal agreement for the Shirley Road Appeal<sup>2</sup>, which was found to be acceptable by an Inspector. The Council was a party to that legal agreement and covenanted to the owner of that site that it shall only use the financial contributions for the purposes for which they are paid. Therefore, that case is materially different to the one before me.

*Biodiversity net gain*

16. JCS Policy 4 states that a net gain in biodiversity will be sought. Within the submitted UU the Owner of the appeal site covenants with the Council to submit a "Biodiversity Offsetting Scheme" prior to first occupation of a dwelling and to obtain the Council's approval and comply with the approved scheme prior to occupation of the final dwelling.
17. I consider that complying with a "Biodiversity Offsetting Scheme" as defined within the submitted UU, including the reference to DEFRA Mechanism 4.0, would ensure that a BNG would be secured. However, to ensure that a BNG would be realised the timing of approval and compliance with the approved scheme would need to be brought forward. The appellant has indicated that they would amend the submitted UU to agree an earlier trigger point if I thought it was necessary to make the development acceptable. If this was the only matter in dispute, I would have written to the appellant inviting them to submit an amended UU.
18. Notwithstanding this, the UU as submitted does not provide sufficient assurance that the proposed "Biodiversity Offsetting Scheme" would be complied with as all of the permitted dwellings may not be constructed and occupied. As such, the UU does not include sufficient provisions to ensure that the proposal would comply

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<sup>2</sup> Appeal Ref. APP/M2840/W/22/3313850, Decision date: 8 June 2023

with JCS Policy 4 or accord with Reg 122. I conclude that it has not been demonstrated that the planning obligation would secure a biodiversity net gain.

### *Library services*

19. The Council has sought a contribution toward the costs of providing new, extended and/or improved library facilities to meet the additional need for library space generated by the appeal proposal. The Council has a tariff-based system based on the size of the proposed dwellings and the expected number of future occupiers.
20. Within the submitted UU, the Owner of the appeal site covenants with the Council to pay the Libraries Contribution prior to the first occupation of a dwelling. The amount of the contribution would be calculated in accordance with the Council's tariff-based system. Within the UU the definition of the Libraries Contribution states "... paid by the Owner to the Council towards the improvement of local library services ..." The appeal site is within Rushden, the phrase "local library services" could be reasonably interpreted as library services within Rushden. I do not consider it necessary to explicitly refer to Rushden within the definition to ensure that the obligation is directly related to the development.
21. The submitted obligation would be compliant with Reg 122 in this regard. As such, the obligation would secure an appropriate contribution toward library services.

### **Other Matters**

22. There would be benefits associated with the proposal including the provision of up to 22 dwellings of differing styles. Several services and facilities are accessible from the appeal site by sustainable transport modes. The development of the site would also provide financial benefits to Northamptonshire Healthcare NHS Foundation Trust which would enhance their ability to provide care. Nevertheless, these considerations do not indicate that a decision should be made contrary to the development plan.
23. The appeal site is in proximity to Upper Nene Valley Gravel Pits Special Protection Area (SPA). I have a duty under the Conservation of Habitats and Species Regulations 2017 to assess any impact the proposed development would have on the SPA. Had I found the proposal to be otherwise acceptable I would need to consider further the effect of the proposal on the integrity of the SPA and the potential for mitigation, as part of an Appropriate Assessment. However, given the harm I have identified, and as I am dismissing the appeal for other reasons, it is not necessary for me to consider this matter any further. Similarly, interested parties have objected to the proposal on several grounds. However, as I am dismissing the appeal, it is not necessary for me to address these matters.

### **Conclusion**

24. The proposal conflicts with the development plan when considered as a whole and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, the appeal should be dismissed, and planning permission is refused.

*J Hobbs*

INSPECTOR