



Appeal Decision

Site visit made on 14 July 2025

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2025

Appeal Ref: APP/C1760/W/24/3352671

Land at Spencer's Farm, Stockbridge Road, King's Somborne

- 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 A Morris of Moonriver Ltd against the decision of Test Valley Borough Council.
 - The application Ref is 23/03267/OUTS.
 - The development proposed is the erection of 14 dwellings and garages, access road, drainage and landscaping. (10 to be custom build houses and 4 to be first homes).
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for an award of costs was made by the appellant Moonriver Ltd against Test Valley Borough Council. In response an application for an award of costs was made by Test Valley Borough Council against Moonriver Ltd. These applications are the subject of a separate decision.

Preliminary Matters

3. The application is in outline with appearance and scale reserved for future consideration. I have determined the appeal on this basis.
4. Following determination of the planning application the appellant has produced additional tree plans, an updated ecological report, drainage report and nitrate budget calculation. I have paid regard to these documents in consideration of the appeal, and I note that the Council has commented on their contents. Having regard to the Holborn Studios judgement¹ which follows on from Wheatcroft² I am satisfied that no interested parties have been prejudiced by my approach.
5. In respect of the drainage information the Council advise that subject to the imposition of conditions the seventh reason for refusal has been resolved. Based on the evidence before me I see no reason to come to a different conclusion. I therefore have not addressed this matter in my reasoning below.

¹ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

² Bernard Wheatcroft Ltd v Secretary of State for the Environment [JPL, 1982, P37]

Main Issues

6. The main issues are:

- Whether the site is an appropriate location for new housing having regard to development plan policies;
- Whether the proposal would be acceptable in terms of layout and housing mix;
- Whether or not the proposed development would make appropriate provision for affordable housing;
- The effect upon trees;
- Whether the public open space contribution is required to make the proposal acceptable in planning terms; and
- The effect of the proposal upon the Solent and Southampton Water and New Forest Special Protection Area European protected sites.

Reasons

Appropriate location

7. Policy COM2 of the Test Valley Borough Revised Local Plan (2016) (LP) directs development to settlements outlined in the hierarchy and within the identified boundaries of the settlement. The policy states that development outside of these boundaries will be permitted only where supported by other LP policies or where there is an essential need for a countryside location. Outside of settlement boundaries land is classed as countryside.
8. King's Somborne is defined in the Borough hierarchy as a 'Rural Village' on account of the limited range and number of facilities and services within it. The appeal site neighbours existing built form on two sides but nonetheless it is located outside the settlement boundary of the village and in the countryside for the purposes of the LP.
9. Part of the appeal site is allocated for at least 14 dwellings in the made King's Somborne Neighbourhood Development Plan (2023) (NDP) under Policy KS/ALL1 subject to a number of design criteria.
10. The Planning Practice Guidance³ (PPG) states that a neighbourhood plan attains the same legal status as a local plan once it has been approved at referendum and at this point it comes into force as part of the statutory development plan.
11. Section 38(5) of the Planning and Compulsory Purchase Act 2004 (the Act) states that if to any extent a policy in a development plan conflicts with another policy within it the conflict must be resolved in favour of the policy which is contained in the last document to become part of that development plan.
12. It is evident that there is conflict between the LP and the NDP as one restricts development in this location and the other permits houses, subject to certain criteria being met. Having regard to the Act, determination should be in favour of the NDP because it is the last document to become part of the development plan.

³ Paragraph: 006 Reference ID: 41-006-20190509

13. I acknowledge that the scheme advanced does not fully align with the relevant policy in the NDP including in terms of the size of the site, however, I cannot say that the proposal in principle represents unjustified development in the countryside, as the Council proffer, given the NDP's intention to direct housing to this location.

Layout and housing mix

14. The proposed development is for custom build housing and affordable units on an irregular shaped site that forms part of a larger field that extends northwards to Stockbridge Road. The site neighbours established residential development on two sides, that sit within the King's Somborne Conservation Area (CA), but on account of its semi-enclosed nature acts as a transition between the built-up area of the village and the surrounding open countryside. The neighbouring built form varies including semi-detached dwellings, runs of terraced properties and houses with 'wrap around' gardens creating a sense of openness on the village edge.
15. I am sympathetic to the appellant's arguments that development of the site would not be able to accord with criterion one, four and five when taking into account the identified site constraints and policy criteria. In my judgement it would be difficult to reconcile the tension between delivering at least 14 dwellings at the site when taking into account the limited developable area of 0.31 hectares, the access road from Stockbridge Road combined with the topographical, technical and design constraints the appellant has drawn my attention to.
16. That said, and notwithstanding the absence of harm in respect of the CA and the findings of the Landscape Appraisal, the cul-de-sac layout of mainly detached dwellings in large plots, would be suburban in nature in contrast to the established neighbouring built form which is more varied and includes semi-detached dwellings and runs of terraced properties. It could not be said to be an appropriate transition between the built form of King's Somborne and the surrounding countryside on account of the suburban layout proposed. I have paid regard to comments in respect of density and that the layout is more conducive to a custom build model, however, it would not successfully integrate into the area and does not lead me to reach a different conclusion on the matter.
17. The NDP, at Policy KS/H2, sets out a housing mix for all new residential development in the plan area. The overall mix is focused on smaller units with 90% of housing required to be 2- and 3-bedroom properties on account of the number of larger properties in the village.
18. Whilst noting the appellant's comments in respect of market conditions Policy KS/H2 does, nevertheless, allow for an alternative approach towards housing mix in certain circumstances. The NDP was made in 2023 therefore one can only assume that it represents an up-to-date assessment of housing need in the Parish. Moreover, the appellant has not undertaken any further assessment to demonstrate a need for larger units or indeed custom housing locally. The arguments presented by the appellant, in my judgement, are not so compelling so as to lead me to depart from the housing mix and need for smaller houses outlined in the NDP.
19. The custom build units would be at least 3-bed dwellings, and it is unlikely that those wanting to build their own bespoke home would commission a small unit. I concur with the Council that the proposed development would likely perpetuate a further imbalance of housing locally through the provision of larger units at the site.

This, in turn, would fail to reflect housing that meets the needs of the local community undermining sustainability of the village.

20. The appellant's claim that small units would prejudice viability of the scheme is essentially anecdotal and thus I give it negligible weight in coming to my decision.
21. Accordingly, I conclude that the proposal would be contrary to NDP Policies KS/ALL1 and KS/H2 which, amongst other things, seek appropriate development of the site and a housing mix that reflects the needs of the local community.

Affordable housing

22. The proposal includes 4 2-bed affordable units. The intention is for the units to be First Homes available to purchase at a 30% discount below their full market value. The National Planning Policy Framework (the Framework) advises that First Homes can continue where local planning authorities judge that they meet local need, but there is no longer a requirement to deliver a minimum of 25% of affordable housing as First Homes. As such, the proposition of First Homes is a matter of local discretion.
23. Whilst the proposed development would provide 30% affordable housing on site alongside a financial contribution, it is apparent that the tenure and size of the units proposed would not align with need in the Borough. This is for shared ownership and affordable/social rent units of sizes ranging from 1-bed to 3-bed houses.
24. I acknowledge that the submitted Unilateral Undertaking (UU) includes mechanisms to dispose of the units as other forms of affordable housing tenure in the event that the First Homes cannot either fully or partially be delivered on site. However, this approach would likely delay the delivery of affordable housing in an area where there is demand for such homes and, moreover, there is no compelling evidence that the size and tenure of affordable units would actually meet local need.
25. In coming to my decision, I have paid regard to the alleged lack of interest in the affordable units from registered providers. However, limited evidence in respect of discussions is before me and in any event, this does not outweigh my concerns in respect of this main issue.
26. On this basis the tenure and size of the affordable housing units proposed would not accord with local need in conflict with LP Policy COM7.

Impact upon trees

27. The south western corner of the site is bordered by an established belt of mixed tree species. Due to their position, height and spread the trees are conspicuous features within the surrounding area visible from nearby properties and public footpaths. Given the rural character of the area the trees positively contribute to the visual amenity of the locality and the surrounding landscape.
28. Despite the appellant contending otherwise, the additional tree plans namely the overlay plan indicates that there would be built form close to or within the Root Protection Area of a mature Common Sycamore. The tree is identified as being in good condition. Taking into account that layout is a matter before me and in the absence of an arboricultural impact assessment or method statement I am not satisfied that the proposed development would not unduly affect this tree.

29. Furthermore, taking into account the height and spread of the Common Sycamore tree and its intended position in the rear garden of one of the plots there is nothing before me to indicate that it would not result in unacceptable overshadowing of the garden area or property. This, in turn, could undermine the living conditions of future occupiers or lead to pressures to carry out works that would compromise its health.
30. As such, the proposed development would be contrary to LP Policy E2 which, amongst other things, seeks to protect important landscape features including trees.

Public open space

31. LP Policy LHW1 and the Infrastructure and Developer Contributions Supplementary Planning Document (2023) set out the requirements for public open space associated with new development. The appellant advises that due to physical constraints public open space cannot be provided on site. In such circumstances the LP permits financial contributions towards open space provision.
32. On this basis the Council is seeking a financial contribution of £24,345.19 towards off-site public open space to address a deficiency in children and teenagers play provision.
33. The Council's figure is derived from the now superseded Infrastructure and Developer Contributions Supplementary Planning Document from 2009 but adjusted using the 2023 Retail Price Index. I acknowledge that categories have been updated and there is no formula in the 2023 SPD, however, it appears that no identified alternative methodology for calculating the contribution exists and the appellant has not provided one. Nor has the appellant suggested an alternative figure for children and teenagers play provision.
34. Based on the evidence before me there is a deficiency of such provision in King's Somborne. The UU identifies that the contribution would be spent on improvements to the recreation ground and Muss Lane public open space in the village and there is nothing before me to indicate that the figure of £24,345.19 would not be fairly and reasonably related in scale and kind to the development.
35. As such, I am satisfied that the proposed contribution towards public open space meets the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

Other Matters

36. The appeal site is located within proximity to the Solent and Southampton Water and New Forest Special Protection Area European protected sites. The Council's fifth and sixth reasons for refusal relate to whether likely significant effects can be mitigated. However, as I have found harm in respect of the layout and mix of market and affordable housing which is significant enough to dismiss the appeal there is no benefit in me pursuing this matter any further.
37. I acknowledge that the development would deliver custom house building properties in the area and whilst the LP does not include specific policies relating to self-build and custom house building, I note that none of the most relevant policies prevent opportunities for such development from taking place in the Borough. I also note that the proposal would give intended occupiers the opportunity to exercise a

degree of individuality and to incorporate energy efficiency measures. However, in this particular regard I find that the benefits of custom housing building properties would not outweigh the harm that I have identified.

38. The potential for an alternative scheme on the site and ongoing discussions with the Parish Council are not matters for me in consideration of this appeal.

Planning Balance

39. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.
40. The Framework is one such consideration. It states, at paragraph 78, that local planning authorities should identify and update a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing, including an appropriate buffer. The Council's housing land supply position is set out in their Housing Implementation Strategy, dated January 2025, which indicates that the deliverable supply of housing land is in the region of 2.76 years.
41. In this regard, paragraph 11 d) states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.
42. However, paragraph 195 of the Framework indicates that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site. For the reasons set out above I have not reached such a conclusion and consequently paragraph 195 applies

Conclusion

43. Whilst the tilted balance does not apply for the reasons set out above, even if it did, the harm of granting planning permission in respect of the layout and mix of market and affordable houses would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
44. For the reasons set out above the appeal does not succeed.

B Thandi

INSPECTOR



Costs Decision

Site visit made on 14 July 2025

by **Bhupinder Thandi BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 September 2025

Costs application A in relation to Appeal Ref: APP/C1760/W/24/3352671

Land at Spencer's Farm, Stockbridge Road, King's Somborne

- 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 Moonriver Ltd for a partial award of costs against Test Valley Borough Council.
- The appeal was against the refusal of planning permission for the erection of 14 dwellings and garages, access road, drainage and landscaping. (10 to be custom build houses and 4 to be first homes).

Costs application B in relation to Appeal Ref: APP/C1760/W/24/3352671

Land at Spencer's Farm, Stockbridge Road, King's Somborne

- 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 Test Valley Borough Council for a partial award of costs against Moonriver Ltd.
 - The appeal was against the refusal of planning permission for the erection of 14 dwellings and garages, access road, drainage and landscaping. (10 to be custom build houses and 4 to be first homes).
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Decision

1. Application A for an award of costs by the appellant is refused.
2. Application B for an award of costs by the Council is refused.

Preliminary Matters

3. 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. All parties are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timetables are met.
4. Unreasonable behaviour in the context of applications for an award of costs may either be procedural relating to the process or substantive relating to the issues arising from the merits of the appeal.

Application A

5. Paragraph 049 of the PPG sets out local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing a planning application.

6. In this regard the applicant contends that Test Valley Borough Council has acted unreasonably on two counts. Firstly, due to an incorrect understanding of the relationship between the Test Valley Borough Revised Local Plan (LP) and the Somborne Neighbourhood Development Plan (NDP) and secondly by misinterpreting NDP Policy KS/ALL1.
7. A neighbourhood plan attains the same legal status as a local plan once it has been approved at referendum and at this point it comes into force as part of the statutory development plan. With regard to the conflict between policies in the development plan any such conflict must be resolved in favour of the policy which is contained in the last document to become part of that development plan.
8. In this regard, there is a conflict between the LP and NDP and whilst this conflict must be resolved in favour of the NDP, as it was the last document to become part of the development plan, the scheme should still accord with the development plan.
9. It is evident from the Officer's report that the Council has had regard to the development plan as a whole including the relationship between the LP and the NDP. Based on the available information, including Counsel's opinion, and despite my findings in respect of this matter, I am not persuaded that the Council has incorrectly interpreted this conflict but rather that they have exercised reasonable planning judgement in coming to their decision in respect of the first reason for refusal. This has also been substantiated at appeal.
10. Whilst I concur with the applicant that NDP KS/ALL1 is conflicted and there is tension between delivering at least 14 dwellings and complying with some of the design criteria, it is down to the developer, as the one spearheading the scheme, to attempt to resolve this conflict or engage with the Council to produce an acceptable scheme. I cannot say that officers have misinterpreted this policy but again they have exercised planning judgement based upon the merits of the case.
11. I therefore find that the Council has not acted unreasonably resulting in unnecessary or wasted expense, as described in the PPG. For this reason, and having had regard to all other matters raised, an award of costs against the Council is not justified.

Application B

12. Paragraph 052 of the PPG sets out examples of unreasonable behaviour by appellants which includes introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.
13. It is well established that the appeal process should not be used to evolve a scheme and in the interests of fairness it is important that what is considered at appeal is essentially the same scheme that was considered by the local planning authority and interested parties at application stage. That said, it is not out of the ordinary for appellants to submit additional information to narrow the matters in dispute which assists in a more efficient appeal process for all parties.
14. There is no doubt that fresh evidence was submitted and accepted under the appeal, however, I am not persuaded that it was substantial. For example, the additional tree survey and drainage report were produced in response to comments

- from Council consultees. In addition, the nitrate budget calculation was updated to reflect changes to the calculator by Natural England.
15. Based on the circumstances it appears that the appellant was in discussion with the Parish Council in respect of producing a scheme that would receive their support. It is likely that had the Council continued dialogue with the appellant the outstanding matters that the additional information relate to would have been addressed as part of the application.
 16. In this regard, it is evident that matters in respect of affordable housing and public open space could have been resolved through further engagement during the course of the planning application. Moreover, it is not unusual for main parties to agree planning obligations and enter into s106 agreements during the appeal process.
 17. The fresh evidence submitted with the appeal was not substantial in my estimation and even if it was, the need for the evidence arose because of circumstances outside of the appellant's control, namely that the Council refused the planning application rather than continue engaging with the appellant and Parish Council. As such, they have not acted unreasonably in pursuing the appeal.
 18. Whilst the Council contend that the submission of this information involved additional work and engagement with different departments including their legal team this is not substantiated by any evidence. In reality, engagement with such bodies is part and parcel of the appeal process and there is nothing to indicate that the Council were unduly inconvenienced or otherwise by the actions of the appellant.
 19. I therefore find that the appellant has not acted unreasonably resulting in unnecessary or wasted expense, as described in the PPG. For this reason, and having had regard to all other matters raised, an award of costs against the appellant is not justified.

B Thandi

INSPECTOR