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# Appeal Decision

Site visit made on 25 July 2022

**by Mr JP Sargent BA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 21 September 2022**

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**Appeal Ref: APP/R0335/W/21/3273240**

**Land north of Herschel Grange, Warfield, Bracknell RG42 6AT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Hodson Developments Limited against the decision of Bracknell Forest Borough Council.
  - The application Ref 19/00497/FUL, dated 23 May 2019, was refused by notice dated 12 February 2021.
  - The development proposed is the erection of 33 dwellings (including 10 affordable dwellings), with car parking, landscaping, open space and access from Herschel Grange, following the demolition of 6 Herschel Grange.
  - This decision supersedes that issued on 3 December 2021. That decision on the appeal was quashed by order of the High Court
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. As originally described only 8 affordable houses were proposed. However, during the course of the application this was amended to 10, and for the avoidance of doubt I have described the development accordingly.

## Main Issues

3. The main issues in this case are
  - a) whether this development is in a suitable location, having regard to the spatial strategy, access to services, and the effect on the character and appearance of the area;
  - b) whether it would deliver sufficient public open space, community facilities and affordable housing;
  - c) whether it would have a likely significant effect, when considered alone or in combination with other plans and projects, on the Thames Basin Heaths Special Protection Area; and
  - d) whether the drainage arrangements would be suitable.

## Reasons

### ***The appropriateness of the location***

4. The Council's spatial strategy for development is initiated by Policy CS1 in the *Core Strategy Development Plan Document*. This advocates locating housing in line with sustainable development principles, which include reducing the need

to travel, and protecting and enhancing the character and quality of the wider countryside. Following on from this, Core Strategy Policy CS2 outlines a sequential approach to the allocation of housing sites. It adds that development will be permitted within defined settlements that is consistent with the settlement character, and on allocated sites. It is, however, silent on how schemes outside of those defined limits will be considered.

5. Core Strategy Policy CS9 seeks to protect land outside settlements for its own sake, particularly from development that would adversely affect the character, appearance, or function of the land. Policy EN8 in the *Bracknell Forest Borough Local Plan* similarly protects the countryside for its own sake, and, along with Local Plan Policy H5, says that housing development may be permitted only if it is for one of a number of specific purposes. Moreover, Policy H5 also requires new housing to cause no harm to the character of the area. Policy CS7 in the Core Strategy aims to protect, respond to, and enhance the character and quality of local landscapes, while Local Plan Policy EN20 seeks development in sympathy with the character and appearance of the area.
6. When compared to the development plan, the *National Planning Policy Framework* (the Framework) offers a more nuanced approach to proposals in rural areas, as it states, in paragraph 174(b), that there is a need for 'recognising' the character and beauty of the countryside in decision-making. Consequently, in this regard I accept that Core Strategy Policies CS9 and (to a lesser extent) CS7, and Local Plan Policies H5 and EN8, are all inconsistent with the Framework to some degree. However, I consider the impact of development on the countryside is a matter to be assessed in the Framework, the Local Plan, and the Core Strategy, and so in this broader sense there is a level of consistency between the relevant national and local planning policy.
7. The Council is bringing forward an emerging Local Plan, but that is now only at examination stage so its policies and provisions may not be carried through to adoption. Consequently, this is not afforded significant weight in my assessment. Notwithstanding that position though, many of the policies cited from that document broadly reflect those discussed above and the Framework, and so do not materially affect the planning merits of the case.
8. Of particular note though is the fact that, in the emerging Local Plan, the Council is promoting the appeal site for 33 houses, the same number as now before me. It is also seeking to extend the settlement boundary to bringing the site subject of this appeal into the settlement in planning terms. From my understanding of the submissions, the settlement boundary amendment only arises because of the allocation, and if the allocation is not to be progressed then neither would the boundary change.
9. I understand that this proposed allocation is subject to various objections. As such, I cannot be certain it will be included in the eventually adopted version. In any event, it is for the Examining Inspector to consider the soundness of the proposed allocation and the consequent effect on the settlement boundary. In doing so they have a very different role to me in the planning system, and will make their decision based on different criteria and circumstances. If the allocation is in fact included, in whole or in part, in the emerging Local Plan when adopted, that would be a fresh chapter in the site's planning history, and it should not be one I endeavour to prejudge or anticipate at this stage. The weight I can afford that proposed allocation is therefore limited.

10. Despite the reasons for refusal, it is not clear as to why the Council supports that proposed allocation yet has chosen to refuse planning permission for this development. However, I have nonetheless treated its case concerning this scheme to be as outlined in its appeal submissions. Despite that, I have taken into account the various extracts I have received of the Council's justification for the proposed site allocation in the emerging Local Plan.
11. In the emerging *Warfield Neighbourhood Plan* the site is again outside the settlement boundary and not allocated for housing. That plan has moved on since the issuing of the earlier decision on this appeal that was quashed (the quashed decision), as it has now been through the Examination, a Decision Statement has now been issued and a Referendum is scheduled for October. Given this, it is fair to assume there is a strong prospect of it being 'made' in its current form. I am aware too that, in relation to this scheme, it does not provide a materially different policy basis to that in the current development plan, as it advocates a comparable settlement boundary that excludes the site and promotes policies that have regard to the countryside and the settlement character. Therefore, I have taken its content into account and afforded it significant weight, though have been mindful that, as it has not yet been 'made', it is not part of the development plan.
12. The appeal site is to the north of a village called Warfield Street. With the exception of the part occupied by 6 Herschel Grange, it sits outside of, but immediately adjacent to the defined settlement boundary around that village. It is therefore in the countryside for the purposes of national and local policy and guidance. As the development proposed is not for any of those accepted in such locations in the policies discussed above, it therefore conflicts with the Core Strategy and the Local Plan in this regard.
13. In relation to the sustainability of the location, currently few if any day-to-day services are within easy walking distance of the development, while a relatively restricted bus service passes through Warfield Street. However, the quashed decision, as well as an appeal decision for housing on land to the east off Newhurst Gardens, reached the view that the services and facilities on the anticipated development to the south of Warfield Street would ensure each of those 2 schemes would be served satisfactorily. I have no reason to come to a different view, as all parties seem to accept that large scheme is coming forward. Accordingly, while there may now be a conflict in this regard with Core Strategy Policies CS1, CS2 and CS23, which all seek development in a sustainable location that reduces the need to travel, such a conflict is likely to be short-lived.
14. Turning to the effect on the character and appearance of the area, the bulk of the appeal site comprises a large, relatively unkempt paddock, which is surrounded by broken hedging and occasional trees.
15. A large field is to the east, accessed off Newhurst Gardens, on which outline planning permission for up to 50 dwellings has been granted on appeal (the Newhurst Gardens scheme), and for which a reserved matters application is being considered at the moment. Whilst access was the only matter approved as part of that outline permission, the size of the site and the number of houses proposed mean it would be a relatively low-density development of about 12 dwellings per hectare. The illustrative plan that informed the outline decision shows the housing on that scheme would sit within an extensive band

of planting around its east, north, and west sides. Although the reserved matters have not yet been approved, the plan accompanying that application broadly reflects this arrangement, and no party to this appeal has contended that site would be developed otherwise.

16. To the south are the houses on Herschel Grange and Toogood Place, and to the west is a mobile home complex called Hermitage Park. To the north of the appeal site are fields. The neighbouring one though is subdivided into smaller paddocks by fencing, with various ancillary structures dotted around, and this diminishes its visual value as open countryside.
17. In the Council's *Landscape Sensitivity Appraisal of Potential Housing and Employment Sites in Bracknell Forest 2018*, the site is considered to have an overall sensitivity to change of low to medium. The appellant's *Landscape and Visual Impact Assessment* similarly finds that the site is medium/low landscape value. However, the Neighbourhood Plan finds the sensitivity of the site to be moderate to high.
18. The *Bracknell Forest Borough Landscape Character Assessment* places the site in Landscape Character Area (LCA) C1: Binfield and Warfield Clay Farmland. This LCA is identified as having a quiet rural character comprising scattered villages in a landscape of small woods and medium/large fields. The LCA also puts the appeal site in an area that has an important green space function by separating urban Bracknell to the south from the settlements and countryside to the north. As a policy document, the weight to be attached to the LCA is limited, but I have no reason to question its landscape assessment.
19. Being landscaped and substantially free from built form, the site contributes to the openness of the area outside of the settlement. Moreover, although maybe in poorer condition, and although being visible from limited places in the public domain, its trees, hedging and grassland nonetheless add positively to the character and appearance of the surrounding countryside and the LCA, as they allow it to link into the fields beyond.
20. The scheme is at a density of some 30 dwellings per hectare and open space is limited mainly to gardens and an area in the north-west corner. Boundary planting is to be retained and enhanced. This though would generally be either within gardens, or between the site boundary and garden fencing, thereby limiting its role and effectiveness in softening the proposal and integrating it into the adjacent countryside. Overall, given its density, the relationship of houses to the carriageway, the limited open space, and the restricted role of boundary planting, the development would change the character of the site from a rural paddock adjacent to the edge of the settlement to a suburban housing estate, undermining the role it plays as green space in the countryside.
21. The scheme would be seen from the rear of the existing houses on Toogood Place to the south. However, when on the cul-de-sac to the front, these houses are sufficiently close to each other to mean views through to the site and an awareness of its nature are limited. As such, when on that road the effect of the development would not be great.
22. Similarly to the west the scheme could be seen from in Hermitage Park and the sense of openness it now provides above the boundary fence would be reduced. However, as Hermitage Park is now being extended northwards, from Gibbins Lane only the upper storeys of some of the dwellings will be visible.

There is not a ready appreciation now of the rural nature of the site when on that lane, and so the change brought about the scheme would not be adverse.

23. The rural nature of the paddocks to the north and the field to the east mean the development would be more at odds with character and appearance of the countryside when seen from those directions. Moreover, the site layout would result in a relatively 'hard' boundary to the north and east, with the boundary planting having only a limited effect in integrating the scheme into the rural landscape. Similarly, the open space is only a small area in one corner, and so its benefit in this regard would not be great. To my mind, when taken with density proposed, the scheme would appear as a sharp, harsh intrusion into the surrounding countryside.
24. I appreciate that similar hard boundaries exist to the side of Hermitage Park and to the rear of Toogood Place. However, it is not uncommon, for historical reasons, for settlement boundaries to be marked by such 'hard' delineations, and that does not justify a continuation of that approach with subsequent developments that extend beyond the settlement edge.
25. The proposal would have Hermitage Park on one side and the Newhurst Gardens scheme on the other, once the latter was built. Given this, it would not be a move towards the coalescence of settlements in the vicinity. However, the lower density of the Newhurst Gardens scheme, and the wide belt of planting around its north, east, and west sides, mean that development would sit more comfortably on the settlement edge and integrate more sympathetically into the surrounding countryside. Indeed, the illustrative layout for the Newhurst Gardens scheme shows an appreciable band of planting is likely to remain between the housing there and the appeal site to the west. Given this arrangement and the size of the appeal site, I therefore find that, even though it would be between the Newhurst Gardens scheme and Hermitage Park, it does not follow that this proposal would be readily infilling a gap in development beyond the settlement boundary.
26. In coming to this view I have noted the recent appeal allowing the extension of Hermitage Park. That though was for lower units, and also infilled an area between the existing mobile home park to the south and the dwelling with extensive outbuildings to the north. As such I consider its nature and context to be materially different. I also recognise it is not a designated landscape and is not particularly visible from the public domain, but the advice in paragraph 174(b) of the Framework is not based on a designation being present or on public visibility.
27. Whilst it was contended that developing this site would compromise the long-standing horse-based uses in the area, I am not satisfied such a change would be contrary to policy. I have also noted the housing to the north of the site, but this is scattered across the landscape in a way that is often found in the countryside and does not mitigate the impact of the proposal in this regard.
28. Finally, Warfield Street is described in the *Character Area Assessments Supplementary Planning Document* (the SPD) as a linear village in the countryside, and while there have been some culs-de-sac constructed along its length, I concur with the SPD that they have not disrupted its form unduly. The development though would be a further cul-de-sac that would add a relatively significant number of houses to the village in a relatively dense



suburban form, and so would be more notably at odds with its general linear pattern.

29. Accordingly I conclude this scheme would be beyond the settlement boundary, for housing that is not supported in such a location by the development plan. I also conclude it would detract unacceptably from the character and appearance of the locality as it would fail to recognise the intrinsic character and beauty of the countryside, it would offer limited access at present to services, and it would be at odds with the character and nature of Warfield Street. It would therefore conflict with the Framework and, insofar as they are consistent with the Framework, Core Strategy Policies CS1, CS2, CS7, CS9 and CS23, and Local Plan Policies H5, EN8 and EN20.

***Public open space, community facilities and affordable housing***

30. A legal agreement has been submitted that the Council accepts secures the delivery of suitable open space, a satisfactory contribution to community facilities (including education) and the necessary affordable housing. On the evidence before me the provisions within the legal agreement appear reasonable, proportionate, and related to the development. Consequently, I have no basis to find differently to the Council.
31. Accordingly, I conclude that the delivery of public open space, community facilities and affordable housing would be satisfactory, and so would not be in conflict with Policies CS6, CS8, CS16 and CS17 in the Core Strategy, and Local Plan Policies R4 and H8, which seek to secure these matters.

***Impact on the Thames Basin Heaths Special Protection Area***

32. The *Conservation of Habitats and Species Regulations 2017* (the Regulations) say any proposals that may affect a designated habitat site should be considered with the aim of maintaining or restoring, at favourable conservation status, its natural habitats and species. Before deciding to give permission for a plan or project that is likely to have a significant effect on a habitat site, the decision-maker must make an appropriate assessment of the implications for that site in view of its conservation objectives. The plan or project can then only be permitted after having ascertained there would be no adverse effect on the habitat site's integrity.
33. The site is within 5km of the Thames Basin Heaths Special Protection Area (the SPA), which is one such designated habitat site. As an area of lowland heath, it supports an internationally important bird population that includes the nightjar, the Dartford warbler, and the woodlark, and so I consider offers irreplaceable habitats. I understand that it is a popular place to walk and exercise, yet such activities can result in a pressure that causes harm to habitat and birdlife through trampling, erosion, general plant destruction and so on. Therefore, by increasing the number of residents who may choose to use the SPA for recreation, the development could adversely impact on the SPA's integrity through greater disturbance and damage.
34. Mitigation is offered by the appellant in the legal agreement, which proposes to make proportionate payments towards the management and maintenance of the SPA and towards promoting alternative green spaces elsewhere for recreation. I have no reason to find it would not deliver sufficient monies for purposes that would allow the likely significant effects arising from the scheme to be mitigated.
35. I therefore conclude that, when considered in combination with other plans and projects, the development would adversely affect the integrity of the SPA, but this would be suitably mitigated by the measures secured under the legal agreement.

As such, the proposal would not be likely to affect the integrity of the SPA, so would not conflict with the Regulations or the Framework, or with Local Plan Policy EN3 and Core Strategy Policy CS14, which, together, seek to protect the SPA from adverse effects on its integrity.

### **Drainage**

36. It is proposed to drain the site to the sewer at the southern end, with the gradient necessitating the use of a pumping system. I have no reason to consider that, in principle, such an approach is not satisfactory, or that any off-site works on the public highway could not be secured with the relevant authorities. However, the Council says the system's monitoring and maintenance needs to be secured for the lifetime of the development, and to this end it needs an £8,000 monitoring fee. This to my mind seems reasonable in the absence of any other alternative, as the failure of the system could well result in drainage issues, and the flooding of parts of the scheme and the surrounding landscape.
37. The Council has suggested conditions that include agreeing maintenance. I share the Council's view though that any fee for monitoring, which appears to be necessary to ensure adequate maintenance, should be secured through a legal agreement, but it is not covered in the one submitted. The parties have suggested a condition could be imposed requiring a legal agreement be entered into before development commences to secure the monitoring monies and the maintenance. However, the *Planning Practice Guide* says a condition requiring a legal agreement be entered into would be '*unlikely to be appropriate in the majority of cases*' and should be imposed only in '*exceptional circumstances*'. To my mind, these tests form a high bar, and I am aware of no such circumstances that can be attributed to this proposal or mean it should not be treated as one of the '*majority of cases*'. Such a condition would therefore not be appropriate, and so there is no mechanism before me to ensure the monitoring of the drainage scheme is secured.
38. Accordingly, I conclude that in the absence of an appropriate means of monitoring the drainage scheme, it would conflict with the Framework, which seeks to ensure drainage for major development is appropriately maintained.

### **Other Matters**

39. I have noted the concerns about the suitability of Herschel Grange and the B3034 to accommodate further traffic flows, especially when taken in combination with the traffic associated with the Newhurst Gardens scheme. These revolve around the number of vehicle movements already present, the use of the roads by horses and the narrow pavements. However, I have insufficient evidence to show that there would be an unacceptable effect on highway safety or that the residual cumulative impacts would be severe.
40. Given the layout and the separation involved, any effect on the privacy or outlook of neighbouring residents, whether on Toogood Place, Herschel Grange, or Hermitage Park, would not be unreasonable. Although the scheme would change the view for those residents, that does not offer grounds on which the appeal could be dismissed.
41. There is no prohibition in national or local planning policy on the development of greenfield land. Although there may be previously developed land elsewhere capable of development, that of itself is not a basis to resist the scheme.
42. As the site is on the edge of the countryside it is understandable that it is used for foraging by wildlife. However, I have no reason to consider that the

development would cause unacceptable harm in this regard, or that with a suitable condition biodiversity net gain could not be achieved.

43. While listed buildings are in the locality, none seem to be in the immediate vicinity of the site. There is therefore no basis to consider the effect of the development on their settings would harm their significance as designated heritage assets.

### ***Planning balance***

44. Section 38(6) of the *Planning and Compulsory Purchase Act 2004* says development should be in accordance with the development plan unless material considerations indicate otherwise.
45. In this respect, the Local Planning Authority accepts it now has only 4.4 years' housing land supply, which falls below the requirement for a supply of 5 years. Although the appellant considers this figure should be lower, it does not challenge it in any decisive or quantitative way. Accordingly, the most relevant development plan policies relating to the supply of housing are out-of-date, and so paragraph 11(d) of the Framework is engaged. This states that in such a situation where development plan policies are out-of-date because a 5-year supply of housing land cannot be achieved, planning permission should be granted unless one of 2 criteria apply. One of these is if any adverse impacts would '*significantly and demonstrably*' outweigh the benefits when assessed against the policies in the Framework taken as a whole. This is known as 'the tilted balance'.
46. The application of Framework paragraph 11(d) is a material consideration of great weight, and it is a significant difference between the situation before me and the position the Inspector thought he was in when considering the quashed decision. At that time he was mistakenly under the impression there was a 5-year housing land supply, and so was of the opinion it was not necessary to undertake the balance found in that paragraph.
47. Numerous benefits have been cited by the appellant. Clearly, in the face of the shortfall in housing land supply the scheme would be delivering an additional 32 more homes, in line with the Government's aims to boost housing delivery. Moreover, nearly a third of these would be affordable. Whether or not the Council currently is delivering sufficient affordable homes, this would be a further factor in favour of the scheme, and the delivery of housing, both affordable and open market, would result in social benefits. I give these significant weight. The scheme would also lead to economic benefits, both in the construction phase and afterwards, that would support businesses in the area, and I afford these moderate weight.
48. Additionally the appellant has said it is not in a sensitive landscape, and the design is considered to reflect the settlement edge. However, I have found landscape harm would be caused, while a suitable design is, to my mind, to be expected with new development. The appellant has also noted the Council's support for the allocation of the site in the emerging Local Plan, but as stated above, I have considered this appeal on its own planning merits. These matters are therefore afforded limited weight in the balance.
49. Against this though are the identified harms arising from development being outside of the settlement boundary, the alterations to Warfield Street's form,



the sustainability of the location, the poor integration into the surrounding countryside by reason of the scheme's density and 'hard' edge, and the failure to secure the monitoring of the drainage.

50. The first of these I consider to be a common consequence of a failure to deliver sufficient housing within the constraints of the existing development plan. The weight I afford it in this balance is limited. Similarly, in addressing a housing land shortfall new development can have some effect on the form of a settlement, and so, again, this matter is not given significant weight, while the likely short-lived nature of the unsustainable location means that is not attributed great weight either.
51. However, the other 2 matters are lasting issues that need not be a consequence of the housing situation. To my mind they are appreciable concerns that weigh heavily against the scheme. While I recognise the presumption of the tilted balance, regard still has to be given to the Framework's need to recognise the intrinsic character and beauty of the countryside, and ensure maintenance arrangements for drainage are in place. I appreciate that the Newhurst Gardens scheme was allowed in a similar housing climate, but as stated above that would have a more integrated relationship to the surrounding countryside and so is materially different to the scheme before me.
52. On balance, I therefore find that the adverse effects of the scheme significantly and demonstrably outweigh the benefits identified. Indeed, a slightly greater shortfall in housing land supply, as implied by the appellant, would not have a material effect on my decision. Similarly, even if the monies for the monitoring of the drainage could have been secured by other means, I consider the harm to the countryside would still significantly and demonstrably outweigh the scheme's benefits.

### **Conclusion**

53. For the above reasons I conclude the appeal should be dismissed.

*JP Sargent*

INSPECTOR