
Appeal Decision

Site visit made on 25 March 2003

by Stephen Job MA DipTP MRTPI

an Inspector appointed by the First Secretary of State

The Planning Inspectorate
4/09 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

T: 0117 372 6372
e-mail:
enquiries@planning-
inspectorate.gsi.gov.uk
Date **16 May 2003**

Appeal Ref: APP/X0360/A/02/1103198

School Road, Hurst, Berkshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Millgate Homes against Wokingham District Council.
- The application (Ref. F/2002/6072) is dated 4 March 2002.
- The development proposed is the demolition of 4 existing dwellings and the construction of 25 no. houses and flats.

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. It was agreed at the site visit that the plans before the Council at the time that the appeal was lodged were 11265 P01, P02E, P04, P05A, P06A, P07, P08, P09, P10A, P11, P12A, P13A, P14, P15, P16, P17, P18, P19, P20, P21B, P22B, P23A, P24A, P25, P26B, X391-01 and 4396/01.
2. After the appeal was lodged the appellant sent amended versions of 2 previously submitted plans both to the Planning Inspectorate and to the Council — P21C to replace P21B and P22C to replace P22B. These amended plans show very minor changes and I am satisfied that no party would be prejudiced if I were to accept the plans. The plans to be considered in this appeal are therefore those set out in paragraph 1 above, but with P21C substituted for P21B and P22C substituted for P22B.
3. In a letter to the appellant's agent, Barton Willmore Planning Partnership, dated 13 January 2003, the Council indicated that, had it been in a position to determine the application, it would have refused it for 4 reasons. In brief, the stated reasons were: first, the proposed development would cause harm to protected species, namely great crested newts and bats; second, the proposed development would not meet the service and infrastructure needs resulting from it; third, the proposed development would not make adequate provision for affordable housing; and fourth, the proposal would constitute a significant and unsustainable development in a category B settlement.
4. Following my site visit the appellant's agent sent a draft unilateral undertaking both to the Planning Inspectorate and to the Council. I refer to this further below.

Main Issues

5. I consider that there are 4 main issues in this case. The first is the effect of the proposed development on the character and appearance of the area having regard to policies which seek to encourage both the efficient and sustainable use of land. The second is the effect that the proposed development would have on protected species, in particular great
-

crested newts and bats. The third is the implications of the proposed development for the infrastructure and service needs arising from it. The fourth is whether adequate provision would be made for affordable housing.

Planning Policy

6. The development plan for the area includes the Berkshire Structure Plan 1991- 2006 adopted in November 1995, incorporating Alterations adopted in August 1997 and the Loddon Area Local Plan adopted in May 1995.
7. In the structure plan, of the policies drawn to my attention, policies OS1, LD1, LD3, LD6, C1, EN8, EN9, H4 and H7 seem to me to be particularly relevant. Policies OS1 and LD1 emphasise the need for development to be sustainable. Policy OS1 refers, among other things, to the need for development to respect environmental and infrastructure constraints and be in accessible locations. Policy LD3 states that development proposals will only be permitted where they do not have an unacceptable impact on the environment. Policy LD6 seeks to ensure the provision of infrastructure, services and amenities made necessary by development proposals. Reference is made to the possible need for contributions by developers. Policy C1 states that development in rural areas should encourage and sustain balanced rural communities. Development will normally be within defined settlements and be appropriate to the scale and character of a settlement. Policies EN8 and EN9 seek, among other things, to safeguard the habitats of protected species but allow for the possible provision of replacement habitats. Policy H4 emphasises the need for new residential development to be accessible, particularly by public transport. Policy H7 states that an appropriate proportion of new housing should be low-cost housing.
8. In the local plan my attention has been drawn to policies LTV1, LH8, LC10 and LPS1. Policy LTV1 states that within identified settlements, such as Hurst, development will normally be allowed, subject to the provisions of other policies. Policy LH8 seeks housing catering for a range of housing needs, including affordable housing. Policy LC10 seeks to protect wildlife habitats but allows for the possibility of mitigation measures where development is otherwise acceptable. Policy LPS1 seeks to ensure the provision of necessary infrastructure, services and amenities in terms similar to structure plan policy LD6.
9. There are also emerging structure and local plans. The deposit draft Berkshire Structure Plan (March 2002) is at an early stage — I can therefore accord its policies little weight. In the deposit draft Wokingham District Local Plan (as proposed to be modified), of the policies drawn to my attention, policies WOS1, WOS2, WOS3, WOS4, WBE1, WH1A, WH3A, WH7, WNC3, WR7 and WT1 appear to me to be of particular relevance. Policy WOS1 seeks to ensure that development is sustainable, setting out objectives developed in greater detail in other policies. Policy WOS2 states that a sequential approach will be applied to housing development. Land in category B settlements, such as Hurst, follows land in and around category A settlements in the sequence and ‘will only consist of very limited infilling and small windfall development’. Policy WOS3 states, among other things, that development proposals should be appropriate to the area in which they are located and respect the local context. Development should not have a detrimental impact on nature conservation features. Policy WOS4 is similar to adopted local plan policy LPS 1. Policy WBE 1, among other things, encourages high standards of design and

layout which make efficient use of land and buildings. It also states that a scheme should create its own identity, while taking account of the wider locality. Policy WH1A encourages sustainable development, including the efficient use of land, an appropriate housing mix including affordable housing, and the more efficient use of existing social and physical infrastructure. Policies WOS3, WBE1 and WH1A all encourage development accessible by alternative modes of transport to the private car. Policy WH3A seeks the efficient use of land, and in particular densities in the range 30 to 50 dwellings per hectare, subject to sustainability policies. Policy WH7 seeks to ensure that a proportion of dwellings are affordable. Policy WNC3 seeks to avoid harm to protected species. Policy WR7 seeks the provision of public open space in new residential development or a contribution in lieu. WT1 states, among other things, that proposed residential areas should be in reasonable proximity to shops, services and facilities that people wish to use frequently. This emerging plan is at an advanced stage. I shall therefore accord it considerable weight.

10. My attention has been drawn to supplementary planning guidance (SPG) entitled *Planning Obligations: Principles and Practice*. As this SPG has been adopted by the Council I shall attach substantial weight to it.
11. I have also had regard to national policy as set out in Planning Policy Guidance Note 3 (PPG3) *Housing*.

Reasoning

Character and appearance of the area

12. The appeal site comprises four detached dwellings, three of them bungalows or chalet bungalows, on large plots fronting School Lane in the centre of Hurst. The site area, according to the appellant, is 0.83 ha. There are detached bungalows opposite the site and detached 2-storey houses to the rear, in Tape Lane. These dwellings are on slightly smaller, but still substantial plots. Adjoining the site to the north there is a small infill development comprising 3 detached dwellings. There are a considerable number of trees on the appeal site, mainly in the four properties' rear gardens.
13. School Lane retains to some extent a rural appearance. A number of the properties are demarcated at the front by hedges. There are fine trees on both sides of the lane. There is no footway, only a verge, opposite most of the appeal site. There is no street lighting in the lane. Although a significant amount of development has taken place in Hurst in recent years, it is not wholly inappropriate in my view to describe the settlement as a village. Some parts of it are more village-like than others. However, Hurst could not in my view reasonably be described as urban.
14. The proposal is to erect 19 2-storey houses and 6 flats on the site. The flats, which are intended to be affordable, would be in a single 2-storey block fronting School Lane at the northeast end of the frontage. 4 substantial houses would also front School Lane. Between these houses and the flats an access is proposed to the rear, where there would be 15 smaller houses in 4 terraces.
15. In my view, the number of dwellings proposed, and the hardsurfacing that would go with them, would introduce an urban element into the centre of Hurst starkly contrasting with

the low density housing which surrounds the site on all sides. I consider that the proposal has little regard for its context and would as a consequence have an unacceptably incongruous appearance. I also consider that the massing and prominence of the houses and flats which would front School Lane — particularly the four houses, which would be of fairly uniform design and close together — would have an adverse effect on the rural character of the lane. The proposal would entail the loss of a considerable number of trees. I accept that, individually, many of these trees are not of great amenity value. They do, however, collectively make some contribution to the character and appearance of the area. Bearing all these factors in mind I consider that the proposal would be detrimental to the character and appearance of this semirural settlement.

16. It is Government policy, as set out in PPG3, to give priority to the re-use of previously developed land, primarily within urban areas, in preference to the development of greenfield sites. This policy is reflected in the emerging local plan (as proposed to be modified), which in policy WOS2 adopts the sequential approach recommended by PPG3. Settlements are divided into category A settlements and category B settlements. Category A settlements are first priority for development, 'after which come category B settlements where development will 'only consist of very limited infilling and small windfall development'. I am given to understand that this approach reflects the recommendations of the inspector who carried out the inquiry into the emerging local plan. That inspector did not define 'small windfall development'. However, the Council has now, in the plan as proposed to be modified, indicated that: 'Small windfall sites within Category B settlements would typically comprise sites of less than 1 hectare. Proposals for sites of less than 1 hectare will be assessed having regard to other policies contained within this Plan.'
17. A number of the policies to which my attention has been drawn both in the development plan and in the emerging local plan aim to ensure that development will be sustainable. The creation of more sustainable patterns of development is also a key objective of PPG3. The proposed development cannot be assumed to be sustainable, in my view, simply because the site is less than one hectare and within a category B settlement. It is necessary to assess whether the development would be sustainable. In any case, an emerging local plan is not the same as an adopted local plan. The proposed modifications to the plan, and in particular the definition of small windfall sites, may be the subject of objections resulting in further changes to the plan.
18. I note that Hurst's retail provision is limited to 3 shops. It has a primary school, although this is site-bound and oversubscribed. It has some community facilities~ and also some facilities for outdoor recreation. The settlement does not have any health services nor does it offer significant opportunities for employment. It has an hourly bus service on weekdays, although the service does not run beyond early evening and its future is uncertain. The nearest public transport, apart from the bus service, is the railway station at Twyford, which appears to me to be significantly over 2 km away from the site. The nearest retail centre is Twyford town centre which is still further away. There is no doubt in my mind that the occupiers of the proposed development would be heavily dependent on the private car for access to shops, services and employment. In my view the proposal is for a significant number of dwellings in an unsustainable location.
19. On the first main issue I therefore conclude that the proposed development would have an adverse effect on the character and appearance of the area, that this harm would

outweigh any advantage that might accrue from using land more efficiently and that the development would be unsustainable. I accordingly conclude that the proposed development would be in conflict with planning policy.

Effect on protected species

20. It is common ground between the main parties that there are great crested newts, and that there may be bat roosts, on the appeal site. Great crested newts and all species of bat found in this country are protected species. Their presence, or suspected presence, on the site is a material planning consideration, although there are separate statutory safeguards applying to these species. It *is* agreed that the proposed development would cause harm to the local population of great crested newts and might cause harm to the local bat population.
21. Although the adverse impact of the proposal on great crested newts and bats was previously one of the reasons why the Council opposed the proposal, the Council has now withdrawn its objection. The Council's revised position follows the submission of a mitigation report in respect of the great crested newts prepared on behalf of the appellant by consultant ecologists.
22. The proposed mitigation in respect of the great crested newts would involve the translocation of the great crested newts on the appeal site to a newly created 'receptor site' in the vicinity. The appellant would procure a suitable site and contribute to the costs of maintaining it, these measures being secured by a planning obligation. I note that English Nature is satisfied with the proposed mitigation measures. In my view, mitigation measures along the lines proposed would, in principle, overcome the harm which the development would be likely to cause in this respect, provided the measures can be secured.
23. Subsequent to my site visit, the appellant sent, both to the Planning Inspectorate and the Council, a draft unilateral undertaking, covering, among other things, the proposed acquisition of the 'receptor site' and the proposed contribution to the costs of maintaining it. However, since this undertaking is in draft I can attach very little weight to it. In my view, as the 'receptor site' would be somewhere beyond the boundaries of the appeal site, a planning obligation is necessary - it would not be appropriate to rely on a condition to secure the proposed mitigation measures.
24. There is considerable uncertainty about whether there are bat roosts on the site. To resolve the uncertainty further surveys would be required. If bat roosts were discovered, the evidence indicates that adequate on-site mitigation measures could be devised, in my view, appropriate mitigation measures would overcome the harm which the development would be likely to cause in this respect. If I were allowing this appeal I consider that the required surveys and mitigation measures could be secured by the imposition of a suitable condition.
25. On the second main issue I therefore conclude that the proposed development would, in the absence of mitigation measures secured by a completed planning obligation, have an adverse effect on the great crested newt population present on the appeal site, although not on the local bat population. I accordingly conclude that the proposed development would be in conflict with planning policy.

Implications for infrastructure and service needs

26. There are policies both in the development plan and in the emerging local plan which seek to ensure that the infrastructure and services needed to support a development are provided by the developer. The key policy in the emerging local plan is policy WOS4. The way in which the Council intends the policy to operate is set out in more detail in its adopted SPG, *Planning Obligations: Principles and Practice*. In most cases it is anticipated that the provision made by the developer will take the form of contributions. I consider that there is a sound basis in policy for requiring financial contributions towards infrastructure and services.
27. In its statement the Council sets out the infrastructure and services for which a contribution is sought along with the level of contribution required in each case. I note that a contribution is sought, among other things, for access and movement, which would be used principally to extend the life of the bus service. The need for contributions to the infrastructure and services identified is not disputed by the appellant. Moreover, it appears that, for the most part, the levels of contribution proposed by the Council are not disputed by the appellant either. The draft unilateral undertaking sets out the contributions the appellant would make to the infrastructure and services identified — with one exception these correspond exactly with the amounts specified in the Council's statement.
28. The one apparent area of dispute is the contribution towards secondary education. The Council requests £37,004. The contribution offered in the draft unilateral undertaking is £29,214. The Council has provided calculations which purport to show how the figure of £37,004 was arrived at. The appellant, in correspondence with the Council, has questioned these calculations and in my view the response received inadequately explains the Council's position. On the basis of the limited evidence before me I am unable to conclude that the lower contribution offered by the appellant is unreasonable.
29. If the contributions set out in the draft unilateral undertaking had been set out in a completed undertaking, I would have been able to conclude that adequate provision would be made towards the infrastructure and services needed to support the development. However, since the undertaking before me is in draft I can attach very little weight to it.
30. On the third main issue I therefore conclude that the proposed development would, in the absence of a completed planning obligation giving effect to the proposed contributions, have adverse implications for the infrastructure and service needs arising from it and be in conflict with planning policy.

Adequacy of affordable housing provision

31. There are policies both in the development plan and in the emerging local plan which seek to ensure that in developments above a certain size a proportion of new dwellings will be affordable. In policy WH7 of the emerging local plan, as proposed to be modified, the size threshold in settlements with a population of 3,000 or fewer (this includes Hurst) is 5 or more dwellings or a site area of 0.25 ha or more — the required affordable housing proportion is 'up to 26%'. 26% of 25 dwellings is 6.5 dwellings. The

appellant proposes 6 affordable dwellings. The Council raises no objection to this level of provision and in my view it is acceptable. Further guidance on the provision of affordable housing is given in Appendix A of the Council's adopted SPG, *Planning Obligations: Principles and Practice*.

32. In the draft unilateral undertaking there is a commitment to provide 6 affordable dwellings on terms which would comply with the Council's adopted SPG. If this commitment had been set out in a completed undertaking I would have been able to conclude that adequate provision of affordable housing would be made. However, since the undertaking before me is in draft I can attach very little weight to it.
33. On the fourth main issue I therefore conclude that the proposed development would, in the absence of a completed planning obligation giving effect to the affordable housing proposals, have adverse implications for the provision of affordable housing and be in conflict with planning policy.

Other Considerations

34. I appreciate that the proposal would have the advantage of providing additional housing units, including a considerable number of smaller units. The proposal would also be likely, to a degree, to help sustain existing services and facilities within the settlement. However, it is my view that the harm I have identified outweighs these advantages.
35. Concern has been expressed by the occupiers of adjacent properties that the proposed dwellings would have an overbearing impact and also give rise to unacceptable overlooking. The properties in the vicinity generally have long rear gardens. For the most part, the rear gardens of the houses proposed would ensure a reasonable degree of separation from the boundaries of adjacent properties. The trees on the boundary shared with the properties in Tape Lane would largely be retained. I found that the proposal would be acceptable in terms of its impact on the occupiers of adjoining properties.
36. It has also been argued that the development would have adverse highways, parking and drainage implications; cause noise and light pollution; create security problems; and give rise to adverse impacts from construction activity. I have carefully considered these matters, but they have not lent further weight to my overall conclusions.

Conclusions

37. I have indicated that 3 of the 4 issues identified could be resolved by the completion of an appropriate planning obligation. However, even if they were so resolved, my concerns about the impact of the proposed development on the character and appearance of the area and the unsustainable nature of the development would remain. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should not succeed.

Formal Decision

38. In exercise of the powers transferred to me I dismiss the appeal.

Information

39. A separate note is attached setting out the circumstances in which the validity of this decision may be challenged by making an application to the High Court.

Stephen Job

INSPECTOR