

Appeal APP/X0360/W/22/3309202

Land East of Lodge Road, Hurst, Wokingham

OUTLINE PLANNING PERMISSION FOR THE DEVELOPMENT OF APPROXIMATELY 200 HOMES, OPEN SPACE, PEDESTRIAN AND CYCLE LINKS, RECREATIONAL FACILITIES (CLASS E) AND OTHER ASSOCIATED INFRASTRUCTURE INCLUDING THE FORMATION OF A NEW HIGHWAY ACCESS ROAD FROM LODGE ROAD LOCATED ADJACENT TO THE EXISTING FIELD ACCESS TO BE CLOSED (ALL MATTERS RESERVED EXCEPT FOR ACCESS)

STATEMENT OF CASE



St Nicholas Hurst Parish Council

Rule 6 Party

2 December 2022

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(APP/X0360/W/19/3226711)

Introduction

1. This is the Statement of Case made on behalf of St Nicholas Hurst Parish Council (“the Parish Council”). The Parish Council was granted Rule 6 Status on 11th November 2022.
2. The Parish Council submitted detailed objections to these proposals dated 31 March 2021.
3. In addition, many of the Parish Council’s parishioners have submitted objections independently. In total, more than 402 letters of objection have been submitted to this scheme.¹ The appeal scheme is highly controversial, not least because it would increase the local population by 34%.²
4. This Statement of Case does not repeat the planning history or summary of relevant planning policies, which are set out in the Statement of Case of Wokingham Borough Council (“the Council”) and adopted by the Parish Council.

Summary of the Parish Council’s case

5. Paragraph 15 of the NPPF provides that “*the planning system should be genuinely plan-led.*” This is reflected in the statutory requirement that applications for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise.³ That requirement is unaffected, as a matter of law, by the age of the plan or what the NPPF states about the weight to be given to development plan policies.⁴

¹ See Officer’s Report, page 6 of 42.

² See the Parish Council’s Objection Letter, page 46.

³ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990. See also NPPF, para 2.

⁴ While the NPPF is an important material consideration, it does not have a higher legal status than the development plan, as the NPPF itself recognises. See NPPF para 2: it is “a material consideration in planning decisions.”

6. The Parish Council will demonstrate that this proposal is the opposite of plan-led development. As the Appellant itself says in its Statement of Case, the Appeal Scheme “*is not consistent with*” several development plan policies.⁵
7. This scheme is just the kind of *ad hoc* development which a plan-led approach seeks to avoid. The scheme not only breaches the statutory development plan. It inflicts direct harm on the plan’s central objectives. It would impose eight times the maximum number of new dwellings permissible for Limited Development Locations such as the immediate local area (25), as set out in Core Strategy Policy CP17- Housing Delivery. This is not just an arbitrary designation: Limited Development Locations are defined in the Core Strategy as “*those containing a basic range of services and facilities and are physically and socially cohesive*” (emphasis added).⁶
8. Other material considerations raised by the Council are important, and of course they lead to policy breaches in their own right. But the critical point against this scheme is the damage it inflicts to the development plan’s spatial strategy, and indeed the concept of plan-led development more broadly, as set out in the NPPF. A fundamental principle of planning is that large developments should be situated in areas with the services and infrastructure to cope with them.
9. Accordingly, as the Appellant tacitly accepts, the appeal scheme would not even get off the ground without the assistance of the ‘tilted balance’ applied via paragraph 11d of the NPPF.
10. However, even though the tilted balance applies, given the extent of the conflict with the development plan and the overall disbenefits of the scheme, in this particular case the adverse impacts of granting permission for the appeal scheme significantly and demonstrably outweigh the benefits.
11. Moreover, it cannot sensibly be argued that a conflict with the development plan of this magnitude can be justified in light of the Council’s failure to demonstrate

⁵ Appellant’s SoC, 0.4.

⁶ Core Strategy Glossary, p 122.

a 5YHLS. The Appellant is effectively treating the development plan as if it did not exist. As a matter of law, the NPPF does not allow the development plan to be totally disregarded (and indeed, it does not purport to allow it).

12. All of these submissions are consistent with the previous findings of Inspector Philip Major in December 2019 (*Land at Lodge Road, Hurst, Wokingham*) (APP/X0360/W/18/3194044). That decision is a material consideration in this appeal. Inspector Major found that a proposal for only 5 dwellings on Lodge Road would have been dismissed *even if* the tilted balance had applied in that appeal, due to the unsustainable location and harm caused to the character and appearance of the area.⁷ Those findings are only more apparent in relation to the present scheme, which is far greater in scale than the proposals in *Lodge Road*.
13. In summary, during the Inquiry the Parish Council will show:
 - 1) The proposal amounts to a very significant extension to a small village that is clearly inappropriate in the circumstances, both under the existing plan and in terms of general spatial hierarchy planning principles.
 - 2) This is a highly unsustainable location for a 200-dwelling site.
 - 3) The development will have an unacceptable impact on the character and appearance of the local area.
 - 4) To the extent the appellant is able to demonstrate some modal shift, the local road network is not sufficiently safe for pedestrians and cyclists.

The Reasons for Refusal

14. The Council refused permission on the basis of 10 reasons for refusal (bold added):

⁷ At [51]: “*Even had I concluded that the tilted balance of the NPPF or Policy CC01 should apply my overall judgement is that the harm I have identified significantly and demonstrably outweighs the benefits in this case. By either route to a decision, therefore, the appeal must be unsuccessful. The proposed development simply fails to address the fundamental shortcomings associated with the appeal site. Put simply, this would be the wrong development in the wrong place.*”

- 1) “The proposal results in an **unsustainable pattern of development by reason of the creation of a new unplanned large housing estate on a greenfield site in the countryside outside of settlement limits**. It would be significantly out of scale with neighbouring small village of Hurst and the level of existing infrastructure within the village. The development is contrary to the spatial objectives of the development plan and policies CP1, CP2, CP3, CP6, CP9 and CP11 of the Core Strategy, CC01, CC02, CC03 and TB21 of the MDD Local Plan, the Borough Design Guide SPD and section 2, 4, 8, 12 and 15 of the NPPF.”
- 2) “The application results in the development of an area of Best and Most Versatile agricultural land and **no justification has been provided regarding the loss of the grade 3a land**, contrary to Core Strategy policy CP1 and section 15 of the NPPF.”
- 3) “The application results in the development of land with sand and gravel deposits and **insufficient information has been submitted demonstrating the sterilisation of mineral deposits is acceptable**, contrary to Policy 2 Replacement Minerals Local Plan for Berkshire (incorporating the alterations adopted in December 1997 and May 2001) and section 17 of the NPPF.”
- 4) “The proposed development will have a **detrimental impact on the landscape and the character & appearance of the area by reason of the quantum, scale, density and location**. It would erode of the separation between existing villages and their rural setting. The development is contrary to policies CP1, CP3, CP9 and CP11 of the Core Strategy, CC01, CC02, CC03 and TB21 of the MDD Local Plan, the Borough Design Guide SPD and section 12 & 15 of the NPPF.”
- 5) “**The application site is within an unsustainable location** that would not encourage a modal shift towards sustainable modes of transport, by reason of the countryside location outside of settlement limits, distances to facilities and services, limited public transport links and poor quality of the walking/cycling an environment, contrary to policies CP1, CP2, CP3, CP6 and CP11 of the Core Strategy, CC01 and CC02 of the MDD Local Plan, the Borough Design Guide SPD and section 8 & 9 of the NPPF.”
- 6) “Insufficient and contradictory information has been submitted that **does not demonstrate and [sic] acceptable impact on existing trees and hedgerows** which have contribute positively to the character and appearance of the area. The proposed development is contrary to Core Strategy policy CP1, CP3 and CP11, MDD Local Plan policy CC01, CC02, CC03 and TB21, The Borough Design Guide SPD, The British Standard 5837:2012, sections 12 and 15 of the NPPF and section 197 of the Town and Country Planning Act.

- 7) The application has **failed to demonstrate the proposed development will have an acceptable impact on ecology and biodiversity** by reason of the impact on protected species, wildlife and habitats, contrary to policy CP1, CP3 and CP7 of the Core Strategy, CC01 and TB23 of the MDD Local Plan and section 15 of the NPPF.”
- 8) “The application **fails to demonstrate that the proposed vehicle access, highway alterations and overall development would have an acceptable impact on highway safety**, contrary to policies CP1, CP2, CP3 and CP6 of the Core Strategy 2010, Policy CC07 of the Managing Development Delivery Local Plan, Borough Design Guide Supplementary Planning Document 2012, and sections 9 & 12 of the NPPF.”
- 9) “In the absence of a completed legal agreement, the proposal **fails to secure opportunities for training, apprenticeships and other vocational initiatives** to develop local employability skills contrary to MDD policy Local Plan TB12.”
- 10) “In the absence of a completed Legal Agreement, the scheme **fails to make adequate provision for affordable housing**, contrary to policy CP5 of the Core Strategy and section 6 of the NPPF.”
15. It is understood that Reason for Refusal 8 is no longer pursued by the Council and Reason for Refusal 9 and 10 are likely to be resolved prior to the Inquiry.
16. The Parish Council does not intend to defend each reason for refusal. It will also avoid duplicating the Council’s submissions at the Inquiry wherever possible.
17. The focus of the Parish Council’s evidence and submissions will be on its parishioners’ experience of the appeal site and the surrounding area, the accuracy of the Appellant’s claims about the local area, and the likely impacts of the proposals on the Parish.
18. Accordingly, the Parish Council’s focus at the Inquiry will be on:
 - Reason for Refusal 1 (unsustainable pattern of development),
 - Reason for Refusal 4 (impact on character and appearance of the area),
 - Reason for Refusal 5 (unsustainable location),

- Reason for Refusal 8 (highways). This is pursued on the basis set out below, despite the Council's agreement with the Appellant on the access issue.

19. The Parish Council will also seek to interrogate the Appellant's evidence regarding ecology and biodiversity (Reason for Refusal 7), providing evidence of local residents' observations of the wildlife on the Appeal Site where appropriate.

Reason for Refusal 1 (unsustainable pattern of development)

20. The Parish Council agrees with the Council's officers that this is a speculative development on a greenfield site in the countryside, and is contrary to a host of development plan policies as well as the NPPF.

21. The Parish Council will demonstrate at the Inquiry the negative impact of such a large suburban development on small villages like Hurst and Whistley Green. The Parish Council will show that the scheme would also, in effect, join two small and distinct villages together into one larger settlement.

22. As previous Planning Inspectors have found, Hurst itself is a small settlement with a rural character, no defined local centre, and a limited range of services.⁸ In accordance with those previous decisions, the addition of some 200 dwellings in an unplanned manner will bring about significant planning harms.

23. The Parish Council notes the Appellant's reliance on the appeal decision *Land at Junction of Sawpit Road and School Road, Hurst* (APP/X0360/W/21/3280255). As a relevant previous decision, the *Sawpit Road* decision is material to this Inquiry. However:

- 1) The *Sawpit Road* decision failed to directly address previous appeal decisions which took a contrary view on sustainability,

⁸ E.g. Inspector Philip Major, *Land at Lodge Road, Hurst, Wokingham* (APP/X0360/W/18/3194044); Inspector A Spencer-Peet, *Land at the Old Rose Garden, Orchard Road, Hurst* (APP/X0360/W/19/3226711).

- 2) Unlike those decisions, the *Sawpit Road* decision failed to consider how realistic and safe the proposed routes would actually be, focusing entirely on distances rather than the routes pedestrians and cyclists would need to take,
 - 3) The *Sawpit Road* decision made no reference to the frequency of local bus services.
24. Overall, the sustainability analysis in the *Sawpit Road* decision is far less detailed, and should accordingly be given less weight, than the analysis in the *Land at Lodge Road* and *Land at the Old Rose Garden* appeal decisions.⁹
25. The diagram on the following page sets out where the previous appeal decision schemes lie in relation to the present appeal scheme. As can be seen, they are all in close proximity, the *Lodge Road* site being closest to the present Appeal Site.

⁹ See above.



FIGURE 1: PREVIOUS APPEAL SITES

26. The Parish Council will make legal submissions regarding the principle of consistent decision-making, which states that Planning Inspectors should have regard to the importance of consistency and giving a clear explanation for departing from a previous decision: *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P. & C.R. 137.
27. The Parish Council will also make legal submission regarding the fact that, even if development plan policies are deemed out-of-date, those policies may still command decisive weight in the planning balance: *Suffolk Coastal DC v Hopkins Homes* [2017] 1 W.L.R. 1865 at [61].

Reason for Refusal 4 (impact on character and appearance of the area)

28. The Parish Council will demonstrate that imposing such a large development on the small rural villages of Hurst and Whistley Green would fundamentally change the character and appearance of the immediate local area through incongruous suburban features and the removal of the last remaining green space separating the two villages. This is contrary to the landscape policies in the development plan.
29. A similar finding was made in the (much smaller) *Lodge Road* appeal, in which the Inspector found that that the development there would not respect the transition between the more built up area and the countryside.¹⁰

Reason for Refusal 5 (unsustainable location)

30. The Parish Council repeats the points made above under Reason for Refusal 1. The Parish Council will show how the location of the appeal site is unsustainable, in line with the detailed findings of previous appeal decisions.
31. The Parish Council will provide sufficient evidence from local residents to allow the Inspector to make a detailed, informed decision on sustainability that gives greater consideration to the local situation than the less detailed analysis in the *Sawpit Lane* decision which the Appellant places great reliance on.
32. To the extent that an element of pedestrian and cycle travel/ modal shift can be realistically encouraged among residents of the appeal site, this will be unsafe for the reasons set out below under Reason for Refusal 8.

Reason for Refusal 8 (highways)

33. The Parish Council notes the Council are no longer pursuing Reason for Refusal 8.

¹⁰ At [28].

34. Nevertheless, linked to its evidence on reasons for refusal 1 and 5, the Parish Council will show that the Appellant has provided insufficient evidence to demonstrate that the addition of further cars, cyclists and pedestrians into the local road network is safe.
35. Local roads in this area are rural, narrow, winding and dark at night, without continuous separated footways. The Appellant's evidence demonstrates a lack of local knowledge about the challenges of shared surfaces and viable travel routes in the local area. The difficulties of pedestrian travel around the local area have been commented upon by previous Inspectors in the appeal decisions highlighted above.
36. Accordingly, to the extent that non-car travel can be encouraged from the Appeal Site, it will not be safe, and will increase risk through additional road users.
37. Accordingly, there is little confidence that the development will not have an unacceptable impact on highway safety.
38. Irrespective of the tilted balance, a lack of sufficient evidence on highway safety alone entitles the Inspector to refuse the application under paras 110 and 111 of the NPPF, as recognised in *Satnam Millenium Ltd v Secretary of State for Housing, Communities and Local Government* [2019] EWHC 2631 (Admin).

Conclusion

39. For the above reasons it is clear that, irrespective of the Council's housing land supply position, this is simply "*the wrong development in the wrong place.*"¹¹ What is proposed is not simply infilling or a reasonably appropriate urban extension that may be technically outside the settlement boundary. It goes far beyond that. As its Statement of Case makes plain, the Appellant has proceeded on the mistaken basis that the housing land supply position allows it to simply ignore the statutory development plan, and indeed basic principles of spatial

¹¹ *Land at Lodge Road* appeal decision, [51].

planning. That is an unacceptable approach to development within a plan-led system.

40. In summary, this scheme would fundamentally and radically change the rural nature of the villages of Hurst and Whistley Green, in an entirely unsustainable and unplanned way, with unacceptable impacts on local infrastructure, the landscape and character of the area, and highway safety.
41. The Parish Council will accordingly submit that the appeal should be dismissed.

List of documents

42. The Parish Council will rely on the following appeal decisions:

- 1) Land at Junction of Sawpit Road and School Road, Hurst, Berkshire

(APP/X0360/W/21/3280255) **(SoC APPENDIX 1)**

- 2) Land at Lodge Road, Hurst, Wokingham RG10 0SG

(APP/X0360/W/18/3194044) **(SoC APPENDIX 2)**

- 3) Land at the Old Rose Garden, Orchard Road, Hurst

(APP/X0360/W/19/3226711) **(SoC APPENDIX 3)**

43. The Parish Council will rely on the following case law:

- 1) *Suffolk Coastal DC v Hopkins Homes* [2017] 1 W.L.R. 1865 at [61] (potential decisiveness of policies deemed out of date),
- 2) *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P. & C.R. 137 (consistency in decision-making),
- 3) *R (Tate) v Northumberland County Council* [2018] EWCA Civ 1519 at [44] (consistency in decision-making),



- 4) *Hallam Land Management Ltd v Secretary of State for Communities and Local Government* [2018] EWCA Civ 1808 (“Hallam Land”) at [62] (consistency in decision-making),
 - 5) *Satnam Millenium Ltd v Secretary of State for Housing, Communities and Local Government* [2019] EWHC 2631 (Admin) (NPPF paras 110 and 111).
44. The Parish Council will seek to closely coordinate with the Appellant and Council regarding additional documents, appeal decisions and case law that may be required in the Core Documents.
 45. The Parish Council requests that it is CCed into all discussions between the Council and the Appellant relevant to its Inquiry case as stated in this document, including regarding conditions and the Statement of Common Ground.