

**TOWN AND COUNTRY PLANNING ACT 1990
PLANNING AND COMPULSORY PURCHASE ACT 2004**

**LAND EAST OF LODGE ROAD, HURST, BERKSHIRE
APPEAL BY MACTAGGART AND MICKEL HOMES ENGLAND LTD**

APP/X0360/W/22/3309202

Inquiry opened 31 January 2023

APPELLANT'S OPENING POINTS

1. The Appellant seeks outline permission for a development of up to 200 homes on the appeal site, which lies to the east of Lodge Road in Hurst, Berkshire. Within the proposals, 40% of the homes would be affordable, with open space and sports facilities brought forward as well as better connectivity across a site of over 10.6 ha, which is entirely private at the moment.
2. Ms Jones' evidence at Appendix 5 contains the Illustrative Masterplan for the scheme, which shows how the site can be laid out to create a characterful new part of the settlement of Hurst.
3. Permission was refused by the Council on 23 June 2022 for ten reasons: reasons 9 and 10 relate to the s.106¹ which is in the process of being finalised for the purposes of the appeal. The Council has on receipt of further information withdrawn its objections relating to its reasons for refusal 3 (minerals²), 7 (ecology³) and 8 (access and highway safety⁴).
4. That leaves as live issues as between the Appellant and the Council: the principle of development, BMV agricultural land, landscape, trees and sustainability (there is obviously some overlap between these points).

¹ CD50

² See Ms Jones 2.11-15 and CD57; and the SCG (CD1.5).

³ Ibid SCG.

⁴ Ibid SCG.

5. There is no dispute that the appeal scheme does not accord with the adopted development plan read as a whole. That comprises the Wokingham Borough Core Strategy (2010)⁵ and the accompanying Managing Development Delivery Local Plan ('MDD') of 2014⁶, which as Ms Jones sets out was intended to allocate sites to deliver the housing numbers in the Core Strategy⁷.
6. However, the development plan is out of date, for two reasons: first, it has not resulted in the Council being able to maintain a 5 year supply of housing on the currently-approved Local Housing Need basis, and second, its policies are not aimed at meeting current needs and therefore housing numbers, settlement strategy and its relationship to control over development in the countryside as identified in the 2010 Core Strategy, are all out of date.
7. The Council has confirmed that the current housing land supply stands at 3.95 years⁸. As a result:
 - The presumption in paragraph 11(d) of the NPPF applies;
 - Policies CP11, CC02, CP9 and CP3 (amongst others) are out of date and conflict with them should only be afforded limited weight;
 - Permission should be granted unless the harmful effects of the scheme would significantly and demonstrably outweigh the benefits taking the NPPF as a whole.
8. At this point it is worth referring to flooding. There is currently an outstanding Environment Agency objection (and therefore examination is necessary as to whether the tilted balance is disapplied by reference to specific policies in the NPPF). The site lies in Flood Zone 1, and apart from some pluvial flooding due to the almost entirely flat levels on the it, there is no flooding data which provides an objective or proportionate reason to undertake the kind of modelling that the EA has said it requires. There is no objection from other bodies concerned with the topic of flooding and the site will be actively drained with a proper scheme if the development goes ahead. Furthermore, the question of final levels, etc, is a matter which can

⁵ CD 5.1.

⁶ CD5.2.

⁷ See Ms Jones paragraphs 4.5-6, referring to the clarification of the role of the MDD in the *Gladman Devts v Wokingham* case (CD 53).

⁸ See Mr Church's evidence at paragraph 2.2.

be conditioned; there is therefore no basis to refuse permission on this basis and it has no bearing on the operation of the tilted balance.

9. Turning briefly to the written evidence as to likely harm that the scheme would cause, the first topic is landscape and visual harm. There would be some: the site is a large undeveloped field which provides some amenity particularly for those who live adjacent to it and for those who walk in Tape Lane. However, the landscape value and sensitivity of the site is only moderate or medium, because it is neither designated for its landscape value nor is it properly described as a 'valued landscape' within the meaning of the NPPF (which of course carries with it the injunction to 'protect' it).
10. Some evidence based on previous appeal decisions has been given to the effect that the site has some elevated landscape value but this is captured within the 'medium' sensitivity rating. It has (particularly for the winter months) a relatively clear visual and character relationship with the houses which fringe it on three sides, and contains few features of value properly analysed. Whilst something is made in objections of the role of the site as lying between different parts of what the Council recognises as a single settlement (Hurst and Whistley Green), its location and the way that Lodge Road's very strong boundary hems it in, means that one should not artificially elevate its importance in landscape and visual terms.
11. There will be some harm from its development but that harm should only be given moderate weight in the circumstances.
12. As to the 'principle of development', the site lies in Hurst which in the adopted plan is a settlement to which only limited growth should be directed. That approach is out of date given the up to date position on housing need and changes to the sustainability of the settlement (particularly given its proximity to the excellent train connections only 1½ miles away in Twyford, where good mainline rail is now complemented by the Elizabeth Line). The location of the site in the designated countryside is also, as I have said, something to which only relatively limited weight should now be given in policy terms.
13. There is no prematurity argument advanced by the Council, for good reason. The replacement local plan has not progressed to a stage where anything more than very limited weight can be given to it, despite the process having been begun in 2015⁹. Mr Church's evidence asks for more limited weight to be given to the way the scheme would meet some of the 5 year housing land supply shortfall, due to so-called 'oversupply' in the past couple or three years – the irony

⁹ See recent findings to that effect in Inspectors' decisions, eg DL8 in CD9.7.

is that the supply to which he refers contains a large number of greenfield completions no different in principle from this one; the Council in its reason for refusal object to the scheme on the basis that it is “unplanned” housing development – but there is no option in this District Council area but to bring forward housing to meet the needs in the absence of a functional local plan.

14. The Council says that the scheme is “out of scale” with the settlement of Hurst, but again to some extent that reflects the out of date policy CC02 on ‘limited growth’ in the settlement; there would be no tangible disbenefits to the character or function of Hurst with the scheme in place – quite the contrary in fact.
15. I have mentioned the nearby station at Twyford, which can be accessed by a variety of means of transport. Being that close to the Elizabeth Line and fast mainline rail is something lacking in most places in Wokingham District, and represents a relationship for sustainable transport purposes that large tracts of London itself lacks, due to the distance from and travel times to, major rail infrastructure like the Elizabeth Line. Mr Whittingham’s evidence sets out the sustainability credentials of the site (and settlement) alongside Ms Jones’ assessment of the decent local facilities (including access to local education, local shopping and other facilities). Hurst is not a larger order settlement like Twyford, it is true, but properly analysed it has much going for it in sustainability terms.
16. As to the BMV agricultural land point, Ms Jones collates and assesses the evidence¹⁰. About half of the site is Grade 3a, but the evidence shows that the site is hampered by the way the lower grade land affects it and it has been farmed for many years on the basis of the lower-order grade (and as horse grazing land in the main). Little weight should be given to its replacement with homes.
17. A recently-designated TPO covers some trees on the site and there are a couple of veteran trees – the outline nature of the scheme allows for a scheme to come forward which would protect them (as well as substantial new tree planting).
18. There would undoubtedly be a level of harm as a result of the scheme, but it would be moderate. By contrast, the scheme’s benefits would be substantial. They comprise the housing and affordable housing benefits firstly: as the housing supply and delivery weaken in the District (as the evidence shows) the District is unable to show how the current and rolling need will be met in full (even the minimum level identified as needed). Over 20% of the need is not

¹⁰ Ms Jones Appendixes 7 and 23.

identified (with a 3.95 year supply). Given the pressing need for increased housing supply, that is something to which significant weight should be given.

19. Ms Jones also notes the marked disparity between delivery (and planned delivery) of housing in the north and south of the District, something which exacerbates the need and feeds directly into the escalating unaffordability of homes in Hurst. It is a desirable and hugely expensive place to live and there has been a significant shortfall in affordable housing delivery here and across the District, as Ms Jones sets out. Substantial weight should be given to the fact that 40% of the proposed homes would be affordable, a benefit which only really comes with delivery at some scale and is unachievable with much smaller sites.
20. The appeal proposals would bring forward a number of other benefits which are of significance: these include the provision of outside gym and tennis courts for the use of the whole Hurst community (a facility which was notably sought in responses to community engagement and which has been shown through assessment work to be lacking in the wider area). Local Primary Schools (St Nicholas and Colleton Primary Schools) would be sustained within reach of sustainable travel; and there would be marked improvements in PROW connections and Biodiversity, as well as economic benefits for Hurst and the wider area.
21. These benefits are partly related to the scale of the scheme (up to 200 units) but also arise from detailed site and location specific work that the Appellant has undertaken.
22. The benefits would outweigh the moderate harms that the scheme would cause, as it is the right kind and size of development in the right location (and definitely at the right time – the sooner the better given the housing and affordable housing problems prevailing in the District). The tilted balance would indicate therefore that permission ought to be granted without delay. In terms of section 38(6), the non-compliance with the development plan would be outweighed by the compliance with the NPPF and the balance of benefits against harms.
23. In due course the Appellant will ask for the appeal to be allowed and permission granted.

RUPERT WARREN K.C.

Landmark Chambers

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