

Appeal APP/X0360/W/22/3309202

Land East of Lodge Road, Hurst, Wokingham

OPENING SUBMISSIONS
ON BEHALF OF
St. NICHOLAS HURST PARISH COUNCIL

Introduction

1. The Appellant now accepts, via its planning witness Ms Jones, that “*The Appeal scheme does not accord with the Development Plan when read as a whole.*”¹ The Appellant has made this concession at a late stage in the appeal process, but it was clearly right to do so. It is now a point of agreement between all the represented parties at the Inquiry that these proposals are not in accordance with the Development Plan as a whole.
2. This has important implications for the Appellant’s case. It is now clear that the Appellant is pursuing this appeal on the basis that the Development Plan must effectively be ignored because the tilted balance applies. That approach is wrong as a matter of law. It is wrong as a matter of principle. And it is also wrong as a matter of national policy.
3. 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

¹ Ms A Jones PoE, para 5.4 and 8.2. This concession was not made in the Appellant’s SoC: see para 7.2 [CD 1.3].

Plan, unless material considerations indicate otherwise.² 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.³ The starting point, in law, is that you must comply with the Development Plan as a whole. That is the very essence of a plan-led system.

4. This scheme is just the kind of *ad hoc*, speculative development which a plan-led system seeks to avoid. In accepting that the Appeal scheme does not accord with the Development Plan *as a whole*, the Appellant has tacitly accepted that the scheme inflicts direct harm on the plan's central objectives. It would be difficult to argue otherwise. This scheme represents a significant percentage increase to the population of Hurst and Whistley Green, an almost 50% increase in the population, virtually overnight.⁴ It would impose eight times the maximum number of new dwellings permissible for Limited Development Locations such as Hurst and Whistley Green (25), as set out in Core Strategy Policy CP17- Housing Delivery. This is not just an arbitrary designation: Limited Development Locations are limited for good reasons. They are defined in the Core Strategy as those areas "*containing a basic range of services and facilities*" (emphasis added).⁵
5. The purpose of any plan is to direct the right development to the right place. The Appellant seeks to impose a large scheme on an area that the Development Plan tells us is the most inappropriate place for such a scheme.
6. The Appellant's only answer to this criticism is to wave the tilted balance as a trump card, and to invite you to apply it here in a simplistic and robotic way, devoid of nuance and context. But the context here is crucial. The plan-led system

² 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.

³ 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."

⁴ In its statement of case the Parish Council suggested a figure of 35% based on the wider area around the villages: the Council have calculated this as 45.5% based on just the 439 houses in the two villages themselves. See Mrs F Jones' PoE, 6.21. However widely the net is cast, the figure is substantial.

⁵ Core Strategy Glossary, p 122 [CD 5.01].

in Wokingham is working. Wokingham is doing very well at building the homes it needs. As the Appellant recognises, large sites are coming forward in appropriate places, in accordance with the spatial hierarchy in the Development Plan and indeed the draft allocations in the emerging Plan. The tilted balance applies in this appeal precisely because Wokingham has overdelivered in the past, its early completions eating into its housing supply pipeline. It is because Wokingham's housing delivery has been so effective that we find ourselves in a strange position where the Council is the victim of its own success, the penalty of the tilted balance applied on a technicality, and speculative developments like this one being pushed upon it.

7. Given that context, it is unsurprising that this is a highly controversial appeal. The question many local residents are asking themselves is this: if the system is working well, if we are doing our fair share in Wokingham to solve the housing crisis, how can a proposal like this come forward, placing a large development in a fundamentally unsuitable place, in a way that irreversibly alters two historic village settlements?
8. The government has recently acknowledged that such concerns are entirely legitimate, and has promised reform to the tilted balance. In the latest consultation on the NPPF (dated 22 December 2022), the government's position could not be clearer:

“Our proposed changes to the operation of the Housing Delivery Test are similarly designed to support a plan-led system, by preventing local authorities who are granting sufficient permissions from being exposed to speculative development, which can undermine community trust in plan-making.”

9. This proposal is exactly the sort of speculative development that the government has mind and wants to discourage. If allowed, it would undermine this community's trust in plan-making.
10. I now turn briefly to each reason for refusal that the Parish Council defends.

Reason for Refusal 1 (unsustainable pattern of development) and 5 (unsustainable location)

11. The Parish Council's position is that this scheme amounts to a significant extension to the small settlements of Hurst and Whistley Green that is clearly inappropriate to the area. Mr Wayne Smith, Chair of the Parish Council, explains in his evidence how Hurst and Whistley Green have a rural character, no defined centre, a poor bus service and a limited range of other services, as previous planning Inspectors have found.⁶
12. The previous appeal decisions put in evidence are important material considerations in this appeal. The courts have said that Planning Inspectors should have regard to the importance of consistency and giving a clear explanation for departing from a previous decision.⁷

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

13. The Parish Council will demonstrate that imposing such a large development on Hurst and Whistley Green would fundamentally change the character and appearance of these two small villages, through incongruous suburban features. This appears to be a point of agreement between all the represented parties at the Inquiry: the Appellant's landscape witness has accepted that "*the character on site will be permanently changed to a more suburban character.*"⁸
14. The proposal would also result in the removal of the last remaining green space separating the two villages, effectively turning them into one larger settlement. This would be a significant and irreversible change. The Appellant's argument that, if this development goes ahead, "*the separation between the local settlements*

⁶ E.g. Inspector Philip Major, Land at Lodge Road, Hurst, Wokingham (APP/X0360/W/18/3194044); Inspector Spencer-Peet, Land at the Old Rose Garden, Orchard Road, Hurst (APP/X0360/W/19/3226711).

⁷ North Wiltshire District Council v Secretary of State for the Environment (1993) 65 P. & C.R. 137.

⁸ Mr Friend's PoE, 5.2.3.

*of Hurst and Whistley Green will remain as currently perceived*⁹ cannot seriously be maintained.

15. Mr Smith in his evidence explains the value of this green space to local residents, and the importance of the historic “reversed C” of Hurst and Whistley Green that previous Inspectors have acknowledged.¹⁰ The Appeal site has been nominated in the Council’s Local Plan Update to be a Local Green Space as it is recognised as being demonstrably special to local residents. It has been an important part of these two settlements for many years.
16. The Landscape impacts of this proposal, including its effect on Hurst and Whistley Green in visual, spatial and amenity terms, is a weighty harm in the planning balance.

Reason for Refusal 8 (highways)

17. 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 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.
18. 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. Moreover, speeding is a significant problem in Hurst and Whistley Green, despite the existing speed limits and signage.
19. 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.

⁹ Mr Friend’s PoE, 7.1.5.

¹⁰ See e.g. Land at Lodge Road, [23] (“In my judgement the site is an important component of the open space which separates the northern and southern arms of the identified settlement of Hurst/Whistley Green.”)

20. Irrespective of the tilted balance, a lack of sufficient evidence on highway safety alone entitles the Inspector to dismiss the appeal 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).

Other matters

21. The Parish Council has assessed the Appellant's ecology evidence and has already confirmed that it will not seek to challenge it at the Inquiry.

Conclusion

22. It is the Parish Council's case that this proposal should never have come forward, nor should this appeal have been pursued on the basis that plans don't matter.
23. In any plan-led system, it is a fundamental principle that large developments should be situated in areas with the services and the infrastructure to cope with them. The Appellant is inviting you to ignore this principle, and treat the Development Plan as if it did not exist. That is a misguided approach that, if endorsed, would undermine trust in the plan-led system, as the government has recently recognised.
24. Ultimately, the benefits of this scheme are significantly and demonstrably outweighed by the conflict with the Development Plan's spatial hierarchy, the sustainability harms, and the landscape harms. Accordingly, the Parish Council respectfully invites you to dismiss this appeal.

ALEX SHATTOCK

Landmark Chambers

31.1.23