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# Appeal Decision

Site visit made on 5 July 2022

**by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE**

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

**Decision date: 4 August 2022**

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## **Appeal Ref: APP/X0360/W/21/3280255**

### **Land at Junction of Sawpit Road and School Road, Hurst, Berkshire**

- 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 JPP Land Ltd and Redcar Investment Company Ltd against the decision of Wokingham Borough Council.
  - The application Ref 211532, dated 30 April 2021, was refused by notice dated 2 July 2021.
  - The development proposed is the erection of 2 detached four-bedroom dwellings and 2 semi-detached three-bedroom dwellings, together with associated site access, car parking, home offices and landscape.
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## **Decision**

1. The appeal is allowed and planning permission is granted for the erection of 2 no. detached four-bedroom dwellings and 2 no. semi-detached three-bedroom dwellings, together with associated site access, car parking, home offices and landscape on land at Junction of Sawpit Road and School Road, Hurst, Berkshire in accordance with the terms of application Ref 211532, dated 30 April 2021, subject to the attached schedule of conditions.

## **Procedural matters**

2. Following the determination of the planning application by the Council the appellants submitted a revised Site Plan (DWG 10A) that provided revisions to the plot boundary and position of a detached garage to serve Plot 1. This was submitted to address the reasons for the refusal of planning permission with regard to the location of development in the proximity of a 'Veteran Tree'. In all other respects, the original submitted Site Plan (DWG 10) remains unchanged.
3. My decision as to whether to accept the amended plan rests on whether the 'Wheatcroft Principles'<sup>1</sup> have been met. The main, but not the only criterion on which that judgement should be exercised, is whether the development is so changed that to grant it would deprive those who should have been consulted on the changed development of the opportunity of such consultation.
4. From my careful consideration of the two sets of proposals, I do not consider that the changes are of a nature that would be likely to prejudice the interests of interested parties, including nearby occupiers of properties. The changes were a direct response to the proximity of part of the development to an

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<sup>1</sup> Bernard Wheatcroft Ltd v SSE [JPL 1982P37]

alleged 'Veteran Tree' that was identified as a reason for refusal of planning permission.

5. The Council has not raised any objections to the consideration of the revised plan in the determination of this appeal. In my view, the changes shown thereon are minor in nature. I have therefore taken the revised Site Plan (DWG 10A) into account in the determination of this appeal.
6. A Unilateral Undertaking (UU) pursuant to S106 of the Town and Country Planning Act 1990 was submitted, dated 22 March 2022. Amongst other things, this provides for a financial contribution towards the provision of affordable housing. I consider the UU later in this decision.
7. The Council has commenced work on the review of the development plan through the preparation of a new Local Plan which will provide a strategic planning policy framework for development in the Borough. The Local Development Scheme (July 2021) suggests that the new Local Plan would not be submitted for examination until late 2022 with the examination in public occurring during 2023 and adoption towards the end of 2023.
8. No substantive reference has been made to the policies contained within the emerging new Local Plan by the main parties and I have no evidence to suggest the extent to which there are unresolved objections to policies contained therein. Consequently, in accordance with paragraph 48 of the National Planning Policy Framework (the Framework), I have attached little weight to the policies contained within the emerging plan.
9. A Hurst Neighbourhood Plan Working Group is in the process of producing a Neighbourhood Plan. I have no evidence to suggest that consultation on this Plan, pursuant to Regulation 16 of the Neighbourhood Planning (General) Regulations 2012, has commenced and there is no evidence before me as to when this Plan may be subject to formal examination. Consequently, the emerging Neighbourhood Plan is currently not made and I have afforded the policies contained therein no weight in the determination of this appeal.

### **Main Issues**

10. The main issues are:

- Whether the proposal is in a suitable location for housing having regard to national planning policies, the Council's spatial strategy for new housing and housing land supply.
- The effect of the proposed development on the character and appearance of the area.
- Whether the proposal is in a suitable location for housing having regard to the accessibility of services, facilities and to the reliance on motor vehicles.
- The effect of the proposed development on trees.
- The effect of the proposed development on biodiversity.
- Whether the proposed development makes sufficient provision for affordable housing.

- Whether there are any material considerations which mean that the decision should be made otherwise than in accordance with the development plan (Planning Balance).

## Reasons

### *Spatial strategy and housing land supply*

11. The appeal site comprises a relatively flat triangular grassed field lying between Sawpit Road, School Road and Church Hill and located immediately to the south of Hurst. The site boundaries are contained by substantial mature trees and hedging. Residential development is located to the north and sporadically to the south with a cluster of community buildings to the east.
12. The Development Plan comprises: the Wokingham Borough Local Development Framework adopted Core Strategy Development Plan Document, January 2010 (CS); the Wokingham Borough Managing Development Delivery Local Plan, February 2014 (MDD).
13. There is no dispute between the parties that the site is located outside of the settlement boundary of Hurst with the carriageway of Sawpit Road delineating the edge of the settlement boundary. It also lies within the Old School House Area of Special Character (ASC).
14. Section 1 of MDD Policy CC02 confirms that development limits for each settlement are defined on the Policies Map and that proposals at the edge of settlements will only be granted where the development, including boundary treatments, is within development limits. In this regard, the location of the proposed development would conflict with MDD Policy CC02.
15. CS Policy CP11 indicates that in order to protect the separate identity of settlements and maintain the quality of the environment, proposals outside of development limits will not normally be permitted, subject to certain identified exceptions. The appeal scheme does not fall within the scope of those exceptions and it follows that the proposal would also conflict with CS Policy CP11. Furthermore, it would not comply with CS policy CP9, which only supports development outside development limits in the case of affordable housing on rural exception sites to address a demonstrable local need.
16. In considering the location of the proposal in the context of the development plan, I conclude that the proposal would conflict with MDD Policy CC02 as well as CS Policies CP11 and CP9.
17. Considerable evidence has been presented in this appeal by both main parties regarding the extent to which the Council can demonstrate a 5-year housing land supply (HLS). At the time the Council produced its statement (January 2022) it suggested that there was a 5.1-year HLS against the Local Housing Need (LHN) of 768 dwellings plus 5% buffer as at 31 March 2021.
18. The Planning Practice Guidance (PPG) sets out the standard method that can be used to calculate a minimum annual LHN figure. The calculation methodology requires an adjustment to the average annual projected household growth figure based on the affordability of the area and that the most recent median workplace-based affordability ratios, published by the Office for National Statistics (ONS) at a local authority level, should be used. Paragraph 61 of the Framework identifies that to determine the minimum number of homes

needed, strategic policies should be informed by a local housing need assessment, conducted using the standard method in the PPG.

19. The appellants provided further evidence on 25 March 2022 regarding the 'most recent' affordability ratio for 2021 provided by the ONS on 23 March 2023. This identified that for Wokingham Borough the most recent median workplace affordability ratio is 11.84. Using the most recent ratio revises the Borough's LHN figure to 796. This means that that instead of 4,032 dwellings (including 5% buffer) being required it is now 4,179 dwellings. The appellants identify that the Council's contended supply of 4,115 dwellings is now insufficient to show a 5-year HLS as it is below the required 4,179 dwellings requirement derived from the most recent median workplace affordability ratio. Consequently, the appellants contend that the HLS equates to 4.92 years.
20. On 13 July 2022 the Council confirmed that it had no comment to make on the further evidence provided by the appellants. In the circumstances I have no other contrary evidence that may suggest that the appellants' calculation of the 5-year HLS position may be incorrect.
21. Both parties have provided considerable evidence regarding the extent to which the relevant policies for the supply of housing may be considered out of date, irrespective of the 5-year HLS position. However, taking into account the evidence now provided regarding the fact that a 5-year HLS cannot be demonstrated, it is not necessary for me to consider the views of both parties regarding which policies may or may not be out of date.
22. As a consequence of the above, footnote 8 of paragraph 11 of the Framework is applicable. Therefore, the relevant policies for the supply of housing should be considered as out-of-date according to paragraph 11(d) of the Framework. The so called 'tilted balance' is therefore not only triggered as a consequence of the 5-year housing land position but also because the most important policies for determining this appeal are out of date.
23. The MDD identifies that its objective is to take forward objectives laid down in the CS, including making provision for the housing requirements set out in the CS and setting boundaries for development limits. As a consequence of the above position regarding HLS, I consider that it would be reasonable to reduce the weight afforded to the identified conflict with MDD Policy CC02 and CS Policies CP11 and CP9 as the development boundaries to which they relate are derived from out-of-date housing requirements. Consequently, I consider that the conflict with these policies should be afforded moderate weight.
24. Notwithstanding the fact that there may be conflict with the locational policies of the development plan, paragraph 11(d) of the Framework advises that where the policies which are most important for determining the application are out-of-date planning permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

25. In light of the above, it is necessary for me to consider the extent to which there may be any adverse impacts arising from the proposed development, and the weight to be given to these in the planning balance.

*Character and appearance*

26. The Wokingham District Landscape Character Assessment (LCA) shows that the site lies within the C2 'Hurst River Terrace' area but adjoins area I4 'Hurst Farmed Clay Lowland'. I accept that the site contributes to some of the key qualities of both character areas, particular being within a setting of narrow rural lanes, with rough hedgerow and trees and an intimate character of small-scale pasture fields that provide a distinctive sense of place.
27. The LCA sets out the relevant landscape strategy which, amongst other things, seeks to conserve and enhance the quiet, rural and agricultural landscape with its scattered rural farmsteads and small red brick villages connected by narrow rural lanes. In terms of development, the aim is to conserve the low-density pattern of settlement centred around Hurst and Whistley Green.
28. In my view, the existing hedgerow and trees on the periphery of the site provide a significant degree of containment which considerably screen views of the site from the adjoining roads. The proposed development would retain and strengthen most of the peripheral landscaping. Although there would be some degree of tree and hedgerow loss in the vicinity of the proposed access off Sawpit Road, the character of the peripheral narrow rural lanes with rough hedgerow and trees would remain largely intact.
29. In my view, the site does make an important local contribution to the character of this part of the countryside but is heavily influenced by the urban fringe of Hurst. Whilst I consider that the rural nature of the roads around the appeal site would predominantly retain their character, the proposal would represent the extension of development into the rural countryside with a consequent erosion of its rural character and appearance. However, the development would be largely screened in views from the surrounding roads. Although it would nonetheless result in a permanent and obvious loss of an undeveloped part of the countryside, such landscape harm would be localised and limited.
30. The appeal site also represents the transition between the more linear and urbanised form of development to the north off Martineau Lane and the more sporadic and less dense nature of the dwellings to the south. Overall, Hurst has a fairly varied character and form, scale and design of development.
31. In visual terms, I consider that the proposal would cause limited and localised effects on the appearance of the countryside because of the relatively contained nature of the site and its surroundings, and the retention of trees and hedgerows along its peripheral boundaries. In my view, as a consequence of the retention of the majority of the peripheral trees and hedgerow, the visual effects of the proposed development would be very localised and minor adverse.
32. In landscape terms, the proposal would undoubtedly have a moderate detrimental effect on the landscape character of the local area. Consequently, there would be conflict with the broad thrust of the countryside and character protection aims of Policies CP1 and CP3 of the CS, in so far as the proposal

- would fail to maintain or enhance the high quality of the environment, and Policies CC03 and TB21 of the MDD.
33. Policy TB26 of the MDD sets out that planning permission will only be granted for proposals to or affecting ASCs where they demonstrate that they retain and enhance the traditional, historical, local and special character of the area. Paragraph 3.126 of the supporting text to the policy identifies that an ASC comprises areas or groups of buildings where there is a consistent period or character reflecting the areas past but where a Conservation Area designation may not be justified.
34. The Council identify that the site is an important element in the area's balance of spatial arrangements with the existing group of mostly former public buildings and reflects the character of tree/hedgerow lanes. The ASC is defined as being predominantly Victorian in character with red brick and tiles. In my view, the spatial arrangement with the old School House, the Lodge and the Village Hall are the most relevant components of the spatial arrangement of the site with the existing buildings.
35. As set out above, I do not consider that the proposals would cause any significant harm to the character of the roads surrounding the site in terms of their appearance as tree/hedgerow lanes.
36. I have carefully considered the appellants' analysis of the ASC and I agree that there are a variety of design styles, materials and forms of buildings within the area. The front elevation of Plots 1 and 2 include the diamond motif in the brickwork that reflects that within the Lodge. Other minor elements of the design are reflective of components of other nearby buildings. Although Plots 3 and 4 are proposed to be clad in black weatherboard the use of this material is not alien within the ASC. Similarly, the proposed cul-de-sac layout is included in other layouts in Hurst.
37. In summary, I do not consider that the cul-de-sac form of the relatively low density proposed development would unacceptably contrast with the pattern and form of development in the village. In addition, I consider that the form, scale, mass and design of the proposed dwellings would be compatible with nearby buildings and would be sensitive to the character of the area.
38. The relatively low density of the proposed development would be appropriate to its transitional role between the more linear, dense and urbanised form of development to the north off Martineau Lane and the more sporadic and less dense nature of the dwellings to the south. In considering the balanced judgement of applications that affect non-designated heritage assets, as set out in paragraph 203 of the Framework, I do not consider that the proposed scale of the development would cause the proposal to be visually detrimental to the ASC as a consequence of the mitigation provided by the retention of the peripheral trees and hedgerows.
39. I accept, as a matter of principle, that there would be localised harm to the spatial character of the ASC as a consequence of the change in the spatial arrangements around the existing buildings that would be caused by the development of the current open site in the countryside. However, as a consequence of the above, the visual elements of such harm would be minimised and localised. Overall, I consider that moderate weight is

attributable to the likely adverse effect of the scheme on the ASC and the conflict with Policy TB26.

#### *Location of Development*

40. Although the appeal site is physically separated from the main body of the residential area to the north it is nonetheless geographically close to it. Hurst has a number of facilities which includes a Post Office and Village Store, Primary School, Pre-school, Public House, Bakery, Church and Village Hall. Secondary schools and medical surgeries are located further afield.
41. There are two bus stops located near the appeal site which provide services to larger settlements including Reading and Wokingham. The nearest railway station is at Twyford, which the appellants indicate is approximately 2.9km to the north of the appeal site and is accessible by bus. The site is also close to promoted 'Quiet Links' suitable for cycling which provide connecting access south to Winnersh and into Wokingham, and north towards Twyford.
42. Given the close geographical relationship to the existing settlement, in my view, future residents of the proposed development would experience a similar degree of accessibility to local facilities as those residents of the surrounding existing residential areas.
43. The submitted Transport Statement and the evidence of the appellants' transport witness provide walking and cycling distances to local facilities that are located within 1.6km of the site which the appellants consider to be within reasonable walking distance (less than 20 minutes).
44. There is no prescriptive and definitive national or local planning policy regarding acceptable walking distances to services and facilities as these will obviously vary between individuals and circumstances. However, the Chartered Institution of Highways & Transportation (CIHT) 'Guidelines for Providing for Journeys on Foot' (CIHT Guidelines) attempt to set out some parameters for appropriate walking distances. These have been used by the appellants in the assessment of the walking distances to facilities and I have no contrary evidence from the Council to suggest that the use of these guidelines is inappropriate.
45. The CIHT Guidelines suggest that the preferred maximum walking distance for commuting/schools/leisure is 2.0km with 1.0km being acceptable and 500m being preferred. The preferred maximum distance to walk to town centres and journeys elsewhere is 800m and 1200m respectively. Approximately 1.6km is the distance where most people (circa 80%) will walk.
46. The appellants evidence refers to data provided within the National Travel Survey (2019) which demonstrates that the average distance per journey by cycling is approximately 4.4km, with the current average length of an employment and leisure cycle trip being some 5.2km. I concur with the appellants' view that a 5km cycle distance represents a 'reasonable' cycle distance.
47. The submitted evidence demonstrates that all of the village facilities are located within 1.6km of the appeal site which is a 'reasonable' walking distance (less than 20-minute walk), and that many of Hurst's facilities can be reached within a much shorter 10-minute walking journey, including the Village Hall,

Pre-School, Primary School, recreation ground, Public House and bus stops. The evidence also demonstrates that all facilities in Hurst are located within a short cycle journey of generally less than 5 minutes.

48. In my view, future residents of the proposed development would benefit from realistic and viable opportunities to reach key local services and facilities on foot and by cycle, including employment, primary education, retail and leisure facilities, without the need to rely on the private car.
49. Taking the above factors into account, I consider that the proposed development would be adequately accessible to local facilities by means of walking and cycling. Paragraph 79 of the Framework supports the sustainable growth of rural areas but it acknowledges that it is not always possible for such areas to provide for the full needs of its community, and in such cases, nearby villages will be likely to support each other.
50. Whilst Hurst village offers a good range of local facilities to address many everyday needs which are accessible by walking and cycling, it is inevitable that there will be demands for travel outside of the village, to higher order settlements in the local area, or to alternative service centres that can offer facilities that Hurst does not. Further essential facilities and services including railway stations, local and supermarket shopping, a GP surgery, and employment, are provided in Twyford, Reading, Winnersh and Wokingham which are accessible from the bus stops in the proximity of the site.
51. As a consequence of the above, I do not consider that the occupants of the proposed dwellings would be wholly reliant on the use of private motorised transport for most of their day-to-day needs. Moreover, the development would make a small contribution to supporting the vitality of the nearby shops and services. In coming to this conclusion, I have also taken into account the relevant obligations proposed in the UU regarding pedestrian improvements and the measures to promote sustainable transport options which are set out later in this decision.
52. Whilst there would likely be some car use to access facilities further afield, there is no basis to support the assertion that the future occupants of the proposed dwellings would be overly reliant on private motor vehicles or that the site is so unsustainably located of an extent to dismiss this appeal on those grounds.
53. Taking the above factors into account, I do not consider that the proposed development would be contrary to the overall travel objectives of Policies CP1 and CP6 of the CS. These policies, amongst other things, require development proposals to demonstrate opportunities to reduce the need to travel by car and provide sustainable forms of transport that allow travel choice.

#### *Effect on trees*

54. The Council's third reason for the refusal of planning permission refers to the fact that the proposals do not adequately address a veteran tree and do not provide an appropriate buffer zone. There is some dispute between the main parties whether the oak tree (identified as Tree T2 in the submitted Arboricultural Impact Assessment and Method Statement and Tree Protection Plan ref: JPP23213-03) located in the north-east corner of the site is a veteran



- tree. Notwithstanding this, the council indicate that the tree is protected by a woodland tree preservation order (TPO-1790-2021).
55. Paragraph 180(c) of the Framework advises that development resulting in the loss or deterioration of irreplaceable habitats (such as veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists. Supporting guidance to the PPG provided by Natural England and the Forestry Commission identifies that veteran trees should have a buffer zone of at least 15 times larger than the diameter of the tree to avoid root damage. The buffer zone should be 5 metres from the edge of the tree's canopy if that area is larger than 15 times the tree's diameter to create a minimum root protection area.
56. The proposed development does not result in the removal of Tree T2. The Revised Site Plan (DWG 10A) provides for an amendment to the proposed north eastern boundary of Plot 1 and an amendment to the position of the external garage. This shows the northern garden boundary of Plot 1 angled to provide a 19m depth buffer zone included within an area of meadow space to the perimeter of the plot boundary. Irrespective of the status of Tree T2, in my view this provides an appropriate root protection buffer zone. Consequently, I am satisfied that the proposed development accords with the forementioned guidance and I have no other contrary technical evidence to suggest that the proposed development would result in deterioration of Tree T2.
57. The Arboricultural Impact Assessment and Method Statement identifies that six trees are to be removed to facilitate the site access and the proposed development (T9, T10, T11, T12, T13 and T14). These are defined as Category 'C' grade and are of low quality and Category 'U' trees which are not suitable for retention. The submitted Revised Site Plan identifies that a number of heavy standard native trees would be planted which would exceed the number of trees proposed to be lost. Notwithstanding the contribution that the trees on the periphery of the site make to the character and appearance of the area, I have no contrary technical evidence to suggest that the health of any other trees may be significantly harmed as a consequence of the construction of the development.
58. I have considered the Council's concern that the proposed development may result in future pressure for tree pruning to mitigate shading and overhang. However, I have no demonstrable evidence to conclusively confirm that this would be the case. In any event, the Council would have a degree of control over such matters as a consequence of statutory protection and/or the requirements of suggested planning condition No. 14, which is considered later in this decision.
59. Other than the trees identified for removal, I do not consider that the proposed development would cause a significant detrimental impact on the health of existing trees on the site. Consequently, there would be no conflict with Policy CP3 of the CS or Policies CC03 and TB21 of the MDD. These policies, amongst other things, require development proposals to maintain fauna and flora, protect and retain trees, hedgerows and landscape features and incorporate native planting as an integral part of a scheme.

### *Biodiversity*

60. The Council's fourth reason for the refusal of planning permission identifies that insufficient information has been provided to demonstrate that the proposed development would not have a harmful impact on protected species and that it would result in a net biodiversity loss.
61. The Council's Statement of Case, January 2022 (paragraph 6.80), identifies that the additional information provided by the appellants in respect of bats (Section 5 of the Ecology Statement by Aspect Ecology, July 2021) indicates that a high-status roost is unlikely to be present in the trees identified as having bat roost potential. Consequently, the additional information overcomes the protected species element of the reason for refusal subject to the imposition of a planning condition requiring the submission of a Construction Environment Management Plan (CEMP). I have considered such condition later in this decision.
62. The submitted Ecology Statement identifies that the proposal would deliver a biodiversity net gain of 49.72% net gain for habitats and a 21.52% net gain for linear habitats. However, this is contested by the Council who suggest that the proposal would result in a net loss of 0.71 units of hedgerow habitat. The Council's concerns predominantly relate to a lack of supporting evidence to show the results of quadrant surveys undertaken on the site, the security of delivery of biodiversity measures, the assignment of the baseline grassland and hedgerow classification and the proposed grassland condition and future hedgerow management.
63. Paragraphs 174(d) and 179(b) of the Framework seek to ensure that development delivers a net gain in biodiversity, although no specific percentage of gain is identified. The Environment Act 2021 sets out that biodiversity net gain should be 10% of the baseline. However, although the Environment Act 2021 has now passed, secondary legislation is required for it to be implemented. Therefore, the 10% biodiversity net gain requirement set out in the Act is not yet law and is not applicable to this appeal. In this regard, I accept the appellants' views that a 1% biodiversity net gain would meet the requirements of the Framework.
64. In order to address the concerns identified by the Council, an Ecology Rebuttal Statement, dated February 2022, was submitted by the appellants. This concludes that *"the information presented within the Ecology Statement is accurate. Accordingly, the reported biodiversity net gains of +52% for habitats and +16% for hedgerows remain relevant and greatly exceed the minimum 1% net gain requirement currently in place. Moreover, the management of these habitats will be secured beyond the 30-year net gain requirement and for the life of the development, such that a long-term biodiversity benefit is assured which is a significant benefit of the appeal proposals"*.
65. I recognise that a part of the disagreement between the appellants and the Council regarding this matter is a consequence of the interpretation of surveys and their classification and application within the 'Defra metric'. However, I have no contrary information to suggest that the evidence provided in the Ecology Rebuttal Statement may be incorrect. Consequently, I have no compelling evidence to suggest that a biodiversity net gain would not be achieved.

66. Furthermore, the Council has suggested a planning condition (No. 7) requiring the submission of a Landscape Environmental Management Plan (LEMP), which would, amongst other things, include long term design objectives, management responsibilities, timescales, and maintenance schedules for all landscape areas, other than privately owned domestic gardens, which delivers and demonstrates a habitat and hedgerow biodiversity net gain. I have no contrary evidence to suggest that the requirements of this condition would not endure for the lifetime of the development.
67. Taking the above factors into account, I have no conclusive evidence to suggest that the proposed development would result in a net loss in biodiversity units. Whilst the extent of biodiversity net gain may be disputed, I am nonetheless satisfied that there would be biodiversity net gain consistent with the requirements of paragraphs 174(d) and 179(b) of the Framework. Consequently, there would be no conflict with Policies CP7 of the CS or Policy TB23 of the MDD. These policies, amongst other things, require development proposals to provide opportunities, including through design, layout and landscaping to incorporate new biodiversity features or enhance existing.
68. Although there would be proposed enhancements to biodiversity, these would primarily ensure there is no net loss. However, biodiversity net gain would be required to meet the policy requirements of the Framework to mitigate the environmental impact of the development. Consequently, I consider that such enhancements should be afforded limited weight.

#### *Affordable Housing*

69. The Council's approach to the provision of affordable housing is set out in Policy CP5 of the CS. This requires all residential proposals of at least 5 dwellings or a net site area of at least 0.16 ha outside development locations to provide a minimum of 40% affordable housing. The Council identify that an off-site commuted sum of £175,342.48 (indexed linked) would be acceptable in-lieu of on-site provision.
70. However, Policy CP5 pre-dates the latest version of the Framework. In particular, paragraph 64 of the Framework states that the provision of affordable housing should not be sought for residential developments that are not major developments (10 or more dwellings), other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer).
71. As Policy CP5 conflicts with the more recent policy in the Framework, I consider its requirements are outweighed by the later policy in paragraph 64 of the Framework and there is therefore no need for the proposed development to provide an element of affordable housing.
72. However, as set out earlier, the appellant has provided a completed Unilateral Undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 which I am obliged to take into account. Amongst other things, this provides for an affordable housing contribution of £175,342.48 (indexed linked) towards off-site provision or regeneration of affordable housing within the Council's administrative area in-lieu of any on-site provision.
73. Notwithstanding the fact that I have found that there is no requirement for the scheme to provide affordable housing in the context of Policy CP5, the Unilateral Undertaking provides that the scheme would make an important

contribution to such provision. I consider this benefit should carry significant weight.

#### *Other matters*

74. Both main parties have drawn my attention to numerous previous appeal decisions. Although some of these also relate to development outside of the settlement limits of Hurst, for example the appeal decision Ref APP/X0360/W/19/3226711, most were considered at a time when the Council could demonstrate a 5-year HLS. In addition, the locational circumstances are materially different from those in the case before me. Furthermore, I do not have the full details of the relevant evidence in those cases, not least that which may relate to walking and cycling distances to local facilities and services.
75. As regards the other appeals referred to that are located outside of the Borough, the planning policies and landscape characteristics relevant to the proposals under consideration were not the same as those in the case before me, which I have considered on its own merits.
76. A number of interested parties have provided representations that support the reasons for the refusal of the application by the Council. In addition, concerns have been raised regarding highway safety and surface water flooding. However, no evidence has been provided by the Council, in its capacity as highway authority to suggest that the proposed development would result in highway safety concerns. In the absence of any substantive evidence to the contrary, I am satisfied that the proposal would not be materially harmful to highway safety.
77. I note that the appeal site is within Flood Zone 1 and the Council, in its capacity as Lead Local Flood Authority (LLFA), has considered the submitted Flood Risk Strategy and Drainage Strategy. It has stated that it does not have any objections to the principle of the development subject to the imposition of a planning condition requiring the submission of details of the proposed surface water drainage system. Such condition is set out in No. 13 of the attached Condition Schedule. I have seen no other technical evidence which would lead me to take a contradictory view to that of the LLFA.
78. In conclusion, the matters raised by interested parties have been carefully considered but they do not alter the main issues which have been identified as the basis for the determination of this appeal, particularly in circumstances where the Council has not objected to the appeal scheme for these other reasons.

#### **Planning Obligation**

79. As set out above, the submitted UU provides an off-site commuted sum of £175,342.48 (indexed linked) towards the provision of affordable housing in-lieu of on-site provision. A 'My Journey Contribution' of £2080 (indexed linked) is also provided towards the 'My Journey Wokingham Travel Plan Services' to make provision for travel information packs, dedicated travel webpages, contact pages and information on travel options.
80. The UU also provides for the occupants of the proposed development to be issued with a 'Welcome Pack' which includes a travel voucher towards the purchase of a bicycle, bicycle equipment or bus pass, provision of walking and

cycling maps to demonstrate how key facilities can be reached, provision of bus timetable information and linked trips to destinations wider afield and the promotion of car sharing schemes.

81. It also provides for the submission of a Sustainable Transport Strategy and the provision of pedestrian improvements along School Lane and Broadwater Lane to improve access to local facilities on foot which also include a pedestrian crossing and dropped kerbs.
82. I am satisfied that all of the provisions set out in the UU are necessary to make the development acceptable in planning terms and are fairly and reasonably related to the development. I have therefore taken the provisions of the UU into account in reaching my decision.

### **Planning Balance**

83. I have found that the Council is currently unable to demonstrate a 5-year supply of deliverable housing sites. Consequently, the relevant policies for the supply of housing should be considered as out-of-date according to paragraph 11(d) of the Framework. The so called 'tilted balance' is therefore triggered, and planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
84. The proposal would deliver a number of benefits. The Framework emphasises the importance of the delivery of housing. The provision of 4 new homes on a site which is visually and functionally well related to the existing village will contribute to meeting the current shortfall. Although this contribution is modest it nonetheless represents a quantifiable addition to the overall supply of housing. I am required to attach significant weight to the provision of this market housing.
85. The proposal would also deliver a contribution to the provision of affordable housing in the Borough for which there is an undisputed local need. These are significant benefits to be weighed in the planning balance. The delivery of market and affordable housing would contribute towards the social dimension of sustainability through the provision of dwellings to meet the needs of present and future generations.
86. Economically, the development would bring short-term advantages in respect of construction jobs and expenditure on materials. In the longer term it would increase household spending within the locality.
87. On the other hand, the proposal would also result in harm. There would undoubtedly be a change to the character and appearance of the appeal site with the proposed housing in place and causing a change in the land use from an agricultural one to a predominantly residential one. However, I have found that the effect on the character and appearance of the area would be localised and limited and that the development, given its location, would be reasonably accessible.
88. There is a requirement that matters relating to the impact on character and appearance are material and should weigh in the balance. However, in this case, the relevant policies seek to protect the countryside and landscape in the Borough and would further constrain housing and would potentially frustrate housing development in circumstances where a 5-year HLS cannot be

demonstrated. Consequently, whilst there would be conflict with the broad thrust of the countryside and character protection aims of Policies CP1 and CP3 of the CS, in so far as the proposal would fail to maintain or enhance the high quality of the environment, and Policies CC03, TB21 and TB26 of the MDD the overall weight afforded to the conflict with these policies is moderate.

89. Drawing all of these threads together I find that being outside the settlement boundary and within the countryside, the appeal proposal is not in accordance with the development plan taken as a whole. However, in the context of paragraph 11(d) of the Framework, I have found that some of the most important policies for determining this appeal are out-of-date, notably MDD Policy CC02 and CS Policies CP11 and CP9. I have attached only moderate weight to the conflict with these policies which lessens the significance of that conflict. The weight I therefore attach to the conflict with the spatial strategy is moderate.
90. In applying the significant weight to the provision of housing in this circumstance where the Council cannot demonstrate a 5-year supply of housing, I consider that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Overall, I conclude that the benefits of the proposal significantly outweigh the conflict with the settlement boundaries and the limited harm in terms of landscape character and visual impact. On this basis a decision, other than in accordance with the development plan is justified and therefore the appeal should be allowed.

### **Conditions**

91. I have considered the proposed planning conditions, including a number of pre-commencement conditions, that have been provided by the Council. I have considered these against the advice given in paragraph 56 of the Framework and the guidance contained in the section on 'Use of Planning Conditions' in the PPG. Where necessary I have amended them in the interests of clarity, precision, conciseness or enforceability.
92. In addition to the standard time limit, I have imposed a condition (No. 2) relating to the approved plans in the interests of certainty. In the interests of protecting the character and appearance of the area, conditions are necessary requiring the submission of details of external materials, boundary walls and fences, hard and soft landscaping, management of landscaping and measures to retain trees and shrubs (condition Nos. 3, 4, 6, 7 and 14).
93. In order to ensure the protection of trees identified for retention on the site, a condition requiring the implementation of tree protection works as required by the Arboricultural Impact Assessment and Method Statement Report dated 30 April 2021 and drawing JPP23213-03 is necessary (condition No. 5).
94. To promote sustainable modes of transport and reduce the need for travel by car, a condition is necessary requiring the provision of secure and covered parking for cycles (condition No. 9). In the interests of highway and pedestrian safety, conditions are necessary requiring the provision of parking and turning spaces, provision and surfacing of the site access and the submission and implementation of footway crossings and improvement works (conditions Nos 10, 11, 12 and 17).

95. Paragraph 54 of the Framework states that planning conditions should not be used to restrict national Permitted Development rights unless there is clear justification to do so. However, in the interests of highway safety and the free flow of traffic on roads in the proximity of the site I consider that the suggested condition (No. 8) which seeks to ensure that the garage accommodation on the site identified on the approved plans shall be kept available for the parking of vehicles ancillary to the residential use of the site is reasonable and necessary.
96. In order to ensure that the surface water arising from the proposed development can be appropriately drained and does not either cause off-site or on-site flood risk, a condition is necessary requiring the submission of details of the proposed drainage scheme (condition No. 13).
97. In order to minimise the effect of the development on nesting birds, a condition is necessary to ensure that all areas of hedges, scrub or similar vegetation where birds may nest which are to be removed as part of the development are removed outside of the bird nesting season or that it has been demonstrated that nesting birds are not present (condition No. 15).
98. To ensure that adequate provision is made for refuse and recyclable materials storage, a condition is necessary requiring the submission and implementation of bin storage and collection details (condition No.16).
99. The Statement of the Council's Ecology Officer identified that the additional information in respect of the protected species element of the Council's fourth reason for the refusal of planning permission was acceptable subject to the imposition of a planning condition requiring the submission of a CEMP. However, the Council's suggested planning conditions do not include a condition requiring the submission and implementation of a CEMP. I have therefore imposed an additional condition (No.18) which is necessary in the interests of the protection and enhancement of ecology and the environment and to protect the living conditions of the occupants of nearby dwellings.

### **Conclusion**

100. I have found that the proposal would undermine the Council's spatial development strategy and would harm the character and appearance of the local area. However, the adverse impacts would not significantly and demonstrably outweigh the benefits. I conclude on balance, that the proposal would comply with the policies in the Framework taken as a whole and it would amount to sustainable development. Consequently, for the above reasons, based on the evidence before me and all other matters raised, I conclude that the appeal should be allowed.

*Stephen Normington*

INSPECTOR

## CONDITIONS SCHEDULE

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - 150 DWG. 10A – Site Plan
  - 150 DWG. 11B – Plots 1 and 2 Plans and Elevations
  - 150 DWG. 12A – Plot 3 Plans and Elevations
  - 150 DWG. 13B – Plot 4 Plans and Elevations
  - 150 DWG. 14 – Context Plan
  - 150 DGG. 15 – Location Plan
  - 1078A/01B and 1078A/02B – Site Survey
  - JPP23213-01 – Tree Survey Plan
  - JPP23213-03 – Tree Protection Plan
- 3) Before the development hereby permitted is commenced, samples and details of the materials to be used in the construction of the external surfaces of the buildings shall have first been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Before the development hereby permitted is commenced details of all boundary treatments shall first be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the first occupation of the development or phased as agreed in writing by the local planning authority. The scheme shall be maintained in the approved form for so long as the development remains on the site.
- 5) No operations shall commence on site in connection with development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and or widening or any other operation involving use of motorised vehicles or construction machinery) until the tree protection works required by the Arboricultural Impact Assessment and Method Statement Report dated 30/04/2021 and drawing JPP23213-03 (hereafter the Approved Scheme) are in place on site. No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within an area designated as being fenced off or otherwise protected in the Approved Scheme. The fencing or other works which are part of the Approved Scheme shall not be moved or removed, temporarily or otherwise, until all works including external works have been completed and all equipment, machinery and surplus materials removed from the site, unless the prior approval in writing of the local planning authority has first been sought and obtained.
- 6) Prior to the commencement of the development, full details of both hard and soft landscape proposals shall be submitted to and approved in



writing by the local planning authority. These details shall include car parking layouts, other vehicle and pedestrian access and circulation areas, hard surfacing materials and minor artefacts and structure (e.g. furniture, play equipment, refuse or other storage units, signs, lighting, external services, etc). Soft landscaping details shall include planting plan, specification (including cultivation and other operations associated with plant and grass establishment), schedules of plants, noting species, planting sizes and proposed numbers/densities where appropriate, and implementation timetable. All hard and soft landscape works shall be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a timetable approved in writing by the local planning authority. Any trees or plants which, within a period of five years after planting, are removed, die or become seriously damaged or defective, shall be replaced in the next planting season with others of species, size and number as originally approved and permanently retained.

- 7) Prior to the commencement of the development a Landscape Environmental Management Plan (LEMP), including long term design objectives, management responsibilities, timescales, and maintenance schedules for all landscape areas, other than privately owned domestic gardens, which delivers and demonstrates a habitat and hedgerow biodiversity net gain shall be submitted to and approved in writing by the local planning authority. The development shall carried out in accordance with the approved LEMP.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), the garage accommodation on the site identified on the approved plans shall be kept available for the parking of vehicles ancillary to the residential use of the site at all times. It shall not be used for any business nor as habitable space.
- 9) Prior to the commencement of development details of secure and covered parking for cycles shall be submitted to and approved in writing by the local planning authority. No building shall be occupied until secure and covered parking for cycles has been provided in accordance with the approved drawing(s)/details. The cycle parking/ storage shall be permanently retained for the parking of cycles and used for no other purpose.
- 10) No part of any building(s) hereby permitted shall be occupied or used until the vehicle parking and turning space has been provided in accordance with the approved plans. The vehicle parking and turning space shall be retained and maintained in accordance with the approved details and the parking space shall remain available for the parking of vehicles at all times and the turning space shall not be used for any other purpose other than vehicle turning.
- 11) No building shall be occupied until the vehicular access has been surfaced with a permeable and bonded material across the entire width of the access for a distance of 10 metres measured from the carriageway edge.

- 12) No other development of the site as hereby approved shall take place until the site access has been constructed in accordance with the approved plans.
- 13) No development shall take place until details of the surface water drainage system have been submitted to and approved in writing by the local planning authority including information on:
  - a. Description of how surface water runoff will be collected and dealt with across from the proposed development, and the site by proposing SuDS techniques including strategy plan indicating the location and sizing of SuDS features, what volumes are to be stored where with related drawings/sketch.
  - b. A surface water drainage layout showing all proposed pipe connections.
  - c. Full calculations with no risk of flooding demonstrating the chosen surface water strategy performance and infiltration justifications.
  - d. BRE 365 test results (or similar) demonstrating whether infiltration is achievable or not.
  - e. Rain-water storages calculations to control the disposal surface water-run off from the site if there are such.

The approved scheme shall be implemented prior to the first occupation of the development and shall be maintained in the approved form for as long as the development remains on the site.

- 14) No trees, shrubs or hedges within the site which are shown as being retained in the Arboricultural Survey and Impact Assessment Report (dated November 2019) shall be felled, uprooted wilfully damaged or destroyed, cut back in any way or removed without previous written consent of the local planning authority; any trees, shrubs or hedges removed without consent or dying or being severely damaged or becoming seriously diseased within 5 years from the completion of the development hereby permitted shall be replaced with trees, shrubs or hedge plants of similar size and species unless the local planning authority gives written consent to any variation.
- 15) All areas of hedges, scrub or similar vegetation where birds may nest which are to be removed as part of the development, are to be cleared outside the bird-nesting season (March - August inclusive) or if clearance during the bird-nesting season cannot reasonably be avoided, a suitably qualified ecologist will check the areas to be removed immediately prior to clearance and advise whether nesting birds are present. If active nests are recorded, no vegetation clearance or other works that may disturb active nests shall proceed until all young have fledged the nest.
- 16) No building shall be occupied until details of on-site collection area(s) for refuse and recyclable materials have been constructed in accordance with details to be submitted to and approved in writing by the local planning authority. The collection areas/ facilities shall be permanently retained as

approved and used for no purpose other than the temporary storage of refuse and recyclable materials (on collection days only).

- 17) Prior to occupation of any of the dwellings, full details of the construction including levels, widths, construction materials, depths of construction, and surface water drainage of the footway shall be submitted to and approved in writing by the local planning authority. The footway crossings and improvement works shall be constructed in accordance with the approved details prior to occupation unless otherwise agreed in writing by the local planning authority.
- 18) No development shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The Plan shall provide details of the necessary further survey work and mitigation measures as set out in the Preliminary Ecological Appraisal dated April 2019 and the Ecology Statement dated July 2021 and shall also include details of:
- i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;
  - iii) storage of plant and materials used in constructing the development;
  - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - v) measures to ensure that vehicles leaving the site do not deposit mud, dirt and other materials on the public highway;
  - vi) measures to control the emission of dust and dirt during construction;
  - vii) a scheme for recycling/disposing of waste resulting from construction works;
  - viii) delivery, demolition and construction working hours;
  - ix) details of pre commencement surveys to ascertain presence/absence of reptiles, bats and amphibians and protected species and measures to ensure that any habitat is not prejudiced during construction work;
  - x) details of external lighting and measures to ensure that light over-spill is minimised to reduce potential impacts on light sensitive bats and other nocturnal fauna;
  - xi) details of mammal construction safeguards;
  - xii) details of Ecological Enhancements including details of habitat creation, provision of bat boxes, bird boxes hedgehog nest domes and fence cut outs, provision of hibernaculum and log piles, provision of bee bricks and habitat piles.

The development shall be undertaken in accordance with the approved CEMP.