

Land to the rear of The Hollies Nursing Home, Reading Road, Burghfield Common

LPA ref: 22/00244/FULEXT

PINS ref: APP/W0340/W/22/3312261

APPELLANTS' OPENING SUBMISSIONS

- 1 This Appeal concerns a proposal for 32 new homes (of which 40% would be affordable) comprising what is in effect Phase 2 of a site allocated for such development in the Development Plan (HSA16), and lying within the settlement boundaries of Burghfield Common. The Appeal Site is locationally sustainable for the scale of development proposed, and a high quality scheme in a verdant and attractive setting is achievable. Phase 1 has been consented, built out and occupied.
- 2 There are 3 reasons for refusal.
- 3 The **first** relates to a s106 obligation to secure the proposed affordable housing. It is understood that mix and tenure issues have latterly been agreed with the Council, and hoped that it will soon be possible to put an executed final version before the Inquiry.
- 4 On that basis, reason for refusal 1 will fall away, and the Appeal Scheme's contribution to the Council's affordable housing needs will be secured. Such needs are a weighty material consideration in circumstances where:
 - 4.1 West Berkshire is (per the Council's submitted draft Local Plan [CD7.12, p71]) "an area of high property prices and many local people have difficulty gaining access to suitable housing on the open market. Provision of affordable housing is seen as a priority as housing has wide implications on health, education and employment opportunities".
 - 4.2 There are a very large number of households (**3947**) living in unsuitable conditions within the District (**778** in the Eastern Area): see Miles §8.10, quoting from §4.32 of the SHMA [CD7.62]. The inevitable knock-on well-being issues from living in unsuitable accommodation can be addressed for 13 households through the Appeal Scheme.
 - 4.3 There are 1023 applicants on the Council's Housing Register, of whom 209 have expressed an interest in living in Burghfield. Indeed, net affordable need is

assessed at 330dpa (Miles §8.7), but only about 50% of this need is delivered (Miles §8.13).

5 The **second** reason for refusal relates to the proximity of AWE(B) and the fact that the DEPZ (with consequential need for emergency planning) washes over the Appeal Site (and embraces the Inspector’s main issues 1 and 2). There will be 3 days of evidence on these issues later this week, and little point would be served seeking to summarise the Appellants’ detailed positions on the matters arising at this stage. It may assist, however, to make some brief observations on the planning policy context and how decision-making in this case falls to be addressed:

5.1 The Council and AWE firmly root their objections in the first sentence of Core Strategy policy CS8, and contend that this sets up a very strong presumption against the Appeal Scheme (as well as resulting in non-compliance with the Development Plan). But on any fair reading, the first sentence of policy CS8 is not engaged. It is absolutely clear from the policy structure and wording (as well as footnote 60’s reference to “Consultation Zones as defined by the ONR and shown on the West Berkshire Proposals Map”) that the “inner zone” to which the first sentence relates does not encompass the Appeal Site. The Council’s / AWE’s interpretation results in impermissibly attempting to re-write the policy, or substituting words – in breach of the Supreme Court’s injunction that planning authorities “cannot make the development plan mean whatever they would like it to mean”. There is nothing surprising about CS8 being construed such that the very strong presumption against envisaged by the first sentence (when engaged) only applies to the specific area to which it expressly relates (rather than an area of land 5-6 times larger). Nothing in policy CS8 allows for some sort of automatic increase in coverage. It is properly a matter for the next Local Plan examination (considering draft policy SP4) to consider whether such a very strong presumption can be justified in respect of the enlarged area – but for our purposes, this carries no material weight.

5.2 The rest of policy CS8 addresses consultation arrangements for proposals beyond the defined “inner” zone; creates no presumption for any particular outcome; and is not offended by a proposal on an allocated site contained in a subsequent DPD.

5.3 None of this is to suggest that the matters raised in reason for refusal 2 are irrelevant. The Appellant makes no such submission. But these matters have to be put in their proper place, in order to facilitate structured decision-making as set out in s38(6) of the 2004 Act. The reason for refusal 2 issues are potential “material considerations”. Thus, the essential question on reason for refusal 2 is whether the array of matters raised amount to “material considerations” which outweigh the HSA16 allocation and indicate that the decision should be otherwise than in accordance with the Development Plan. It puts the cart before the horse to say that the weight of the allocation is reduced by REPP19 (etc). The correct analysis is that there is a indisputable allocation of the Appeal Site

for residential development in a relatively recent DPD which is supported not just by the statutory presumption in s38(6) but also by the fundamental precept of planning policy that development should be “genuinely plan-led” (NPPF §15). The allocation is therefore the strong starting-point and as NPPF §15 intends it should be accorded full weight. For reasons set out in the Appellants’ evidence, the “material considerations” on which opposing parties rely do not indicate that a decision should be taken other than in accordance with the Development Plan.

5.4 Indeed, the Appeal Site appears to be the only allocated site which is within the DEPZ and does not already have planning permission. While every case turns on its own facts, that is a very significant fact for this case. The various “floodgates” arguments pursued by opposing parties ignore this reality, and do not arise on this Appeal.

5.5 The Council also pursues a prematurity point, alleging that the Appeal Scheme conflicts with NPPF §49. This is a surprising argument in respect of a scheme for 32 homes on an allocated site.

6 The **third** reason for refusal raises concerns about the loss of trees and general impact on the character and appearance of the area. Mr Keen’s evidence explains that it is not practical to retain the 4 TPOd oaks which lie within the “developable area” shown on the HSA16 plan (very significant slopes on the Site make this unrealistic), and that the many other (retained) trees means that the 4 to be lost make only limited contribution to the character of the area. It is unclear why the Council maintains its argument about overgrown hedge 91, or why a condition could not secure a satisfactory degree of new planting (including of larger trees) and ancient woodland protection. In the final analysis, the Appeal Scheme accords with the expectations of the allocation, and its impacts on character do not extend beyond what was envisaged by policy HSA16.

7 Although not contained in any reason for refusal, the Council’s proofs have complained about alleged non-compliance of the Appeal Scheme with policy HSA16. None of these unheralded arguments stands up to scrutiny, and it is hoped they will not be pursued further by the Council at this Inquiry. In particular:

7.1 It is not reasonable to make a point about HSA16 coming forward comprehensively in circumstances where the Council was content to grant Phase 1.

7.2 It is not reasonable to complain that access is taken from Phase 2 via Regis Manor Rd (the road through Phase 1) to Reading Road, and not directly to Reading Road. This is the situation which necessarily arose when the Council consented Phase 1 without Phase 2. Material before the Council at the time of the Phase 1 application showed Phase 2’s access arrangements would be through Phase 1, in precisely the manner now proposed.

7.3 It is not reasonable to complain about the absence of a secondary access. No secondary access was required by policy HSA16, nor was it required for Phase 1.

8 For these summary reasons, at the conclusion of this Inquiry, the Inspector will respectfully be invited to allow the Appeal and grant planning permission.

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