

Planning Policy

Summary Key Issues

Town and Country Planning Act 1990

Section 78 appeal against the refusal of planning permission

CD 20.12

Witness: Arthur Bryan Lyttle BSc (Hons), Dip TP, MBA, MRTPI

Subject of Evidence: Planning Policy

Appeal: APP/W0340/W/22/3312261

Site: The Hollies, Reading Road, Burghfield Common
RG7 3LZ

Proposal: Erection of 32 dwellings including affordable housing, parking,
and landscaping. Access via Regis Manor Road

Date: 6th June 2023

Council Reference: 22/00244/FULEXT



Summary

Name: Arthur Bryan Lyttle

7th June 2023

Town and Country Planning Act 1990
Section 58 appeal against the refusal of planning permission

Witness: Arthur Bryan Lyttle BSc (Hons), Dip TP, MBA, MRTPI

Support of Evidence: Planning Policy

Applicant: APY/WO340/W/22/0312561

Site: The Hollies, Rosling Road, Burghfield Common

Council Reference: 22/00244/FULEXT

Revision: A

Issued: 6th June 2023

Proposal: Erection of 22 dwellings including affordable
and landscaping. Access via Regis Manor Road

Date: 6th June 2023

Council Reference: 22/00244/FULEXT

West Berkshire Council
Development and Planning
Market Street
Newbury
Berkshire
RG14 5LD

T: 01635 519111
E: appeals@westberks.gov.uk
www.westberks.gov.uk/planning



Summary

The issues raised in this appeal are complex and therefore having regard to the Proof of Evidence and Rebuttal as submitted by Katherine Miles and to assist in the appeal process there are a number of further points which the Council and the appellants can agree on:

Housing Requirement: The Council has already exceeded the total number of dwellings needed to be planned for as a minimum to 2026 by March 2022. Appendix ABL2 Housing Monitoring Report Table 3.18

5 year Land Supply: Appendix ABL2 Housing Monitoring Report Table 3.9

Development Plan Policy: The Core Strategy Policy CS8 (2012) and the Housing Site Allocations Policy 16 (2017)

There are still however a number of points of which we still disagree:

Relationship between Core Strategy and Housing Site Allocations DPD

In the rebuttal proof of evidence from Katherine Miles attention is drawn to Section 38(5) of the Planning and Compulsory Purchase Act 2004 and that conflict between policy in one plan and that in another plan being resolved in favour of the policy which is contained in the last document to become part of the development plan.

This unfortunately, misrepresents the relationship between the two plans in question in that the Housing Site Allocation Development Plan Document (HSA) is a sibling document to the Core Strategy and therefore the HSA DPD is a subdocument of the Core Strategy. Both documents combined represent the Local Plan for West Berkshire, as stated in paragraph 1.1 of the HSA DPD *"The Housing Site Allocations Development Plan Document (DPD) is the second DPD within West Berkshire's Local Plan"*.

The Core Strategy only allocated two sites for development and then broad locations for development. Paragraph 2.42 of the Core Strategy states: *"The Core Strategy will be followed by a Site Allocations and Delivery Development Plan Document (DPD). This will include details of any additional housing allocations, reviews of settlement and town centre boundaries, plus policies for development management"*.

If this was not the case then policy GS1 of the Housing Site Allocations DPD would also be relevant.

CS8 and footnote 60: It is a matter of Fact that the Inner Zone referred to in Policy CS8 has been removed by the superseding of the 2001 Regulations by the 2019 Regulations and the latter's allocation of the function of the designation of zones as a function of the local authority now and not of the ONR. What is in dispute is the ability of other legislation to effect on the development plan. The Secretary of State achieved this by Footnote 60 because properly interpreted it concerns a function and the ONR is simply a reference to the party then charged with that function.

Further, it is agreed that *"The development plan is at the heart of the planning system with a requirement set in law that planning decisions must be taken in line with the development plan unless material considerations indicate otherwise"* (paragraph 1 NPPF 21) but paragraph 6 of the NPPF also states *"other statements of government policy may be material when preparing plans or directing applications, such as relevant Written Ministerial Statements and endorsed recommendations of the National Infrastructure Commission"*. The general intention is therefore clear that Development Plan Policies are not set in stone but have a degree of flexibility. In this Appeal, the Appellant reads CS8 and Footnote 60 literally, and overly literally, in that it also disregards the context of Footnote 60 as a function and as relating to extrinsic regulations. Regulations do change.

The general intention of planning guidance can be further illustrated by reference to the changing definition used with regards Affordable Housing. The NPPF 2012 Annex 2 Glossary defined Affordable Housing as: *"Social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market"*. However, the NPPF 2018 changed the definition to: *housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers); and which complies with one or more of the following definitions: a) Affordable housing for rent...b) Starter homes....c) Discounted market sales housing...d) Other affordable routes to home ownership..."*

It must also be remembered that the wording of CS8 was that proposed by the Inspector as a Main Modification (MM5.18) to make the plan sound (Evidence of Sean Bashforth page 65). Within this context it is reasonable to assume that by referring to "ONR" it was envisaged that this would also apply to an organisation which replaced the ONR in this regard through future changes in legislation, and to assume otherwise would mean that the policy as written by the Secretary of State's Inspector had a significant gap with regards to public safety and nuclear safety legislation going forward and the exposure of the public to radiation risks.

Regardless of the interpretation of Footnote 60, and the demise of the Inner Zone, the application would still lie within the middle consultation zone also when CS8 is applied literally. The policy states: *"All other development proposals in the consultation zones will be considered in consultation with the ONR, having regard to the scale of development proposed its location, population distribution of area..."*. This was done and the evidence shows that they had a concern and advised against. This is clearly demonstrated in Carolyn Richardsons Proof of Evidence at paragraph 6.17 (pages 23 /24) which shows the growth in Sector M (which covers the appeal site) rising from 3 residential properties in 2018 to 2,566 in 2022, a rise of 85,433%.

Finally the emerging Local Plan Review by proposing to change the wording of CS8 to reflect the new regulations (NPPF 2021 paragraph 97) and also provide for adaptability in case of future changes will update the local Plan but that policy has yet to go through the examination process.

Prematurity: The issue of prematurity was raised in the Council's statement of case (paragraph 3.23). If as a result of this appeal it is demonstrated that on a case by case basis, planning permission can be granted even when both the ONR and MOD/AWE object then it must be considered that CS8 as written by the Secretary of State's Inspector in 2012 is not as comprehensive as the Secretary of State envisaged.

Therefore, the envisaged proposed high degree of constraint for public safety reasons within the policy reflecting CS8 on residential development within the DEPZ as proposed by SP4 would not be present.

This would not bring the policy up to date to reflect changes in the NPPF with regards paragraph 97 (a) and (b) and also paragraph 187 in that "...Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established..." and should be considered.

The Council therefore would invite the Secretary of State to protect the residents of West Berkshire with regards to this matter.