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# Appeal Decision

Hearing held on 29 November 2022

Site visits made on 16 & 28 November 2022

**by JP Sargent BA(Hons) MA MRTPI**

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

**Decision date: 29 December 2022**

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**Appeal Ref: APP/J0405/W/22/3303420**

**Land south of Buckingham Road, Winslow, Buckinghamshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Thrive Homes Limited against the decision of Buckinghamshire Council (the Council).
  - The application Ref 20/03556/AOP, dated 12 October 2020, was refused by notice dated 21 January 2022.
  - The development proposed is development of up to 60 residential dwellings (a minimum of 50% affordable) with associated open space, landscaping, highway, and drainage infrastructure.
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## Decision

1. The appeal is allowed and planning permission is granted for development of up to 60 residential dwellings (a minimum of 50% affordable) with associated open space, landscaping, highway, and drainage infrastructure at land south of Buckingham Road, Winslow, Buckinghamshire in accordance with the terms of the application, Ref 20/03556/AOP, dated 12 October 2020, subject to the conditions in the Conditions Schedule below.

## Procedural matters

2. Despite the information on the application form, I understand the appellant's name and the site address given above are correct.
3. This application seeks outline permission only, with all matters reserved. Moreover, the precise number of houses is not established, as it is described as being 'up to' 60 dwellings, so a lower number, albeit in the vicinity of 60, could be accepted.

## Main Issues

4. The main issues in this case are
  - a) whether the loss of this designated employment land would be contrary to development plan policy;
  - b) whether the scheme would be likely to have an adverse effect on drainage and flooding;
  - c) whether the site can accommodate the necessary open space associated with a scheme of this scale and
  - d) whether infrastructure impacts are suitably addressed.

## Reasons

### ***Employment land***

5. To the south of Buckingham Road, at the north-western edge of Winslow, is a site that was allocated for a mix of employment, education and station uses in Policy 6 of the *Winslow Neighbourhood Plan 2014* (WNP). A school has been recently built on one part of the site while a station is being built on another. This leaves 2 vacant blocks of land, which comprise the appeal site. These lie on either side of the access serving the school, and have a combined area of 1.68ha. It was accepted that these comprise the area intended for employment in the WNP allocation. This allocation is followed through in the *Vale of Aylesbury Local Plan*, which was adopted in 2021. There is currently an extant permission for employment uses on the site, dating back to the approval of Reserved Matters in 2018.
6. In the Local Plan, the appeal site is not a key employment site, and so is subject to Policy E2. This states that, outside key employment sites, the redevelopment and/or reuse of employment sites to alternative non-employment use will normally be permitted, provided all of 5 stated criteria apply. This policy therefore creates a support for changes from employment to non-employment uses, subject to meeting these criteria. Moreover, while the policy states that '*normally*' this will be permitted, there is nothing to show that the approach of the policy should not be applied in this case.
7. Of the 5 criteria, the Council accepts that criteria (a), (b) and (e) apply. Given the evidence before me and the nature of the site at present, I agree. I also agree with the Council that criterion (c) has been met, and the site has been appropriately marketed. While clearly there are different ways the marketing could have been undertaken, I have no basis to consider the manner it was approached was unreasonable. As such, the only point of disagreement is with regard to criterion (d), which says the change to non-employment uses will be accepted if  
  

*'there is a substantial over-supply of suitable alternative employment sites in the local area'*.
8. Having regard to the wording of criterion (d), I was drawn to no definition of '*the local area*' in the Local Plan, and indeed was told that spatially there was no data for employment land needs in just Winslow itself.
9. Notwithstanding that, the Council contended the policy should be interpreted at a Winslow level. It said this was in effect a dormitory town, that did not provide enough jobs for its residents. As a result, to redress this situation and also to encourage a more sustainable approach to development, this site should be retained in employment use.
10. I accept that securing appropriate employment in the town would have sustainability benefits, but that is not a basis to identify an amount of land that is substantially in excess of what is required. The Council did not say how much employment land was needed to constitute a suitable supply in Winslow, and hence, what represented an over-supply. Rather, the only evidence I was given in support of this was being told that, in a consultation exercise, the need to provide employment was a consensus amongst those who responded, and there was support for the allocation in the Neighbourhood Plan referendum.

Consequently, the Council has not demonstrated that, when taken with a much larger allocated employment site on the north side of Buckingham Road, there is not a substantial over-supply of employment land for Winslow.

11. In response, the appellant submitted persuasive evidence to show that across the Local Plan area there was an over-supply of employment land that I consider was of a scale that could be defined as '*substantial*'. It also showed that the combined area allocated for employment uses on the appeal site and to the north of Buckingham Road far exceeds the take up of employment land in Winslow over recent years. Finally, it was said that Winslow was unattractive to many employment uses given its location, and in this regard the appeal site has been marketed, without success, for 12 years and has been allocated for employment uses for nearly 20.
12. These factors together lead me to the view that there is in fact a substantial over-supply of land allocated for employment uses in the town, and this site is not needed, and so for some reason is unsuitable. Indeed, with pupils using the access to cross the appeal site as they walk to and from the school, I can see its attractiveness to employment uses to have only decreased further. I therefore consider criterion (d) of Local Plan Policy E2 is also applicable. This position is reflected in the supporting text to Local Plan Policy E2, which says  
*'where there is no reasonable prospect of an employment site being used for employment purposes, alternative uses may be considered'*.
13. Accordingly, to my mind the scheme does not conflict with Local Plan Policy E2.
14. Turning to the made WNP, Policy 6 does not have a comparable list of criteria to those found in Local Plan Policy E2, but just allocates the land for the stated uses. Its approach is therefore not in total conformity with the Local Plan. However, where a policy in a development plan for an area conflicts with another policy in the development plan, that conflict must be resolved in favour of the policy in the last document to be adopted, in this case the Local Plan. Therefore, while the WNP is a material consideration, it does not offer a basis for me to reach a different finding on this issue.
15. In the emerging *Winslow Neighbourhood Plan Review 2021-33*, Policy 5 allocates the 2 parcels subject of this appeal for employment. The Examiner's Report into this has been published and, in it, the Examiner was aware of the appellant's intentions. However he said his purpose was to examine the submitted Plan rather than to propose an alternative plan, and so in my opinion he did not express a view on the use of the land for residential purposes. In that regard while he was satisfied that allocating the site for employment meets the basic conditions, he was not convinced that the Employment Needs Assessment fully assessed the impacts on the town following the opening of the station. He therefore recommended the Town Council considered the ongoing applicability of Policy 5 in due course, depending on the extent to which employment development comes forward on that allocated site. I share his recognition of the importance of having employment in the area, but to my mind that does not support an oversupply of such provision where one has been demonstrated. Overall, mindful that this is still an emerging document, I consider any weight I afford it is not sufficient to outweigh the lack of conflict that I have identified with adopted Local Plan Policy E2.

16. The businesses on the industrial estate off Station Road are to be displaced, as that site is to be redeveloped for housing. However, there is no mechanism before me to ensure those businesses move here or are accepted by the land owner. In any event, I understand those businesses have been approached albeit with no success.
17. Accordingly, I conclude that the change of this land to non-employment uses would not be in conflict with Policy E2 in the Local Plan.

### ***Drainage & flooding***

18. The appeal site is in Flood Zone 1 and so is at least risk of flooding. Moreover, by repeatedly allocating the site for development the Council has accepted its drainage is possible in principle, and this was confirmed at the Hearing.
19. I accept the need for a drainage scheme to be approved before the development is implemented, in order to ensure it does not result in flooding. However, I am aware that all matters are reserved, and the description contains some flexibility concerning the number of houses. Given these points, and mindful of the acknowledgement, both implicit in the allocation and stated at the Hearing, that the site can be drained, it is not necessary for an appropriate drainage method to be agreed at this stage. Rather, through a suitable condition, the matter can be considered alongside the other Reserved Matters.
20. Accordingly, on the evidence before me I conclude that the scheme could be adequately drained and would not have an adverse effect on flooding. As such, it would not conflict with Policy I4 in the Local Plan, which seeks to ensure the impacts of and from all sorts of flood risk are minimised.

### ***Open space***

21. The Council has reasonable requirements for Incidental Open Space, Major Open Space and Equipped/Designated Play Space on housing schemes of this nature. The appellant has submitted 2 illustrative or alternative layouts to show that open space, significantly exceeding that required, can be delivered along with 60 units. However, at the Hearing the Council confirmed it still has reservations that the play space, which should take the form of a Local Equipped Area for Play with its associated 20m buffer, can be provided.
22. As with drainage though, I am mindful that all matters are reserved and there is a certain flexibility in the number and nature of units. Given this, and taking comfort from the appellant's submitted layouts, I am satisfied that suitable amounts of open space can be accommodated on site.
23. Accordingly, I conclude the site can deliver the necessary amounts and types of open space to support the housing development, and so would not be in conflict with Local Plan Policies I1 and I2, which seek to ensure the delivery of green infrastructure and open space, and Local Plan Policy BE3, which aims to protect the amenity of future residents.

### ***Infrastructure contributions***

24. Although a failure to address pressures on infrastructure was a reason for refusal, I consider this has been addressed by the submission of a legal agreement.

25. This agreement secures affordable housing provision, education contributions to primary and secondary schools, a contribution to a toucan crossing to allow the future occupiers to access a sports hub on the opposite side of Buckingham Road, and obligations towards public open space and drainage management. I am satisfied that these accord with the requirements of Regulation 122 in the *Community Infrastructure Levy Regulations 2010*.
26. Accordingly I conclude that the development would make the necessary contributions to infrastructure, and so in this regard it would accord with Local Plan Policies S5, H1, I2 and I3, which seek to secure the delivery of affordable housing and the necessary infrastructure payments and measures. It would also not conflict with guidance in the Framework.

### **Other Matters**

27. It was said that the scheme was contrary to the housing strategy, and that housing requirements had been met in both Buckinghamshire and Winslow. In this regard I have noted the comments of the Examiner concerning the situation in Winslow. However the distances involved mean the appeal site is not in an unsustainable location with regard to the town centre, while it would be close to the school and the station. At least 50% of the units would be affordable, which is above the policy requirement in the development plan. I have no reason though to think this would produce an unacceptable mix, or that this would be an unsuitable place for this proportion of affordable housing. Moreover, it is within the settlement, and any housing targets or housing provision in the District Local Plan, or in any iteration of the Neighbourhood Plan, are minimum rather than maximum figures. As such, allowing housing in excess of the targets, even if the Council can demonstrate an adequate housing land supply, is not, of itself, grounds for refusal in the absence of any other harm.
28. The proximity of the site to the burial ground or the school would not create unacceptable living conditions, while soundproofing can address possible noise from the railway and road. The relationship of the dwellings to the double deck car park at the station would be a matter to address at the Reserved Matters stage. I therefore have no reason to consider this would be an unsuitable place for housing.
29. There is opportunity for biodiversity enhancement in the Reserved Matters.

### **Conditions**

30. Of the Council's suggested conditions (referenced in the square brackets in the following text), I consider conditions [2], [3], and [4] are necessary to secure the submission of Reserved Matters and the implementation of the permission.
31. Having regard to biodiversity, conditions [5], [6], [7], [13], and [14] are justified. However there is a certain overlap between them so they could be run together to some extent.
32. Mindful of safety issues on the roads and on the site, conditions [18] and [19] should be imposed. The public right of way and cycle way crossing the site should be secured and enhanced in the interests of maintaining public access, but in line with what was discussed at the Hearing, conditions [20] and [21] should be reworded and merged.

33. Having regard to the environment, a condition relating to sustainable energy and water use [23] should be imposed, and in order to avoid flooding a drainage scheme with management should be agreed in line with conditions [26] and [27]. Finally, to safeguard living conditions, residents should be protected from rail and road noise as proposed under condition [28].
34. Conditions [5], [6], [18] and [26] all contain lists of the information the required plans and schemes should include. Noting these are not exhaustive lists, and mindful that the Council could refuse to approve the plans or schemes if information was lacking or aspects were not addressed, I consider such lists to be unnecessary.
35. Of the remaining conditions, given that all matters at this stage are reserved, I am aware of no clear justification to remove permitted development rights (conditions [12] and [24]). Moreover, as all matters are reserved condition [1] confirming the approved plan is unnecessary. Conditions [8], [9], [10], [11], [15], [16], [17], [22] and [25] all concern matters that will be addressed in any Reserved Matters applications, and so need not be controlled at this stage.

### **Conclusion**

36. Accordingly, I have found that the development would not conflict with the development plan when taken as a whole, or otherwise cause harm, and so I conclude that planning permission should be granted and the appeal allowed.

*JP Sargent*

INSPECTOR



## **SCHEDULE OF CONDITIONS**

- 1) Details of the access, appearance, landscaping, layout, and scale, (the reserved matters) shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) No development shall take place (including ground works, site and/or vegetation clearance) until a Construction Environmental Management Plan (CEMP) relating to biodiversity has been submitted to, and approved in writing by, the local planning authority. The development shall then be undertaken in accordance with the approved CEMP.
- 5) No development shall take place (including ground works, site and/or vegetation clearance) until a Landscape and Ecological Management Plan (LEMP) relating to the development has been submitted to, and approved in writing by, the local planning authority. The development shall then be undertaken in accordance with the approved LEMP.
- 6) The development hereby approved shall be implemented in accordance with the Outline Mitigation and Enhancement measures detailed in the *Outline Ecology Assessment Of Proposed Housing Development Site* by James Johnston Ecology dated January 2021.
- 7) No development hereby permitted shall take place
  - except in accordance with the terms and conditions of the Council's organisational licence (WML-OR22-2020-1) and with the proposals detailed on the plan entitled '*land south of Buckingham Road: Impact Map for great crested newt district licencing*' dated 27 January 2021 and
  - until a certificate from the Delivery Partner (as set out in the licence), confirming that all necessary measures in regard to great crested newt compensation have been dealt with, has been submitted to and approved in writing by the local planning authority, and the local planning authority has provided authorisation in writing for the development to proceed under the district newt licence.
- 8) No development shall take place (including ground works, site and/or vegetation clearance) until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. The development shall then be undertaken in accordance with the approved CTMP.
- 9) No dwellings shall be located within the inner HSE consultation zone of the Marsh Gibbon to Newton Longville pipeline, and no more than 30 dwellings, at a density no greater than 40 dwelling units per hectare, shall be located within the middle HSE consultation zone of that pipeline.

- 10) With or before the submission of Reserved Matters details, a scheme for the formation and resurfacing of the footpath and a cycleway between Furze Lane and the railway bridge, along with a timetable for the implementation of the works, shall be submitted to the local planning authority for approval. The development shall not commence until these details are approved in writing, and the resurfacing and formation of the footpath and a cycleway works shall then be implemented in accordance with the approved details and timetable.
- 11) With or before the submission of Reserved Matters details, a scheme of an energy strategy for the residential development, including measures to reduce carbon emissions through renewable technologies and reduce water consumption to a limit of 110 litres per person per day, together with a timetable for the implementation of those measures, shall be submitted to the local planning authority for approval. No development shall commence until these details have been approved in writing, and the development shall be implemented in accordance with the approved details and timetable, and those details and measures shall thereafter be retained.
- 12) With or before the submission of Reserved Matters details, a scheme for the drainage of the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, shall be submitted to the local planning authority for approval. No development shall commence until the scheme for the drainage of the site has been approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details before the development is completed and, to demonstrate this, details, including as-built drawings and/or photographic evidence of the drainage scheme as implemented, shall be submitted to the local planning authority within 6 months of first occupation of any dwelling.
- 13) With or before the submission of Reserved Matters details, a whole-life maintenance plan for the drainage on the site shall be submitted to the local planning authority for approval. The plan shall set out a maintenance schedule for each drainage component, with details of who is to be responsible for carrying out the maintenance. No development shall commence until the maintenance plan for the drainage on the site has been approved in writing by the local planning authority. The maintenance of the drainage on site shall thereafter be at all times in accordance with the approved whole-life maintenance plan.
- 14) With or before the submission of Reserved Matters, a written noise impact assessment with regard to rail and road noise, together with proposals for any necessary mitigation measures, shall be submitted to the local planning authority. The assessment will demonstrate that with appropriate mitigation, where required, internal and external noise levels will not exceed
  - 35db LAeq, 16hr in living rooms and bedrooms, and 40db LAeq, 16hr in dining rooms between 0700h and 2300h, and
  - 35db LA eq, 16hr 30db LAeq/8hr 45db LAm<sub>ax</sub> (no more than 10 times per night) in bedrooms between 2300h and 0700h and



- 55dB LAeq,16hr in external amenity spaces provided for the sole use of the occupiers of the dwellings.

No development shall commence until the assessment has been approved in writing by the local planning authority. Any mitigation measures required by the assessment to meet the internal and external noise standards specified above shall be implemented prior to the first occupation of the dwellings to which the measures relate, and the mitigation measures shall be retained thereafter.

## **APPEARANCES**

### **FOR THE APPELLANT:**

Mr A Baxter	Ecological consultant
Mr C Broughton	Affordable Housing consultant
Mr R Catlin	Marketing consultant
Mr B Donnelly	Architect
Mr P Goatley	Kings Counsel
Mr M Harris	Agent
Mr M Powney	Employment consultant
Mr S Ricketts	Legal adviser
Mr M Symonds	Drainage consultant

### **FOR THE LOCAL PLANNING AUTHORITY:**

Ms J Bates	Senior Flood Management Officer
Mr D Broadly	Principal Planning Officer
Mrs H Fadipe	Planning consultant
Mr D Lawrence	Planning consultant

## **DOCUMENTS SUBMITTED AT OR AFTER THE HEARING**

### **BY THE APPELLANT**

- APP1) Legal Agreement under section 106 of the Town and Country Planning Act 1990
- APP2) Comments on the Examiner's Report into the *Winslow Neighbourhood Plan Review 2021-33* (dated 12 December 2022)

### **BY THE LOCAL PLANNING AUTHORITY:**

- LPA1) Decision 18/02599/ADP for the Approval of Reserved Matters at the site
- LPA2) Extract from the Proposals Map for the Aylesbury Vale District Local Plan 2004
- LPA3) Policy WI.2 from the Aylesbury Vale District Local Plan 2004
- LPA4) Policies Map from the emerging Winslow Neighbourhood Plan 2021-33
- LPA5) Consultation response to the planning application from Parks & Recreation (dated 18 October 2021)
- LPA6) The *Winslow Neighbourhood Plan Review 2021-33*, the Examiner's Report into that Plan, and comments on the report (dated 5 December 2022)
- LPA7) Comments on appellant's email of 12 December 2022 (dated 22 December 2022)