



Appeal Decision

Inquiry held on 7/8/9 May 2014

Site visit made on 9 May 2014

by John Wilde C.Eng M.I.C.E.

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 25 June 2014

Appeal Ref: APP/C3620/A/13/2206125

Land at Tanners Meadow, Strood Green, Dorking, Surrey

- 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 Charles Church Developments Ltd against the decision of Mole Valley District Council.
 - The application Ref MO/2013/0055/PLAMAJ, dated 14 January 2013, was refused by notice dated 13 June 2013.
 - The development proposed is the erection of thirty residential dwellings including twelve affordable homes together with associated open space, meadow land, access, landscaping and seventy five parking places.
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Decision

1. The appeal is dismissed.

Procedural matters

2. During the appeal process the appellants introduced amended drawings that provided for improved drainage around the site, in the form of, amongst other things, larger ditches and a secondary/emergency pumped system. The quantum of the housing, the access and general layout was however the same as that originally proposed. The Council considered that a fresh application should have been forthcoming and that therefore the amendments proposed should not be accepted as evidence at the Inquiry. This is in line with planning Inspectorate's guidance¹ which makes clear that *if an applicant thinks that amending their application proposals will overcome the local planning authority's reasons for refusal they should normally make a fresh planning application*.
3. However, my primary concern in this matter has to be to take account of the Wheatcroft Principles² and therefore to determine if the introduction and acceptance of the amendments would lead to prejudice to interested parties. In this respect the appellants pointed to the consultation that had taken place regarding the amendments during the period January to March 2014. This included several letters to interested parties and a public consultation held in Brockham Village Hall on 20 March 2014.

¹ Procedural Guide – Planning appeals and called-in applications.

² Derived from *Wheatcroft (Bernard) Ltd v Secretary of State for the Environment and Harborough DC* (1982) P&CR 233

4. At the Inquiry it became evident that all interested parties, particularly the Tanners Meadow Action Group (TMAG), were aware of the proposed amendments and in light of this and the consultation that had been carried out, I accepted the amended drawings as evidence at the Inquiry.
5. This in turn meant that the Council, following an earlier committee resolution, then withdrew their objection to the revised proposal. However, submissions from interested parties, particularly TMAG, both before and during the Inquiry mean that this is by no means an open and shut case and that consideration has to be given to each of these objections. The objections raised can be distilled into the two main issues outlined below.

Main Issues

- (a) The effect of the proposed development on flooding within the site and the surrounding area.
- (b) Whether or not the proposal would represent sustainable development.

Reasons

The site

6. The appeal site is an agricultural field situated to the west of the village of Strood Green. To the north and south of the site are the residential developments of Silverdale Close and Boxhill Way respectively, whilst to the east is the development of Tanners Meadow, which includes housing, business units, a doctors' surgery and an old peoples home. Strood Green is about 1.5km away from the larger settlement of Brockham.

Planning policy background on housing

7. The development plan consists of the Mole Valley District Council Core Strategy (2009) (CS) and saved policies of the Local Plan (2000) (LP). The appeal site is part of a larger area of land identified as reserve housing land since the Dorking Area Local Plan of 1983. The LP carried forward the reserve housing sites into policy HSG6. This policy indicates that if, as a result of annual monitoring of housing land supply, the Council is satisfied that land is required in addition to that allocated in the LP to meet the identified housing requirements for the period 2001-2006, one or more of the five reserve housing sites will be released.
8. The CS confirms that should there be a shortfall of housing land in the period before 2011 then the Council will bring forward the development of the reserved housing sites in accordance with the provisions of policy HSG6. The Council considered in 2009 that it had insufficient housing sites to meet its five year housing requirement for the period 2009-2014 and consequently released four of the five reserve sites. However, following the revocation of the Regional Strategy the Council rescinded its decision to release the sites on the grounds that there was now uncertainty over the future housing requirement. Two of the sites were however the subject of planning applications and, although refused by the Council, these were both allowed at appeal, although one of these appeal decisions is currently the subject of a High Court challenge.
9. The current planning status of the site is that it is a greenfield site, is not in the Green Belt but is surrounded by it and is a reserve housing site subject to the provisions of policy HSG6.

10. The Council accept that it cannot demonstrate a five year housing land supply and consequently paragraph 49 of the National Planning Policy Framework (the Framework) is invoked. This indicates that *housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered to be up to date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites.*
11. In this case policy HSG6 by its very nature can be considered to be a housing supply policy and, by virtue of the lack of a five year housing supply, could be considered to be out of date. If this were the case then the fourth bullet point of paragraph 14 of the Framework would come into force. This makes clear that where the development plan is absent, silent or relevant policies are out of date, 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.
12. Conversely however, it could be argued that as policy HSG6 is a *reserve housing site policy* then it can be considered to be up to date, in which case the third bullet point of paragraph 14 comes into force, and the proposed development should be allowed if it accords with the development plan, assuming that there are no material considerations that would outweigh this. Whichever course is followed, it is first necessary to assess the weight that can be afforded to the material considerations that weigh against the proposal, and I will now consider these.

Main issue 1 - flooding

13. Strood Green has experienced severe flooding problems in the recent past in 2009, 2012 and just before Christmas 2013. The 2013 flooding resulted in 96 homes being flooded. As a consequence of this 42 families had to leave their homes. The flooding is not solely fluvial but arises from a combination of factors. These include the topography of the area, with Strood Green situated between higher ground to the south and the river Mole to the north. This leads to water flowing down into the village from the south after heavy rainfall, to an extent using Middle Street as its primary route. The area around the village has a number of ditches and watercourses that are in many cases relatively flat and in a poor state of repair.
14. A Local Flood Forum has been set up to identify the problem areas and the possible measures that could be carried out to ease the problems. The Forum includes representatives of the Parish Council, District Council, County Council, Thames Water and the Environment Agency (EA). The Forum has identified fifteen areas where drainage problems have contributed to the flooding issues in the area. Several of these areas are south of the appeal site, one is directly north and a further one relates to the catchment area that feeds to Tanners Brook, prior to feeding into the river Mole.
15. The appeal site itself has underlying clay and does not allow water to percolate through, and therefore regularly has standing water, occasioned by both the rainwater not being able to soak away, and ditches surrounding the site overflowing. The site is clearly shown on the EA Risk of Flooding from Surface Water Map as an area that suffers from surface water flooding, with the north-east corner of the site shown as being particularly at risk of inundation.

16. The original Flood Risk Assessment (FRA) prepared by GTA Civils Ltd on behalf of the appellants was relatively brief and was criticised in a report prepared by Water Resources Associates (WRA) entitled *Critique of Flood Risk Assessment at Tanners Brook* on behalf of TMAG. This resulted in GTA Civils preparing a response dated 8 March 2013 and also a *Drainage Report for Councillors*, which was intended to address various queries raised regarding the original FRA. WRA then produced a further response dated 25 April 2013. The Council also asked for a Non-technical report on the drainage proposals to be prepared by Stilwell Limited, and this was in turn commented on by GTA Civils.
17. There are therefore several reports that in some cases go into considerable technical detail and which are critical of one another. Before considering the various reports I will firstly outline the practical measures proposed to drain the development.
18. To overcome the flooding problems it is proposed to improve an existing ditch to the east of the site and provide a new ditch to the whole of the west side of the site as well as shorter new ditches to the north-east of the site. The ditches would be 1m deep and over 4m wide with facing of Gabion baskets on one side and a 1 in 2 embankment on the other. There would also be a pumped system that in an emergency would take water from the east of the site to the new ditch on the west and then into a lowered flood storage area. Run-off from the hard surfaces of the site itself would go into two balancing ponds in the central area of the site, and thence into the existing surface water sewer to be discharged into Tanners Brook. Two existing pipes that drain into the existing ditch that borders the south of the site would also be piped directly into a new storm water sewer that would in turn connect to the existing Thames Water sewer that discharges into Tanners Brook.
19. The appellants consider that the drainage, balancing ponds and flood storage area provided would ensure that the run-off from the site would be the same as that currently occurring and that therefore there would be no additional risk of flooding to those living downstream of the site. I note however that these measures would result in the proposed development being surrounded by ditches apart from a short section at the entrance from Tanners Meadow, and would have three areas of potential ponding as well as a pumped sewer.
20. I also note that the rear gardens of the properties would be drained by swales. At the Inquiry it was made clear that these would have two functions, one to take away surface water into a drainage system which would flow into the adjacent ditches, and the second to provide storage capacity if the ditches were running full. In effect this would allow gardens to flood in extreme events, and to me this seems a highly unusual proposal, and one which points to the unsuitability of the site for residential development.
21. Maintenance of the new drainage provision would be very important and to this end the appellants have suggested setting up a management company, initially financed by the developer but eventually financed by contributions from the residents. The existence of this management company could be ensured by the submitted Section 106 agreement.
22. The report by Stilwell Limited is useful as it distils the problems and the differences between the appellants and TMAG reports into a less technical format than the reports themselves. It notes that the difference between the parties is partly down to the capacity of the balancing ponds, with the Action

Group advocating greater capacity and demonstrating the need for this with an inflow-outflow calculation. The Stilwell Limited report does however go on to make the point that the ponds would be able to contain far more water than their actual design capacity. The latter report also concludes that the GTA Civils Ltd have produced *a professional piece of work based upon the recognised methodology for this type of development.*

23. The Stilwell Limited report does however contain several observations that are a cause for concern. These are primarily to do with the drainage arrangements away from the site itself. The report indicates that *it is unclear if the water that falls directly on the open land within the site and water that arrives from the surrounding land and ditches will drain properly because it depends upon the success of work, yet to be defined, in ditches, culverts and watercourses downstream.* It also makes the point that *if the Drainage Forum Action Plan is fully implemented this will change flows throughout the whole network and hence the volume of surface water arriving at the site.* In the concluding section the report reinforces this point by stating that *it is unclear what volumes of water will arrive at and leave the site until the work outlined in the Drainage Forum Action Plan is fully defined.*
24. It seems to me that assessing the volume of water that arrives at the site is fundamental to the question of whether the proposed development would be negative, neutral or positive in its effect on the flooding situation in the village. It is only when there is any certainty about this that the volume of the balancing ponds and the other water storage area as well as the capacity of the ditch and pipe system could be accurately determined.
25. In this respect it was made clear at the Inquiry that due to what the appellants consider to be a small catchment area, the run-off calculations were approximated, with a general rate used. It was also made clear that the exact volume of water flowing onto the site was unknown. Furthermore, the size of the ditches had been assessed using 'approximate calculations'. From this I deduce that, whilst the appellants consider that it has been shown that the proposed development would have a positive effect on the drainage of the surrounding area, and would certainly not compromise it, this has not been adequately demonstrated.
26. However, the appellants have also agreed that a Grampian form of planning condition, formulated in negotiation with the EA, could be imposed that would require further drainage investigation and design. The condition would require, amongst other things, *a detailed hydrological model which assesses both the impacts of the proposals on the local ditch network and also assesses the impacts of high levels in the Tanners Brook on the capacity of the proposed drainage arrangements at the development site.* It would also have to be shown that *the surface water run-off generated for all events up to and including the 1 in 100 plus climate change critical storm will not exceed the greenfield run-off from the undeveloped site.* Furthermore, it would have to be demonstrated that *the drainage proposals would reduce surface water flood risk to the properties adjacent to the appeal site having regard to the flooding which occurred in December 2013.*
27. At first reading this proposed condition, if imposed, should result in a drainage scheme that would be satisfactory, although I do note that the appellants'

acceptance of it does seem to indicate that the current drainage scheme proposed for the development is not necessarily adequate.

28. However, the Drainage Forum Action Plan has identified a series of locations, both above and below the appeal site, where further investigation and drainage remedial work is required. The Stilwell Report is quite correct when it identifies that until these works are carried out, or at least identified, it is unclear what volumes of water will arrive at and leave the site. I acknowledge that as well as carrying out further drainage modelling work the appellants would provide a contribution of £61,491.20 towards developing, maintaining, applying and monitoring a local flood risk management strategy, and this contribution would go some considerable way to funding necessary works. However, it seems to me that to allow the appeal, notwithstanding the proposed condition and contribution, would be premature in relation to the works necessary in the surrounding drainage network, all of which could have a significant impact on water flowing onto and through the appeal site.
29. Furthermore, whilst the proposed development itself would benefit from a regime of ongoing maintenance this could not be guaranteed for the ditch and pipe system above and below the site, and these are to my mind inextricably linked with the site itself. Problems on any section of the system could have serious ramifications for other sections. It follows that whilst it may be possible to design a system that would, on paper, prevent the site from flooding or even causing flooding elsewhere, due to the interaction of other sections of the drainage network, it would not be possible to guarantee that the site would never suffer a serious flood event. For these reasons I consider the site unsuitable for the proposed residential development.
30. In arriving at this conclusion I have taken into account the serious flooding that recently occurred adjacent to the site. I am also conscious of my earlier findings regarding the amount of engineering and continual ongoing maintenance that would be necessary on and around the site to keep the proposed dwellings from flooding. I have also taken into account my observations regarding the swales/ditches to the gardens of the proposed dwellings.
31. Planning policy and guidance is clear; the general approach to the location of development is to ensure that areas at little or no risk of flooding, from any source, are developed in preference to areas at higher risk³. Whilst sequential approaches advocated in national guidance are predominantly aimed at fluvial or coastal flooding, it is acknowledged that surface water and other sources of flooding should also be taken into account.
32. I accept that a site specific flood risk assessment has been prepared, but I am not satisfied that this has properly identified the risks, particularly in the longer term. Paragraph 100 of the National Planning Policy Framework (the Framework) makes clear that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. I consider that the proposed development would be in conflict with this paragraph, and this weighs heavily against the development in the overall planning balance.

³ National Planning Practice guidance

Main issue 2 - Sustainability

33. I will now turn to the question of sustainability. In terms of facilities Strood Green has a community shop that sells convenience and fresh food, has two internet terminals, a post point and also contains a small café. There is a recreational field with play equipment, and business units and a doctors' surgery at Tanners Meadow. There is also a Vet on the corner of Middle Street and Glenfield Road. With regard to public transport there is a bus service to Dorking, Guildford and Redhill, although at the Inquiry I was made aware of the fact that the bus service is not necessarily suitable for commuters wishing to connect to the rail service, or for people wishing to have a car free evening out in Dorking.
34. The village of Brockham is about 1.5km away. There is a footway connecting the two villages along Middle Street and the walk takes about 10-15 minutes. Brockham itself has a pub, a restaurant, a Spar convenience store, a pharmacy, a butchers and a hairdressers. There are also two churches, a village hall, primary school, nursery and sports field. My attention was drawn at the Inquiry to the fact that the local primary school is full and that it is very difficult to arrange an appointment at the doctors' surgery. However, I have been given no official confirmation of this and note that the Section 106 Agreement would include a contribution towards primary school provision. I can therefore give only limited weight to these issues. I also note that Strood Green and Brockham are only about 3.5km from the town of Dorking, which has far more facilities as well as a main rail connection to London.
35. In terms of facilities therefore Strood Green is reasonably provided for. This does not necessarily mean that all the needs of the future occupiers of the proposed development could be met without the use of a car, but given the facilities available in the villages and the relatively close proximity to Dorking I consider that in transport terms the proposed development could be considered to be reasonably sustainable. In arriving at this conclusion I am conscious of the Council's conclusion on this matter in April 2013. This was that *whilst this is not the most sustainable location in the district it is nevertheless sufficiently sustainable to support the level of development proposed*. I concur with this view.
36. The Framework does however make clear in paragraph 7 that there are three dimensions to sustainable development. These are economic, social and environmental. In economic terms the proposed development would provide jobs during the construction phase and the future occupiers would be likely to spend some of their income in and around the villages. This therefore adds to the sustainability credentials of the site. In social terms the appellants point out that the future occupiers would also support and enhance the services provided within the villages, thereby contributing to the vitality and viability of those services. There is some merit in this argument, although I have not been provided with any information to show that any of the services are currently in danger of going out of business.
37. In environmental terms I have already found that the site is reasonably sustainable in respect of transport. The houses would be built to Code Level 3 of the Code for Sustainable Homes and would achieve a 10% reduction in carbon emissions. There would also be a landscaping scheme and ecological management plan.

38. However, I have also found that that the proposed development would be in conflict with paragraph 100 of the Framework. Paragraph 6 of the Framework states that *the policies in paragraphs 18 to 219 taken as a whole, constitute the Government's view of what sustainable development in England means in practice for the planning system*. In this case, I consider this conflict to be such as to conclude that the proposal cannot be considered as sustainable development.

Other matters

39. My attention has been drawn to problems of vehicular access to Tanners Meadow caused by the geometry of the road and also the somewhat indiscriminate parking. However, the highway authority have not objected to the proposed development and I note that the proposed Section 106 Agreement would provide for a contribution towards highways works which could include the management of parking in Tanners Meadow. The junction of Tanners Meadow with Middle Street was also a concern of residents but I have been provided with no significant evidence in the form of accident data to show that the junction is dangerous. Whilst I note that residents consider that the likelihood of parking enforcement would be remote I do not consider that the highway objections are so significant that they should weigh against the proposed development in the overall planning balance.

40. The issue of the unsuitability of Tanners Meadow to accommodate site traffic was also an issue for local residents. However, if the appeal were to be allowed a condition has been suggested that would require a construction method statement. This would give the Council some control over such things as timings of delivery and if felt necessary the size, weight or axle numbers of delivery vehicles.

Overall balancing exercise

41. I have found that conflict exists with paragraph 100 of the Framework in respect of the flooding issue and that due to this the site cannot be considered to be sustainable. Whilst the need for housing and affordable housing is acute, and I am aware that the site is a reserve housing site in policy terms, I nonetheless consider the identified flooding issue to be an adverse impact of such magnitude that it significantly and demonstrably outweighs the benefits of the proposed development. These represent material considerations which justify making a decision other than in accordance with the development plan.

42. It follows that irrespective of whether bullet point 3 or 4 of paragraph 14 of the Framework is invoked the appeal should be dismissed.

Contributions

43. During the appeal process the Council and appellants agreed a range of contributions that the Council considered were necessary to mitigate the effects of the proposed development. At the end of the Inquiry I was supplied with a signed and dated Section 106 agreement that would provide for the required contributions and also, amongst other things, the required affordable housing. Normally it would be incumbent on me to assess these contributions against the tests outlined in Community Infrastructure Levy Regulation 122. However, as I have found against the proposed development on the two main issues, this is not necessary in this case.

Conclusion

44. In light of my above findings and having regard to all other matters raised, I conclude that the appeal should be dismissed.

John Wilde

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Thomas Cosgrove of Counsel instructed by Gary Rhoades-Brown, Head of Planning, Mole Valley District Council.

FOR THE APPELLANT:

Mr John Pugh-Smith of Counsel instructed by Alliance Planning

He called

Mr Paul Jenkin BEng(Hons), Msc, CEng, C.Wem, FCIWEM	Peter Brett Associates LLP
Ms Heidi Copland LLB MPhil	DMH Stallard
Mr Tim Allen TPP, MIHT, MCILT	Peter Brett Associates LLP
Mr David Loxton Dip Arch RIBA	Loxton and Associates
Mr Andrew Stallan BA(Hons) RTPI	Alliance Planning

INTERESTED PERSONS:

Mr John Washtell	Local resident and lead speaker of TMAG
Councillor Paul Potter	Mole Valley District Council
Mr Roger Abbot	Local resident
Mr Maurice Homewood	Local resident and TMAG
MR Edward King	Local resident
Mr Justin Theobald	Local resident
Dr Harvey Rodda WRA	TMAG drainage expert
Councillor Helyn Clack	Surrey County Council
Mrs Valerie Homewood	Local resident and TMAG
Mr Bill Hill	Local resident and TMAG
Mr Will Clemson	Local resident and TMAG
Mrs Claire Frewer	Local resident
Mrs Anne Washtell	Local resident
Mrs Liz Knight	Local resident and TMAG
Mr Alain Eve	Local resident
Mr Ian Clinging	Local resident
Mrs Judy Rapoport	Local resident

DOCUMENTS

- 1 Letter dated 19 November 2013 giving notification of the Inquiry
- 2 Updated Proof of Evidence of David Loxton
- 3 Draft conditions list
- 4 Note from Alliance Planning regarding third party consultation regarding amendments
- 5 Copy of the Wheatcroft decision
- 6 Opening Statement on behalf of the Council
- 7 List of speakers for TMAG
- 8 Evidence from Mr Ian Currie
- 9 Opening Statement by TMAG
- 10 Evidence from Mrs Claire Frewer
- 11 TMAG list of supporters
- 12 Transcript of MVDC Committee meeting 5 June 2013 supplied by Mr Hill
- 13 Statement from Brockham Parish Council
- 14 TMAG statement presented by Mrs Liz Knight
- 15 Paper entitled Why did EA not object to the development at the Tanners Meadow site?
- 16 Statements from Mr Boyer, Mrs Brignell, Kim and Andrew Purser and Victoria Churton
- 17 Newspaper cuttings from 3 December 2009 and 5 January 2012
- 18 Paper on sustainability produced by Mr Clemson
- 19 Sustainability audit
- 20 Paper on transport and sustainability issues by Mrs Judy Rapoport
- 21 Background info on sustainability issues
- 22 Statement by the Council in relation to 5 year housing land supply
- 23 Statement by Mr William Hill
- 24 Statement on behalf of Mr Timothy Knight
- 25 Revised condition 2
- 26 Alternative condition 15
- 27 Statement on re-cycling by MVDC
- 28 Statement on S106 Environmental enhancements by MVDC
- 29 Note on the S106 agreement by MVDC
- 30 Revised condition 22
- 31 TMAG closing statement
- 32 Appellant's closing statement
- 33 Draft Section 106 Agreement

PLANS

- A Drawing nos L1101/2.1/05B, L1101/2.1/03A, L1101/2.1/02A, L1101/2.3/25A
- B Set of A4 drawings provided by Mr Hill
- C A4 OS map supplied by Mr Clinging