



The Planning Inspectorate

3/J Kite Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

Direct Line: 0303 444 5384
Customer Services:
0303 444 5000

Email:
ELIZABETH.HUMPHREY@planningi
nspectorate.gov.uk

www.gov.uk/planning-inspectorate

Wiltshire Council
Planning Appeals
Monkton Park Office
Chippenham
Wiltshire
SN5 1ER

Your Ref:

Our Ref: APP/Y3940/W/18/3202551

06 April 2020

Dear Sir/Madam,

Town and Country Planning Act 1990

Appeal by Beechcroft Land Ltd, John Webb, Sally Ballard & Carole Ann Lindsey
Site Address: Land at Purton Road, Swindon, Wiltshire, SN5 4FR

I enclose a copy of our Inspector's decision on the above appeal(s), together with a copy of the decision on an application for an award of costs.

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<http://planningguidance.communities.gov.uk/blog/guidance/appeals/how-to-make-an-application-for-an-award-of-costs/>

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Thank you in advance for taking the time to provide us with valuable feedback.

Yours faithfully,

Elizabeth Humphrey

Elizabeth Humphrey

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Appeal Decision

Inquiry held on 29 January 2019, 4-7, 12-14 and 27-28 February 2020

Site visit made on 7 February 2020

by Michael Boniface MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 April 2020

Appeal Ref: APP/Y3940/W/18/3202551 Land at Purton Road, Swindon, Wiltshire

- 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 Beechcroft Land Ltd, John Webb, Sally Ballard, Carole Ann Lindsey and Deborah Muriel Webb against the decision of Wiltshire Council.
 - The application Ref 17/08188/OUT, dated 21 August 2017, was refused by notice dated 2 March 2018.
 - The development proposed is described as “up to 81 dwellings and associated infrastructure”.
-

Decision

1. The appeal is dismissed.

Application for costs

2. At the Inquiry an application for costs was made by Beechcroft Land Ltd, John Webb, Sally Ballard, Carole Ann Lindsey and Deborah Muriel Webb against Wiltshire Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The application is submitted in outline form with details of the proposed access for consideration. Matters of appearance, landscaping, layout and scale are reserved for subsequent consideration.
4. The Inquiry was originally opened by a different Inspector but adjourned before hearing evidence in light of new and unanticipated ecology issues being raised by the Council, resulting in the need for further survey works. The Inquiry resumed some months later after the survey works had been undertaken and all parties had been given the opportunity to consider the new evidence.
5. Discussion between the parties took place during the course of the appeal in an effort to reduce the areas in dispute. As a result, and subject to appropriate conditions and planning obligations, the Council chose not to defend reasons for refusal 2 (planning obligations), 4 (air quality), 5 (flood risk and drainage), 6 (archaeology), 7 (design) or 8 (neighbours living conditions). Reason 7 was not defended by the Council following agreement from the appellant that the development should be restricted to no more than 79 dwellings. As such, it was not necessary to hear detailed evidence on these topics.

6. In addition, it was confirmed that concerns raised in relation to the character and appearance of the area were confined to Old Purton Road, in the vicinity of the proposed site access as expressed in reason for refusal 9. No wider issue in relation to character and appearance was pursued, notwithstanding a further reference in refusal reason 1.
7. Before the Inquiry closed, the Council resolved to adopt the Wiltshire Housing Site Allocations Plan Submission Draft Plan (July 2018) as amended by the Main Modifications and some additional minor modifications. The plan was subsequently adopted and the parties were given the opportunity to make any observations arising.
8. Following a round table session dealing with housing land supply, the parties reached agreement that the Council cannot currently demonstrate a deliverable five-year housing land supply. The parties agree that somewhere within the range of 4.42-4.62 years supply can be demonstrated against Wiltshire's Local Housing Need figure. It was further agreed that the position within this range was immaterial for the purposes of this decision. I do not disagree and it is not necessary for me to determine a more accurate figure in this case.

Main Issues

9. In light of the above, the main issues are whether the site is a suitable location for the development, having regard to the development plan; the effect on ecology; and the effect on local character and visual amenity, with particular regard to the vicinity of Old Purton Road.

Reasons

Location

10. The site is located adjacent to relatively recent residential development west of Swindon but within the neighbourhood plan area covered by the Purton Neighbourhood Plan 2017-2026 (Made November 2018) (NP). It is close to the Swindon Borough Council local authority area but within the area covered by Wiltshire Council, where the Wiltshire Core Strategy (January 2015) (CS) applies.
11. Core Policy 1 (CP1) of the CS sets out the settlement strategy for the area, identifying a hierarchy of settlements to which development will be directed with the aim of achieving sustainable development. Purton is identified as a 'Large Village', defined as settlements with a limited range of employment, services and facilities and where development will be limited to that needed to help meet the housing needs of settlements and to improve employment opportunities, services and facilities. The proposal conflicts with this policy since the proposed housing would not meet the housing needs of Purton, or any other settlement contemplated by the CS. The appellant does not suggest otherwise, asserting that the housing would more likely serve Swindon.
12. Core Policy 2 (CP2) provides a more detailed delivery strategy, assigning a minimum housing requirement to respective housing market areas, along with an allowance at West of Swindon for 900 houses in recognition of planning permissions granted at Moredon Bridge and Ridgeway Farm, which have since been developed. Core Policy 19 (CP19) details the amount of development expected in each community area. The site falls within the Royal Wootton Bassett and Cricklade Community Area, within which around 385 houses are

expected to be delivered outside of Royal Wootton Bassett Town. There is no dispute that this number have been delivered or that the appeal proposal conflicts with these policies.

13. Saved policy H4¹ of the North Wiltshire Local Plan 2011 (LP) restricts development in the countryside, other than in specified circumstances, none of which apply to the appeal proposal. The appeal site is some distance from the built-up area of Purton and there is no dispute that it is located in countryside, in conflict with this policy.
14. The NP is recently made and provides positively for the delivery of housing in the NP area, despite the relevant CS requirements having been met. In anticipation of population growth in the village during the plan period, the NP allocates sites for a minimum of 94 additional dwellings. The allocations comprise six sites within the settlement boundary capable of accommodating around 75 dwellings and approximately a further 40 dwellings on a single site outside the settlement boundary. The supporting text makes clear that the allocations are made to accommodate necessary growth in line with local aspirations for the village and to support a plan-led approach to development in recognition of the significant development pressures in the area.
15. The NP does not seek to control development outside of the allocations made by Purton Policy 13 or 14, nor does it need to. It is a plan to be read in conjunction with the remainder of the development plan and seeks merely to plan positively for development that is considered necessary and appropriate in the plan area. It does not identify how further housing applications are to be considered beyond the allocations, because none are supported. That does not displace the suitable exceptions identified elsewhere in the development plan².
16. There would be no utility or desirability in the plan replicating policy requirements of higher-level policy, such as the CS, which already provides for the strategic approach to housing delivery. The NP does not cut across CS policies, it works with them. The appeal proposal does not expressly conflict with the wording of Purton Policy 13 or 14 but it is clear, taking the policies together and having regard to the supporting text, that the appeal scheme is entirely at odds with the NP taken as a whole and manifestly incompatible with the strategy contained within it.
17. I have had regard to the court judgements referenced by the appellant³, but since none of them involve the development plan in Wiltshire and particularly, the Purton NP, they do not alter my judgement on the facts of this case. The community has gone to significant effort to plan positively for its neighbourhood area. The proposed development would deliver housing that is clearly not anticipated or sought by the NP.
18. Notwithstanding the importance of the above policies for determining the appeal, they must be considered out-of-date because the Council cannot currently demonstrate a deliverable five-year housing land supply. In addition, the CS is now more than five years old and its strategic policies have not been reviewed and found not to require updating. As such, the Council's local housing need figure, calculated using the standard method, is the relevant

¹ Which remains part of the development plan notwithstanding adoption of the Housing Site Allocations Plan

² See CS para. 4.25

³ Including Chichester District Council v SSHCLG [2019] EWCA Civ 1640

- housing requirement for the area and attracts greater weight than the housing requirement contained in policy CP2.
19. In addition, saved policy H4 of the LP is no longer entirely consistent with the National Planning Policy Framework (the Framework) in that it is more restrictive on development in the countryside and was devised some time ago, in a different policy context and when the need for housing differed.
 20. Even having regard to the above, there remains substantial benefit in maintaining a plan-led system. The overall strategy of the CS to direct development to the most sustainable settlements remains desirable and accords with the objectives of the Framework.
 21. Even at the lower end of the range agreed between the parties, there is a relatively modest shortfall in housing land in the Wiltshire Council area. The local housing need derived from the standard method is very similar to the housing requirement contained in the CS for the relevant five-year period⁴ and so there is no reason to think that the strategy will not continue to be effective, particularly in light of recent progress in adopting the Housing Site Allocations Plan⁵. Whilst weight to the conflict with LP policy H4 is diminished for the reasons I set out above, it continues to provide an important function in recognising the intrinsic character and beauty of the countryside in accordance with the Framework. For all of these reasons, and notwithstanding that the policies are out-of-date, I attach significant weight to the conflict with policies CP1, CP2 and CP19 of the CS, and moderate weight to the conflict with policy H4 of the LP in this case.
 22. The appellant pursues a range of alternative scenarios in respect of housing land supply and policy matters, but they do not alter the conclusions I have reached. There is no disagreement between the parties that the local housing need figure should be used as the housing requirement in this case, given the age of the CS. The Framework and Planning Practice Guidance (PPG) are absolutely clear how that figure is derived and that the requirement to demonstrate a deliverable five-year housing land supply is against that requirement for each local planning authority. There is no scope for applying the housing requirements in an adjoining authority.
 23. As set out, the CS provides for an allowance of 900 houses at West of Swindon in recognition of planning permissions already granted. The plan is abundantly clear that this should not be considered to represent a housing market area and do not contribute to the housing requirements in the Wiltshire Council area.
 24. It is agreed that, at the time the CS was examined, it was expected that most, if not all of the housing would meet the needs of Swindon, given the close relationship to it. However, it is also very clear that the Council, in partnership with Swindon Borough Council, considered the need for further development west of Swindon and found that there was none, and that development in this area did not represent the most sustainable option for future growth in Swindon.
 25. There is no evidence to suggest that this position has changed and ultimately, the CS did not direct any further development in this area. The open wording

⁴ See Proof of Evidence of Chris Roe, Section 4.0

⁵ Notwithstanding that Mr Totz did not expect sites to come forward quickly during xx

in the supporting text⁶ contemplating the possibility of development beyond that already committed does not change the clear policy position. I do not accept that this should be interpreted as an invitation or expectation for further development west of Swindon of an undefined quantity and over an undefined spatial area. Supporting text could simply not have that effect, in clear conflict with the policy and strategy of the CS. There is no housing requirement defined for West of Swindon in the CS, because it is not intended that housing should be delivered there beyond the allowance identified.

26. Even if much of the proposed housing would ultimately serve the Swindon housing market, it is the Wiltshire Council local housing need that applies. The amount of housing supply in Swindon does not alter the local housing need in the Wiltshire Council area, and this is the clearly defined requirement applicable to the appeal scheme. Should it become necessary to allocate housing west of Swindon in the future, that is a matter for the plan making process⁷. Planning appeals are not the correct vehicle for assessing whether a local authority should accept development for the purposes of meeting a neighbour's housing needs and I simply do not have the appropriate up-to-date evidence before me to consider such matters.
27. It is regrettable that the Council has not produced a housing land supply position statement which uses the most recent base date, instead relying upon a statement published in August 2019, with a base date of 1 April 2018. I do not endorse the Council's extreme tardiness, given the requirement to identify and update annually a supply of specific deliverable sites to provide a minimum of five years housing land supply. Such delays result in the testing of an outdated housing land supply picture, which is not at all helpful in ensuring an appropriate and ongoing supply. However, it is the best evidence available in this case and is more useful than artificially adopting a position that no supply exists at all.
28. Based on the evidence that is available, I therefore conclude for the purposes of this appeal, that the Council can demonstrate a housing land supply in the range of 4.42-4.62 years. As this exceeds the requisite 3-year supply identified by paragraph 14 of the Framework and all other criteria are met, the adverse impact of allowing development in conflict with the NP weighs heavily against the development.
29. Overall, I conclude that the appeal site is not located in an area supported by the development plan. It would involve housing development in the countryside, remote from all settlements identified for development in the CS and not in accordance with any of the housing allocations made by the NP. There is a clear conflict with policies CP1, CP2 and CP19 of the CS; Policy H4 of the LP; and the NP, fairly read and taken as a whole.

Ecology

30. The site is located within a County Wildlife Site (CWS), designated for its species-rich neutral grassland habitat (HG2.2), a lowland meadows priority habitat within the UK Biodiversity Action Plan. The appellant accepts that the designation exists and that it should be taken into account in determining the appeal. However, some time and effort was subsequently applied in seeking to

⁶ CS Para.4.34

⁷ Whether through a review of the CS or a new Local Plan

undermine the designation, along with the evidence base underpinning it. It is not the role of a planning appeal to determine whether a County Wildlife Site is properly designated and I have not sought to answer that question in reaching a decision. It is, however, appropriate to consider the ecological value of the site based on the evidence available.

31. The appeal is accompanied by a recent survey (2019 Ecology Surveys) of the appeal site and other adjacent fields within the CWS. So far as establishing the grassland species present is concerned, it is not disputed between the parties that a Farm Environment Plan (FEP) structured walk is the most objective and appropriate method.
32. The results of such a survey are included in the appellant's evidence and was the most recent structured walk evidence before the Inquiry. It concludes that none of the fields surveyed, including Field 1, within which the appeal site is located, currently meet the minimum criteria (particularly the number of appropriate species) to constitute HG2.2 priority habitat. Nor does the evidence support qualification as any other priority habitat outside the purpose of the original CWS designation. The Council's own earlier survey (Botanical Assessment, 2018, v2) identifies that those areas which, at the time of the survey met the criteria for HG2.2, fall outside of the appeal site and within the wider field. Indeed, only an area of 0.8ha within Field 1 was shown to qualify as priority habitat at that time.
33. The appeal site itself is shown to be one of the least ecologically valuable parts of the CWS and is in fact of relatively low quality, dominated by coarse grasses as opposed to more valuable species. That is not to say that it has no ecological value or that it might not be capable of supporting the species necessary to qualify as priority habitat in the future, but there is no evidence to suggest that it would at present. The land is not currently subject to any management regime aimed at supporting ecological interests. Instead, I heard that it is used for grazing animals periodically, that chemicals are applied to support such practices and that the current landowner has considered ploughing the fields. All of this is likely to compromise the ecological value of the land. The evidence available does not indicate improving or even maintained ecological value, quite the contrary given that the latest survey identified no priority habitat.
34. The appeal proposal would result in a significant proportion of the CWS being built upon, but a large area would remain and could be made the subject of a more appropriate management regime. Appropriate cutting, over-sowing areas with species rich meadow mixture and the encouragement of species that reduce the dominance of coarse grasses are part of a proposed package of measures in a draft Landscape and Ecological Management Plan (LEMP). Species rich grassland could also be incorporated in the appeal site itself, around the water attenuation areas.
35. The close proximity of housing to the remaining fields would likely result in pressure for recreation but open spaces would be incorporated into the development and a country park provides an attractive alternative close by. As such, the use of fencing, information boards and mown paths are all measures that could mitigate such pressures. It must also be noted that the fields are already being used by members of the public for walking, albeit informally.

36. Overall, I am satisfied that suitable mitigation and enhancement measures could be put in place to ensure that the quality of the remaining fields within the CWS would be improved, potentially returning them to priority habitat status. Such improvements are unlikely to be achieved by other means and would compensate sufficiently for the loss of the area where new homes would be built. Measures could be secured by condition through a requirement for a LEMP. Furthermore, as much of the CWS would be retained and enhanced connectivity with other wildlife and ecology resources would be maintained.
37. In addition to the above matters, there are a number of faunal species identified through survey work as being in the vicinity of the site, including protected species. A variety of bats are shown to be using the site boundaries for foraging, including Myotis species. Within this category are a variety of sub-species, including some that are relatively rare such as Bechstein's bat which tend to be light-shy and prefer darker foraging routes.
38. The site currently provides such routes, the boundary with Old Purton Road in particular. Old Purton Road is subject to traffic restrictions such that it is mainly used as a pedestrian route. It is largely unlit, albeit that light spill from the adjacent Purton Road (B5434) does occur in places. It is lined by trees and vegetation on both sides, punctuated in places by gaps. From the bat surveys undertaken it is clear that numerous bats are using this route and whilst it is not possible to be definitive about the exact sub-species in all cases, most bats are light shy, some more than others.
39. The proposed site access would be gained from the elevated level of Purton Road, passing across Old Purton Road as it descends into the site, flanked by landscaped banking. This would necessitate re-routing Old Purton Road and the subsequent need for bats to navigate a large engineered structure. Whilst I acknowledge that this is likely to disrupt existing bat activity, particularly during construction, I am not persuaded by the evidence that such a feature would necessarily have a long-term or insurmountable adverse impact.
40. It is clear that gaps in the vegetation already exist along Old Purton Road and some contain man-made features such as a railway bridge. The illumination surveys also demonstrate that parts of the route are well lit, including in the vicinity of the proposed vehicular access. The new development could be designed to reduce impacts on bats through the introduction of extensive planting along the route, by providing tree planting within the highway island so as to shorten the gap bats are required to cross and through sensitive lighting schemes in this part of the site, minimising illumination to tolerable levels. Further measures, such as formal bat crossing points, could also be secured by condition. There is no evidence before me, that bats could not adapt to the new layout or that the proposed development would lead to long-term adverse impacts on bat species.
41. The survey work also identifies the presence of water voles and otters in the nearby River Ray, though the latter have not been identified since 2017 when a single spraint was found. Increased habitation near to the river has the potential to introduce activity to the area, including recreational users of the riverside and predation/disturbance by pets⁸. However, there is no suggestion that these species are using the stretch of the river close to the site for anything other than foraging or commuting and there is no reason to believe

⁸ Fiona Elphick referred to literature that indicated mammals might be disturbed by dogs

this transient use could not continue. The appeal site would be located over 50m from the river and the intervening space would comprise the remaining CWS grassland subject to the measures discussed above, designed to dissuade recreational use other than on defined routes. Subject to appropriate measures being secured by condition, I am satisfied that these species would not be harmed.

42. The appellant makes use of the DEFRA Biodiversity Metric⁹ to demonstrate a biodiversity net gain in excess of 30%. This is said to be a worst-case scenario as the tool has under-rated the anticipated net gain in past scenarios. The Council criticised some of the inputs into the tool and questioned its reliability, but no detail was provided to demonstrate that a net gain would not be achievable, even if not on the scale suggested.
43. I have had regard to the output of the tool with caution given its 'Beta' status and the criticisms made of the tool which is still undergoing a process of refinement. However, the draft LEMP demonstrates a range of ideas for enhancing the CWS, extensive tree and hedgerow planting could be secured, including new planting along the route of the railway line and new habitats could be created around water attenuation features. It seems to me, that there would be an opportunity to achieve a significant net biodiversity gain.
44. Core Policy 50 (CP50) of the CS seeks to protect and enhance biodiversity. Features of nature conservation value should be retained, buffered and managed favourably. With reference to local sites, such as the CWS, development should avoid direct and indirect impacts through sensitive site location, layout and design. Damage and disturbance are generally unacceptable, other than in exceptional circumstances. Purton Policy 4 (PP4) of the NP seeks the retention and enhancement of local sites of ecological interest wherever possible and an overall net gain in biodiversity.
45. The appeal proposal would result in development on part of the CWS, which even if not currently in favourable condition, could be improved and might become of more value in the future. It cannot be said that the development could not be reasonably avoided given my conclusions above in relation to the first main issue and so there is a conflict with policies CP50 and PP4. However, the proposed site location within the CWS, the design, ecological enhancement and management measures proposed would reduce impacts as far as possible and appropriate compensation measures could be secured. The ecological benefits that would arise would also, in my view, outweigh the loss of part of the CWS to development. Having regard to all of these matters, the ecology benefits attract significant weight, sufficient to outweigh the limited conflict with policies CP50 and PP4 in this case.

Character

46. The dispute between the parties lies in whether the proposed site access would unacceptably harm the character of Old Purton Road and the amenity of its users. Old Purton Road is a narrow road used primarily by pedestrians and cyclists. It provides a pleasant route with trees and other vegetation either side and glimpsed views of the open fields possible in places. That said, it is a relatively short route between two distinctly suburban housing estates and

⁹ DEFRA Biodiversity Metric 2.0 Calculation Tool Beta

- users are very aware of the busy elevated road running parallel, given the noise and movements of traffic close by. It is not a remote or tranquil route.
47. It is no doubt a more preferable route for pedestrians and cyclists to that of the footway alongside Purton Road (B4543) which is heavily used by vehicular traffic. The appellant's suggestion that the two routes are comparable is simply not credible. However, much of the route would remain unaltered by the development and the parties agree that the effects of the development would be extremely localised around the new site access.
 48. The introduction of an elevated access across the line of Old Purton Road would undoubtedly change the appearance of the route but it would not be dissimilar to the elevated B4543, nor would the landscaped banking required either side be out of place given that it is already a feature of Old Purton Road. Diversion of the route to cross the new access road would introduce a more urban character to this part of the route, but again users would already be well aware of the established urban fringe context.
 49. Landscape features would remain largely unaltered, except for the point at which the proposed access passed through the field boundary vegetation. Appropriate landscaping of the diverted route could be readily achieved by way of condition and further landscaping would be incorporated into the development. Users of the route would only really be aware of the new access once in proximity to it and would still have the opportunity to continue their onward journey beyond the new access. Much of the route would remain unaltered, with limited impact on visual amenity or enjoyment, including for recreational users.
 50. Further urbanisation of part of the route and the breaking through an existing field boundary would nonetheless be detrimental to users experience of it to some extent. In addition, the views of housing on currently open fields must be seen as harmful. I agree, however, that the effects would be very localised and the harm arising would be limited. Whilst the development could be delivered sensitively, seeking to mitigate impacts as far as possible through landscaping and design, there would be inevitable adverse impacts in terms of character. These would be in conflict with Core Policy 51 (CP51), which requires development to protect, conserve and where possible enhance landscape character. Although the resulting harm is limited, this is a matter that further weighs against the appeal proposal.

Other Matters

51. The appellant identifies a range of benefits that would arise from the proposed development. These include the provision of both market and affordable housing. Given the lack of a deliverable five-year housing land supply (in both the Wiltshire and Swindon local authority areas) and the demonstrable need for affordable housing, this is a matter that attracts significant weight, notwithstanding my conclusions on the first main issue. In addition, there would be economic benefits arising, including from construction works, employment and local expenditure from new occupants. There would be a net gain in biodiversity and some benefit from improved drainage. The delivery of housing close to the large urban area of Swindon might also provide opportunities to reduce commuting distances if existing Wiltshire residents that commute to the town could move closer, an objective of the CS. These matters all weigh in favour of the proposal.

Planning Balance

52. The appeal proposal conflicts with policies CP1, CP2 and CP19 of the CS, policy H4 of the LP, and the made Purton NP. These are fundamental policies of the development plan which provide for the spatial strategy and the distribution of development across the Wiltshire Council area. The proposal is clearly in conflict with the development plan taken as a whole and I attach the conflict significant weight despite the policies being out-of-date for the reasons I have set out above.
53. This development plan conflict, which includes a carefully considered and positively prepared neighbourhood plan, is sufficient in itself to significantly and demonstrably outweigh the benefits identified, when assessed against the policies of the Framework taken as a whole. However, I have found additional limited harm to the character of the area, resulting in a conflict with policy CP51 of the CS. This further weighs against the proposal.
54. In this case, there are no material considerations that indicate a decision other than in accordance with the development plan.

Conclusion

55. In light of the above, the appeal is dismissed.

Michael Boniface

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Timothy Felton, Counsel (day 1)
Martin Carter, Counsel (days
2-10)

He called:

Fiona Elphick MSc	Senior Ecology Officer
Chris Roe MSc MRTPI	Spatial Planning Manager
Henning Totz	Senior Planning Officer
Catherine Blow MSc	Senior Planning Officer

FOR THE APPELLANT:

Killian Garvey, Counsel

He called:

Dominic Farmer BSc (Hons) MSc MCIEEM CEnv	Director, Ecology Solutions
Mark Hewett	Senior Partner, Intelligent Land
Andrew Cook BA (Hons) MLD CMLI MIEMA CENV	Director, Pegasus Group
Guy Wakefield BA (Hons) MRTPI	Partner, Ridge and Partners LLP

INTERESTED PERSONS:

Jacqui Lay	Councillor
Richard Pagett	Local resident and member of NP Steering Group
Elizabeth Scotford	Local resident
Darren Smith	Local resident

DOCUMENTS SUBMITTED DURING THE INQUIRY

- 1 Council's list of appearances
- 2 E-mails relating to use of Biodiversity Metric
- 3 Cabinet Agenda (4 February 20) and Draft Housing Site Allocation Plan and Examination Report
- 4 Appeal and costs decision (APP/G2815/W/19/3232099)
- 5 Appellant's opening submissions
- 6 Council's opening submissions
- 7 Copy of objection from Purton Parish Council
- 8 Copy of original statement by Cllr Lay and updated statement
- 9 Statement of objection from Richard Pagett
- 10 Access proposals drawing (2900.07) and accompanying e-mails
- 11 Housing Land Supply – Position Statement Addendum
- 12 Enlarged copy of Appendix 7 from the evidence of Catherine Blow
- 13 Final 5 year housing land supply statement of common ground
- 14 E-mail from Swindon Borough Council regards 5YHLS
- 15 Draft conditions agreed between the parties
- 16 Appellant's costs application
- 17 Extracts from Biodiversity net gain – Good practice principles and the Biodiversity Metric 2.0 User Guide
- 18 Neutral grassland indicators table
- 19 Appeal decisions APP/W2275/V/11/2158341, APP/K2610/W/17/3188235 and APP/N5090/W/16/3145010
- 20 Completed S106 agreement
- 21 Ecology note – size of county wildlife site post development
- 22 Amended costs application by the appellant
- 23 Council's position on 5YHLS following publication of the 2019 Housing Delivery Test results
- 24 Council's response to costs application
- 25 Wiltshire Council Highway Report
- 26 Summons to full council meeting discussing Housing Site Allocations Plan
- 27 Council's closing submissions
- 28 Appellant's closing submissions and associated legal judgements
- 29 E-mail from Mark Callaghan regarding site access and tracking diagram



Costs Decision

Inquiry held on 29 January 2019, 4-7, 12-14 and 27-28 February 2020

Site visit made on 7 February 2020

by Michael Boniface MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 April 2020

Costs application in relation to Appeal Ref: APP/Y3940/W/18/3202551 Land at Purton Road, Swindon, Wiltshire

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Beechcroft Land Ltd, John Webb, Sally Ballard, Carole Ann Lindsey and Deborah Muriel Webb for a partial award of costs against Wiltshire Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for “up to 81 dwellings and associated infrastructure”.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Beechcroft Land Ltd, John Webb, Sally Ballard, Carole Ann Lindsey and Deborah Muriel Webb

2. The application for costs was made in writing. In summary, it is said that the Council introduced a new issue very shortly before the Inquiry opened, that being the adequacy of ecological survey work and reports. This necessitated additional seasonal survey work that could not be undertaken before the Inquiry opened or for some time afterwards. This prolonged the appeal proceedings and required significant additional work on behalf of the appellant. This included new ecological surveys and the updating of previous surveys; a new ecology proof of evidence; a wasted first day to the inquiry; the need for new housing land supply evidence given the intervening time; new planning evidence; updates to the Statement of Common Ground and fresh instructions for professional experts. The issues had not been raised in the Council’s decision or subsequent statements but should and could have been.

The response by Wiltshire Council

3. The Council’s response was made in writing. In summary, it is said that concerns were raised throughout the lengthy pre-application process, in responses from the Council’s Ecologist, in the Officer’s Report, in the appeal statement and in other correspondence. In this context, the Council’s concerns cannot have come as a surprise to the appellant, who should have had regard to all the information available and the discussions had with the Council leading up to its decision. These specifically raised a concern about the apparent undervaluing of the County Wildlife Site (CWS). It was not unreasonable to pursue such concerns, which had gone unanswered by the appellant. The Council was content to proceed with the Inquiry based on the information available. It was in fact the appellant that considered an adjournment was

necessary for it to produce additional evidence. This could have been provided long before.

Reasons

4. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
5. There has been a great deal of discussion between the parties in this case, evidenced in the e-mail trails and extracts provided to me. It is also very clear that these discussions have not always been in a positive spirit with the aim of narrowing or resolving issues. This is unfortunate as it might have allowed the appeal to be resolved more quickly.
6. I have had regard to the various documents provided by the Council, which do indeed identify ecology concerns raised over a long period of time leading up to the Council's refusal of planning permission, which included ecology concerns within reason for refusal 3. The fact that concerns existed must have been entirely clear to the appellant, but it is the scope of those concerns and the suggested inadequacy of the information that was not clear, and which led to the need for an adjournment.
7. References to undervaluing the CWS are numerous but little information was available to explain why the Council thought this was so or what evidence could be provided to justify the appellant's position. It was not until the exchange of proofs, very close to the Inquiry opening, that the numerous and detailed concerns were eventually clarified. At this point, there was no time (given the seasonal nature of the surveys involved) to undertake the necessary survey works in advance of the Inquiry.
8. There is a requirement for the Council to set out its reasons for refusal clearly and fully. I accept that the officer's report on the application and preceding discussions are also informative and should be taken into account. However, the Council's concerns were expressed vaguely throughout, with little opportunity for the appellant to establish exactly what was needed to overcome its concerns.
9. The appellant could not have anticipated the need for further extensive survey works until it was too late. This necessitated an adjournment and the production of evidence to meet the newly defined concerns of the Council.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Wiltshire Council shall pay to Beechcroft Land Ltd, John Webb, Sally Ballard, Carole Ann Lindsey and Deborah Muriel Webb, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred after 3 January 2019 in preparing new ecological surveys and the updating of previous surveys; a new ecology proof of evidence; a wasted first

day to the inquiry; new housing land supply evidence; new planning evidence; updates to the Statement of Common Ground and fresh instructions for professional experts; such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to Wiltshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Michael Boniface

INSPECTOR