

Pins Ref 3143214	North Newbury - Land adjacent to Hilltop, Oxford Road, Donnington, Newbury.	Mixed use scheme on 23.1 hectares of land, comprising up to 401 dwellings on 11.35 hectares of land. A 400 sq.m. local centre (Use Classes A1/A2/D1/D2 – no more than 200 sq.m. of A1) on 0.29 hectares of land, a one form entry primary school site on 1.7 hectares of land, public open space, landscaping and associated highway works.	Dele. Refusal	Allowed 20.03.2017
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Procedural matters

The application is in outline, with only the means of access to be determined, along with the principle of the development.

A Unilateral Planning Obligation (UPO)¹ was discussed in full draft at the Inquiry. The Inspector allowed a short period of time after the close of the Inquiry for it to be signed, and the final document was dated 27 January 2017. It deals with, amongst other matters, open space / play space, affordable housing, transport, education and ecology. There was no need for further consultation on the final UPO as it had been discussed at the Inquiry.

The Council's decision notice included a reason for refusal related to the capacity of the A339 and highway mitigation measures. However, in the light of further modelling and subject to the provisions of the UPO, this matter was not pursued by the Council, as announced at the start of the Inquiry and as set out in the Highways Statement of Common Ground (HSOCG). At this stage the Council also no longer argued that the grant of planning permission for the appeal scheme would be premature. The remaining reasons for refusal, dealing with settlement policy and the emerging development plan, access by sustainable modes of travel and the linkages with the town centre, and the adequacy of the underpass beneath the A339 remained part of the Council's case as set out in the Planning Statement of Common Ground (SOCG).

On the sixth day of the Inquiry, after the case for both parties had been part heard, the Council withdrew all its objections to the appeal and recommended that conditional planning permission should be granted, subject to the UPO. An Additional Statement of Common Ground (ASOCG) was produced. The Council took no further part in the Inquiry and did not submit a Closing Statement. The Inspector heard from the remaining witnesses for the appellant, so he could seek clarification on a number of matters, and he heard a Closing Statement from the appellants.

After the close of the Inquiry the Government published a Housing White Paper entitled "Fixing our broken housing market". The main parties were consulted on this document. The Council stated that it did not materially alter the assessment of the appeal. The appellants stated that it placed even greater emphasis on housing delivery, particularly given the agreed absence of a five year housing land supply. The Inspector took these responses into account.

Decision

The appeal is allowed and planning permission is granted for a mixed use scheme on 23.1 hectares of land, comprising up to 401 dwellings on 11.35 hectares of land. A 400

sq.m. local centre (Use Classes A1/A2/D1/D2 – no more than 200 sq.m. of A1) on 0.29 hectares of land, a one form entry primary school site on 1.7 hectares of land, public open space, landscaping and associated highway works on land adjacent to Hilltop, Oxford Road, Donnington, Newbury, in accordance with the terms of the application, Ref 14/02480/OUTMAJ, dated 17 September 2014, subject to the conditions set out in the Schedule to this decision.

Main issues

The main issue in this case is the suitability of the site for the proposed development, in the light of the development plan, national policy and the emerging development plan.

Reasons

The site and the proposal

The appeal site is an area of 23.1 hectares of agricultural land immediately to the north of the existing urban edge of Newbury. It is in two parcels on either side of the A339, which is a major road linking Newbury to the M4 and the A34. To the south is the centre of Newbury and the Vodafone headquarters. To the north and east is agricultural land, with the village of Donnington to the west.

There is an existing public footpath running north – south across the site, linking the two parcels by way of an underpass below the A339. In the south this links with footpaths which encircle the Vodafone site, and thereby links with routes into central Newbury. Existing bus services run to the south and west of the western parcel, and provide a limited service into the centre of the town.

The proposal is as described in the heading above. Access would be from both sides of the existing roundabout on the A339, with access for emergency vehicles, buses and a school drop off from Love Lane. The application was supported by a range of technical assessments and includes Parameter Plans, a Concept Masterplan, and a Design and Access Statement. It includes 40% affordable housing, which is shown as being integrated into the overall development.

Policy context

The relevant parts of the development plan are the Core Strategy (CS) (2012) and the saved policies (2007) of the West Berkshire District Local Plan (DLP). The Planning Statement of Common Ground identifies relevant policies in both documents.

The CS provides the overarching policy for development in West Berkshire. CS policies ADPP1, ADPP2 and CS114 provide that development in West Berkshire should follow the existing settlement pattern, with most development within or adjacent to existing settlements. Newbury is intended to accommodate around 5,400 homes over the plan period, with urban extensions at Newbury Racecourse and Sandford Park. The general location of the appeal site was considered as a possible strategic allocation during the CS process, but was not eventually selected. Policy CS1 deals with housing land supply whilst policies CS13 and CS14 encourage more sustainable travel and set out design principles.

The relevant saved policy (HSG.1) of the DLP identifies settlement boundaries, within which development will normally be permitted. The appeal site is outside, but partly adjacent to, the Newbury settlement boundary.

The approach of the CS has informed the emerging Housing Allocations Development Plan Document (HADPD), which has been through Examination and is subject to consultation on modifications. It is described by the Council as a 'daughter document' to the CS and it is not designed to re-assess housing numbers. Rather it will allocate sites on the basis of the requirements of the CS. The appeal site is not allocated in the emerging HADPD.

The Council has adopted a Supplementary Planning Document (SPD) on Planning Obligations. This is relevant to consideration of the UPO, but there is no issue between the parties in this respect. There is also an SPD on Quality Design, which deals with sustainability and accessibility. Although there is no longer an issue between the main parties in this respect, it is relevant to some matters raised by local residents related to the underpass.

Housing Land Supply and its consequences

The main parties agreed a Statement of Common Ground on Housing Land Supply in January 2017. This set out agreed and disputed matters in relation to the housing requirement and housing supply at that time. This document was usefully used at the Inquiry to identify and test the differences between the parties, but it has now been superseded by the ASOCG which was concluded during the Inquiry and which sets out the basis for the Council withdrawing its objection to the proposal.

The balance of the evidence before the Inquiry suggested that the FOAN should be higher than that used by the Council. The main parties do not agree the FOAN figure but, in the light of the existence of an agreed deficit, it was common ground that it would not be useful to debate this further. Nor is there agreement on the appropriate buffer, as the Council's position is based on a 5% buffer, which the appellants do not accept. If the appellant's position, that a 20% buffer should be applied, the shortfall would be significantly worse. However, given the position of the main parties, this need not be pursued further in the context of this appeal.

The main parties agree that there is a deficit of 203 in the five year housing land supply. The Council's position, amended in the light of the evidence at the Inquiry, is that the deficit is no more than 203 and that a number of sites on which it had relied for delivery should be removed from the supply. Based on the Council's assumptions, there is only a 4.74 year supply. The appellants' position is that the deficit is more than 203 and the supply is less, but the parties again agreed that it would not be proportionate to debate the precise difference further.

On that basis, the main parties agree that a five-year supply of deliverable housing sites cannot be demonstrated. The relevant policies for the supply of housing therefore attract less weight and the National Planning Policy Framework (the Framework) paragraphs 49 and 14 are engaged. The presumption in favour of sustainable development in paragraph 14 of the Framework is agreed to apply.

For the purposes of paragraph 49 of the Framework, policies ADPP1 and ADPP2 and DLP policy HSG.1 are agreed to be relevant policies for the supply of housing. Although these policies remain part of the development plan they attract significantly reduced weight due to the limited potential of development soon coming forward to make up the shortfall.

The appeal site considered in the context of adopted and emerging policy

CS policy ADPP1 recognises that most development will be within or adjacent to Newbury. Although the appeal site is outside the settlement boundary it is next to it, and the Council agreed that it is adjacent to Newbury. The policy also states that the majority of development will take place on previously developed land, but that does not preclude proposals on greenfield sites. The proposal is therefore not contrary to CS policy ADPP1.

CS policy ADPP2 states that Newbury is intended to accommodate around 5,400 homes over the plan period, and refers to urban extensions at Newbury Racecourse and Sandlesford Park. It also contemplates other development coming forward through (amongst other mechanisms) the allocation of smaller extensions to the urban area through the HADPD. The appeal site has not come forward by any of the mechanisms envisaged in ADPP2 and, as a consequence, the proposal is in conflict with this aspect of the policy. The HADP also states that a number of sites which have future potential for development have been identified in the Strategic Housing Land Availability Assessment (SHLAA).

There are a number of factors which must be balanced against this conflict with policy ADPP2:

- The appeal site has been considered through the SHLAA process in 2011 and 2013 – an approach which was noted in policy ADPP2. Both these SHLAA assessments identified the appeal site as potentially developable. The 2013 SHLAA noted that it was in a basket of sites from which the most suitable would be allocated through the development plan process. However as a potential strategic site, the appeal site is outside the scope of the HADPD, as noted in the relevant Sustainability Appraisal. Nevertheless, the potential of the appeal site is clearly recognised.
- CS policy CS1 makes reference to at least 10,500 new homes coming forward in the plan period, but the Council accept that this figure is out of date as a requirement for FOAN or five year housing land supply purposes. In addition the approach of the CS Inspector appears to have been that the plan did not provide for all housing needs even at that time, but adopted a pragmatic approach and recommended the adoption of the plan as it stood and encouraged an early review. This approach further reduces the weight which can be accorded to the CS housing and settlement policies.
- As mentioned above, the area around the appeal site was considered during the CS Examination process. The Examining Inspector noted that there was a choice to be made between Sandlesford Park to the south of Newbury and the area north of Newbury (including the appeal site). This was in addition to the development at Newbury Racecourse for which planning permission had already been granted. A number of the concerns which were identified related to the north of Newbury area were apparently not fully investigated by the Council at that time, although the Inspector described highway matters and flood risk as not being 'show stoppers'. However, on balance, the Sandlesford Park site was preferred as it was stated that there was not the evidence to demonstrate that north Newbury was a clearly preferable site. Overall, the Examining Inspector stopped well short of recommending that there were problems associated with the north Newbury area, although preference was given to Sandlesford Park.
- The Inspector heard detailed and uncontested evidence that the Sandlesford Park site is experiencing substantial delays. No party was able to suggest how or when this major development might progress. Before the Council's withdrawal from the Inquiry, the authority had accepted that completions at this site could not be expected in the next five

year period – or perhaps longer. Under these circumstances this loss of around 1000 units makes the achievement of even the limited CS target highly optimistic.

- As noted, the appeal site was in the basket from which the SHLAA envisaged that the most suitable would be allocated through the development plan process. The Council, before withdrawing its opposition to the appeal scheme, accepted that there were no sites of comparable scale which might be preferable and/or more sustainable than the appeal site. In effect, even if the development at Sandford Park were to progress more rapidly than the evidence indicates, the appeal site is next in line to meet the housing needs of the area.

- There is nothing to suggest that, even if the CS figure of approximately 5,400 dwellings were exceeded, this would cause any harm. There is nothing to suggest that the figure was envisaged as a cap on development, as was made clear by the CS Inspector.

CS policy CS1 does not specifically preclude development beyond existing settlement boundaries. The Council, prior to withdrawing their objection, agreed that the development is not contrary to this policy.

LP saved policy HSG1 supports housing within settlement boundaries, but says nothing about development outside the boundaries. It stands rather oddly in isolation at this time, as it was previously linked to a related policy dealing with areas outside settlements. This related policy has not been saved. In any event the appeal scheme does not conflict with policy HSG1.

Moving away from the development plan, emerging HADPD policy C1 would set a presumption against new residential development outside settlement boundaries. However this plan does not carry the weight of the development plan and the soundness of the emerging plan is not for me to consider. It is however based on CS housing targets and is not intended to address the potential inclusion of larger sites such as this.

Conclusion on the principle of the development

Local residents stressed the importance of development being plan led. However in this case the adopted development plan, specifically the CS, is experiencing serious difficulties in terms of the housing delivery it envisaged (which may well be too limited), and it appears that a replacement plan which might identify large sites is some time away.

There is no five year supply of deliverable housing sites and, in this context, the presumption in favour of sustainable development in paragraph 14 of the Framework applies. The Council agrees that the appeal scheme is sustainable development and all the evidence supports this conclusion.

It is accepted that there is a pressing need for housing, and it is clear that Newbury will remain the focus of development. One of the main sites identified in the CS is not expected to deliver during the next five years. The appeal site has a number of specific advantages and is agreed to be next in line.

There is a conflict with CS policy ADPP2 in that the policy sets out the way in which it anticipates further sites coming forward. The appeal scheme has not come forward through the HADPD, as this 'daughter document' to the CS does not allow for the inclusion of larger sites such as this. No other plan-led mechanism is likely to emerge in the near future which would allow for the appeal site to be considered. However no

objection has been raised by the Council on the grounds of prematurity or prejudice to the emerging HADPD.

In any event, there a number of weighty factors, as summarised set out above, which must be set against this limited conflict with policy which attract less than full weight.

Other matters

No objection was raised by the main parties to a range of other matters, even before the Council's changed overall stance. This position is set out in the SOCG and the HSOCG. However local residents have raised a number of matters which the Inspector addressed below.

The design and safety of the underpass, and the consequent extent to which the two parts of the development would be linked in a satisfactory manner was the subject of concern for some residents, although the local cycling group's position was that it would provide a very good route. This matter was originally a reason for refusal and was the subject of evidence for the Council until the authority changed its overall position on the scheme.

The proposed underpass is short, the paths approaching it are in a relatively straight line, and the limited slope means that the visibility into and through the underpass is good, as the Inspector saw on his site visit. Visibility and safety could be further improved when the details of the development were being considered. The evidence is that the dimensions of the underpass comply with Sustrans guidance and the underpass, with improvements, would provide an appropriate and safe link for pedestrians and cyclists alike. The proposal would not conflict with the Quality Design SPD and the two parts of the site would be linked in a manner which would encourage the use of non-car modes of transport.

The footpaths around the Vodafone site, which provide access towards the town centre from the eastern parcel and, via the underpass, from the whole of the development, were also originally criticised by the Council. However as the Inspector saw on his site visit, these are wide paved routes and he saw that they were apparently well used by Vodafone employees. He could see no reason why they should act as a deterrent to cyclists or pedestrians wishing to access the town centre.

The highways consequences of the proposal were summarised in the HSOCG in relation to a number of junctions in the vicinity, the most critical of which is the Robin Hood gyratory to the south of the entrances to the appeal site. Local residents gave clear evidence of the difficulties which this junction currently causes. However a mitigation scheme, full funded through the UPO, has been put forward for that junction and has been tested against various scenarios. The conclusion of the analysis is that the scheme would do more than mitigate the effects of the proposal and would improve the operation of the junction compared to the 2021 Base Case scenario (i.e. including committed development and the scheduled gyratory improvements).

There was also concern from some residents that the proposal would generate traffic along Love Lane which, as he saw on his visit, has recently had chicanes installed. However, although he could appreciate that Love Lane may well be currently used as a rat run between Shaw Hill and Oxford Road, there is no evidence that this would be

substantially increased as a result of the proposal, as new residents would access the development direct off the A339.

Residents expressed concern that the development could flood or increase flood risk elsewhere. However the site is located within Flood Zone 1 and there are no objections to the proposal on this basis from the Council or any other authority. In the absence of any technical evidence this objection carries little weight.

The suggestion was made by some local residents that there is an existing lack of facilities in the area. However in contrast to this view the SOCG notes that the site benefits from access to schools, leisure facilities, shops and other local services within Newbury. There is a local convenience store to the south and two supermarkets are within less than 10 minutes cycling distance. The town centre is around 1.5 miles from the site, which could be regarded as an acceptable walking distance, is certainly an easy cycling distance, and can be accessed by existing bus services.

This current position would be enhanced by the proposed bus service, which would be funded by the developer for the first five years, running from the western parcel of the land, close to the underpass, and provide a link into the town centre. In addition the inclusion of a local centre in an appropriate location within the development would provide opportunities for existing and new residents.

The SOCG confirms that the site is within close proximity of existing primary, secondary and specialist schools. The appeal scheme would deliver a one-form entry primary school in walking distance of both the new and existing dwellings. This would be delivered by way of the UPO26.

There was a suggestion made by local residents that the development would not be supported by employment opportunities in the town, and that it would be inaccessible to employment sites. Given the proximity of the Vodafone HQ adjacent to the site (employing around 5,500 people) and the access to the town centre, this is a difficult argument to make, and no evidence was put forward to support the suggestion.

A few residents objected to the loss of the countryside. However the SOCG confirms that the development could be accommodated within the landscape and that it complies with CS policy CS19 and other policy documents. The area is not the subject of any specific landscape designations. Similarly, subject to the details of the scheme, the development would not affect any important trees within or around the appeal site. The main parties have agreed that the development would provide suitable mitigation and enhancement measures. The objection to the effect on the landscape is therefore not supported by the evidence.

An appeal decision on land south of Man's Hill, Burghfield Common was issued during the latter part of the Inquiry, and was drawn to the Inspector's attention. It is worthy of specific comment as the Inspector in that case dismissed the appeal and found differently to the Inspector on a number of matters. Although he had been provided with the closing submissions in that case, the Inspector did not know the detail of the evidence put to the Inspector. In particular his decision was partly based on a finding that a five year housing land supply existed at that time, which the Council accepts is no longer the case. In addition there was harm to the landscape in that instance, which is a specific planning objection which does not exist in this case. Each appeal must be

decided on its own merits and in the light of the evidence, and there are notable differences between this appeal and that at Man's Hill.

Planning Obligation

As noted above, a UPO was discussed at the Inquiry and finalised shortly thereafter. All the terms of the obligation were agreed at the Inquiry, and deal with the provision of open space / play space, affordable housing, transport matters, education and ecology. These provisions are soundly based on CS policies CS5, CS6 and CS13 and the Planning Obligations SPD.

The Inspector concluded that the UPO meets the policy in paragraph 204 of the Framework and the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010. He therefore had taken it into account and given weight to those matters which go beyond mitigation related to the impact of the development – especially related to highways improvements, educational aspects and open space provision.

Conditions

A wide range of conditions was agreed between the parties and discussed at the Inquiry. I am satisfied that these all meet the tests in the Framework, are necessary, and are fairly and reasonably related to the development.

A number of initial conditions are necessary for clarity related to plans and to provide for the submission of details (2-7). These details should be in broad accordance with the illustrative plans, in the interests of the appearance of the development and highway safety (5). The levels of the development also need to be specifically controlled in the interests of the appearance of the scheme (11). The details should include a strategic landscape plan and define the housing mix and the total number of dwellings (8). The development would be undertaken in phases and a phasing plan needs to be submitted for approval, so as to inform some subsequent conditions (1).

To protect the amenity of adjoining land uses, the hours of construction need to be limited (9), piling needs to be controlled (19), and a Construction Method Statement needs to be submitted for approval (10). This latter would also address any harm to highway safety during construction.

The two accesses of the A339 and the site layout need to be completed before the development is occupied in the interests of highway safety (12, 13 and 17). The secondary access for buses and emergency vehicles, and visitors to the school, needs to be provided for the same reason (15). As discussed above the detail of the improvements to the underpass need to be submitted for approval, in the interests of improving accessibility and safety (14). Similarly improved pedestrian/cycle access needs to be in place before occupation of the development (16) and cycle storage provision needs to be secured (25).

To protect any archaeological remains, a programme of archaeological work needs to be approved and implemented (18).

In view of the presence of trees on the site, an arboricultural method statement, including the protection of trees during development, needs to be approved and implemented (20). For biodiversity reasons a Construction Environmental Management

Plan needs to be approved and implemented (21). For the same reason, a lighting design strategy for biodiversity needs to be produced (22). A Landscape and Ecological Management Plan, dealing with existing and new habitats, is necessary (23). In the light of concerns about water supply, an impact study of the existing water supply infrastructure needs to be submitted for approval (24). To ensure the adequacy of refuse/recycling facilities, details of the provision need to be submitted (26). To ensure that surface water is handled in an appropriate manner, a Sustainable Drainage Strategy needs to be submitted for approval (27). To ensure sufficient sewage capacity is provided a drainage strategy needs to be approved and implemented (28). A waste collection plan needs to be approved (29). Given the lack of public mains in the area, the provision of private hydrants or similar emergency water supplies is necessary (30).

In order to protect the amenities of new occupiers, details of protection from external noise should be approved (31). For the same reason, noise from services associated with new non-residential buildings needs to be controlled (32).

So as to ensure that risks from land contamination to the future occupiers of the land and neighbouring land are minimised, a range of contamination matters need to be controlled (33).

Planning balance and conclusion

The appeal clearly engages paragraph 14 of the Framework, such that planning permission should be granted unless the adverse consequences of doing so would significantly and demonstrably outweigh the benefits. This position is common ground between the parties.

The benefits arising from the development are agreed by the parties and particularly include:

- The provision of up to 241 market homes in an area which lacks a five year housing land supply.
- The provision of up to 40% affordable homes, in an area with acknowledged affordability issues. This is stated in the CS30 and is reflected in the 2016 housing waiting list figures³¹. There is a difference as to the exact extent of the affordable housing need (with the Council putting forward a lower figure based on the SHMA³², as opposed to the CS position). It is agreed that the historical delivery of affordable housing has been significantly below that set out in the CS. Overall the evidence clearly demonstrates that the provision of these affordable homes would be a substantial benefit which would be in line with CS policy CS6.
- A boost to the local economy, as set out in the Economic Benefits Statement³³. In particular there would be short term construction jobs, longer term employment at the school and the local centre, and substantially increased local spend by the new residents.
- The provision of the new school, providing 210 primary and 26 nursery spaces. The evidence indicates that 60 of the primary places would be available for the existing community. The school would be within very easy walking distance of the new dwellings.
- The new bus service, funded by the appellants for five years, will not only benefit new residents, but also existing residents of this part of the town. Prior to the Council withdrawing its evidence there was a dispute as to whether the service

- would be able to stand on its own feet at the end of the funding period, but the evidence of the operator was persuasive in that it should be able to do so.
- The improvements to the Robin Hood gyratory system, at a cost of £700,000, is agreed to be a substantial benefit over the 'no development' scenario. In addition, a further £35,000 would be spent on improvements to the connectivity of the site to the town centre.
 - There would be a significant benefit (£392,000) to mitigation and improvements to a nearby Site of Special Scientific Interest, along with the benefit of planting within the development.
 - The provision of c.6.5 hectares of open space /playspace/ allotments. This is in excess of the 4.3 hectares required by policy.

There are no specific policies in the Framework which indicate that development should be restricted. There is however a limited conflict with CS policy ADPP2 in relation to the manner which this site has come forward, although there are a number of reasons why this would not cause actual harm. In addition this policy carries significantly reduced weight. In addition, emerging HADPD policy C1 would set a presumption against new residential development outside settlement boundaries, but this carries only limited weight and the emerging plan is not designed to cater for developments such as the appeal proposal.

This policy issue is the only adverse impact of granting permission and it falls far short of significantly and demonstrably outweighing the benefits of the development, when assessed against the policies in the Framework as a whole. As agreed by the parties, the proposal represents sustainable development and permission should be granted in accordance with the presumption in favour of sustainable development.

For the reasons given above, the Inspector concluded that the appeal should be allowed.