



## Appeal Decision

Site visit made on 2 February 2016

**by J S Nixon BSc(Hons) DipTE CEng MICE MRTPI MCIHT**

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

**Decision date: 23 June 2016**

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**Appeal Ref: APP/N1730/W/15/3136107**

**Land east of Hook Road, North Warnborough, Hook, Hampshire, RG29 1DL.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against the refusal of planning permission.
  - The appeal is made by Banner Homes Southern Ltd against the decision of by Hart District Council.
  - The application Ref. No: 14/01704/Major, dated 18 July 2014, was refused by notice dated 16 September 2015.
  - The development proposed is for 37 dwellings, access, roads, and associated landscape, drainage and infrastructure works.
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### Decision

1. For the reasons given below, this appeal is dismissed.

### Clarification

2. In this case, prior to a decision being reached by the Council, the application was changed from one for 37 dwellings to one for 30 dwellings, with a corresponding reduction in affordable housing. In addition, the amended layout plan 2014032/PO1M exhibits further significant changes which include revision of the layout, landscape, design and drainage. However, at the point the decision was to be made, it was deferred pending some further amendments. These were incorporated into the final proposal. In an attempt **to remove some of the Council's other concerns, a draft s.106 was submitted.** As this was not signed before the decision date, the Council did not recognise the s.106 and refused the application, giving six reasons, five of which the Council considered could have been addressed by either a signed s.106 or a Grampian condition. This was the basis on which the Council decided the application.
  3. Since the appeal was lodged, the s.106 has been signed and the Council accepts that this removes the reasons for refusal pertaining to managing surface water drainage, open space/leisure, affordable housing and transport. The Council submits that two draft Grampian conditions relating foul drainage and secondary schooling would overcome concerns and/or objections on these topics.
  4. For my part, I have taken on board the latest plans, the content of the s.106 and the submitted draft conditions. In doing this, I see no reason to question the undertakings on surface water drainage, though there is a practical caveat discussed later, and affordable housing and accept that these are compliant
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with the Community Infrastructure Levy (CIL) Regulations and especially s.123. As for open space/leisure and transport I have concerns about the wording and deal with this later. I have also considered the Grampian condition approach to the intended education contribution to be of doubtful provenance and, again, this is explored later. This is the basis upon which the appeal has been determined.

### **Policy overview**

5. This appeal must be determined in accordance with the prevailing development plan (DP) policies unless the material considerations indicate otherwise. In this case, the DP comprises the saved policies from the adopted Hart District Local Plan (Replacement) 1996-2006 (LP). In this Plan, the appeal site is untended agricultural land, which lies in open countryside, outside, but abutting the North Warnborough settlement boundary. Consequently, proposals have to be considered against LP Policy RUR2, which, while generally restrictive, would not preclude suitable development if certain criteria can be met.
6. Perhaps more important in this case, the appeal site is located within two Conservation Areas (CAs), the North Warnborough and the Basingstoke Canal CAs. Not surprisingly, these have different characteristics and assets and should be looked at both individually and in combination. The former contains a number of Listed Buildings. Under these heritage heads, the Council cites LP Policies GEN1, CON10 and CON13. These reflect the well-rehearsed obligation on decision makers evinced by s.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to consider the desirability of preserving or enhancing their character or appearance. However, as there is some difference from the guidance in paragraph 134 of the National Planning Policy Framework (the Framework), I have relied on the Framework policies in respect of heritage.
7. Clearly as the saved policies precede the publication of the National Planning Policy Framework (the Framework) and the Planning Practice Guidance (PPG), the DP policies can only attract weight commensurate with their conformity with the Framework. The PPG, which was first published in March 2014 is a living document attracting regular updates, and puts flesh on the Framework policies.
8. The emerging Hart District LP is still at an early stage, with adoption not expected before summer 2017. As such, its policies attract very little weight and, in fact, are not relied upon by either of the main parties. There is, also, an emerging Odiham and North Warnborough Neighbourhood Plan, which has been out for public consultation. This identifies the appeal site as suitable for housing. Even so, this is again at an early stage and cannot carry significant weight. However, it has been informed by public consultation and indicates a direction of travel.

### **Main Issues**

9. Having regard to the prevailing planning policies, the written representations and my visit to the appeal site and surroundings, it follows that the main issues to be decided in this appeal are:
  - whether there is a 5-year supply of readily available housing land;

- the effect this housing proposal would have on the character and appearance of the North Warnborough and the Basingstoke Canal CAs and the setting of Listed Buildings within the former;
  - whether the environmental concerns pertaining to sewage and drainage can be suitably addressed by condition/agreement;
  - the sustainability accreditation of the site and project; and
  - in the final planning balance whether the cumulative residual harm would significantly and demonstrably outweigh the benefits of the scheme when looked at against the policy objectives of the DP and/or Framework taken as a whole.
10. In addition to the main issue, there are a number of other material considerations that would have implications for the proposed development and environment interests. These include the affordable housing contribution, the s.106 Agreement and certain of the draft conditions.

## Reasons

### Housing land position

11. In the Framework and the PPG, Government recognises that there is an urgent need to boost significantly the supply of housing. Further, it states the consequences of Councils not being able to demonstrate a 5-year supply of readily available housing land (the HLS) and a continuing failure to deliver at the planned annual rate.
12. There is no agreed position on the HLS delivered by the representations. On the one hand, the Council claims a 5-year HLS. However, and on the other hand, the Appellants point out that this is measured against a requirement figure that seems to have received no endorsement from any authoritative source. Even then, I have found no information about how the supply has been calculated, what sites have or have not been included and what are the lead-in times and/or delivery trajectories for the larger sites. The decision letter relied upon by the Council is some 2-years old and I cannot divine from this that the Inspector in that case was confident that there was a robust 5-year supply, even at that time. Accordingly, I am more inclined to the **Appellants' submissions** and conclude that the Council has not demonstrated the existence of a robust 5-year HLS.
13. In the absence of a 5-year HLS, Government policy is clear. Where local planning authorities cannot demonstrate such a supply, DP policies controlling the supply of housing cannot be considered up-to-date and, in accordance with paragraph 49 of the Framework, housing developments should be determined in accordance with the presumption in favour of sustainable development. In turn, this triggers paragraph 14 of the Framework, which explains that under such circumstances, planning permission should be granted unless the adverse impacts of a particular scheme would significantly and demonstrably outweigh the benefits, when assessed against the DP policies and those evinced by the Framework, taken as a whole.
14. Taking these factors together, **the shortage in the Council's 5-year HLS** means that the delivery of up to 30 new dwellings, with a proportion of these being expected to be affordable, attracts significant weight to take forward to the

overall planning balance. The policies that must be considered out of date include settlement boundaries, agricultural land, where there is no lower grade alternative, and open countryside not designated or protected for its landscape quality. Notwithstanding, and having regard to footnote 9 to paragraph 14 of the Framework, the effects on heritage assets still have to be considered and any harm to these weighed in the overall balance. I am mindful, also, that the emerging Neighbourhood Plan (NP) sees the appeal site as suitable for housing.

The effect on the setting of Listed Buildings and the North Warnborough and the Basingstoke Canal CAs

15. In this context, there are three particular aspects that are raised by the parties. These are first, the effect the development would have on the setting of Listed Buildings within the North Warnborough CA. Secondly, the consequences for the character and appearance of the North Warnborough CA and thirdly, the implications for the Basingstoke Canal CA and views from it across the appeal site towards Hook Road. These are looked at in turn.

### ***The effect on the setting of the Listed Buildings***

16. The key Listed Building drawn to attention is the former public house The Cat, Listed Grade II. This is situated opposite the appeal site on the west side of Hook Road. It is no longer in use as a public house, but the open ground in front of it on the appeal site is judged important as part of its setting, in what was historically a rural area. Similarly, views from the Basingstoke Canal CA, across the appeal site to The Cat, are also considered noteworthy. As for the open space, the appeal scheme now goes a considerable way to retain a significant area of openness opposite The Cat. So much so that this is no longer a key point at issue.
17. The threat to the open view from the Canal across the appeal site, towards The Cat, is still, however, a matter of dispute. In times past, with the visual connectivity, trade plying the Canal would have seen the pub as a landmark feature, and no doubt an attractive location to stop. At present the view is only glimpsed and the foreground is not the most attractive, with the land unkempt. The proposal would retain the longer view, although more restricted, with the danger that new landscape planting within the appeal site could encroach further as it matures. Even so, this is a matter that could be covered by condition and so I have not found this crucial.
18. In summary on this point, the effects of the new development would retain an appreciable element of openness opposite The Cat, but the views of The Cat from the Canal would be harmed by the new building and more constricted view. Looked at in the context of the Framework (paragraph 134) and s.66, the harm would certainly be less than substantial and only moderately significant. From this position, it is recognised that a balancing exercise between this harm and the benefits of the scheme must be undertaken and this follows in the overall planning balance.

### ***The effect on the North Warnborough CA***

19. Clearly the open green spaces and trees and undeveloped rural nature of the appeal site are important characteristics of the CA. It emphasises the close relationship between the built elements and the surrounding farmland, thereby reflecting the agricultural roots of the Village. Its loss would be important as it

is arguably the only open area still fronting the east side of the roads visible from the Village. It is contended that the appeal scheme would close off long views from the Village.

20. For my part, I agree that the loss of openness would detract from the rural character and appearance of the CA. Even so, I do not think this would be substantially negative. Some openness would be retained, though this would be much less of an agrarian hue. Moreover, looking at the CA Appraisal Map the long views are not identified as important. I can understand this, as walking along the road, on both sides, I did not experience particularly long views and certainly not over any great length of the footways.
21. Where I do anticipate significant harm to the character and appearance is in the more immediate views of the developed site from the main road. The key features of the CA are around its openness and links to the agricultural past. As the Council says, the hard engineered features of the roads and car parking areas would stand apart and jar in the CA. This would transform the site from something that might be judged rural to a modern urban feel, having lost all pretence to a rustic presentation. While not underestimating the difficulties of accommodating car parking on sites to meet modern day expectations, I agree with the Council that the present arrangement would be unacceptable, with so much on view at the front of houses.
22. **In saying this, I do not necessarily subscribe to reference to 'over development' in the Councils' case.** My criticisms are essentially ones of design and layout and not of the quantum proposed.
23. Even so, as it stands the appeal scheme would not preserve or enhance the character or appearance of the CA and, albeit of less than substantial harm, this counts as a highly significant objection to the present scheme. Again it is recognised that a balancing exercise between this harm and the benefits of the scheme must be undertaken and this follows as part of the overall planning balance.

### ***The effect on the Basingstoke Canal CA***

24. The effects on this CA are perhaps more acute. In the first place, the appeal proposal plans would, of themselves, deliver little or no integration between the scheme and the canal. However, there is an acceptance that integration should be a feature, with this left to a Grampian style condition. I do not see this as satisfactory and consider this would circumvent due process. There are several interested parties to the CA and to exclude them from the design process, with the final decision most probably taken by Officers, without any further public consultation, is not in the wider public interest for such a sensitive site.
25. The CA exhibits several noted features that justified its designation. These include, the **Canal's engineering and architectural value, including many active frontages**, its interface with the agricultural economy, its credentials as a green corridor, with the enhanced ecological offer and its leisure and recreational use.
26. Against this background, I consider that there are three key problems with the design as it stands. First, there is the length of urban style road that would run parallel to the Canal. This introduces a distinctly urban feel and an alien transport mode. Secondly, despite some design changes, the design and

relationship of the proposed dwellings to the Canal still leaves much to be desired. It is true that they are now orientated so that they would not back onto the Canal, which is an improvement over earlier versions of the scheme. However, they do nothing architecturally to link with the Canal in either a functional sense or promoting the heritage characteristics in any other way. Thirdly, the longer distance views from the Canal across the appeal site are important and, again, the urban feel of the layout and especially the hard development in terms of roads and open parking areas would be wholly unsympathetic.

27. In my opinion, the schemes for the development itself and the section of Canal alongside must be considered holistically and not separately. Trying to create an acceptable scheme for the Canal side once the housing layout has been fixed would make integration very much more difficult, if not impossible. Once again, for the reasons given above concerning the harm to views from the Canal and the failure to provide positive integration I foresee the harm to the character and appearance of the CA, although less than substantial harm, as being highly significant, thereby providing a further reason for resisting the current scheme. Again there is the need to undertake a balancing exercise between this harm and the benefits of the scheme must be undertaken and this follows in the overall planning balance.

### **Summary**

28. To summarise on this issue, the effect on the setting of the Listed Building (The Cat) would be moderately significant, with the harm to the North Warnborough and the Basingstoke Canal CAs generating highly significant harm. Taken together, I judge these adverse impacts run counter to the obligations established by s.66 and Framework paragraph 134 and, thereby, to constitute a strong objection to the current proposal, albeit recognising that the harm to each element must be weighed individually against the benefits of the proposal taken as a whole and this is done as part of the overall planning balance.

The implications for sewage and surface water drainage

29. Although not raised as a reason for refusal, from the submitted representations and comments, I have encountered difficulty understanding the position of the responsible authorities, the proposals advanced to address points made and the implications these may have for certain elements of the scheme.
30. In the first place, the parties seem to accept that, although the appeal site is not shown on the Environment Agency flood maps as being at risk, the site has flooded in the past. In fact, it is said by some that the appeal site forms part of water meadows that assist in flood prevention downstream. As a consequence, there is a SuDS protocol required and this and an ongoing maintenance protocol has been incorporated in the signed s.106 Agreement. However, there are a number of potential uncertainties.
31. From the representations it seems the intent would be to construct porous surfaces where ever possible on the site and any captured surface water run-off would be prevented from draining off-site until there could be certainty that this would not add to the flood risk downstream. In essence, this would replicate the function of the water meadows, with the mechanism to achieve this being a series of shallow ponds and/or pipes, whereby the run-off could be controlled. This could be a sensible approach, but for two points.

32. First, there is a reported high groundwater level and I can find no evidence of porosity tests having been carried out. Secondly, if shallow ponds are to be constructed and the water table is high there is a distinct possibility that the pressure from the groundwater could lift the pond liners. Alternatively, if the ponds are designed to be deeper to avoid this, then this would displace some of the groundwater meaning that extra storage would be necessary.
33. As it stands, I am unsure how this would work and whether there is a reasonable prospect of a workable outcome, and certainly one that would not have a direct effect on the layout of the site. If pipes were to be used instead, these would be of an appreciable size and could impinge on the layout, which is not a reserved matter.
34. Turning to the foul sewage management, again there is a key area of concern. While there seems to be an agreed solution, my understanding of the representations shows that to deliver this would require third party land. If this is the only solution then this could effectively constitute a ransom strip and the cost of addressing that could have serious implications for the contributions to infrastructure and social housing etc. Whereas this is clearly a legal matter in the first instance, in my view, as it could affect the viability of the site this is a material planning consideration and something that should be resolved prior to the grant of planning permission. With third party involvement and without some legal agreement, a Grampian condition does not give reasonable certainty.
35. In summary, there are several unresolved matters pertaining to drainage delivery that need to be addressed in advance of the grant of planning permission. Without this, this stands as a further reason for rejection of the current scheme.

#### Sustainability

36. The Framework defines sustainability as the golden thread running through both plan-making and decision-taking, and looks for proposals to be assessed against the three dimensions, economic, social and environmental. The Framework also sets out the 12 core planning principles underpinning planning decision taking and these provide useful guidance on how the sustainability accreditation of individual applications should be assessed. These principles have been factored in when weighing the benefits and disbenefits of the appeal scheme.
37. As for the ***economic dimension***, this particular proposal would generate most of the benefits of any housing development and Government recognises the importance of these. There would be the short term construction jobs and purchase of building materials and, in the future the generation of service jobs such as cleaning, child care, decorating and household repairs. A proportion of the income of new residents would be disposable and this could be used to support the Village facilities, local buses and other activities in the Village, whether through the Parish Council precept or other less formal organisations and events.
38. It is fair to say, however, that there is no claim that the construction workers would be drawn from village residents or that unfilled local jobs exist in the immediate locality. There is a garage/ shop next door offering a top-up shopping facility and pubs in the Village, which should gain additional

- patronage. **Odiham offers primary and senior schools, a doctor's surgery** and a wider range of facilities, but this is some 1.5 km distant, and outside the walking range of most people. This means that large convenience shopping and virtually all comparative retail activity would be undertaken elsewhere. Taken together, these factors do not provide many facilities within walking distance. This dents the sustainability accreditation of this dimension, though it might just be judged marginally positive overall.
39. Turning to the **social benefits**, one main gain would be the affordable housing provision. Although the Appellants have not produced an Economic Viability Assessment for the scheme, the provision is covered by Agreement. Having said this, and despite confidence of delivery being accepted by both sides, the unknown costs involved in drainage and integration with the Basingstoke Canal CA bring the level of provision into question. Then there would be the delivery of general housing, in a situation where the supply may well fall short of the eventual local plan requirement.
40. The Appellants are willing to make a contribution to the secondary school, but I foresee problems with the approach being advocated. I look at this again later. The entire education offer is in Odiham, which is again 1.5 km away and would not be within walking distance for most. The same line of argument follows the health provision, with **a Doctor's surgery** in Odiham. Next, there would be the support for the Church along with other organisations, and these would benefit from the influx of newcomers. Having said this, the remoteness of many services would not make it easy for those living in the affordable housing, who could be expected to have a lower car ownership, with many reliant only on a modest bus service to access a wider range of services.
41. As such, I find the social benefits of the proposed development for the existing Village limited, though again perhaps just positive.
42. Finally, when considering the **environmental dimension**, benefits are harder to find. As for the accessibility of the Village, the appeal site allows a few of the existing facilities to be reached by walking. There are existing leisure/ walking opportunities close by alongside the Canal and within more rural locations. However, it is clear from the transport information that, with only an hourly bus service, and this needed to connect to a rail station, most of the trips would be to destinations outside the immediate Village, and the vast majority of these would not be made by sustainable means.
43. Moving to other topics that fall under the environmental banner, there would be the loss of agricultural land, though the negative weight to be afforded this is greatly tempered by the fact it is not part of any holding and clearly has not been put to beneficial use for some time. Neither is it advanced as land classified as the best and most versatile. There are no particular ecological habitats or species that would be prejudiced. To improve diversity, an Ecological Management Plan could be required by condition and tree planting would form part of the overall landscape for the scheme.
44. Summarising on the environmental dimension, this is very finely balanced, though probably negative in terms of accessibility.
45. Looking at all three dimensions, and discounting the main issues of heritage protection and sewage/drainage, the position is balanced though very possibly just positive overall.



### S.106 and conditions

46. As noted above, these constitute further areas of concern. Looking first at the draft conditions, there are three that could create real problems. The first two, are draft Conditions 21 and 25. These pertain to the treatment of the Canal side and its integration with the adjoining CA. As concluded previously, I do not believe these would be sufficiently transparent, having regard to the wider and varied **interests in the Canal's future**.
47. The third condition is Condition 24 and this covers the contribution to secondary school accommodation. This fails to meet the guidance test (PPG para 21a-010, as below). First, I am provided with no compelling justification **for considering this to be "exceptional circumstances"**. I can see no evidence that the development is considered to be a **"more complex and strategically important development"**. In addition, **"The heads of terms or principal terms need to be agreed prior to planning permission being granted to ensure that the test of necessity is met and in the interests of transparency"**. Here, no heads of terms have been provided and the detail is left to be agreed at a later point with the County Council. As such, I judge that this is not an acceptable condition.
48. There are also questions about CIL compliance on other sections of the s.106, namely those concerning open space/leisure and transport and whether these satisfy the CIL pooling restrictions.

### Overall planning balance

49. **The starting point must be to consider the appeal scheme's conformity with the DP.** In a strict application of the LP, the appeal site is not allocated for housing and, as such, would not comply. As for the current housing position, I have not been able to conclude that the Council can identify a robust 5-year supply of readily available housing land. Thus, those DP policies judged to be controlling the supply of housing cannot be considered up-to-date, and housing developments should be determined in accordance with the presumption in favour of sustainable development.
50. In turn, this triggers paragraph 14 of the Framework, which explains that under such circumstances, planning permission should be granted unless the adverse impacts of a particular scheme would significantly and demonstrably outweigh the benefits, when assessed against the policies evinced by the Framework, taken as a whole.
51. On the benefit side, the provision of 30 new dwellings, of which some would be affordable/ social, would be a benefit that attracts significant weight in favour of the appeal proposals. Additional benefits would be the generic economic and social contributions delivered by any housing scheme, including support for local services. The site is suggested for housing in the emerging NP and is also considered to be locationally sustainable, with access to some services by non-car means, though the bus service is relatively infrequent and many key services at or beyond the limits of acceptability for walking.
52. On the negative side of the equation, when adding in the negative effects of the harm to heritage assets and sewerage/drainage I have not found the appeal scheme would be sustainable development overall, in the terms expressed by the Framework.

53. Specifically looking at the heritage objections, I am satisfied that the harmful effect on the setting of the Listed Building would not be sufficient on its own to outweigh the benefits of the scheme taken as a whole. However, in each case, the highly significant harm to the character and appearance of the North Warnborough and the Basingstoke Canal CAs would be sufficient to significantly and demonstrably outweigh the public benefits of the appeal scheme already assessed and would run counter to the obligations divined by paragraph 134 of the Framework. Thus, taken cumulatively, this scheme would not accord with the Policies and obligations referred to above, or paragraphs 132-134 of the Framework.
54. In addition, there are outstanding concerns about the drainage matters and the conditions and s.106 Agreement intended to address these. The condition requiring a contribution to secondary schooling would not meet the CIL tests and there are questions about those pertaining to open space/leisure and transport. In any event, the conditions and s.106 would fall well short of mitigating the strong negative reasons I have carried forward to the overall planning balance. As such, and taken cumulatively, I conclude that the adverse effects of this proposal would significantly and demonstrably outweigh the benefits of the appeal scheme, when looked at against the aims and objectives of the policies of DP and Framework, when considered as a whole.

### **Formal decision**

55. Having taken into account all other matters raised, I conclude, on balance, that the appeal should fail.

*JS Nixon*

Inspector