

Appeal Decision

Hearing held on 29 July 2014

Site visits made on 28 and 29 July 2014

by John Felgate BA(Hons) MA MRTPI

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

Decision date: 23 September 2014

Appeal Ref: APP/W0340/A/14/2216837

Land south of Lower Farm, off Hambridge Lane, Newbury, Berkshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Rivar Limited against the decision of West Berkshire Council.
 - The application Ref 13/01517/FULEXT, dated 19 June 2014, was refused by notice dated 15 October 2013.
 - The development proposed is the erection of 25 holiday chalets, reception building, parking, landscaping and associated works.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of 25 holiday chalets, reception building, parking, landscaping and associated works, on land south of Lower Farm, off Hambridge Lane, Newbury, Berkshire, in accordance with the application, Ref. 13/01517/FULEXT, dated 19 June 2014, subject to the conditions set out in the attached schedule.

Preliminary matters

2. Two S.106 unilateral obligations (Undertakings A and B) have been entered into by the appellants. Both undertakings provide for the payment of various financial contributions, including sums relating to transport, libraries and public open space, and both also contain various provisions relating to on-site ecological measures. In all these respects, Undertakings A and B are identical. In addition, Undertaking B also provides for an additional financial contribution, to off-site ecological mitigation.
3. Both undertakings are conditional on the decision-maker determining that the required contributions are relevant and reasonable in all respects, and are necessary to make the development acceptable.

Main issues

4. In the light of all the submissions made, both at the hearing and in writing, the main issues in the appeal are as follows:
 - i) whether the proposed development is acceptable in principle, having regard to the site's location in the countryside;
 - ii) the development's effects on highway safety;
 - iii) the effects on the character and appearance of the local landscape;
 - iv) the effects on the ecology and biodiversity of the surrounding area;
 - v) and the effects on the setting of heritage assets at Pigeon's Farm.

Reasons for decision

Issue (i): principle of development in the countryside

5. The appeal site is outside the settlement of Newbury, as defined on the relevant proposals maps, and is therefore in the countryside. Refusal Reason no. 1 (RR1) states that, due to its location outside the settlement boundary, the proposed development is in conflict with saved Policy HSG1 of the Local Plan¹ (the WBDLP), and Policy ADPP2 of the Core Strategy² (the WBCS), and the National Planning Policy Framework (NPPF).
6. At the hearing, the Council confirmed that RR1 was intended as a policy-based objection to the principle of development in the countryside. I have considered this issue in the light of the policies cited in RR1, and other relevant policy considerations, as follows.

Policy HSG1

7. The first policy to which the Council refers is WBDLP Policy HSG1, which lists the district's main settlements, and states that housing development will be permitted within their defined boundaries, subject to various other criteria. Reliance on this policy in relation to the present appeal seems to me to give rise to two questions.
8. The first is over whether Policy HSG1 is in fact applicable to the appeal proposal. The policy relates to housing development. The Council argues that the development now proposed would be a form of housing. However, that is by no means self-evident. The permission sought in the application is for holiday chalets. To my mind, that is a different purpose from providing homes. Although the chalets might be capable of being used or converted to permanent dwellings, that should not preclude the proposal from being considered on its own terms. I have no reason to doubt that the scheme is put forward in good faith. Its design and layout seem to me to support its stated purpose as holiday accommodation. And in any event, the Council does not dispute that permanent residential occupation can be prevented by condition.
9. I note the argument advanced at the hearing, that in the absence of any other policies specifically relating to holiday accommodation or tourism, the Council's only option is to apply the 'nearest' one. However, this is not a persuasive argument. In the circumstances, it reinforces my view that the type of development now proposed is outside the intended scope of Policy HSG1.
10. Leaving that aside, the second question that arises from Policy HSG1 is over the nature of what the policy seeks to achieve. The Council argues that, in specifying locations where housing will normally be permitted, it is implicit that development elsewhere will not. However, it is well established in case law that planning policies should be interpreted strictly on the basis of what they actually say. On the matter of development outside the specified locations, including in the countryside, it is quite clear that Policy HSG1 is silent. In my view, nothing can be inferred from that silence except neutrality. Consequently, whilst there is nothing in the policy that supports the proposed development, there is equally nothing that could be interpreted as seeking to prevent it. I therefore find no basis for the contention that development in the countryside is contrary to Policy HSG1.

¹ The West Berkshire District Local Plan 1991-2006, adopted June 2002

² The West Berkshire Core Strategy, adopted July 2012

11. Paragraph 3.5.4, which accompanies Policy HSG1, does state that development outside settlement boundaries will be acceptable only in exceptional circumstances. If this text were treated as part of the saved plan, that would support the Council's interpretation. However, in my view, the case for doing so is highly dubious, to say the least. If paragraph 3.5.4 were simply an explanation or interpretation of the relevant policy, it seems to me that it would be right to treat it as saved. But here that is not the case, because the text in question goes well beyond the scope of Policy HSG1 itself, so that its effect would be akin to incorporating an additional policy into the saved plan, by the 'back door'. Nothing in the Saving Direction supports that approach. It therefore seems to me that little weight can now be attached to paragraph 3.5.4 in the context of this appeal.
12. In the light of all the above, it seems to me that the appeal site's countryside location cannot properly be said to conflict with Policy HSG1.

Policy ADPP2

13. The other local policy cited in RR1 is WBCS Policy ADPP2. This policy deals with the spatial strategy for the Newbury and Thatcham area, and sets out quantitative targets and broad locations for various types of development in the area. Just like HSG1, Policy ADPP2 is silent on the question of development in the countryside, and indeed also on any other locations or types of development apart from those proposed in the plan. In this case, the accompanying text adds nothing of relevance to the present appeal.
14. I note the Council's contention that Policy ADPP2 requires that, other than specific commitments and brownfield sites, development should only come forward through DPDs or on infill sites. But that is an incorrect representation of the policy wording, because in fact the policy does not use the word 'only'. As a result, Policy ADPP2 does not have the restrictive effect that the Council suggests.
15. Consequently, Policy ADPP2 has no bearing on the appeal, and does not give rise to any policy conflict in relation to the site's countryside location.

The NPPF

16. RR1 also alleges an in-principle conflict with the NPPF. Although the RR does not identify any specific paragraphs, reference was made at the hearing to paragraph 17, where the core planning principles include recognising the countryside's intrinsic character and beauty; and also paragraph 109, relating to the natural environment.
17. There is no doubt that the matters raised in these paragraphs are intended to have a bearing on any proposed development in the countryside, requiring a careful assessment of the particular development's effects. But neither of these paragraphs proposes or supports any kind of blanket ban on all development in such areas³.
18. On the other hand, paragraph 28 gives support to all types of rural enterprise, including sustainable rural tourism and the provision of tourist facilities in appropriate locations. This advice is directly addressed to rural areas. Although the NPPF does not suggest that such development should be

³ For the avoidance of doubt, the appeal site is not in any Green Belt

unrestrained, it equally does not indicate that it should be confined only to sites within settlement boundaries. In my view, there can be little doubt that paragraph 28 is intended to allow for some developments of the type now proposed to be located in the countryside, subject to other relevant planning considerations.

19. Paragraph 55 advises against permitting isolated homes in the countryside, but again that paragraph relates specifically to housing. For the same reasons as explained above, it has limited relevance to the present proposal.
20. I therefore find no basis on which to conclude that the NPPF gives rise to an in-principle objection on the grounds of the proposed development's location in the countryside.

Other matters arising from RR1

21. RR1 also raises matters relating to precedent, coalescence and loss of rural character. However, these are separate issues, and I therefore deal with them elsewhere in this decision. In this context, the RR also refers to WBCS Policy CS19, but that policy is about assessing the effects of development, rather than matters of principle.
22. I note the contents of WBCS Policy ADPP1, which states that in open countryside only limited appropriate development will be allowed. However, this policy is not referred to in the refusal reasons, or in the Council's statement, and despite questioning at the hearing, the Council declined to make any case on this basis. I must deal with the appeal on the evidence put before me. I note that the policy allows for exceptions for development related to the rural economy and other identified needs, and thus does not preclude all development in the countryside.
23. There is no disputing the fact that one of the principles that lies behind many planning policies, including HSG1, and ADPP1 and 2, is a preference for steering most forms of development to urban areas, rather than to the countryside. That general principle is based on long established considerations relating to sustainability and protecting the natural environment. The appeal proposal would not accord with that principle. But a general principle is not a substitute for adopted policies that have been examined and justified through the development plan process. Here, the development plan appears to contain no policies on development in the countryside, nor any for tourism or rural economic development. Where relevant policies are absent, silent or out of date, the approach set out in NPPF paragraph 14 is that permission should be granted, unless the adverse impacts would significantly and demonstrably outweigh the benefits. A refusal based on nothing more than an unwritten and undefined general principle or preference would clearly not satisfy that test.

Conclusion on Issue (i)

24. I agree that the development now proposed finds no specific support in any of the policies identified by the Council, nor in any other development plan policies that have been identified to me. However, that is not the same as finding a policy conflict. In the present case, for the reasons explained above, none of the policies relied on by the Council provides the basis for an automatic policy-based refusal. I therefore conclude that the appeal site's location in the countryside does not give rise to any in-principle objection.

Issue (ii): Effects on highway safety

25. The Council's RR2 suggests that the development would pose a risk to the safety of pedestrians and cyclists. WBCS Policy CS14 requires, amongst other design criteria, good provision for access by all transport modes. The NPPF, at paragraph 32, endorses the need for safe and suitable access, but goes on to say that development should only be refused on transport grounds where the residual impact would be severe.

Existing highway situation

26. The unnamed lane leading to the appeal site is, for most of its length, an unadopted track, running from Hambridge Lane to Burys Bank Road. The lane is designated as a public footpath (Greenham Footpath No 6), and I saw on my visits that it is used by walkers, cyclists and horse riders, for local access and for recreational purposes. Amongst other things, it provides access to the towpaths of the River Kennet and Kennet & Avon Canal, and a network of other footpaths, woods and lakes, including the Thatcham Reed Beds Nature Reserve, Bowdown and Chamberhouse Woods, Greenham and Crookham Commons, and the birdwatching hide at Lower Farm Lake. Although there is no general right of way for vehicles, there are private rights associated with the appellants' land and other properties, including the dwellings at Lower Farm and Lower Farm Court. There is also anecdotal evidence of unauthorised use by other vehicles, as a shortcut to the Ham Marsh industrial area, or to the nearby Newbury Racecourse and Newbury & Crookham Golf Club.
27. The lane follows a winding route, and is narrow in parts. Dedicated passing places are few. Although the most northerly section has a metalled surface, the remainder is mostly either gravel or hardcore and consolidated earth. In some places the surface has worn away, leaving deep ruts and pot-holes. For the most part, the available space is shared between vehicles and other users. Under the railway bridge, even a pedestrian and vehicle cannot pass in safety. In wet weather, the underpass also apparently suffers from flooding. The overall distance from the appeal site to the adopted highway is between about 600m – 900m in either direction. Without any doubt therefore, the existing lane falls well short of providing a good access route to the proposed new development. At the very least, it is inconvenient and unattractive, and at worst, there is the potential for injury to persons and damage to vehicles.
28. This situation is far from ideal. However, the conditions thus described are those that exist now. For the purposes of the present appeal, the question is whether the development now proposed would make matters materially worse; and whether the risks would be so significant as to be unacceptable.

Effects of the proposed development

29. The appellants estimate that the proposed development would generate around 24 inbound vehicle movements a day, and a similar number of outbound movements. Although these estimates are based on TRICS data, I agree that they appear somewhat on the low side. But even if the actual figures were to be double the appellants' estimates, the number of movements would still be quite small. There would also be some additional pedestrian and cycle trips, bearing in mind the available links to countryside recreation facilities. But again, the numbers generated by a development of 25 chalets are unlikely to be very large.

30. I accept that even a modest increase in usage must have some effect on the level of risk. However, the appellants' revised proposals include a new segregated footpath/cycleway, from the site entrance to Lower Farm. From there to just south of the railway bridge, non-motorised users could utilise the existing Lower Farm driveway. Although the latter is not completely vehicle-free, it offers a better-surfaced and more direct route than the main track. All of this new route would be within the appellants' ownership, and could be secured by condition. And in addition, the Council proposes to use part of the appellants' S106 transport contribution to provide a footway from the railway bridge to the adopted part of Hambridge Lane. Together, these proposals would mean that an improved route would be available for pedestrians and cyclists over the great majority of the length of the northern access route. This would be a significant benefit to existing users as well as those generated by the development.
31. At the bridge itself, improvements could be achieved by installing signal controls, with a detection system for non-motorised users, plus appropriate signage, lighting, and pumped drainage. I accept that compliance with signs and signals on a private road might not be legally enforceable, but nonetheless, it seems to me that they would be likely to improve the existing situation. Elsewhere along the vehicular route, further improvements could be made, by way of resurfacing where necessary, and cutting back excess vegetation. In the light of the information submitted by the appellants, I am satisfied that the necessary legal rights exist to carry out all of these works, and that they could therefore be secured by condition.

Conclusion on Issue (ii)

32. I appreciate the Council's view, that none of these measures would be sufficient to fully alleviate their concerns regarding safety. But in my opinion, the combination of the proposed new segregated path south of Lower Farm, funding for a new footway north of the bridge, signal controls and other improvements at the bridge itself, and other enhancements achievable by condition, together would improve the level of safety on Footpath No 6 substantially, and would make its use a more pleasant experience for all users. Given the modest scale of the proposed development, it seems to me that any additional safety risks resulting from the increased vehicular and pedestrian usage would be outweighed by these safety benefits.
33. I therefore conclude that overall, the proposed development would bring a net gain in highway safety. In this respect the scheme meets the relevant requirements of Policy CS14 and NPPF paragraph 32.

Issue (iii): Effects on the character and appearance of the landscape

34. RR3 is that the development would cause visual harm to the character of the local landscape. WBCS Policy CS19 seeks generally to conserve and enhance the landscape's diversity and distinctiveness. The NPPF states that the planning system should recognise the countryside's intrinsic character and beauty (paragraph 17), and should protect and enhance valued landscapes (109).

Existing landscape character and quality

35. The appeal site lies within the Lower Kennet valley. However, whilst the shallow valley landform is a recognisable element of the landscape, it is not a

particularly dramatic or distinctive one, and in policy terms the area has no special landscape designation. There are some pleasant outward views towards higher ground, but these are seen from the context of a valley floor which contains extensive areas of existing and former gravel workings, industrial estates, an elevated railway line, the Racecourse, and other urban-fringe development. The presence of these features is not in any way a justification for causing further harm, but realistically they must have some influence on any assessment of the landscape's existing quality and value.

36. I appreciate that the current mineral areas will eventually be restored, but that is necessarily a long-term process. It also appears that other nearby land is identified for further sand and gravel workings. It seems likely that the valley floor area will be subject to on-going extraction and remediation for the foreseeable future. I also note that a major development has been approved at the Racecourse, including around 1,500 dwellings, a hotel and other facilities, which are likely to have some further impact on the valley landscape.
37. I note the contents of the various published landscape studies. However, these are descriptive rather than evaluative. They provide little or no basis for any form of comparative assessment. I accept that the area's landscape may be valued by local people. But objectively it seems to me that its quality, especially around the appeal site, is relatively poor. Consequently, this seems to me an area where the landscape's sensitivity to change is quite low.

Contribution of the appeal site

38. Although the appeal site too has been worked for minerals in the past, it is now restored to grazing land, and its visual contribution to the area is thus a positive one. However, the site itself has no particular landscape qualities or features of interest, other than its openness.
39. In any event, the site is well contained, by the extensive woodlands to the north and southeast, and also to the south by the steeply rising topography. This sense of containment is further reinforced by the several smaller woodlands and plantations to the south and east, within the golf course and around the river, and by the expanse of the Racecourse to the west. As a result, views into the site from public vantage points are limited to a short stretch of Footpath 6.
40. According to the GLVIA guidance, the users of public footpaths are usually regarded as highly sensitive receptors. In the present case however, given the nature of the path and its surroundings, I consider that this approach would be likely to over-state the likely impact of any development. Medium sensitivity would therefore be more appropriate here.
41. Furthermore, in land-use terms, the site is largely isolated from any other agricultural land, except for the various small paddocks around Pigeon's Farm. This further limits any impression that the site gives the area a rural character rather than being part of the urban fringe.

Effects of the proposed development

42. The development now proposed would introduce buildings, roadways, car parks and footpaths into what are now three open fields. The site's present undeveloped character would change, and some of its openness would be lost.

43. However, this does not necessarily mean that the site would be urbanised. Firstly, this is because the density would be very low, leaving substantial areas of the site free from development. This would give ample space for new planting to screen and soften the development; and indeed would also allow a substantial margin beyond this to be left free from new planting too, if that is considered desirable. Secondly, the single-storey design, with low eaves and ridgelines, would reduce the development's impact on all but the closest views. And thirdly, the use of timber cladding and seeded roofs would give the buildings a rustic appearance. Consequently, in my view, the development's overall character would be rural or semi-rural.
44. In terms of the GLVIA guidance, the development would form a visible and recognisable new element, which would be readily noticed, but would not be a dominant element in the landscape. The magnitude of its effect would therefore be no more than medium. Overall, this would give rise to a moderate visual impact, but the impact on landscape character would be only slight.

Other issues raised in relation to RR3

45. I note the Council's reference to the effects on views from residential properties at Pigeon's Farm and Lower Farm Court. But private views from dwellings are not normally a compelling planning consideration, except where living conditions are unacceptably affected, such as where overshadowing or overlooking would occur. Here, that is not the case, due to the long distances involved. The effects on the setting of the Pigeon's Farm buildings as heritage assets are considered later as a separate issue. None of these matters are decisive in terms of the impact on the character and appearance of the landscape.
46. The Council also suggests that the development would cause or contribute to coalescence between Newbury and Thatcham. However, in reality such coalescence has already occurred along the A4. And although the gap to the east and north of Hambridge Lane appears vulnerable, and may become more so when the Racecourse development goes ahead, the proposed development at the appeal site would not worsen that situation.
47. I note the Council's concerns regarding precedent, but the appeal is concerned only with the development proposed now. Any future proposals would have to be considered on their own merits.

Conclusion on Issue (iii)

48. I conclude that whilst the proposed development would have some effect on the character and appearance of the landscape, that effect would be quite minor. In the context of the appeal site and its surroundings, it seems to me that the intrinsic character and beauty of this part of the countryside would not be significantly harmed. Such an effect would not conflict in any material way with the aims of Policy CS19, or with the relevant provisions of NPPF paragraphs 17 and 109.

Issue (iv): Effects on ecology and biodiversity

49. RR4 states in general terms that the Council is concerned about possible impacts on surrounding sites of ecological value and interest, raising conflicts with WBCS Policy CS17 and the NPPF. In its evidence for the appeal hearing, the Council clarified that its concerns relate to the effects on the Lower Farm

Lake area adjacent to the site, and off-site impacts on the River Kennet, Thatcham Reed Beds, Greenham and Crookham Commons, and Bowdown & Chamberhouse Woods.

50. Policy CS17 seeks, amongst other things, to conserve and enhance biodiversity assets, to restrict development that would harm important sites, and to maximise opportunities for biodiversity gains. Although RR4 does not identify any particular part of the NPPF, paragraph 109 states that the planning system should minimise impacts on biodiversity and provide net gains where possible. Paragraph 118 states that if significant harm cannot be avoided or compensated for, permission should be refused; and that development likely to have an adverse effect on a Site of Special Scientific Interest (SSSI) should not normally be permitted.

Impact on the appeal site itself

51. The appeal site itself has no ecological or wildlife designation. There is no dispute that in its current use as grazing land, the majority of the land has little ecological interest or habitat value of any significance.
52. Although the site contains some existing trees, hedgerows, ditches, and other vegetation around the field boundaries, the proposed development would allow for most of these features to be retained. The scheme would also retain substantial buffer areas, which could be retained as grassland, and managed to enhance their biodiversity, or landscaped with new planting. All of these matters can be resolved and secured by means of conditions.
53. The effects on the site itself are therefore not a matter of contention.

Effects on Lower Farm Lake

54. The Lower Farm Lake adjoins the appeal site. It is a former gravel pit, which was restored as a lake for fishing and nature conservation, surrounded by woodland. The restoration scheme included the provision of access paths and car parking for these uses, and a bird-watching hide, which is managed by the Newbury District Ornithological Club (NDOC). The lake has no national or local designation, but has some ecological value as a habitat for birds, bats, reptiles, and amphibians.
55. The lake would not be directly affected by the proposed development, but the Council's concern relates to the potential for the development to generate noise, disturbance and additional pressure for recreational use. However, the Council agrees that these impacts can be mitigated by the combined effect of the appellants' legal undertakings and the draft ecological conditions contained in the statement of common ground. I broadly agree with this conclusion, although for different reasons.
56. In the submitted undertakings, the ecological mitigation measures proposed in respect of the lake area are the implementation of a Habitat Enhancement and Management Plan (HEMP), plus a covenant not to dispose of the lake without Council approval, and a ban on fishing. I appreciate that the Council sees merit in all of these measures. However, there is no evidence before me to show that continued fishing would cause harm, and any transfer of the lake to a different ownership would not affect its planning status or the enforceability of any conditions or obligations relating to it. A HEMP could undoubtedly be beneficial, and I note that there is provision for consultation with NDOC and the

local Wildlife Trust. But the obligations do not appear to give the Council any right of approval over the HEMP's contents. In the absence of any such control by the Council, there is no certainty that the kind of HEMP that could be secured under the undertakings alone would provide effective mitigation for the development. For these reasons, I give little weight to these obligations in the undertakings.

57. However, provision for a HEMP is also envisaged in the agreed draft conditions. Normally it would be undesirable for a condition to duplicate an obligation. But here, the imposition of a condition alongside the obligation could overcome the defect in the latter, by ensuring that the HEMP must be approved by the Council. In addition, the proposed conditions include control of external lighting, and a requirement for the provision of boundary treatments of a type to be approved. All together, it seems to me that these three conditions would provide for an appropriate level of mitigation in respect of any impacts on the lake area, commensurate with its status.
58. I note the other proposed ecological conditions, including the provision of bat boxes, newt ponds and fencing, hibernacula, an additional bird hide, a tern raft, and interpretive boards and leaflets. The appellants have confirmed their willingness to provide these items, and there is no doubt that their provision would be beneficial. However, a specific requirement for these by way of conditions would be over-prescriptive, and is not justified on the evidence before me. In my view these are matters that could be considered for inclusion in the HEMP, rather than needing to be specified as conditions in their own right. I also consider the proposed condition relating to noise too vague to be of much value in terms of any ecological mitigation. But again there is no reason why this issue could not be addressed in the HEMP. I therefore propose to limit the number of ecology-related planning conditions to those that I have indicated above.
59. If all of the matters agreed between the parties were included in the resulting HEMP, it seems to me that the result would be a net benefit. However, the contents of the HEMP are not for me to decide. For the reasons that I have explained, on the basis set out above, I am satisfied that the proposed development's effects on the ecology of the Lower Farm Lake area can be adequately mitigated.

Effects on the nearby SSSIs

60. The River Kennet, Thatcham Reed Beds, Greenham and Crookham Commons, and Bowdown & Chamberhouse Woods are all SSSIs. The first two of these are also within the Kennet & Lambourn Floodplain Special Area for Conservation (SAC). These areas include ancient woodland, heathland, and chalk streams. Some of these habitats support ground-nesting birds similar to those covered by the Thames Basin & Heaths Special Protection Area (although none of these sites themselves are within the SPA). According to the Council's evidence, all of these SSSIs are between 600m – 900m from the appeal site.
61. The Council argues that the impacts on these areas could only be mitigated by the payment of a financial contribution of £29,025, towards the West Berkshire Living Landscape Project, which seeks to improve the management and maintenance of the SSSIs in the area. Such a contribution is included in the appellants' Undertaking B, but not in Undertaking A.

62. I can understand the Council's concerns. SSSIs are amongst our most important wildlife habitats, and many are vulnerable to increased recreational pressure. The development now proposed would be likely to appeal to visitors within an interest in walking and outdoor pursuits, and the network of footpaths in the area provides good access to the areas identified. However, the development would not affect these more distant off-site habitat areas directly. Its impacts, if any, would be indirect, and thus more difficult to demonstrate or quantify. Harm might or might not arise, but it is not self-evident that this would be so, nor that the extent of any such harm would be significant.
63. This intangibility would not be an obstacle if there were a clear policy basis for the Council's approach. However, the Council relies primarily on Policy CS17, and although that policy applies to indirect as well as direct impacts, it contains no provision for seeking financial contributions. The SPD⁴ states that contributions may be sought towards environmental mitigation in certain circumstances, but it does not explicitly refer to any situations directly comparable to the appeal proposal, where the impact is notional rather than demonstrable. Any policies for off-setting contributions within the SPA do not apply here. Consequently, none of the available policies seems to me to provide the necessary clear development plan basis for seeking a financial contribution in the present case.
64. And even if I were to take a different view on that point, there would still be a need to justify the actual amount which is sought. There is no adopted or agreed formula. The methodology used by the Council in the present case depends on their assumption of two visits to the SSSIs per person per week. However, it was admitted at the hearing that this figure is not backed up by any evidence. Essentially therefore, it seems to me that the Council's key assumption is actually little more than speculation, and it follows that the resulting calculations are untenable. Without any credible figures, there is no basis on which to judge whether the amount sought is reasonable; nor indeed whether any harm caused by the development would be significant enough to warrant any mitigation at all.
65. I accept that even where developments are individually quite small, the cumulative harm could be significant. But that is not the point here. In the absence of a clear development plan policy to establish the principle, and a recognised formula for calculating the amount, there is no proper basis for seeking to mitigate such impacts through financial payments.
66. Consequently, although Undertaking B includes the ecological contribution sought by the Council, it has not been shown that such a contribution is necessary to make the development acceptable, or that the amount would be fairly and reasonably related to the development's scale. In the circumstances, I can give no weight to the ecology contribution. I appreciate that, without the contribution, the Council's view is that the development should be refused. But, for the reasons made clear above, I find insufficient evidence of any significant harm to the SSSIs.

⁴ Delivering Investment from Sustainable Development SPD, adopted June 2013

Other matters raised in connection with RR4

67. I note that the appeal site is within the Kennet Valley East Biodiversity Opportunity Area (BOA), as defined in the WBLP. But paragraph 5.121 of the WBCS states that BOAs do not represent a statutory designation or a constraint on development, but are areas where biodiversity improvements are likely to have the most beneficial results.

Conclusion on Issue (iv)

68. For the reasons set out above, and subject to the conditions discussed, I conclude that the proposed development would not have any unacceptable impact on the area's ecology or biodiversity. Indeed, the opportunity to secure the implementation of a HEMP, over which the Council would have control by means of a planning condition, would bring the potential for net gains. In these respects therefore, I find that the scheme does not conflict with any of the relevant policies identified above relating to ecology and biodiversity.

Issue (v): Effect on the setting of heritage assets

69. The effect on nearby heritage assets is not raised in the Council's refusal reasons, but is introduced by local residents. Their concern relates to the effects on the setting of the group of buildings at Pigeon's Farm, including Hall Barn House, Pigeon's Farm East and West, Pigeon's Farm Cottages and Lime Tree Cottage. Hall Barn House and one of its outbuildings are listed (Grade II), and the objectors contend that the other buildings in the group are undesignated heritage assets.
70. The citations for the two listed buildings record that both are timber-framed, and of 18th century origin. Hall Barn House is now converted to a dwelling. The second listed building, formerly a barn, has suffered a partial collapse, and is largely overgrown.
71. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard be paid to the desirability of preserving a listed building or its setting. In the WBCS, Policy CS19 requires regard to be given to the conservation and enhancement of heritage assets and their settings. NPPF paragraph 132 requires that, in considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. In the case of non-designated assets, paragraph 135 states that the direct and indirect effects should be taken into account, and that a balanced judgement should be made, taking into account the asset's significance and the scale of any harm.
72. I saw on my visit that the Pigeons Farm dwellings are set in an elevated position, where they enjoy extensive views over the Kennet Valley. The appeal site lies within the centre foreground of the view to the north. It therefore forms part of the setting of the listed buildings and that of the building group as a whole.
73. However, the appeal site occupies a relatively small part of that vista. As I have already noted, the wider view is already dominated by urban and urban-fringe development, and the further development which has been approved at the Racecourse will increase that domination. In this context, the proposed development at the appeal site would not be out of keeping with the prevailing pattern of development as seen from Pigeon's Farm. The nearest part of the

appeal site is around 200m from Pigeon's Farm, and the nearest of the proposed buildings would be a further 50m beyond this. At this distance, the development would not be unduly prominent, especially given the low height of the proposed buildings and the scope for new planting. Furthermore, the appeal site is on lower ground, and would not impede the existing view. And the development itself would be well-designed for its rural context. The fact that the new buildings would be visible from the Pigeon's Farm buildings, at a distance, would not in itself be harmful. Consequently, it seems to me that the proposed development would not have any significant adverse effect on the historic buildings' visual setting.

74. In terms of land uses, I accept that historically the Pigeon's Farm buildings were related to the surrounding farmland, and for that reason I agree that retaining a buffer of agricultural land around them is an important part of their setting. However, the appeal site is separated from Pigeon's Farm by a substantial area of existing grazing land and paddocks, and these would remain. The proposed development would not encroach any closer to Pigeon's Farm than the golf course which partly encircles it to the south.

Conclusion on Issue (v)

75. Overall therefore, I conclude that the proposed development would preserve the setting of the Pigeon's Farm buildings. In this respect there would be no conflict with Policy CS19, or with any part of the NPPF.

76. Other matters

The benefits of the development

77. The proposed development would provide an attractive development of 25 holiday units, in a location suitable for countryside leisure pursuits such as walking, riding, and fishing, and convenient for the nearby racecourse, golf course and other visitor attractions such as the well-known Highclere House. Although West Berkshire is not devoid of tourist accommodation, neither is it in any sense an established holiday destination, and as far as I can tell, there are no existing facilities of a similar nature to that now proposed. Consequently, I see no reason to doubt that such a development would attract new visitors to the area.
78. The appellants estimate that the local expenditure generated by visitors would be in excess of £770,000 per annum. That figure is unchallenged. But I also note that this is based on an average occupancy of only 20 weeks per year, and thus may be regarded as conservative. In addition, there would be the economic stimulus of the initial construction works, and the on-going permanent employment, which at the very least would be likely to include management, administration, cleaning and grounds maintenance staff. Overall, I am satisfied that the development would be likely to produce significant economic benefits for the area. In the light of NPPF paragraph 28, I give these benefits significant weight.
79. In addition, there would be the benefits that I have identified to highway safety, arising from the provision of new footways and improvements to the railway underpass and access track, as discussed above. And there would be potential benefits to ecology and biodiversity, dependant on the contents of the proposed HEMP. These carry moderate weight.

Sustainability

80. As well as providing economic benefits, the proposed development would be financially self-supporting. By providing good-quality opportunities for tourism and leisure, in semi-rural surroundings, it would contribute to the well-being of society. Its location would avoid intrusion into any more remote or environmentally sensitive areas, thus causing the minimum harm to the countryside; and would allow reasonably easy access to the urban area, minimising unnecessary travel and emissions. As such, the development would be economically, socially and environmentally sustainable.

The legal undertakings

81. Regulation 122 of the CIL Regulations⁵ requires that planning obligations must be necessary to make the proposed development acceptable in planning terms; and directly related to the development; and fairly and reasonably related in scale and kind. Similar tests are incorporated into the NPPF, at paragraph 204.

Transport contribution

82. Both obligations provide for a transport contribution of £38,225. Of this, £28,000 would be used to provide a new footway on highway land to the north of the railway bridge, as discussed above. For the reasons already stated⁶, this element is necessary and reasonable for the purposes of improving pedestrian safety on one of the main access routes serving the development.
83. The remainder of the transport contribution would be used to fund improvements to bus and rail facilities, including 'Nextbus' information plates, and safety measures at the Newbury racecourse station which is nearby. In view of the information provided by the Council, I am satisfied that these works are reasonably related to the development, and meet the other relevant legal and policy tests.

The library and public open space contributions

84. Both obligations also provide for a library contribution of £7,085 for the purchase of stock, and a public open space contribution of £13,542, for the purpose of providing or expanding open space or recreation facilities in the vicinity.
85. I note the explanations given for these contributions, and the development plan policies cited, including WBCS Policy CS6 and the 'Delivering Investment' SPD. However, none of the evidence presented explains why a development intended to attract holiday visitors, for relatively short stays, would be likely to put pressure on these types of facilities, which are mainly geared towards the needs of permanent residents. Nor is there any evidence as to how any expected increase in the use of these facilities has been quantified. There is therefore nothing to show that these contributions are needed to overcome planning objections, and are thus necessary to make the development acceptable. Accordingly, I have given no weight to these proposed contributions.

⁵ The Community Infrastructure Levy Regulations 2010

⁶ See paragraph 30 of this decision

Ecological measures and ecology contribution

86. As stated earlier⁷, I also give little weight to the provisions relating to the ecological measures contained in the Schedule to both Undertakings A and B, and no weight to the ecology contribution of £29,025 in Undertaking B. For the reasons already given, none of these provisions meets the test of necessity. The ecology contribution has also not been shown to be directly related to the development, or fair or reasonable in its amount. In view of these findings, I cannot take these obligations into account in my decision.

Refusal Reason 5

87. The Council confirmed at the hearing that the proposed contributions in respect of transport, libraries and open space would overcome their concerns in RR5, relating to the development's impacts on local facilities and infrastructure. Since I have found insufficient evidence that the library and open space contributions are justified, it follows that I now find no reason to withhold planning permission on grounds relating to these matters. In so far as RR5 relates to transport impacts other than those already covered in RR2, I am satisfied that the transport contribution would adequately mitigate those impacts.

Reasoning with regard to conditions

88. I have considered the Council's suggested conditions against the advice in NPPF paragraph 206, which requires that conditions be necessary, relevant, enforceable, precise and reasonable. I have also taken account of the discussions at the hearing, and have made amendments where necessary to meet the above requirements, and to improve clarity.
89. A number of the conditions that I intend to impose, and the reasoning behind them, have already been discussed elsewhere in this decision. At paragraph 8, I have referred to the need for a condition to ensure that the proposed chalets are not occupied as permanent dwellings. In the light of the discussions at the hearing, I consider that this would be best achieved by simply limiting their permitted use to holiday accommodation (Condition 3). Additional controls on the length of stay, or limiting the number of weeks that chalets could be let each year, are unnecessary and would be unduly onerous.
90. The need for various works to improve access to the site is set out in paragraphs 30 and 31. In this context the parties are agreed on the need for a 'Grampian-style' condition in respect of the necessary enhancements to the access road itself and the railway underpass, including signals, signage and drainage (Condition 4). However there is also a need to secure the proposed new segregated pedestrian route, from Lower Farm to the site entrance, and in my view this requires an additional condition (Condition 5). Both of these conditions are imposed in the interests of highway safety.
91. I have also explained at paragraph 57 the need for conditions to provide for the proposed HEMP, and to secure appropriate boundary treatments, and to control any external lighting (Conditions 6 – 8). All of these conditions are imposed to mitigate any potential impacts on wildlife and ecology. However, as noted at paragraph 57, the other ecology related conditions suggested in the Statement of Common Ground would not meet the tests in the NPPF.

⁷ See paragraphs 56 and 62-66 of this decision

92. In addition, conditions are required in respect of materials, landscaping and landscape management, in the interests of ensuring a satisfactory quality of development (Conditions nos. 9 – 11). I have also imposed the standard time limit for commencement (Condition 1), and a requirement for adherence to the approved plans (Condition 2). The latter is needed in the interests of good planning and for the avoidance of doubt.

Conclusions

93. The proposed development would be located in an area defined as countryside. However, it would not conflict with any development plan policies. The scheme would result in a minor adverse impact on the character and appearance of the local landscape. But on the other hand, it would provide a valuable tourist facility, plus improved highway safety, potential gains to biodiversity, and a worthwhile boost to the local economy. Any other effects, including the effects on heritage assets, would be neutral.

94. For the reasons that I have explained earlier, the proposal would constitute sustainable development. The development plan is silent on the key issues. The harm that I have found would not significantly and demonstrably outweigh the benefits; indeed, in my view, the reverse would be the case. No specific policies in the NPPF restrict development. Applying the approach in NPPF paragraph 14 therefore, permission should be granted. I can find no reason to depart from that approach here.

95. I have taken account of all the matters raised, but none changes these conclusions. The appeal is therefore allowed.

John Felgate

INSPECTOR

SCHEDULE OF CONDITIONS

The planning permission to which this decision relates is granted subject to the following conditions (Nos. 1 - 11).

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) Except where these conditions require otherwise, the development shall be carried out in accordance with the approved plans, Nos. 3721/PL01B, 3721/PL02B, 3721/PL04A, and 3721/PL05A.
- 3) The proposed chalets shall be occupied only for the purposes of holiday accommodation, and no part of the development shall be occupied at any time as any person's permanent or main residence. A lettings register shall be kept, containing details of the names and addresses of all occupiers, and the dates of their occupation, and this register shall be made available for inspection by the local planning authority, on request. All such details shall remain on the register for a period of not less than 5 years.
- 4) No development shall take place until a detailed scheme has been submitted to the local planning authority and approved in writing, for the improvement and enhancement of the vehicular access route between the site entrance and the adopted part of Hambridge Lane. The scheme shall include provision for:
 - i) at the railway underpass, signal controls with detection of non-motorised users, warning signs, lighting and pumped drainage;
 - ii) along the route as a whole, carriageway repairs and resurfacing where needed, and the cutting back of encroaching vegetation.

No part of the development shall be brought into use until these works have been implemented, as approved, and thereafter these works shall be retained and the access route shall be maintained, in accordance with the approved details.

- 5) No part of the development shall be brought into use until a new segregated footpath has been provided from the site entrance to Lower Farm (as shown on Plan No. 3721/PL01B), in accordance with further details to be submitted to the local planning authority and approved in writing.
- 6) No development shall take place until a Habitat Enhancement and Management Plan (HEMP) has been submitted to the local planning authority and approved in writing. The HEMP shall contain proposals for the ecological enhancement and management of existing and proposed wildlife habitats within the application site itself and the adjoining land, including the Lower Farm Lake and its margins, within the blue edging shown on Plan No 1265/P01. The HEMP shall also contain a timetable for the implementation of the proposed ecological works, and their on-going management. The HEMP shall thereafter be implemented and the ecological measures managed and maintained in accordance with the details thus approved.
- 7) No development shall take place until a scheme of proposed boundary treatments has been submitted to the local planning authority and approved in writing. The said scheme shall include a timetable for the implementation of these works, related to the programme for the completion and occupation of the development. The boundary treatments shall thereafter be provided in accordance with the details and timetable thus approved.

- 8) No external lighting of any kind shall be installed anywhere within the site, other than in accordance with details approved in writing by the local planning authority.
- 9) No development shall take place until full details and samples of the materials to be used in the construction of the external surfaces of the proposed buildings have been submitted to and approved in writing by the local planning authority. The development shall be carried out using these approved materials.
- 10) No development shall take place until a scheme of hard and soft landscaping has been submitted to the local planning authority and approved in writing. The landscaping scheme shall include full details of all trees and hedges to be retained, all proposed planting, seeding and hard surfacing, and any proposed mounding or changes to ground levels. The scheme shall also include a timetable for the phased implementation of these works, related to the programme for the completion and occupation of the development. The landscaping works shall thereafter be carried out in accordance with the details and timetable thus approved.
- 11) The development shall not be brought into use until a landscape management plan has been submitted to the local planning authority and approved in writing. The landscape management plan shall include proposals for the management and maintenance of all new landscaped areas, as approved under Condition 4, during their first 5 years after implementation. The plan shall also make provision for any trees or plants which die within that period, or become seriously damaged or diseased, to be replaced in the next planting season with others of a similar size and species, or with such alternatives as may be approved by the authority. The landscaped areas shall thereafter be managed and maintained in accordance with the management plan thus approved.

APPEARANCES

FOR THE APPELLANT:

Mr Justin Packman MPlan MRTPI	PROVision Planning and Design
Mr Steven Smallman MRICS MRTPI	PROVision Planning and Design
Mr Graeme Turner BEng(Hons)	Principal Engineer, Glanville Transport Consultants
Mr Malcolm Bull MRICS IRRV	Managing Director, Rivar Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr Michael Butler BSc MPhil MRTPI	Principal Planning Officer
Mr Jeremy Davy BSc CBiol MSB MCIEEM	Principal Ecologist
Ms Christine Marsh BA(Hons) DipLA CMLI	Hankinson Duckett Associates Landscape Consultants
Mr Robert Turner MSc BSc(Hons) PGCE CMILT MCIHT MSoRSA AMRSGB	BT Highways Consultants
Ms Elaine Cox BSc(Hons) MIPROWM	Senior Rights of Way Officer

OTHER INTERESTED PERSONS:

Ms Emma Adams MRTPI IHBC PGDipBldgCons(RICS) DipBldgSurv(RICS)	DPP Consultants (On behalf of the Pigeons Farm Local Residents' Group)
Mr Adrian Abbs BSc(Hons) MIOD	Local resident
Mr Jonathan Carne	Local resident

DOCUMENTS TABLED AT THE HEARING AND SUBSEQUENTLY

- 1 Plan: 'Proposed Footway: General Arrangement' (Glanville Consultants), tabled by the appellants at the hearing
- 2 Drawing: Newbury Racecourse development master plan, tabled by the appellants at the hearing
- 3 Proposed conditions relating to access route and flood mitigation works, tabled by the Council at the hearing.
- 4 Draft Unilateral undertaking A, submitted by the appellants at the hearing
- 5 Draft Unilateral undertaking B, submitted by the appellants at the hearing
- 6 Listed building details relating to Pigeon Farm, submitted by DPP on 30 July 2014
- 7 Ownership plan, submitted by the appellants on 15 August 2014
- 8 Letter from Mr Packman dated 15 August, in response to DPP's submissions re impact on heritage assets
- 9 Report on legal title by Gardner Leader solicitors, for the appellants, submitted 15 August 2014
- 10 Executed Unilateral undertaking A, submitted by the appellants on 15 August 2014
- 11 Executed Unilateral undertaking B, submitted by the appellants on 15 August 2014
- 12 Letter from DPP dated 27 August 2014