

MATTERS STATEMENT

North Hertfordshire District Council Local Plan Examination

On behalf of: Pigeon Land Ltd (Representor ID 016084)

11 January 2018

Prepared by:

Liz Fitzgerald BA (Hons) Dip TP MRTPI Associate Director

Our Reference: 17107



Matter 11: The Housing Allocations and the Settlement Boundaries: The Category A Villages (Whitwell/St Paul's Walden)

- 11.80 Is the proposed housing allocation deliverable? In particular, is it:
 - a) confirmed by all of the landowners involved as being available for the use proposed?
 - b) supported by evidence to demonstrate that safe and appropriate access for vehicles and pedestrians can be provided?
 - c) deliverable, having regard to the provision of the necessary infrastructure and services, and any environmental or other constraints?
- 11.81 Is the proposed housing allocation justified and appropriate in terms of the likely impacts of the development?
- 11.82 Is the proposed allocation the most appropriate option given the reasonable alternatives?

Introduction

This statement has been prepared on behalf of Pidgeon Land Ltd in relation to the forthcoming Hearing Sessions for the North Hertfordshire District Council Local Plan Examination.

Site SP2: Land between Horn Hill and Bendish Lane, Whitwell has been successfully allocated for residential led development within the emerging plan for an estimated 41 dwellings.

The site is located outside of the Green Belt, to the west of the village of Whitwell. Whitwell is defined as a Category A settlement and benefits from all the local services and facilities required to support a sustainable development.

The site is currently in arable use, but is situated to the south of Whitwell Primary School and has large residential properties adjacent to the southern and eastern boundaries. A Byway Open to All Traffic (BOAT) St Paul's Walden 036 is located adjacent to the western boundary.

The site is not located within the Conservation Area, but its boundary sits adjacent to the north eastern corner of the site.

Planning History

Planning Application: 15/02555/1 was submitted to the Local Planning Authority for consideration on the 6 October 2015. The application sought planning permission for the following development:



"Erection of 41 New Homes, Traditional Office Accommodation, Extensive Open Space and Associated Infrastructure"

Land To The South Of Bendish Lane And Adjacent To 2-12 Cresswick Whitwell

During the course of the consideration of the application the proposed development was amended which included the removal of the office accommodation and changes to the type of residential units proposed. Consequently the description of the development changed to:

"Residential development for 41 dwellings comprising 25 open market houses (5 two bed dwellings, 6 three bed bungalows, 5 four bed dwellings, 2 four bed bungalows and 1 five bed dwelling) and 16 affordable dwellings (6 one bed dwellings, 7 two bed dwellings and 3 three bed dwellings), associated parking, cycle storage, refuse storage, pumping stations and open space. "

On the 23 August 2016 the Local Planning Authority refused the application for the following reason:

"By reason of the extent of landscape and earthwork changes necessary to facilitate the proposed flood risk mitigation scheme the proposed development would fail to maintain the existing character and visual quality of the countryside in accordance with Policy 6 of the Local Plan and Core planning principles set out in paragraph 17 of the National Planning Policy Framework."

An appeal was subsequently lodged and the written representations procedure started on the 28 April 2017.

On the 27 October 2017 the Inspector allowed the appeal and granted full planning permission, subject to a Unilateral Undertaking and Planning Conditions. Due to a minor error in the decision the Inspector re-issued the decision on the 7 December 2017 (**Appendix 1**).

The Inspector concluded that whilst the development would give rise to some harm to the character and appearance of the area, along with the limited public transport in the area, the provision of 41 additional dwellings, 16 of which would be affordable, would undoubtedly contribute to the current housing deficit, whilst the extensive areas of open space around the southern and western parts of the site would greatly assist in blending the development into the wider area. He therefore considered the scheme to be sustainable development when considering the Framework as a whole.

The permission is subject to 23 planning conditions pertaining to drainage, materials, archaeology, contamination, landscaping and a construction management plan, amongst others.

The Judicial Review period associated with this permission is due to expire on the 18 January 2017.



Matter 11: Response

Is the proposed housing allocation deliverable?

The proposed housing allocation is deemed to be fully deliverable within the first 5 years of the plan period.

The site is in a single ownership and benefits from a full planning permission for 41 residential units. The associated planning conditions are not considered to be overly onerous such that development would be unduly delayed.

Access details have been fully approved and can be seen on the layout plan attached at **Appendix 2**.

All matters pertaining to infrastructure delivery and services have been fully considered as part of the application/appeal process and it has been concluded that the scheme, with its associated infrastructure proposals, along with the Unilateral Undertaking ensure that any impact on infrastructure and services is adequately mitigated against.

The permission includes the provision of large areas of open space, along with the provision of two ponds designed to provide relief from any existing flooding to properties fronting adjacent roads and to provide adequate drainage for the site. The proposal therefore not only mitigates against its own impact, but will also benefit local residents.

Given the above factors and the presence of a planning permission, the site can be considered to be deliverable.

Is the proposed housing allocation justified and appropriate in terms of the likely impacts of the development?

The site has been subject to a full planning application and appeal process, such that it can be concluded beyond doubt that the allocation is both justified and appropriate in terms of the likely impact of the development.

Is the proposed allocation the most appropriate option given the reasonable alternatives?

Five sites around Whitwell were considered as part of the SHLAA process, two were discounted as their failed to meet the tests set out in the SHLAA.

The remaining three sites were taken forward, unlike site SP2, the other two remaining sites constituted backland development with no obvious access point. One of the two alternative sites has been subject to a planning application and subsequent appeal. The appeal was dismissed. The site location plan and appeal decision are attached at **Appendix 3**.

Site SP2 offers the most logical expansion to the settlement, with defined boundaries and good accessibility to the village facilities, particularly the Primary School.



Without doubt and in light of the grant of planning permission, the site is the most appropriate and deliverable option available.

Conclusions

Unlike many proposed site allocations, this site now benefits from a full planning permission, demonstrating that matters pertaining to landscape and transport impact, amenity provision and other environmental matters can be fully mitigated against.

Subject to the discharge of planning conditions, which is being worked up at present, development can commence on site promptly, thus facilitating the delivery of 41 residential units within the first 5 years of the Plan period.

The proposed allocation is therefore entirely appropriate and deliverable and the policy requirements have been fully and appropriately satisfied by the grant of the recent planning permission. The policy is therefore considered to be sound.

We do note the typographical error in the second bullet point: solutions

Appendices

<u>Appendices</u>

Appendix 1: Appeal Decision (APP/X1925/W/17/3168114) 7 December 2017

Appendix 2: Approved Layout Plan

Appendix 3: Appeal Decision (APP/X1925/W/16/3164043) 11 May 2017 & Site Location Plan

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Appendix 1: Appeal Decision (APP/X1925/W/17/3168114) 7 December 2017

Appeal Decision

Site visit made on 19 June 2017

by Chris Forrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government Decision date: 7 December 2017

Appeal Ref: APP/X1925/W/17/3168114 Land to the south of Bendish Lane and adjacent to 2-12 Cresswick, Whitwell, Hertfordshire SG4 8HX

- 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 Pigeon Land Limited against the decision of North Hertfordshire District Council.
- The application Ref 15/02555/1, dated 30 September 2015, was refused by notice dated 23 August 2016.
- The development proposed was originally described on the application form as the erection of 41 new homes, traditional office accommodation, extensive open space and associated infrastructure.

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 27 October 2017.

Decision

1. The appeal is allowed and planning permission is granted for the residential development for 41 dwellings comprising 25 open market houses (5 two bed dwellings, 6 three bed dwellings, 5 four bed dwellings, 2 four bed bungalows and 1 five bed dwelling) and 16 affordable dwellings (6 one bed dwellings, 7 two bed dwellings and 3 three bed dwellings), associated parking, cycle storage, refuse storage, pumping stations and open space at land to the south of Bendish Lane and adjacent to 2-12 Cresswick, Whitwell, Hertfordshire SG4 8HX in accordance with the terms of the application, Ref 15/02555/1, dated 30 September 2015, subject to the conditions set out in the schedule to this decision letter.

Application for costs

 An application for costs was made by Pigeon Land Limited against of North Hertfordshire District Council. This application is the subject of a separate Decision.

Procedural matters

2. During the course of the consideration of the application by the Council, the proposed development was amended which included the removal of the office accommodation and changes to the types of residential units proposed. Consequently the description of the development also changed. The Council determined the application on the basis of those amended plans,

- including the amended description of the development, and I have determined the appeal on this basis.
- 3. The Application form identifies the site as 'Whitwell West' whereas the Council have used a more descriptive address (Land to the south of Bendish Lane and adjacent to 2-12 Cresswick, Whitwell). The Council's site address more accurately describes the location of the site (and that the application and appeal publicity have also utilised this address) I have utilised this to identify the site in my decision.

National Planning Policy Background

- 4. The Council have confirmed that they do not have a five year housing land supply. It follows that, in accordance with paragraph 49 of the National Planning Policy Framework (the Framework), the housing supply policies in the North Hertfordshire District Local Plan No.2 with alterations (1996) (LP) are out of date.
- 5. Consequently the fourth bullet point of paragraph 14 of the Framework comes into force. This makes clear that where development plan policies are out of date planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.

Main Issues

6. The main issues are the effect of the development on the character and appearance of the area and infrastructure requirements.

Reasons

Character and appearance

- 7. The appeal site is located on the west side of the village of Whitwell and is in the region of 5.9 hectares in size. The site is largely bordered by existing residential properties on its north-east, east and south side with open fields to the west beyond the public footpath. To the north, on the opposite side of Bendish Lane, is a primary school and playing field.
- 8. The site generally rises from Bendish Lane towards the south, although there is an area of the site to the rear of the Creswick properties which is lower than the existing road level. The site is currently an arable field with hedgerows and trees around its boundaries.
- 9. The proposed development would include a total of 41 new dwellings and associated facilities, including two ponds which form part of the overall drainage strategy for the site. The developable area would extend to around 3.13 hectares and would be on the lower lying parts of the site. The remainder of the site would be provided as open space which would be generally towards the southern and western parts of the site.
- 10. The Councils concern relates to the amount of landscape and earthworks required to implement the flood risk mitigation measures (as opposed to the residential development) and the resultant impact on the character and visual quality of the countryside. However, very little detail is given on the exact nature of this concern.

- 11. From the submitted details it is clear that the two ponds would involve regrading of the existing land levels with pond one being in the region of 2.2 metres in depth. Pond two would also be of a similar depth. However, in respect of pond one the topography of the site would mean that the increase in land levels to the south would give a perception of a greater depth.
- 12. My attention has also been drawn to other areas of water in the locality such as the pond at Chalkleys Wood, the watercress beds at Whitwell and the River Mimram.
- 13. To my mind, the level of earthworks and regrading of the land to form the two ponds would not result in a excessive of works, especially given the overall development proposed. The provision of the two ponds would not be out of character with the wider area which also features ponds and the River Mimram.
- 14. In addition to the concerns from the Council, numerous representations have been received raising concern over the wider impact of the development on the rural landscape quality of the area including views across the valley and from the Chiltern Way and other footpaths in the area.
- 15. As I understand it the site lies outside of any defined village development boundary and, in planning policy terms, is located in the countryside. Given the undeveloped nature of the site, and the open countryside to the west (and to a lesser extent the north and south beyond the existing development), it has a rural feel to it.
- 16. The new dwellings would be generally located on the lower parts of the site with a significant amount of greenspace around the western and southern parts. This level of greenspace would significantly reduce the impact of the development on the rural character of the area. Notwithstanding this, the development would still have an adverse impact on the open character of the area by extending development along Bendish Lane beyond the existing village.
- 17. For the above reasons, I conclude that the dwellings would lead to some harm to the rural character and appearance of the area contrary to the provisions of saved Policy 6 of LP which amongst other matters seeks to maintain the existing countryside and villages and their character.

Infrastructure

- 18. Whilst the development was not refused on the basis of a lack of infrastructure requirements the Council, in their Officers report to committee, identified a number of infrastructure matters which should be delivered through a section 106 agreement including affordable housing, education contributions, library service contributions, fire hydrants, a waste collection and recycling contribution, open space management and maintenance arrangements, and a play space contribution.
- 19. The Appellant has considered these matters, and in the absence of a bilateral agreement with the Council, has provided a Unilateral Undertaking (dated 22 June 2017). However, following comments from St Pauls Walden Parish Council (the PC), the Council, and the County Council a revised Unilateral Undertaking (dated 12 September 2017) has also been submitted.

- 20. However, the second undertaking does not take effect unless (amongst other matters) the Owners complete a Deed of Variation prior to the commencement of development and that the Council and County Council execute the Deed within 12 weeks of receipt. In the event that this is not executed by the Council the revised undertaking would terminate with immediate effect. In the event that this does not take place, the original undertaking would still be in effect.
- 21. The justification for the financial contributions comes from the Planning Obligations Supplementary Planning Document and Policy 51 of the LP. However, full details of these have not been provided to me.
- 22. Regulation 122(2) of the Community Infrastructure Levy (CIL) Regulations 2010 states that a planning obligation may only constitute a reason for granting planning permission for a development if the obligation is:
 - (a) necessary to make the development acceptable in planning terms;
 - (b) directly related to the development; and
 - (c) fairly and reasonably related in scale and kind to the development.
- 23. Notwithstanding that, the County Council has provided a detailed justification for the education and library contributions. From the evidence before me, these requirements are necessary to make the development acceptable in planning terms. The County Council have confirmed that there are less than 5 specific planning obligations that have been entered into with respect to these matters. Consequently, I consider that these requirements accord with the provisions of the CIL Regulations.
- 24. I have also had regard to the trigger points for payment in the undertaking. Given the nature of the financial payments, I consider that the payment trigger point of occupation of any dwelling is a reasonable timescale for payment to be made. Whilst I appreciate that the County Council seeks the earliest possible trigger point for payment, to my mind, this is not essential in this case.
- 25. In respect of fire hydrants I am not convinced that this needs to be part of the undertaking. Whilst I consider that such provision is necessary, given that it would need to be provided on site, this can be achieved through a suitably worded planning condition. Therefore, there is no requirement for this to form part of any legal agreement and I therefore give this element no weight in my decision.
- 26. Turning to matters which favour the (District) Council, very limited evidence has been provided to me in respect of the financial contributions requested towards waste and recycling facilities, and towards the enhancement and maintenance of play space at Bradway Recreation Ground.
- 27. Consequently, I am unclear on how the financial amount of any of the suggested contributions has been arrived at or how the development impacts on any of these financial requirements. Furthermore, it is unclear whether there have been any other developments which also contribute to such enhancement and maintenance of the Bradway Recreation Ground facilities. As such I cannot be certain that these requests accord with the CIL Regulations and I therefore give these matters no weight in my decision.

- 28. The Undertakings also make provision for the delivery of affordable housing, although between the two undertakings the trigger points differ.
- 29. The revised undertaking provides for the delivery of four affordable homes prior to the occupation of the 12th open market dwelling, with the remaining 12 affordable dwellings being delivered prior to the occupation of the 19th open market dwelling. To my mind, these trigger points represent a reasonable period to deliver the much needed affordable housing whilst also providing an incentive to the developer to deliver all of the open market housing.
- 30. The development includes a sizable amount of open space and the provision and maintenance of such is an important aspect to the overall development. Whilst the original undertaking made some provisions in this respect, following the concerns raised by the Council and the PC the revised undertaking does not make any provision for this, with the Appellant indicating that this could be dealt with by planning conditions.
- 31. Given that all of this open space is located within the application site, I am satisfied that the provision of the open space, and the subsequent management and maintenance of this area can be adequately controlled by means of suitably worded planning conditions. I also consider that the sustainable drainage aspects to the open space area (and other areas within the overall site) could also be adequately controlled by means of planning conditions and therefore it is not necessary for these matters to be included within a legal agreement.
- 32. Both undertakings also make provision for a sustainable transport contribution towards the costs of improvements to both of the existing bus stops in Whitwell at the top of Horn Hill. Whilst I have been provided with very limited details of this, I am conscious that the appeal site is not the most accessible in relation to public transport provision. Consequently, improvements to the existing public transport facilities in the area would help to encourage the future occupiers of the development to use alternative means of transport to the private motor vehicle. Therefore, given this, I consider that this contribution is necessary to make the development acceptable in planning terms.
- 33. In addition to the above, the UU also provides for a contribution of £28,000 towards the community centre facilities at Fellowship Hall in Whitwell. However, this is not mentioned in the Council's report to Committee nor has this requirement been justified in any subsequent appeal documentation. Consequently I give this no weight in the determination of this appeal.
- 34. In summary, I find that the provision of affordable housing, education and library and sustainable transport contributions are all necessary and meet the tests in the CIL regulations. All other contributions and infrastructure provision has either not been justified or can be delivered through suitably worded planning conditions.

Other matters

35. I have also had regard to the concerns raised in the significant amount of representations from the Council's consultation period on the application and through the appeal consultation period. The principle issues raised include

- matters relating to flood risk and drainage, highway safety, the emerging Local Plan, the need for the development and its location, future development proposals and the effect on wildlife.
- 36. From the evidence before me the appeal site is located in Flood Zone 1 as defined by the Environment Agency. Consequently, there is no requirement for a sequential test to be undertaken. Notwithstanding that, a revised Strategic Flood Risk Assessment has identified that parts of the site have the potential for surface water flooding. The appeal application was supported by a site specific Flood Risk Assessment (SSFRA), which was updated during the course of the application.
- 37. Flood risk matters were also considered by the Lead Local Flood Authority who, subject to conditions, came to the view that the development would not pose significant flooding issues or be at excessive risk of flooding.
- 38. Notwithstanding that, I have had regard to the JBA review (on behalf of the PC) of the updated SSFRA. JBA acknowledge that this review is not a detailed Flood Risk Assessment. The JBA review is consistent with large parts of the Appellant's own SSFRA and drainage strategy, although there are differences in relation to surface water and run-off.
- 39. However, I consider that these matters are sufficiently addressed in the SSFRA and the Appellants comments on the JBA review. The JBA does not provide any compelling evidence to demonstrate that the SSFRA and drainage strategy would not be fit for purpose and provide for a suitable means of drainage and flood protection measures for the development.
- 40. It is acknowledged that the development would include pumps to allow the site to be drained and concern is raised if these pumps fail. Whilst this does raise some concern, the proposal includes two pumps and I am satisfied that further details in relation to ongoing maintenance and management could be addressed through a suitable worded planning condition.
- 41. Turning to potential highway issues, the site access would be located close the primary school access and opposite an area which has been surfaced to allow for parking at the side of the road. However, the access would be constructed to design standards and would have adequate visibility in both directions. Given the nature of the existing highway, and the likely traffic generation from the development, I consider that the proposal would create a safe and suitable access to the site and would not result in any significant highway safety issues to the existing network, including the proximity of the school access and layby. It is also noted that the Highway Authority came to a similar conclusion subject to the imposition of certain planning conditions.
- 42. Reference has also been made to the emerging Local Plan where the site has been put forward for residential development (known as site SP2). However, it is noted that objections on the allocation of the site have been received which given the unexamined nature of the emerging Local Plan severely limits the weight I can attach to such an allocation.
- 43. Notwithstanding that, the site is located on the edge of the existing village and concern has been raised over its separation from the existing development. However, it is noted that the new residential properties are generally located at the northern and eastern parts of the site adjoining the

- existing development along Bentish Lane. Furthermore, the proposal would extend the existing pedestrian footway to link into the sites access road, and provide a dedicated footway to the public footpath to the west. To my mind, this provides a sufficient link to the village.
- 44. The development would provide 41 new dwellings which would clearly represent a sizable increase in the number of dwellings in the village. However, this is not a reason in itself to withhold planning permission. Concern has also been raised in respect of further development proposals on the site. However, each application must be considered on its individual merits.
- 45. In respect of the effect of the development on wildlife, the proposal would involve the loss of a greenfield site. However, the site is currently used for agricultural purposes with no trees or bushes within the main parts of the site. The proposal retains the vast majority of the trees and hedgerows around the edge of the site and would provide a large area of greenspace which would have wildlife benefits. It is also noted that the ecological surveys did not identify any significant issues in respect of protected species or wildlife in general.
- 46. It is also suggested that the development of the site would have an impact on potential mineral extraction. However, the site is located within the buffer zone (rather than the Minerals Resource Block) as is much of the village, with the mineral source being on the opposite side of the village to the appeal site. With that in mind, I consider that the development of this site would not have any significant impact to future mineral extraction in the area.
- 47. Finally, the appeal site abuts the western extremities of the Whitwell Conservation Area which includes St Mary's Chapel. Plots 1 and 11 of the proposed development abut the Chapel boundary. Notwithstanding my finding of harm to the rural character and appearance of the area, given the nature of the development and the very limited amount of development adjacent to the Conservation Area boundary, there would be little restriction on views into and out of the Conservation Area. I therefore conclude that its setting would not be harmed. Therefore, I find that the proposal would accord with the conservation aims of the Framework.

Planning balance

- 48. I have found that the proposed development would give rise to some harm to the character and appearance of the area and would conflict with the LP. This factor weighs against allowing the proposed development. The limited amount of public transport in the area also weighs slightly against the development. I also acknowledge that the lack of infrastructure contributions (such as financial contributions towards improvements at Bradway Recreation Ground and Fellowship Hall) may have some limited impact on the provisions of services.
- 49. From the evidence before me, it is unclear what the current shortfall in the Council's five year housing land supply is. However, the provision of 41 additional dwellings, including 16 affordable dwellings, would undoubtedly contribute to the reduction of the deficit. This would also have some social benefits to the area. I also consider that the extensive areas of open space

- around the southern and western parts of the site would greatly assist in blending the development in to the surrounding area and help the transition from a built up village to rural undeveloped land. These are significant benefits of the scheme.
- 50. The dwellings would also provide some economic benefits to the area during the construction process and would have ongoing benefits to the local economy as additional residents would help to support local facilities. The economic benefits are also in favour of the development.
- 51. Taking all of these factors into account given that the area of greenspace around the western and southern parts of the site considerably minimises the impact of the proposal on the surrounding rural area, to my mind, the adverse impacts of the development do not significantly and demonstrably outweigh its benefits. I therefore consider that the development is sustainable development when considering the Framework taken as a whole.

Conditions

- 52. The Officers report to committee detailed a number of conditions which the Council would have imposed had it granted planning permission. I have also had regard to the additional suggested conditions which the Appellant has put forward. I have considered these in light of the Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG, I have amended some of the suggested wording and combined conditions as appropriate.
- 53. Other than the standard time limit condition, it is necessary to ensure that the development is carried out in accordance with the approved plans for the reason of certainty. Although not requested by the Council, in the interests of the character and appearance of the area a condition relating to external materials of the new dwellings is required.
- 54. In the interests of highway safety, conditions are necessary in respect of the construction of the first part of the access from Bendish Lane (including its width, kerb radii and gradient), construction of the footway and pedestrian crossing points, and vehicular visibility splays to the new access road.
- 55. A construction method statement (with traffic management aspects as well) is also necessary to ensure that the construction process does not affect highway safety and the amenity of other road users and local residents. For environmental reasons, conditions which make provision for dealing with potential contaminated land issues are also necessary.
- 56. To ensure that the site has suitable drainage, and does not have undue risk of flooding (including increasing the risk of flooding elsewhere), or give rise to unacceptable pollution, conditions relating to surface water drainage, details of the underground storage tank, pollution risks, a restriction on penetrative foundations and flood risk are required.
- 57. Conditions relating to landscaping and biodiversity, including on-going maintenance and management, are also necessary in the interests of the character and appearance of the area and for environmental reasons.
- 58. Given the possibility of archaeological remains conditions are also required to ensure that any findings are properly recorded. As noted above, in the

- interests of fire safety, a condition requiring fire hydrant(s) is also necessary.
- 59. With the exception of the initial section of the access road, construction method statement, contaminated land, drainage details (including surface water drainage, the underground tank and sewerage pumping station) and archaeological investigations, it is not necessary for any of the suggested conditions to be agreed pre-commencement.
- 60. It is necessary for these matters to be agreed prior to any works commencing as the archaeological and contaminated land investigations relate to matters below ground level and should be resolved before any ground disturbance works occur. In respect of the construction method statement, this needs to be agreed prior to any works so that the development does not create any unacceptable problems during the entire construction period. In respect of the drainage details, the additional details required will invariably involve works at the early stages of the construction process.
- 61. The initial section of access road is required to ensure that there is a safe access and egress to the site for the construction process particular given the proximity of the school on the opposite side of Bendish Lane.
- 62. The Officers report also recommended conditions relating to pedestrian visibility splays on each side of the driveways to the new properties. However, whilst desirable, I consider that this is not necessary to make the development acceptable in planning terms. In respect of the need for a noise assessment to take account all proposed plant this would appear to relate to the plant associated with the pumping station. In this respect I consider that such a condition is not necessary.

Conclusion

63. Taking all matters into consideration I conclude that the appeal should be allowed.

Chris Forrett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans listed in schedule below.
- Prior to the commencement of the construction of the external surfaces of each dwelling details and samples of the materials to be used in its external surfaces shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

- 4) The development hereby permitted shall not commence until the proposed access has been constructed for at least 30 metres from the highway boundary on Bendish Lane.
- 5) Prior to the first occupation of the first dwelling, the footway and pedestrian crossing points shall be completed on each side of the new access road including connections to the adjacent village footways.
- With the exception of the construction of the first 30 metres of the new access road, the development shall not commence until vehicle to vehicle inter-visibility splays of 2.4 metres by 80 metres in both directions has been provided with no obstruction to visibility between 0.6 metres and 2.0 metres above the carriageway level (when taken from the intersection of the centre line of the new road with the edge of the existing carriageway. The visibility splays shall be maintained as such for the life of the development.
- 7) The gradient of the new access from Bendish Lane shall not be steeper than 1 in 20 for the first 15 metres from the edge of the existing carriageway.
- 8) Notwithstanding the submitted details, the access road shall be 5.5 metres wide with a kerb radii of 8.0 metres complete with tactile crossing features (as indicated on drawing number WHI-05-01 revision H).
- 9) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The method statement shall include:
 - i. the number of construction vehicles and the routing of construction traffic;
 - ii. construction and storage compounds (including areas designated for car parking);
 - iii. the siting and details of wheel washing facilities;
 - iv. cable trenches within the public highway that affect traffic movement of existing residents;
 - v. cleaning of the site entrance and the adjacent public highway; and
 - vi. the disposal of surplus materials.

The construction works shall only be carried out in accordance with the approved Plan

- 10) Prior to the commencement of the development a scheme that includes the following components to deal with the risks associated with contamination of the site shall be submitted to and approved, in writing, by the local planning authority. The scheme shall include:
 - i. a preliminary risk assessment which has identified:
 - all previous uses;
 - potential contaminants associated with those uses;
 - a conceptual model of the site indicating sources, pathways and receptors; and
 - potentially unacceptable risks arising from contamination at the site.
 - ii. a site investigation scheme, based on (i) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
 - iii. the results of the site investigation and detailed risk assessment referred to in (ii) and, based on these, an options appraisal and

- remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
- iv. a verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (iii) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The approved scheme shall be implemented in full.

- 11) No dwelling shall be occupied until a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation have been submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.
- 12) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise first agreed in writing with the local planning authority) shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.
- 13) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall only be carried out in accordance with the approved details.
- 14) No development shall take place until a detailed surface water drainage scheme for the site (to include details of safeguarding measures for the proposed ponds during periods of flood) based on the approved FRA and sustainable drainage principles, a detailed assessment of ground water levels, and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall only use infiltration systems where it can be demonstrated that they will not pose a risk to groundwater quality. The drainage strategy should demonstrate the surface water run-off generated up to and including 1 in 100 year + climate change critical storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall include:
 - detailed engineered drawings of the proposed SuDS features including their size, volume, depth and any inlet and outlet features including any connecting pipe runs; and
 - ii. a detailed management plan to include arrangements for the management and maintenance of the approved surface water

drainage scheme, and including a plan identifying the sections of the surface water system to be maintained and arrangements for the ongoing maintenance of the SuDs elements of the surface water system for the lifetime of the development.

The development shall only be implemented, and subsequently maintained, in accordance with the approved scheme.

- 15) Prior to the commencement of development a scheme to install and maintain the underground tank (and associated equipment) shall be submitted to and approved in writing by the local planning authority. The scheme shall include the full structural details of the installation (including details of the excavation works, the tank(s), tank surround and associated pipework and monitoring systems). The approved scheme shall be fully implemented and maintained as such for the life of the development unless alternative measures are first agreed in writing by the local planning authority.
- 16) Prior to the commencement of development a scheme to manage the pollution risks associated with the operations of the proposed sewage pumping station and drainage system shall be submitted to and approved in writing by the local planning authority. The scheme shall include and address the following components:
 - the location and design of groundwater monitoring boreholes comprising of at least one up hydraulic gradient and two down gradient boreholes, one of these to be located down gradient of the sewage pumping station; and
 - ii. the frequency of monitoring and reporting to relevant regulatory authority and the suite of substances that will be tested in each groundwater sample from the site. These boreholes must be constructed in a manner that ensures they do not provide a pathway for contaminants to enter the ground or groundwater from the site surfacing.
- 17) The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment carried out by Fairhurst dated September 2015 reference 109490/0052/R1/4 and the Drainage Statement reference 109490/0052 R5.1 dated April 2016 unless details required by other conditions in this permission supersede the requirements of the Flood Risk Assessment or Drainage Statement. The mitigation measures shall be fully implemented in accordance with a timing/phasing plan which shall be submitted to and approved in writing prior to the first occupation of any part of the development.
- 18) Notwithstanding the submission of the Landscape and Visual Appraisal and Appendix E of that report (drawing no CSa/2631/107G), prior to the first occupation of any part of the development a landscape and ecological design strategy shall be submitted to and approved in writing by the local planning authority, detailing how it is planned to incorporate biodiversity as part of the development and how the habitats within the site boundary will be managed to maintain long term biodiversity objectives. This strategy shall include the following:
 - purpose and conservation objectives for the proposed works;
 - ii. detailed design(s) and/or working method(s) to achieve stated objectives;

- iii. extent and location/area of proposed works on appropriate scale maps and plans;
- iv. the type and source of materials to be used where appropriate, e.g. native species of local provenance;
- v. a timetable for implementation;
- vi. persons responsible for its implementation;
- vii. details of initial aftercare and long-term maintenance; and
- viii. details for monitoring and remedial measures.

The approved strategy shall be implemented in accordance with the approved details.

- 19) Prior to the first occupation of any part of the development, a detailed landscape scheme (to generally accord with drawing no CSa/2631/107G and clearly indicating such details to the rear boundaries of properties in Cresswick and St Marys Chapel, together with any fencing) shall be submitted to and approved in writing by the local planning authority. The scheme shall include an implementation plan for the landscaping works (including the areas of open space). The approved landscaping shall be implemented in accordance with the approved details (including the implementation plan). Any trees or plants which, within a period of 5 years of it planting, die, are removed or become seriously damaged or diseased, shall be replaced during the next planting season with others of similar size and species, unless the local planning authority agrees in writing to vary or dispense with this requirement.
- 20) No dwelling shall be occupied until a scheme for the ongoing maintenance and management of all of the open space has been submitted to and approved in writing by the local planning authority. The scheme shall include provisions to ensure that it is available for public use.
 - The open space shall be managed and maintained in accordance with the approved scheme.
- 21) No development shall take place until a Written Scheme of Investigation has been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions and
 - i. the programme and methodology of site investigation and recording as suggested by the archaeological evaluation;
 - ii. the programme for post investigation assessment;
 - iii. the provision to be made for analysis of the site investigation and recording;
 - iv. the provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - v. the provision to be made for archive deposition of the analysis and records of the site investigation;
 - vi. the nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.
- 22) The development shall be undertaken in accordance with the programme of archaeological works and no dwelling shall be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme as set out in the Written Scheme of Investigation approved under condition 21.

23) No dwelling shall be occupied until a scheme for the provision of fire hydrant(s) within the site has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the first occupation of any dwelling.

SCHEDULE OF APPROVED PLANS

- Location plan;
- Masterplan layout WHI-03-04 H;
- Affordable housing WHI-03-07 G;
- Building heights WHI-03-05 G;
- Residential boundary WHI-03-09 B;
- Extent of residential area WHI-03-08 B;
- Roof plan WHI-04-01 G;
- Boundary Key Plan and Parking WHI-05-01 H;
- Cross Sections A-A, B-B & C-C WHI-27-01 A;
- Pumping Station enclosure plan and elevations WHI-08-01;
- Street Scenes WHI-28-01 A;
- Street scene along Bendish Lane WHI-28-02;
- Type C elevations WHI-10-01 A;
- Type C floor plans WHI-10-02 A;
- Type D1 elevations and floor plans WHI-11-01 A;
- Type D2 elevations and floor plans WHI-12-01 A;
- Type D3 elevations and floor plans WHI-13-01 A;
- Type E elevations and floor plans WHI-14-01 A;
- Type E1 elevations and floor plans WHI-15-01 A;
- Type D4 elevations and floor plans WHI-18-01 A;
- Type K elevations and floor plans WHI-19-01 A;
- Type D6 elevations and floor plans WHI-20-01 A;
- Type F elevations WHI-21-01 B;
- Type F floor plan WHI 21-02 B;
- Type G elevations and floor plans WHI-23-01 A;
- Type H elevations WHI-24-01 A;
- Type H floor plans WHI-24-02 A;
- Garages elevations and plans WHI-25-01 A;
- Refuse and cycle stores elevations and floor plans WHI-25-02 A;
- Boundary treatments WHI-26-01;
- Type L elevations WHI-29-01 B;
- Type L floor plan WHI-29-02 B;
- Type M elevations WHI-30-01 B;
- Type M floor plan WHI-30-02 B;
- Type N elevations WHI-31-01 A;
- Type N floor plan WHI-31-02 A;
- Type P elevations WHI-32-01 A;
- Type P floor plan WHI-32-02 A;
- Type Q elevations WHI-33-01;
- Type Q plans WHI-33-02.



Appendix 2: Approved Layout Plan





Appendix 3: Appeal Decision (APP/X1925/W/16/3164043) 11 May 2017 & Site Location Plan

Appeal Decision

Site visit made on 3 April 2017

by Jonathan Hockley BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government Decision date: 11 May 2017

Appeal Ref: APP/X1925/W/16/3164043 Land south of High Street, Whitwell SG4 8AJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr George Walsh-Waring against the decision of North Hertfordshire District Council.
- The application Ref 15/02020/1, dated 24 July 2015, was refused by notice dated 27 May 2016.
- The development proposed is the erection of up to 45 residential units (Use Class C3) with details of access.

Decision

1. The appeal is dismissed.

Preliminary Matters

- 2. The application was submitted in outline with all matters reserved apart from access. I have dealt with the appeal in the same manner, and have thus treated all plans, apart from those relating to access, as indicative only.
- 3. A revised plan has been submitted concerning the access road for the proposed development. This has been consulted upon as part of a subsequent application for up to 25 homes. The plan does not alter the proposed point of access but changes the internal layout of the road to access the site, which could in any event be altered by any subsequent reserved matters application. When considering that the access point to the site remains the same I do not consider that any party would be prejudiced by my considering this plan as an alternate.

Main Issue

4. The main issue in this case is whether the site is a suitable site for housing, having regard to if the proposal would preserve or enhance the character or appearance of the Whitwell Conservation Area and its effect on the setting of the Grade II listed buildings of Nos 22, 24, and 33 High Street.

Reasons

5. Whitwell is a linear village, primarily based around High Street/Lilley Bottom Road and Horn Hill. The historic core of the village is centred on the High Street, which runs roughly parallel to the Mimram River just to the north. The Whitwell Conservation Area (WCA) is centred on this area of the settlement. The WCA is a linear one and primarily covers the High Street and the buildings

fronting the street, with land to the rear to the north between the street and the river included. The WCA has a dense character along the High Street, with many buildings, including various listed buildings directly fronting the highway, with numerous parked cars along the street adding to this character. Due to this dense character, the WCA is enhanced by the limited landscaping sited along the road. To the north along and around the river the character alters to a more peaceful, pastoral landscape, away from the hustle and bustle of the High Street.

- 6. The appeal site lies to the south of the High Street, and mainly consists of No 33a High Street, some of the garden land of no 33 High Street, including a tennis court, and a large field to the rear of No 33. The land rises steeply from the road edge, and continues to rise towards the rear of the field. This field is tracked on its eastern and southern sides by public footpaths. The WCA boundary follows the rear boundary of No 33a and cuts across the garden land of No 33, excluding the tennis court area and the field. The proposal seeks to construct an access in front of No 33a, demolishing this property and building up to 45 houses on the land to the rear.
- 7. Section 72(1) of the Planning (Listed Building and Conservation Areas Act) 1990 states that special attention must be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. Section 66 (1) of the same act states that, when considering whether to grant planning permission for development which affects the setting of a listed building, special regard should be had to the desirability of preserving this setting.
- 8. Paragraph 132 of the National Planning Policy Framework (the Framework) says when considering the impact of a proposed development on the significance of a designated heritage asset (including conservation areas), great weight should be given to the asset's conservation. Significance can be harmed or lost through alteration or destruction of a heritage asset, or by development within its setting. The Framework defines setting as the surroundings in which the asset is experienced. Elements of setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance, or may be neutral.
- 9. No 33 is a Grade II listed building constructed in the early 18th century according to the listing, heightened to 3 storeys in the early 19th century, and is constructed of painted brick with a tiled roof. The house has two parallel blocks lying roughly north to south, with the northern gables facing towards the road. The property is distinctively set back from the High Street, and is sited higher than the street due to the topography of the area. A 'U' shaped drive serves the property, with accesses at both ends. The western end of the access also serves No 33a, which has a steeply rising drive and parking area. No 33a is a fairly modern red brick 2 storey property which has a neutral effect on the character and appearance of the WCA. A dense range of trees and vegetation largely hides No 33 from the High Street. The special interest of No 33 derives chiefly from its varied architectural form and its setting above and set back from the High Street.
- 10. The Grade II listed buildings of the Old Brewery and the Brew House (Nos 22 & 24 High Street) lie virtually opposite the access to No 33a. Stated in the listing to have previously been one house, the 3 storey property dates from the early 17th century, with substantial alterations dating from the early 18th century and

from around 1800. The slate hipped roof is partially hidden behind a noticeable red brick façade and parapet wall, which also has a moulded cornice sited just below. The 3 storey building has a pleasing symmetrical façade, with the two pedimented entrance doors located between the 3 bayed frontage. An eastern extension is noted as previously being used as a straw plait school. The special interest of the properties arises from their architectural quality, historical features and history and their setting directly on the High Street in the dense centre of the village.

- 11. At present the access to Nos 33a and 33 is reasonably characteristic of a private drive, being fairly low key and informal within the street scape; this impression is considerably aided by the surrounding landscaping, including various trees on both the east and west sides of the access. The access is bordered by brick piers. These piers, and the attached brick wall to the west also contribute to the character of the WCA. The proposed access, in serving some 45 dwellings would necessarily widen this access fairly considerably, removing some 5 tall cypress trees on the west side of the boundary.
- 12. The widened access and its bellmouth would be directly opposite No 22. This would introduce a fairly heavily engineered modern road into the direct setting of Nos 22 and 24, adversely affecting the setting and therefore the significance of these listed buildings. In creating such an access, and by the removal of the treed western verge to the existing informal track, the proposal would also cause harm to the character and appearance of the WCA. The introduction of an access road in such a way at perpendicular to the High Street would also be a new feature in the dense character of the WCA; whilst other roads also join the High Street in the WCA such as Horn Hill and the Valley to the south, these roads are fronted and cornered by houses maintaining the dense pattern of development in the WCA.
- 13. The current informal access slopes up to Nos 33a and 33, with the track having a focal stop in the form of No33a. The proposed access road would be wider than this track, removing No 33a and a brick outbuilding located in front of this property, extending roughly in a straight line to approximately the back of where No 33a currently stands. The road would be a prominent feature, and whilst I note that some of the trees adjacent to the access may need to be removed in any case and landscaping proposals would seek to plant and soften the new verges, such landscaping would take time to establish and would need to allow for visibility splays. The plans also show significant areas of cutting slope that would be required to construct the new road. Such artificial slopes would appear out of place and alien within the historic character of the WCA.
- 14. The setting of No 33 itself would be less affected than that of Nos 22/24, with the new access set off to the side and well hidden behind landscaping. Nevertheless, the widening of the existing informal western access to the property and introduction of the access road would still cause harm to the setting and therefore the significance of No 33. To the rear, the proposed alignment of the access road would retain a significant area of back garden to the heritage asset. The revised plan would increase this area of back garden, and subject to landscaping would cause little harm to the setting of No 33.
- 15. Having regard to the advice in planning practice guidance I consider that the scheme would not reach the high hurdle of substantial harm (as defined in the Framework) to the significance of the heritage assets. However, though less

- than substantial, there would, nevertheless, be real and serious harm which requires clear and convincing justification. Paragraph 134 of the Framework indicates that such harm is to be weighed against the public benefits of the proposal, including securing its optimum viable use.
- 16. The proposal would deliver some 45 dwellings, of which 40% would be affordable housing. There is no dispute between the parties that the Council are unable to demonstrate a 5 year supply of deliverable housing sites, with the deficit being noteworthy at only some 2.2-3.5 years supply. 45 dwellings is not an immaterial number, and would produce fairly significant economic and social benefits in the Council area with an acknowledged substantial lack of housing supply, both in terms of construction of the dwellings, and also in terms of the socio-economic benefits of the new residents of the houses to the village. The 18 proposed affordable housing units would also be a considerable benefit of the scheme. I place significant weight on these benefits. The provision of a village green at the centre of the indicative design is submitted as a public benefit, as well as access routes through the trees to the rear of the sites. However, whilst I acknowledge such benefits, I also consider that they would primarily serve the future residents of the site.
- 17. Such justification is clear; however, I do not consider it is convincing. Whilst noting the need for market and affordable housing in the District area, the proposal would cause serious harm to the WCA and to Nos 22 & 24 High Street, with lesser harm caused to No 33. Less than substantial harm does not equate to a less than substantial objection, and as heritage assets are irreplaceable any harm or loss requires clear and convincing justification. When considering the totality of the harm caused, I consider that the public benefits of the scheme, although significant, do not outweigh the harm caused and as such the proposal would be contrary to paragraphs 132 and 13 4 of the Framework.
- 18. Paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered up to date if the Local Planning Authority cannot demonstrate a five year supply of deliverable housing sites. Furthermore, no development plan policies are listed in the decision notice, and accordingly the development plan in this case is silent. Paragraph 14 of the Framework states that where the development plan is silent or relevant policies are out of date permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, or specific policies in the Framework indicate development should be restricted. Footnote 9 specifically refers to policies relating to designated heritage assets in this context.
- 19. The Council raise concerns over the effect of the development on the character of the countryside when viewed from the Hertfordshire Way. This footpath ascends the Mimram valley on the land to the north of the appeal site, such that from the higher parts of this path the appeal site is reasonably visible. I walked this path as part of my site visit.
- 20. Despite the elevated position of the appeal site, not all the site is visible from this footpath due to the levels of screening, even at my visit which took place in early Spring. However, a large area of green field of the site could be seen from this footpath. The development would inevitably fill a large area of this land with built form, filling more of the horizon visible from the footpath with housing.

- 21. However the site is clearly, even from this distance, bordered by trees on its southern and eastern boundaries such that it is separated and detached physically from the wider areas of more open countryside to the east. Furthermore, the built development would follow a similar building line of that surrounding the 'Bradway' estate to the west. I therefore consider that although the proposal would have a harmful effect on the intrinsic character and beauty of the countryside, such an effect would be minor.
- 22. I have concluded that the proposal would be contrary to the policies in paragraphs 132 and 134 of the Framework, and paragraph 14 therefore indicates that development should be restricted. Consequently it follows that the proposal does not constitute sustainable development for which there is a presumption in favour of within the Framework. The minor harm to the character of the countryside adds weight to my decision.
- 23. I therefore conclude that the site is not suitable for housing, as the proposal would neither preserve nor enhance the character and appearance of the Whitwell Conservation Area and would cause harm to the settings, and therefore the significance of Nos 22 & 24 High Street and No 33 High Street. Such harm would not be outweighed by the public benefits of the scheme. In addition, the proposal would also cause minor harm to the intrinsic character and beauty of the countryside.

Other Matters

- 24. A unilateral undertaking has been submitted concerning the delivery of affordable housing, as well as contributions and details relating to various other subjects, including open space, education and sustainable transport. I have considered the benefits of the proposed affordable housing above, and as I am dismissing the appeal on other grounds I have not considered this matter further.
- 25. I note that the site has previously been proposed in various consultation and option documents as being suitable for housing. However, I also note that the emerging Local Plan, which has been or is, imminently being submitted for examination, proposes to include the site in the Green Belt. I note in this context that the plan has not yet been examined and there remain outstanding objections to the proposed inclusion of the appeal site within the Green Belt, limiting the weight to which I can apply to this matter in line with paragraph 216 of the Framework.

Conclusion

26. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jon Hockley

INSPECTOR

