



Appeal Decision

Inquiry held on 7 December 2011

Site visit made on 7 December 2011

by **David Morgan BA MA MRTPI IHBC**

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

Decision date: 1 February 2012

Appeal Ref: APP/Y3940/A/11/2156351

Land at Slag Lane and Hawkeridge Road, Westbury (Vivash Park)

- 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 David Wilson Homes against the decision of Wiltshire Council.
 - The application Ref W/10/03406/FUL, dated 21 October 2010, was refused by notice dated 4 May 2011.
 - The development proposed is erection of 117 dwellinghouses, public open space and associated landscaping, highways and drainable infrastructure.
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Decision

1. The appeal is allowed and planning permission granted for the erection of 117 dwellinghouses, public open space and associated landscaping, highways and drainable infrastructure at Land at Slag Lane and Hawkeridge Road, Westbury (Vivash Park) in accordance with the terms of the application Ref W/10/03406/FUL, dated 21 October 2010, subject to the conditions set out on the schedule at the end of the decision.

Application for costs

2. At the Inquiry an application for costs was made by David Wilson Homes against Wiltshire Council. This application is the subject of a separate Decision.

Procedural matters

3. The planning application was refused by the Council on the basis that the site was not allocated for housing but designated for light industrial use; additionally there were no material considerations presented of sufficient weight to justify setting aside development plan policy in this regard. However, prior to the scheduled date of the Inquiry the Council received further information in the form of a draft employment land study that no longer identified the site as suitable of industrial use. Following further consideration, the Council withdrew its objections to the proposals and there are no longer any substantive matters at issue between the main parties. However, another party sustained their objection, and these representations form the basis of the main issues set out below.
4. After an agreed period following the Inquiry a signed and dated Section 106 Agreement was submitted by the appellant facilitating the provision of affordable housing, financial contributions to local infrastructure, including education, highway works, public open space and waste and recycling. The provision of an urban park and a contribution towards its future maintenance

are also facilitated; this agreement is considered in the reasoning of the decision below.

Main Issues

5. These are a) whether there is a less than five year housing land supply in the West Wiltshire or Westbury Area justifying the application, b) whether there is adequate affordable housing provision within the proposed development, c) whether there is adequate sport and recreational space provided by the proposals, d) whether the proposed development would compromise the delivery of the proposed T4F Western Distributor Road, e) whether the proposed development would compromise the Regionally Important Geological Site (RIGS) within the site boundary, f) whether the proposals would compromise archaeological remains on the site and g) whether the proposals would compromise the use of the footpath in plot D of the development site.

Reasons

Housing land supply

6. The other party relies on the shift in emphasis in consultation documents relating to the Draft Wiltshire Core Strategy (CS) placing less emphasis on housing growth in Westbury to support a view that there is a five year land supply in the West Wiltshire or Westbury Area. However, this Strategy is yet to go out to full public consultation and is still some substantial way short of formal examination or adoption; as such only limited weight may be afforded its policies. Moreover, whilst there are nuanced differences in the availability of a five year housing land supply between the main parties, these differences are not material, and this issue does not constitute a formal reason for refusal. Other than a reliance on the broad thrust of the draft CS, the other party offers no other detailed evidence or evidence-base for suggesting this position is demonstrably flawed. On this basis, existing development plan policy (WWDP DP3) supporting the development of previously developed land, in conjunction with that same expectation set out in Planning Policy Statement 3 *Housing*, further limit the weight that may be afforded such a counter-assertion.

Affordable housing

7. The other party's concerns over inadequate affordable housing provision appear grounded in the belief that the 29 on-site dwelling provision represents the sum contribution to the scheme. The appellant points out in evidence that the total provision is split 83% on site provision with 17% as an off-site financial contribution properly secured through planning agreement. This arrangement is in full accord with the Council's framework for affordable housing provision and no weight may be afforded the other party view, again unsupported by substantive evidence or reasoned justification.

Sport and recreation

8. As the other party states, land at Vivash Park is identified for grass sport pitches in the Council's Recreation and Leisure Development Plan Document, although the supporting text also refers to the land being suitable for formal and informal recreation. Furthermore, analysis of part C of the site demonstrates that due to its size, topography and proximity to both pond and railway, it is better suited to more informal recreational use. This is the view of the Council's officers, who support the provision of the urban park, to mitigate existing under-provision for such space and to provide for future recreational

need. Conclusively, the greater degree of earth and bedrock movement required to facilitate formal pitches would also seem in direct conflict with the other party's concerns over local geology and archaeology set out below.

Western Distributor Road

9. No substantive technical evidence is put forward by the other party to substantiate the assertion that the proposals would compromise or blight the delivery of the proposed Western Relief Road, part of the funding for which has already been secured through planning consent and an associated Section 106 Agreement. It is asserted that due to a requirement to increase housing numbers on an adjoining site the path of the road will have to be realigned, and as a result the current scheme needs to take account of this consideration. This is a view not shared by the Highway Authority or Planning Officers of the Council. Indeed, further evidence submitted by the appellant demonstrates the appeal proposals can be implemented without compromise to the delivery of the relief road, again, a position unchallenged by detailed evidence from the other party. Moreover, whilst it is clearly desirable that the relief road comes forward, this is dependent on the delivery of development on the adjacent site. The non-delivery of development on the adjacent site though regrettable, cannot, in the circumstances of this appeal, be legitimately applied as a justification for withholding permission in this case.

Regionally Important Geological Site

10. This site, comprising an exposed section of the Westbury Iron Stone Formation, is located below Hawkeridge Road, and comprises an element of part C of the site. This area is allocated as urban park and the layout plans indicate the eastern boundary (the location of the RIGS site) would be planted. Conditions attached to the consent cover earth moving and landscape details and there is no reason why full consideration could not be given to safeguarding this site through their provisions.

Archaeology

11. The other party raises concerns over the adverse impact of the proposed development on the potential archaeological remains relating to site C. It is contended that this area has not been the subject of historical iron working (a conclusion apparently predicated on the trial pit analysis relating to Ground Investigation Study by Hydrock Consultants) so suggesting a good survival of Romano-British remains. The County Historic Environment Record confirms the site lies adjacent to a postulated significant Romano-British settlement, a conclusion supported by finds on adjacent ground. However, site C is the area proposed for the urban park, and works here are going to be less invasive than the other areas of the site. It is on this basis that the County Archaeologist has recommended a programme of archaeological investigation is undertaken prior to any works commencing on site. Such a programme can reasonably be secured through condition. On this basis any threat to identified archaeology could be appropriately mitigated.

Footpath

12. There is no consensus, on the base of the evidence presented, as to whether the footpath crossing plot D is an established public right of way or not. Notwithstanding this point, the safeguarding of access to the strip of land to the south of the arched underpass through the railway embankment could

reasonably be considered through the conditions attached in respect of surface water management relating to this part of the site.

13. A second party raised concerns over the impact of the development on the continued successful management of fishing on the adjacent lake. Whilst the dwellings will clearly be lit at night and so emit some light, the boundary of the site will be landscaped and this planting, in conjunction with the existing and in places extensive cover on Slag Lane, would mitigate any increased light emissions.

Conclusions

14. In light of the withdrawal of their objection to the proposal, the evidence submitted by the Council and in light of the Ministerial Statement *Planning for Growth* published on 23 March 2011, I too find no impediment to allowing the appeal. Whilst all the issues raised by the other party may rightly be considered planning considerations material to the case, none individually or collectively merit sufficient weight to outweigh the benefits of the appeal being allowed.

Conditions

15. The appeal being allowed, conditions are attached requiring the submission of samples of materials, the submission of all earthwork details and details of hard and soft landscaping, all to ensure a satisfactory appearance to the development; conditions are also attached requiring the submission of a Construction Method Statement and a Scheme of Archaeological Investigation, both to safeguard any special archaeological, geological and wildlife on and adjacent to the site; conditions are also attached requiring that a scheme and strategy for the management and discharge of surface and foul water are submitted for approval, to safeguard ground water in the environs of the site and manage surface water run-off; a condition is also attached requiring the submission of a detailed scheme of site investigation and remediation is submitted and approved to ensure the full mitigation of any extant soil contamination; conditions are also attached requiring the submission of details of internal road layouts and the submission of a Traffic Management Plan and the provision of carriageway and path to all dwellings, all to safeguard highway safety and to ensure appropriate access to all dwellings; lastly a condition is attached requiring that the development be carried out in accordance with the approved plans, in the interests of sound planning and for the avoidance of doubt.

Section 106 Agreement

16. The parties have completed a Section 106 Agreement in conjunction with Wiltshire Council which includes a number of obligations to come into effect if planning permission is granted. I have considered these in light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010. They relate to the following matters.

Education

17. West Wiltshire District plan First Alteration 2004 (WWDP) policy S1 makes provision for securing financial contributions towards educational infrastructure. Westbury Infants and Junior Schools and Matrevers Secondary School are all identified as destinations of future appeal site occupants, and all are described as effectively full, with a rising roll forecast. Based on agreed capital building

cost multipliers reflecting increased demand, contributions to primary and secondary school infrastructure totalling £615,000 are sought and facilitated by the Agreement. The increase to future pupil numbers as a result of the proposals would place additional demand on at-capacity institutions. The calibrated contributions to help mitigate this impact set out in the obligation therefore pass the statutory tests of the Regulations.

Highways Contribution

18. The Heads of Terms of the Agreement facilitate off-site highway works including the provision of a mini roundabout at the Slag Lane junction and the redesign and reconfiguration of Slag Lane. A Construction Traffic Management Plan is included, as is a financial contribution of £20,000 to necessary works and Traffic Regulation Orders, calibrated and agreed between the parties. Policy I1 of the WWDP facilitates such infrastructure contributions and the provision of the roundabout and upgrading of Slag Lane are directly related to the proposed development. In broad terms therefore, this obligation passes the statutory tests.

Affordable Housing

19. WWDP policy H2 seeks a minimum of 30% of the units to be social rented housing, with 83% of the 30% being housing for rent on site, with a financial contribution of 17% towards off-site provision. The Agreement provides for 29 such units and for a financial contribution to be made in respect of the remaining 17%. The units are broken down into two groups, 60% 2 bed units and 40% 3 bed units. In accordance with the Council's Supplementary Planning Guidance, *Affordable Housing*, the units are also grouped in small clusters through out the scheme, giving social diversity to the whole. In these circumstances I consider that this obligation would be fairly and reasonably related to the development proposed and that it passes the statutory tests.

Public open space and community park

20. WWDP Policy C41 and policy OS2 of the Council's adopted Leisure and Recreation Development Plan Document that supersedes it support part of the site being utilized for recreational purposes. The relevant obligation seeks to provide a fully equipped and landscaped public open space and community park with a commuted sum contribution for its continued maintenance following its transfer to local authority or other nominated body control, or the establishment of a private management company for its continued maintenance. The proposed open space and urban park would address the shortfall in such provision in the town identified by the Council's District Wide Recreational Needs Assessment (2005), serving local existing housing need and address that created by the proposed development. In these circumstances I consider that this obligation would be fairly and reasonably related to the development proposed and that it passes the statutory tests.

Public art

21. Policy I2 of the WWDP anticipates contributions towards public art. This obligation proposes a sum of £30,000 towards such a scheme. Explicit reference is also made to such provision within the open space area in site B on plan 13048/5000/K and the scope and extent of provisions set out within the Agreement. In these circumstances I consider that this obligation would be fairly and reasonably related to the development proposed and that it passes the statutory tests.

Waste and recycling

22. Policy I1 of the WWDP also makes provision for more generic infrastructure provision and a financial contribution for £13,221 is facilitated in the Obligation. Whilst this sets the policy framework and the contribution will address a demand of the development, it is not clear from the submitted evidence how the contribution is calculated; as such it fails to meet one of the statutory tests of the regulations.
23. In light of these findings, since the obligation for waste and recycling fails to meet one of the tests set out in CIL Regulation 122, I am unable to take it into account in determining the appeal. However, I give significant weight to the obligations for education, affordable housing, public art, highway improvements and for the improvement of local open space and urban park provision to address the current levels of such provision in the town.
24. For the reasons given above, and having considered all matters raised in evidence and at the Inquiry, I conclude that the appeal should be allowed.

David Morgan

Inspector

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) No development shall commence on site until details and samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 3) No development shall commence on site until a scheme for the discharge of surface water from the site and the provision and implementation of surface water run-off limitation has been submitted to and approved in writing by the local planning authority. The scheme shall accord with the strategy set out in the flood risk assessment (21 October) and the supplementary information provided by the Environment Agency. The drainage scheme shall be implemented in accordance with the approved details and a timetable agreed with the Local planning authority.
- 4) No development shall commence until a foul water drainage strategy, including a timetable for its implementation, has been submitted and approved in writing by the local planning authority. The drainage scheme shall be completed in accordance with the approved details and timetable.
- 5) No development shall commence on site (other than that required to be carried out as part of a scheme of site investigation or remediation approved by the Local Planning Authority under this condition), until steps (i) to (iii) below have been fully complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until step (iv) has been complied with in full in relation to that contamination.

Step (i) Site Characterisation:

An updated investigation and risk assessment must be completed to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings submitted to and approved in writing by the Local Planning Authority. The report of the findings must include:

- A survey of the extent, nature and scale of contamination on site;
- The collection and interpretation of relevant information to form a conceptual model of the site, and a preliminary risk assessment of all the likely pollutant linkages;
- If the preliminary risk assessment identifies any potentially significant pollutant linkages a ground investigation shall be carried out, to provide further information on the location, type and concentration of contaminants in the soil and groundwater and other characteristics that can influence the behaviour of the contaminants;
- An assessment of the potential risks to human health, property (existing or proposed and including buildings, crops, livestock, pets, woodland and service lines and pipes), adjoining land, groundwater and surface waters, ecological systems and archaeological sites and ancient monuments;

This must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Land Contamination, CLR 11" and other authoritative guidance.

Step (ii) Submission of Remediation Scheme:

If any unacceptable risks are identified as a result of the investigation and assessment referred to in step (i) above, a detailed remediation scheme to bring the site to a condition suitable for the intended use must be prepared. This should detail the works required to remove any unacceptable risks to human health, buildings and other property and the natural and historical environment, should be submitted to and approved in writing by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, a timetable of works and site management procedures.

Step (iii) Implementation of Approved Remediation Scheme:

The approved remediation scheme under step (ii) must be carried out in accordance with its requirements. The Local Planning Authority must be given at least two weeks written notification of commencement of the remediation scheme works.

Step (iv) Reporting of Unexpected Contamination:

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it should be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment should be undertaken in accordance with the requirements of step (i) above and where remediation is

necessary, a remediation scheme should be prepared in accordance with the requirements of step (ii) and submitted to and approved in writing by the Local Planning Authority.

Step (v) Verification of remedial works:

Following completion of measures identified in the approved remediation scheme a verification report (referred to in PPS23 as a validation report) must be produced. The report should demonstrate the effectiveness of the remedial works.

A statement should also be provided by the developer which is signed by a person who is competent to confirm that the works detailed in the approved scheme have been carried out (The Local Planning Authority can provide a draft Remediation Certificate when the details of the remediation scheme have been approved at stage (ii) above).

The verification report and signed statement shall be submitted to and approved in writing of the Local Planning Authority.

Step (vi) Long Term Monitoring and Maintenance:

If a monitoring and maintenance scheme is required as part of the approved remediation scheme, reports must be prepared and submitted to the Local Planning Authority for approval at the relevant stages in the development process as approved by the Local Planning Authority in the scheme approved pursuant to step (ii) above, until all the remediation objectives in that scheme have been achieved.

All works must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Land Contamination, CLR 11" and other authoritative guidance.

- 6) Prior to the commencement of any development (excluding site investigation and remediation measures), full construction details of all the internal road layouts, generally in accordance with drawing 13048/5000/K, shall be submitted to and approved in writing by the local planning authority, and the internal road layouts shall thereafter be completed in full accordance with the approved details.
- 7) Prior to the commencement of development (excluding site investigation and remediation measures) a construction Traffic Management Plan in relation to the new mini roundabout and improvements to Slag Lane shall be submitted to and approved in writing by the local planning authority and the approved construction Traffic Management Plan shall thereafter be implemented in full accordance with the so approved recommendations.
- 8) The internal road construction shall be completed in such a manner that before it is occupied, each dwelling shall have been provided with a properly consolidated and surfaced footway and carriageway to at least binder course level between the dwelling and the existing public highway.
- 9) No development (excluding site investigation and remediation measures) shall commence on sites A and B respectively until details of all earthworks for that particular site have been submitted to and approved

in writing by the Local Planning Authority. These details shall include existing and proposed site levels, proposed slab levels of new dwellings, proposed grading and mounding of land areas within the site and along boundaries and shall include the levels and contours to be formed, sections where necessary, the nature of the material, and the relationship of proposed mounding to existing and surrounding landform. Development shall be carried out in accordance with the approved details.

- 10) Prior to the commencement of development a Noise Mitigation Scheme in accordance with the recommendations of the submitted Noise and Vibration report dated October 2010 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 prior to the first occupation of the dwellings.
- 11) No development, including the deposition of new soil, shall commence within site C (proposed urban park) until:
 - (a) A written programme of archaeological investigation, which should include on-site work and off-site work such as the analysis, publishing and archiving of the results, has been submitted to and approved by the Local Planning Authority; and
 - (b) The approved programme of archaeological work has been carried out in accordance with the approved details.
- 12) No development shall commence (excluding site investigation and remediation measures) within any part of site C until further details of the scheme of hard and soft landscaping for the proposed urban park have been submitted to and approved in writing by the Local Planning Authority. These details shall include:
 - * a phasing programme for the proposed works
 - * indications of all existing trees and hedgerows on the land and those to be retained;
 - * details of any to be retained, together with measures for their protection in the course of development;
 - * all new planting including species, planting sizes and planting densities, spread of all trees and hedgerows within or overhanging the site, in relation to the proposed buildings, roads, and other works;
 - * existing and finished levels and contours and proposed earthworks and identified on a separate plan;
 - * means of enclosure within, and around the site boundaries;
 - * car park layouts;
 - * other vehicle and pedestrian access and circulation areas;
 - * hard surfacing materials;
 - * minor artefacts and structures including furniture, play and fitness equipment, refuse and other storage units and signs;
 - * retained ecological features and proposed mitigation.
- 13) Prior to the commencement (excluding site investigation and remediation measures) of any development, a Construction Method Statement shall be submitted to and approved in writing by the Local Planning Authority. This

shall incorporate a precautionary method of working for all construction works and phasing in relation to the following:

- * Disturbance avoidance measures to protect waterfowl wintering on Frogmore Lake;
- * Measures to avoid impacts to badgers and their setts;
- * Measures to avoid harm to reptiles;
- * Protection of bats roosting in Hawkeridge Road cave
- * Protection of Regionally Important Geological Site No ST 85.RIGS27

The development shall subsequently be carried out in accordance with the approved method of working.

14) The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans and documents:

- * 13048/1000/B received on 21.10.10
- * 13048/5000/K received on 03.03.11
- * 13048/3600 and 3601 received on 21.10.10
- * 13048/6000, 6001, 6002, 6003, 6004, 6005, 6006, 6007, 6008, 6009, 6010, 6011, 6012, 6013, 6014, 6015, 6016, 6017, 6018 received on 21.10.10
- * CIR.D.0304_01B received on 07.04.11
- * CIR.D.0304_02C received on 07.04.11
- * CIR.D.0304_03 received on 25.10.10
- * CIR.D.0304_04A received on 09.02.11
- * CIR.D.0304_05 received on 09.02.11
- * P9433 G200 rev A and G201 rev A received on 30.12.10
- * Planning Statement received on 21.10.10
- * Design and Access Statement received on 21.10.10
- * Transport Assessment received on 21.10.10
- * Flood Risk Assessment received on 21.10.10
- * Phase 2 Surveys and Ecological Assessment received on 21.10.10, Addendum relating to Reptiles received on 14.01.11 and Addendum relating to Wintering Birds and Great Crested Newts received on 09.02.11
- * Archaeological Assessment received on 21.10.10
- * Noise and Vibration Assessment received on 21.10.10
- * Market Feasibility Report received on 21.10.10
- * Ground Investigation Reports dated May 2006 and June 2006, and letter Report dated September 2010 received on 21.10.10
- * Statement of Community Involvement received on 21.10.10
- * Drawing SK001G and SK005F dated 02.03.11

APPEARANCES

FOR THE APPELLANT:

Mr Richard Phillips QC

Instructed by Mr Neil Bromwich, Osborne Clark,
Solicitors

He called:

Mr Glen Godwin, Dip TP,
MRTPI

Mr John Mullholland

FOR THE LOCAL PLANNING AUTHORITY:

Ms Jacqueline Lean of Counsel

Instructed by Mr Ian Gibson, Solicitor for
Wiltshire Council

She called:

Mr M Wilmott, Area
Development Manager

INTERESTED PERSONS:

Mr Francis Morland

Mr and Mrs Bruce Evans

Documents Submitted at the Inquiry

1. Written Statement – Mr F Morland
2. OS extract map (archaeology) – Mr F Morland
3. Extract for the proceedings of the Wiltshire Geological Society – Mr F Morland
4. Archaeological Report (Hawkridge Pumping Station) – Mr F Morland
5. Signed and dated Statement of Common Ground (SoCG) – Appellant
6. Copy of letter from Barclays Bank (Section 106 Agreement) – Appellant
7. Amendments to SoCG and Mr Godwin's Proof of Evidence – Appellant
8. Amended list of conditions – Council
9. Suggested amendment to conditions (prefix) - Appellant
10. Mr Morland's e mail 7 November 2011 – Mr F Morland
11. Application for full costs – Appellant
12. Rebuttal of costs - Council

