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# Appeal Decision

Inquiry held on 10, 11, 12, 13, 17 and 18 January 2012

Site visit made on 18 January 2012

**by Jessica Graham BA(Hons) PgDipL**

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

**Decision date: 21 February 2012**

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**Appeal Ref: APP/Q4625/A/11/2157515**

**Land known as Moat House Farm, Elmdon Road, Marston Green**

- 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 Persimmon Homes Ltd against the decision of Solihull Metropolitan Borough Council.
  - The application Ref 2011/154, dated 1 February 2011, was refused by notice dated 8 July 2011.
  - The development proposed is the construction of 125 dwellings with associated car parking, access, infrastructure provision and open space.
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## Decision

1. The appeal is allowed and planning permission is granted for the construction of 125 dwellings with associated car parking, access, infrastructure provision and open space on land known as Moat House Farm at Elmdon Road, Marston Green in accordance with the terms of the application, Ref 2011/154, dated 1 February 2011, subject to the conditions set out in the schedule attached as Appendix 1 to this decision.

## Procedural matter

2. At the inquiry, the appellant submitted a duly executed S.106 Undertaking. I discuss its content and implications in the section headed 'Infrastructure' below.

## Main Issues

3. The main issues in this appeal can be summarised as
  - (a) whether residential development of the site is justified at this time;
  - (b) the effect that the proposed development would have upon the character and appearance of the area; and
  - (c) whether the proposal makes adequate provision for mitigating any adverse impact it would have upon local services and infrastructure.

## Reasons

4. Policies H2 and H2/1 of the Solihull Unitary Development Plan (2006) specifically identify twelve sites "to help meet long-term (i.e. post 2011) housing needs". The current appeal site is one of them.

5. National planning guidance set out in the government's Planning Policy Statement (PPS) 3: *Housing* provides that where local planning authorities cannot demonstrate an up-to-date five year supply of deliverable sites, they should consider favourably planning applications for housing.
6. The Council contends that there is an up-to-date five year supply of deliverable housing sites for the district; the appellant asserts that there is not. A useful starting point, then, will be to consider the five year supply position, in order to determine whether the PPS 3 requirement to "consider favourably planning applications for housing" should apply to this proposal.

*The five year supply position*

7. The discrepancy between the main parties' respective calculations as to the five year supply position arises from the different approach each has taken to (i) sites which already have planning permission, (ii) windfall sites, (iii) sites included in the North Solihull Regeneration Business Plan and (iv) sites included in the draft Local Plan.

(i) Sites which already have planning permission

8. It is common ground that there are sites with planning permission for a total of 1,222 dwellings. The Council's position is that while in previous calculations of housing land provision it has applied a discount, to allow for the likelihood that not all of the permissions would be implemented, it no longer believes that approach to be appropriate. Given the current economic climate, I consider the assumption that every one of the 1,222 dwellings will be built is somewhat optimistic. The appellant submitted evidence that local planning authorities generally deliver substantially fewer dwellings than they anticipate in their land supply calculations, such that a sizeable discount might be justified. Predicting the number of planning permissions that will be implemented can never be done with any certainty, but I consider the application of a 10% discount, an approach widely practised when undertaking calculations of this kind, to be fair and reasonable.

(ii) Windfall sites

9. Paragraph 59 of PPS 3 provides that allowances for windfalls should not be included in the first 10 years of land supply unless there is robust evidence of genuine local circumstances that prevent specific sites being identified. The Council advises that there is very little vacant or derelict land across the Borough, and that high land values mean opportunities to re-develop sites currently in active use are continuously sought; it makes the fair point that such sites cannot be identified, because it is not known where they will occur. However, the same is true of most other urban Boroughs. The fact that a good number of windfall sites can and do come forward does not itself preclude other specific sites from being identified, as has been done in the Council's Strategic Land Availability Assessment. The full extent of local circumstances that might justify the inclusion of windfall sites will no doubt be considered in detail at the Examination in Public of the emerging Local Plan, but on the basis of the limited evidence currently before me, I find insufficient justification to include windfall sites in the calculation of the five year housing land supply.

(iii) North Solihull Regeneration Business Plan sites

10. Paragraph 54 of PPS 3 advises that when identifying specific deliverable housing sites, any such sites must be available, suitable and achievable. The Council contends that sites included within the North Solihull Regeneration Business Plan provide deliverable capacity for 498 net additional dwellings. However, the Council did not provide the inquiry with a copy of this document, because some of the sites are sensitive, and the Business Plan is subject to commercial confidentiality. I do not criticise the Council for this, but since the sites cannot be identified their availability, suitability and achievability cannot be established, and so they do not meet the criteria set out in paragraph 54 of PPS 3 for inclusion in the five year housing supply. This was accepted by the Council at the inquiry.

(iv) Draft Local Plan sites

11. The draft Local Plan identifies proposed sites for 1,445 net additional dwellings, and the Council maintains that these should be taken into account when calculating the five year supply position. However, it is important to bear in mind that this emerging Local Plan is still only a draft, which has yet to be the subject of further consultation, representations, and an Examination in Public. Paragraph 54 of PPS 3 explains that to be considered deliverable, sites should be available, suitable and achievable at the point of adoption of the relevant Local Development Document. There can be no guarantee that sites included in the current draft will remain in the finished version of the Local Plan, which in any event will not be adopted before 2013. As the situation stands at present then, I consider that these sites should not be included when calculating the current five year land supply position.

12. Taking all of this into account establishes that the Council is able to demonstrate deliverable housing land supply for 1,352 dwellings.

13. The parties were unable to agree on the appropriate five year housing land provision target. The Council maintains that it is 2,932 net additional dwellings, based on the Regional Strategy (Phase 2) Panel's recommended target. The appellant believes the figure to be considerably higher, and produced a range of calculations to demonstrate how taking account of factors such as the latest published housing projection figures would increase the target number of dwellings. Be that as it may, it is clear that even on the basis of the lowest of the numbers put forward – that is, the Council's preferred figure of 2,932 – there is a significant shortfall in deliverable housing land supply.

14. This means that the requirement to consider planning applications favourably, set out in PPS 3, must apply to this proposal. Paragraph 71 explains that this favourable consideration should have regard to a number of considerations set out at paragraph 69, so the next step is to assess the proposed development against them.

*The paragraph 69 considerations*

15. The considerations set out at paragraph 69 include the need to ensure that the site is suitable for housing, that its development will use the land effectively and efficiently, and that the proposal will achieve a good mix of housing. The Council accepts that the proposed development will meet each of these requirements, and I agree; the proposed number of houses would represent an

efficient use of the site, and provide a range of dwelling types and sizes. I appreciate that many local residents have grave concerns about whether the site is in fact suitable for housing at all. However, this is a question which has been previously addressed by the Council and by other Inspectors, in connection with the designation of the land as potentially able to help meet long-term housing needs, and on the basis of the evidence currently before me I have no reason to depart from their findings.

16. The other considerations to which paragraph 69 requires decision makers to have regard are the need to achieve high-quality design, and the need to ensure that the proposed development accords with the spatial vision for the area and with planning for housing objectives, without undermining wider policy objectives.
17. Achieving high-quality housing is primarily a function of design, as is the effect that the proposed development would have upon the character and appearance of the area, so it will be useful to consider these together.

#### *Design matters*

18. Marston Green is an attractive settlement, with buildings constructed in a variety of different architectural styles over different periods; no single design idiom is predominant. The appeal site is a roughly triangular piece of land to the south-eastern side of this settlement. It contains three large, mature oak trees that are protected by a Tree Preservation Order.
19. The proposed layout would involve incorporating two of these oak trees within a central Green, and the third within a smaller green space to the east. The Green at the heart of the development would act as a focal point for the approach along Somerton Drive, and provide informal play space. It would also contribute to the variations in character achieved by differing treatments of public areas, such as the intimate, shared-surface space in the mews courts and the more formal, urban style of the two main access streets. These variations in layout would provide texture and interest, and reflect the "patchwork" of places that contribute to the character of Marston Green as a whole.
20. The proposed layout would be less spacious, in terms of plot sizes, than some other parts of Marston Green. But that is not to say that it would fail to reflect the character of the area. The housing would be arranged such that dwellings would front on to the street, with the majority of their garden space provided in a more private area to the rear, in keeping with the general pattern of existing development in the surrounding area.
21. Some of the smaller rear gardens would fall short of the 11m recommended in the Council's *Planning Guidelines for Housing Development*, a publication which dates from 1994, and so precedes the emphasis placed by more recent guidance upon making the most efficient use of land. As the *Planning Guidelines* themselves note, advice concerning garden sizes should be flexibly, rather than rigidly, applied; there are many different ways in which to provide a high degree of privacy, amenity and choice. I am satisfied that none of the proposed rear gardens would be so small, or so overlooked, as to compromise in any way the living conditions of future occupiers.
22. I understand the Council's concern that repeating a small number of standard house types, a design approach frequently employed by volume house builders,

can lead to a bland and uninteresting residential development. However, in this case the housing types would be varied to reflect the different character areas, such as the provision of taller, terraced buildings to create a sense of containment around the central play space, and more widely spaced detached dwellings along the eastern boundary to integrate with the adjoining countryside. There would be sufficient variation in form, materials and architectural features to ensure that the street-scenes within the proposed development appeared harmonious, rather than simply monotonous.

23. Concerns were also raised that in areas of the development where parking spaces would be provided in front of the proposed housing, these spaces would not always be aligned directly in front of the dwellings they were intended to serve. I appreciate that parking can sometimes be the cause of heated disputes between neighbours. But in this case, the fact that each space would be allocated to a specific dwelling, rather than utilised on a first-come first-served basis, would assist in the prevention of territorial skirmishes. While there is no accounting for individual temperament, I consider the proposed arrangement unlikely to be so inflammatory as to cause significant problems for future occupiers.
24. The busy west coast mainline railway adjoins the south-western boundary of the site, and presents a significant constraint in terms of the noise and disturbance generated by a high volume of rail traffic. A professional assessment of noise and vibration at the site, carried out by acoustic experts, recommended that dwellings located in this area should be set back at least 16m from the ballast line, to achieve a suitable noise buffer. The proposed layout achieves this, with the design solution at the northern end of the boundary being to orientate the houses so that their rear gardens would back on to a bund with a 2m high fence, providing an environmental buffer. This would reflect the layout of nearby existing houses on Aylesford Drive.
25. The design solution at the southern end of the boundary is different, with the houses orientated to face toward the railway line, but set back behind an intervening street and, in most places, frontage parking areas. This means that a higher degree of privacy, and insulation from noise, can be provided for the rear gardens of these properties.
26. The Council does not dispute that both of these design approaches would provide an adequate standard of living conditions for future occupiers, but has expressed concern that over half of the affordable dwellings provided by the development would be located in parts of the site closest to the railway line, and none would be located along the eastern boundary of the site, where new dwellings would have the benefit of attractive views over the adjoining countryside.
27. That is true, but it does not follow that this must be a socially divisive approach. The affordable dwellings would not be clustered together in one part of the site. Rather, they would be located in a number of different areas; backing on to the existing dwellings of Somerton Drive, adjoining the railway in the southern part of the site, facing one side of the northernmost mews court, and located along either side of Street 4, where there would also be some open market housing backing on to the railway line. Further, there would be no distinction between the elevational treatment of open market and affordable dwellings, such that it would not be possible to tell by looking which was which.

28. In my judgment the proposed development would achieve a satisfactory mix of a range of dwelling types, sizes and tenures, and would thereby accord with the national planning objectives set out in Paragraph 35 of PPS 1: *Delivering Sustainable Development*, which advises that high quality and inclusive design should create well-mixed and integrated developments which avoid segregation.
29. In summary, I find that the development would constitute high-quality housing that would accord with the character and appearance of the area.

*The spatial vision*

30. As noted above, saved policies of the Unitary Development Plan (UDP) specifically identify the appeal site "to help meet long-term (i.e. post 2011) housing needs". We are now in that post 2011 period, so the proposed residential development of this site would not conflict, in principle, with the spatial vision of this component of the adopted Development Plan.
31. The other component of the extant Development Plan, the West Midlands Regional Strategy, places considerable importance on securing the renaissance of urban areas by focusing development within them, to assist in their regeneration. The Council contends that to permit residential development on the appeal site now could discourage redevelopment within regeneration areas, due to the competition it would present. It is not clear to me why this should be so, and the Council advanced no specific evidence to support its assertion. Given that I have identified a clear shortfall in the existing five year supply of housing sites, which would still remain even if the currently proposed houses were provided, it seems to me that there need be no conflict between the development of the appeal site and the re-development of the areas targeted for regeneration; both may make contributions toward addressing the established housing need. The existing under-supply means that the Council's concern about an over-supply of housing encouraging in-migration can, in this context at least, be laid to rest.
32. The Regional Strategy also seeks to stem out-migration, by maximising housing land provision within the conurbations, and preserving the attractive qualities of Solihull's environment in order to encourage mobile and economically active households to remain. I have concluded above that the proposed development would accord with, rather than harm, the character or appearance of the surrounding area, and since it would preserve the attractive qualities of its environment, it would also comply with this aspect of the Regional Strategy.
33. I find that the proposed development would accord with the spatial vision.

*Planning for housing objectives*

34. Policy H2 of the UDP provides that the possible future designation of the appeal site for housing will be determined through subsequent reviews of the UDP. The Council is currently in the process of preparing a new Local Plan which will, when adopted, replace the UDP; the future designation of the appeal site (and the other housing land identified by Policy H2/1 of the UDP) is one of the matters under review.
35. As it is currently drafted, the emerging Local Plan introduces phasing policies, aimed at providing a continuous supply of housing through the plan period,

- which would reserve the provision of housing on the appeal site for the period beyond 2018. The Council is concerned that granting permission for residential development of the site now could prejudice the emerging Local Plan, and undermine its strategic phasing policies.
36. The government's advice in *The Planning System: General Principles*, which functions as a companion guide to PPS 1, explains that in some circumstances it may be justifiable to refuse planning permission on grounds of prematurity. Such circumstances include situations where a Development Plan Document (such as the emerging Local Plan) is being prepared, and to grant permission could prejudice that Plan by predetermining decisions about the phasing of new development which will be addressed by policies within the Plan. The guidance goes on to say that while account can be taken of policies in emerging Plans, the weight to be attached to them will depend on the stage of preparation of the Plan, and the nature of any representations made about the proposed policies. In this case, the emerging Local Plan is still only a draft, and has yet to be the subject of further consultation and representations before being submitted for Examination in Public. At previous stages of its evolution objections were made to its approach to phased housing development, and there are strong indications that this is a matter likely to remain in dispute at the Examination stage.
37. The guidance also advises that to establish prematurity, there would need to be a clear demonstration as to how the grant of permission for the proposed development would prejudice the outcome of the Development Plan process. The Council has expressed concern that the cumulative impact of bringing forward sites intended for the long-term provision of housing would be to undermine the supply of housing in later periods of the plan. But PPS 3 is quite clear about the duty to ensure a continuous five year supply of deliverable sites, and to take appropriate action where such a supply cannot be demonstrated. I can find no policy-based support for the proposition that current housing need should go unmet in order to reserve identified sites for the possible provision of housing in the future. Indeed, I note that the Draft Local Plan includes a policy making specific provision for sites to be brought forward into an earlier phase if housing land supply should fall below five years.
38. Taking all of this into account, I see no reason why granting permission now for the residential development of the appeal site, in the context of my finding that there is an existing shortfall in housing supply, should prejudice the forthcoming Examination of the Council's proposed phasing policies. The need to maintain a continuous five year supply of housing sites is, after all, only one of the many requirements that would need to inform consideration of the appropriate strategic approach to the future provision of housing in the Borough. The early development of one of the sites originally intended for a later plan period need not necessarily undermine the validity of a phased approach to housing provision.
39. I conclude that the proposed development would not conflict with planning for housing objectives.
- Wider policy objectives*
40. The Ministerial Statement on *Planning for Growth*, issued in March 2011, set out the expectation that the answer to development and growth should

wherever possible be “yes”, except where this would compromise the key sustainable development principles set out in national policy.

41. This approach was further developed in the draft National Planning Policy Framework (NPPF), which was published by the government for consultation in July 2011. It sets out a presumption in favour of sustainable development, and advises that local planning authorities should grant permission where the plan is absent, silent, indeterminate or where relevant policies are out of date. That is the situation in the present case; this appeal falls to be determined at a point of transition between the expiry of housing targets in the UDP, the proposed revocation of Regional Strategies, and the Examination in Public of new policies and figures proposed in the emerging Local Plan.
42. The weight to be placed upon the NPPF is of course limited by the fact that it is currently still only a draft. Nevertheless, it emphasises the importance placed by the government on the need for the planning system to do everything it can to deliver sustainable development and help secure a swift return to economic growth.
43. The government’s localism agenda, which seeks to give Councils and communities a greater say in how and to what extent their area will be developed, is also of relevance in this context. The Localism Act 2011 introduced new rights and powers to allow local communities to prepare Neighbourhood Plans, and I understand that Bickenhill Parish Council has already started work on a Neighbourhood Plan, with the eventual aim of having it adopted as part of the Development Plan.
44. Such adoption, however, is as yet a long way off, and while Neighbourhood Planning may make provision for more development than is set out in the adopted Development Plan, current indications are that there would be very limited scope for it to reverse adopted Local Plan policies about the development of identified sites. The present situation is that the Moat House farm site is identified by the adopted UDP as suitable to help meet post-2011 housing need, and identified in the emerging Local Plan as suitable to meet post-2018 housing need.
45. The extent of local opposition to a scheme is not, in itself, a reasonable ground for resisting development, but opposition founded on valid planning reasons certainly can be. Local residents have taken considerable trouble to advise me of a number of material issues and genuine concerns, and while I simply do not have the space to address every single one of them within the text of this decision, I have had careful regard to them all. I consequently find no substance to the contention that granting permission for the proposed development at the present time would deprive local residents of the opportunity to make their views known.
46. I consider that the proposed development would accord with the relevant wider policy objectives.

### *Infrastructure*

47. The appellant has provided a S.106 Undertaking which would, if planning permission were granted and development commenced, secure the provision of the proposed affordable dwellings, and their subsequent retention. It also makes provision for the laying out, and subsequent maintenance, of the areas of open space within the proposed development; for the payment of a financial



contribution of £125,000 towards improvements at Marston Green Infant and Junior School, and for a financial contribution of £99,835 toward enhancing the play and recreation value of Marston Green Park and LNR.

48. Many local residents expressed concern that local schools are already full, but the evidence of the Council is that following discussions between its Resources Directorate and the Head Teachers of Marston Green Infant and Junior Schools, the sum provided by the appellant would represent a reasonable contribution toward the provision of additional teaching space, or alternatively an increase in resource areas, necessary to address the impact of the additional children likely to occupy the proposed development.
49. The arrangements for securing the provision and retention of the proposed affordable housing and on-site open space are clearly directly related to the proposed development, and necessary to make it acceptable in planning terms. I conclude that these aspects of the Undertaking, and the education contribution, accord with the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010.
50. As for the off-site open space contribution of £99,835, I have not been provided with any explanation as to why the Council considers this sum necessary. *The Planning Inspectorate Good Practice Advice Note 16* (available to all on the Planning Portal website) advises that if an Inspector is to assess whether any financial contribution provided through a S.106 deed meets the statutory tests in Regulation 122, evidence will be needed on (among other things) the extent to which existing facilities or infrastructure are able or unable to meet the additional demands that would be placed upon them as a result of the proposed development, and the methodology for calculating any financial contribution considered necessary. In the absence of any such evidence I am unable to ascertain that this provision of the Undertaking would comply with the requirements of Regulation 122, and so I shall not take it into account in reaching my decision on this appeal.
51. The S.106 Undertaking makes no provision for mitigating the impact of the proposed development on healthcare provision within Marston Green, and the Council maintains that this remains a significant and unresolved issue.
52. There is convincing evidence that the existing GP Surgery in Marston Green already has a significant capacity problem, which could not, due to the physical constraints presented by its site, be addressed by extension or expansion at its current location. The evidence of Drs. Sagoo and Syed is that the lack of space in their existing premises is compromising the potential care they could offer their existing patients. It is clear that even without the additional pressure that would arise from occupiers of the proposed new dwellings, there is already an urgent need for the surgery to relocate to larger premises. The evidence of the Solihull Primary Care Trust (PCT) is that it would support a proposal to provide a new surgery as a matter of priority.
53. One of the housing land sites identified in the emerging Local Plan incorporates the provision of a site for the relocation of the GP surgery. There is evidence that the Homes and Communities Agency, as owner of the site, is keen to go ahead with its development.
54. However, I do not share the appellant's somewhat optimistic view that a new surgery on this site could therefore be operational before the currently

proposed dwellings were occupied. As discussed above in the context of the five year housing land supply, the draft status of the emerging Local Plan limits any certainty that can be placed on the deliverability of sites it identifies for housing. Further, it is the GPs, as owners of the existing surgery, not the Council or the PCT, who would need to satisfy themselves that the proposed new site could meet their needs, and who would be responsible for sorting out the necessary funding to acquire and develop it. There is no evidence as to the GPs' views on the suitability of the proposed Chelmsley Lane site, or their intention and ability to fund the relocation of their surgery to that location, never mind any reliable indication of the likely timescales involved.

55. Equally, however, I do not share the Council's somewhat pessimistic view that in the absence of a certain solution to the capacity problem within a guaranteed timescale, the only course of action is to refuse planning permission for the currently proposed development. Beyond facilitating the provision of a site, the planning system cannot be held responsible for the expansion of the existing healthcare infrastructure; that is a matter for the GPs and the PCT. But the planning system can and should be held responsible for providing sufficient quantities of housing. The PCT, in turn, has a statutory duty to provide the population with access to healthcare.
56. I agree with the Council that requesting a financial contribution toward health infrastructure from the appellant, through the mechanism of a S.106 planning obligation, would be inappropriate; since the use to which such a financial contribution would be put is currently unknown, it could not meet the tests of CIL Regulation 122. In any event, advice in Circular 05/2005 *Planning Obligations* explains that while developers may reasonably be expected to pay for infrastructure provision which would not have been necessary but for their development, planning obligations should not be used to resolve existing deficiencies in infrastructure provision.
57. To conclude on the third main issue then, I find that the appellant has done all it reasonably can to make adequate provision for mitigating any adverse impact the proposed development would have upon local services and infrastructure. The S.106 Undertaking addresses the need to provide affordable housing, open space, and a contribution toward education, but as the Council agrees, there is no reasonable means by which the Undertaking might address the impact of the development upon the provision of healthcare.
58. A planning obligation is not the appropriate mechanism through which to resolve the pre-existing shortfall in healthcare capacity, which will need to be addressed in any event. In my judgment, the increased strain that the proposed development would place upon the already pressured healthcare infrastructure in Marston Green is not, of itself, sufficient reason to refuse planning permission outright for the proposed development; rather, it is one of the many material considerations to be weighed in the overall planning balance.

#### *Other matters*

59. Local residents drew my attention to existing parking problems at Marston Green, including the station, village centre, and the streets that would function as access roads in to the development. However, parking provision made within the new development would meet the Council's required standards, and the location of the new dwellings within walking distance of a range of local

facilities and public transport services would mean that future occupiers need not necessarily be reliant on the use of a car. A transport assessment undertaken by professional consultants found that there was capacity within the existing road network for the additional vehicle movements that would be generated by the proposed development, without any adverse impact upon highway safety, or any queuing at junctions. The Highway Authority reviewed the data provided, and agreed with the findings, and so I see no reason to doubt this evidence.

60. Concerns were raised about the capacity of existing drainage and sewerage systems, the likely impact of the proposed development on flooding further along the course of the Lowbrook, and the risk that the appeal site would remain waterlogged. However, the Flood Risk Assessment provided by the appellant sets out measures to provide for the appropriate drainage of foul and surface water, together with storage facilities to attenuate run-off. The Environment Agency and Severn Trent have confirmed that these measures would be satisfactory, and subject to a condition securing their provision prior to occupation of any of the dwellings, I agree with that assessment.
61. The Council's Ecologist has examined the ecological assessment submitted by the appellant, and has confirmed that the proposed development would have no impact on any ecological designations, habitats of nature conservation interest, or any protected species. Similarly, the findings of an archaeological appraisal provided by the appellant have been considered by the Warwickshire County Council Archaeologist, who raises no objection to the proposed development. While I note the concerns expressed by some interested parties, there is no substantive evidence to refute the findings of these professional assessments.
62. Concerns were also raised that to grant permission now for residential development of the appeal site could set an unwelcome precedent for similar proposals on other sites currently scheduled, in the Draft Local Plan, for development in a later phase. It is, however, a well-established principle of the planning system that any proposal for development must be considered on the basis of its own site-specific merits, having regard to the extant development plan, and in the light of all other material considerations. Even if other applications for development were to be prompted by my finding that the Council does not currently have a five year supply of deliverable housing sites, that would not be the end of the matter; future decision makers will still be obliged, as I am, to undertake a careful balancing exercise of all the other relevant considerations.

#### *The balancing exercise*

63. I have already concluded, in the course of my deliberations above, that the proposed development would accord with the character and appearance of the area, and would make every reasonable provision to address the impact it would have upon local services and infrastructure. The remaining main issue - that is, whether residential development of the site is justified at this time - falls to be determined by conducting an overall balancing exercise of the planning considerations.
64. In my judgment the considerations weighing against the proposed development, chief among which is the increased pressure it would place on healthcare infrastructure in Marston Green, are heavily outbalanced by the

combined weight of the considerations that are in its favour. At the forefront of these I place the national policy requirement to consider favourably planning applications for housing where there is less than a five year supply of deliverable sites. The weight of that requirement is undiluted in this case by any conflict with the considerations set out in paragraph 69 of PPS 3. I attach substantial weight too to the fact that this appeal site is specifically identified, in both existing and emerging development plan policies, as having the potential to meet post-2011 housing needs. I also attach some weight to the contribution the scheme would make to the provision of much-needed affordable housing in the Borough.

65. I conclude that there is clear and convincing justification for the proposed development of the appeal site at this time.

### *Conditions*

66. The Council and the appellant produced a list of conditions which they agreed should be imposed if I were to grant planning permission. I have considered these in the light of our discussions at the inquiry, and advice set out in Circular 11/95: *The Use of Conditions in Planning Permissions*, and have made some minor amendments in the interests of clarity.
67. In addition to the standard conditions governing the time limit for commencement of development, and compliance with the approved plans, I agree that it is necessary to impose a condition requiring the Council's prior approval of samples of the external materials, to ensure these are of appropriate quality and appearance. In order to protect the privacy of the occupiers of No. 8 Somerton Drive and Nos. 9 and 11 Farndon Avenue it is necessary to impose a condition requiring the obscure-glazing of facing windows in the proposed development, but I do not consider exceptional circumstances exist such as would justify the Council's suggestion of removing Permitted Development Rights from a number of the proposed new dwellings.
68. As discussed above, a condition is needed to secure the provision of the measures set out in the Flood Risk Assessment prior to the occupation of any of the dwellings. Conditions are also needed to protect retained trees and shrubs during the course of construction works, to require the Council's approval of final details of landscaping works prior to the commencement of development, and to secure the provision of those landscaping works prior to occupation of the dwellings.
69. As discussed at the inquiry, a condition requiring the appellant to provide, and adhere to, a Construction Method Statement is needed to protect the living conditions of residents living near the site. In the interests of highway safety and the reduction in reliance upon private cars, conditions are needed respectively to secure the timely provision of roads, footpaths and visibility splays, and the implementation of the approved Travel Plan. A condition requiring the provision and future retention of the bund and acoustic fence is also important, to protect future occupiers from noise and disturbance.
70. The Council also suggested conditions requiring additional windows in the dwellings at Plots 2 and 70, to improve surveillance, and altering the roof form of the dwelling at Plot 86, to better accord with the appearance of other nearby dwellings. I agree that these are minor amendments to the overall scheme, that can be appropriately addressed by condition.

*Conclusion*

71. For the reasons set out above, I determine that the appeal should be allowed.

*Jessica Graham*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Ms N Sharif, of Counsel

She called  
Mr R P Whitehouse FRICS  
Mr P R Watson BA (Hons)  
DipTP MRTPI

Instructed by Mr P Lloyd Williams, Council Solicitor

Head of Estates, Solihull Primary Care Trust  
Strategic Director for Regeneration and Development, Solihull Metropolitan Borough Council

### FOR THE APPELLANT:

Mr J Cahill, of Queen's Counsel

He called  
Mr M Carr BA (Hons) Dipl.LA  
MA Urban Design MRIBA  
Mr A C Bateman BA (Hons) TP  
MRICS MRTPI MCMi MIOd

Instructed by Pegasus Planning Group Ltd

Managing Director, Pegasus Planning Group Ltd  
Director in charge of Urban Design and Masterplanning, Pegasus Planning Group Ltd

### INTERESTED PERSONS:

Mr R G Cobb BA Econ (Hons) DipTP  
MRTPI

Mr A R Laight

Ms L Poulson

Mr R Smallwood

Mr A Martin

Ms L Green

Mr J Ratheram Browne

Ms L Poulson

Mr J Gardner

On behalf of Bickenhill Parish Council

On behalf of MGRA (Marston Green Residents Association)

On behalf of MGOOD (Marston Green Optimizing Our Development)

Councillor and local resident

Councillor and Planning Committee Member

Chair of Governors

Local resident

Local resident

Local resident

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

- 1 Appellant's list of appearances
- 2 Copy of Appendix 5 to Mr Watson's proof of evidence
- 3 Statement of Common Ground, signed by the Council and the appellant and dated 10 January 2012
- 4 Copy of opening statement on behalf of the appellant, with attached plan and photographs of various residential properties adjoining the railway
- 5 Copy of opening statement on behalf of the Council
- 6 Extracts from the Inspector's report, and the Secretary of State's decision, in respect of linked appeals refs. APP/F1040/A/06/2027908, APP/F1040/A/06/2019435, APP/F1040/A/06/2019434, APP/F1040/A/07/2038653, APP/F1040/A/07/2035346 and APP/F1040/A/06/2028732, submitted by the appellant
- 7 Copies of Statements made by the Rt Hon Grant Shapps MP, dated 17 February 2011, 4 April 2011 and 1 December 2011, submitted by the appellant
- 8 Government publication "Unlocking the Bonus Bulletin", submitted by the appellant
- 9 Government publication "Laying the Foundations: A Housing Strategy for England" submitted by the appellant
- 10 Printed copy of the Marston Green Surgery website, submitted by the appellant
- 11 Copy of appeal decision ref. APP/P1805/A/11/2150938, submitted by the appellant
- 12 Copy of letter dated 11 January 2012 from Bromford Group, submitted by the appellant
- 13 Copy of statement made by Mr Cobb on behalf of Bickenhill Parish Council, with enclosures
- 14 Copy of statement made by Mr Laight on behalf of Marston Green Residents Association, with enclosures
- 15 Photographs submitted by Cllr Smallwood
- 16 Draft list of suggested conditions agreed by the Council and the appellant
- 17 Photographs submitted by Mr Laight
- 18 List of suggested conditions agreed by the Council and the appellant
- 19 Extracts from the Localism Act 2011, with explanatory notes, concerning local finance considerations, submitted by the appellant to assist the Inspector
- 20 S.106 Unilateral Undertaking executed by the appellant
- 21 Copy of closing submissions on behalf of the Council
- 22 Copy of closing submissions on behalf of the appellant

## **APPENDIX 1: SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) Subject to the amendments required by conditions nos. 13, 14 and 15 below, the development hereby permitted shall be carried out in accordance with the following approved plans:
  - P.0582\_06D
  - P.0582\_11J
  - P.0582\_15C
    - (P657) – P.0582\_15C-1
    - (P767) – P.0582\_15C-2
    - (P841) – P.0582\_15C-3
    - (P978) – P.0582\_15C-4
    - (P1194) – P.0582\_15C-5
    - (P1218) – P.0582\_15C-6
    - (P1274) – P.0582\_15C-7
    - (L2) – P.0582\_15C-8
    - (L3) – P.0582\_15C-9
    - (L4) – P.0582\_15C-10
  - (P657) Shared Equity – P.0582\_15C-1
  - (P767) Shared Equity – P.0582\_15C-2
  - P.0582\_17B-1
  - P.0582\_24-1
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Before the first occupation of the dwellings at Plots 1 and 46 hereby permitted, the bathroom windows of those dwellings which face No. 8 Somerton Drive and Nos. 9 and 11 Farndon Avenue shall be obscure-glazed, and rendered non-opening unless the parts of the window that can be opened are more than 1.7m above the floor of the room in which the window is installed. The windows shall thereafter be permanently retained in that condition.
- 5) None of the dwellings hereby permitted shall be occupied until foul and surface water drainage works have been completed in accordance with drawing no. 9114 Fig 6 of the approved Flood Risk Assessment.
- 6) Prior to the commencement of work on site, all existing trees, hedges and large shrubs that are to be retained shall be protected by fencing,



- the type and siting of which shall first have been submitted to and approved in writing by the local planning authority. The protective fencing shall be retained for the duration of the construction works, and the protected areas shall be kept free of all materials, equipment and building activity, and ground levels within them shall not be raised or lowered.
- 7) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (eg. furniture, play equipment, refuse or other storage units, signs, lighting etc); retained historic landscape features and proposals for restoration, where relevant; planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers and densities; and an implementation programme.
  - 8) All hard and soft landscaping works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any of the dwellings hereby permitted, or in accordance with a programme submitted to and agreed in writing by the local planning authority. Any trees which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
  - 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 approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
    - i) the parking of vehicles of site operatives and visitors
    - ii) loading and unloading of plant and materials
    - iii) storage of plant and materials used in constructing the development
    - iv) wheel washing facilities
    - v) permitted hours of work.
  - 10) None of the dwellings hereby permitted shall be occupied until the roads, footpaths and associated visibility splays have been provided in accordance with the approved plans.
  - 11) None of the dwellings hereby permitted shall be occupied until the Travel Plan has been implemented in accordance with the approved details set out in the Travis Baker Ltd Residential Travel Plan dated 30/12/10 Rev A.
  - 12) Before the dwellings hereby permitted on Plots 54 to 69 are first occupied, the bund and acoustic fence shall be erected in accordance with the details shown on the approved plan numbered P.0582\_24-1. The bund and acoustic fence shall thereafter be retained at all times.
  - 13) Notwithstanding the provision of condition no. 2 above, prior to commencement of development of the house hereby permitted on Plot 2, a revised plan amending the elevational detail to provide an additional

bedroom window fronting the open space shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved revision.

- 14) Notwithstanding the provision of condition no. 2 above, prior to commencement of development of the house hereby permitted on Plot 70, a revised plan amending the elevational detail to provide an additional ground floor window shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved revision.
- 15) Notwithstanding the provision of condition no. 2 above, prior to commencement of development of the house hereby permitted on Plot 86, a revised plan amending the roof form shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved revision.