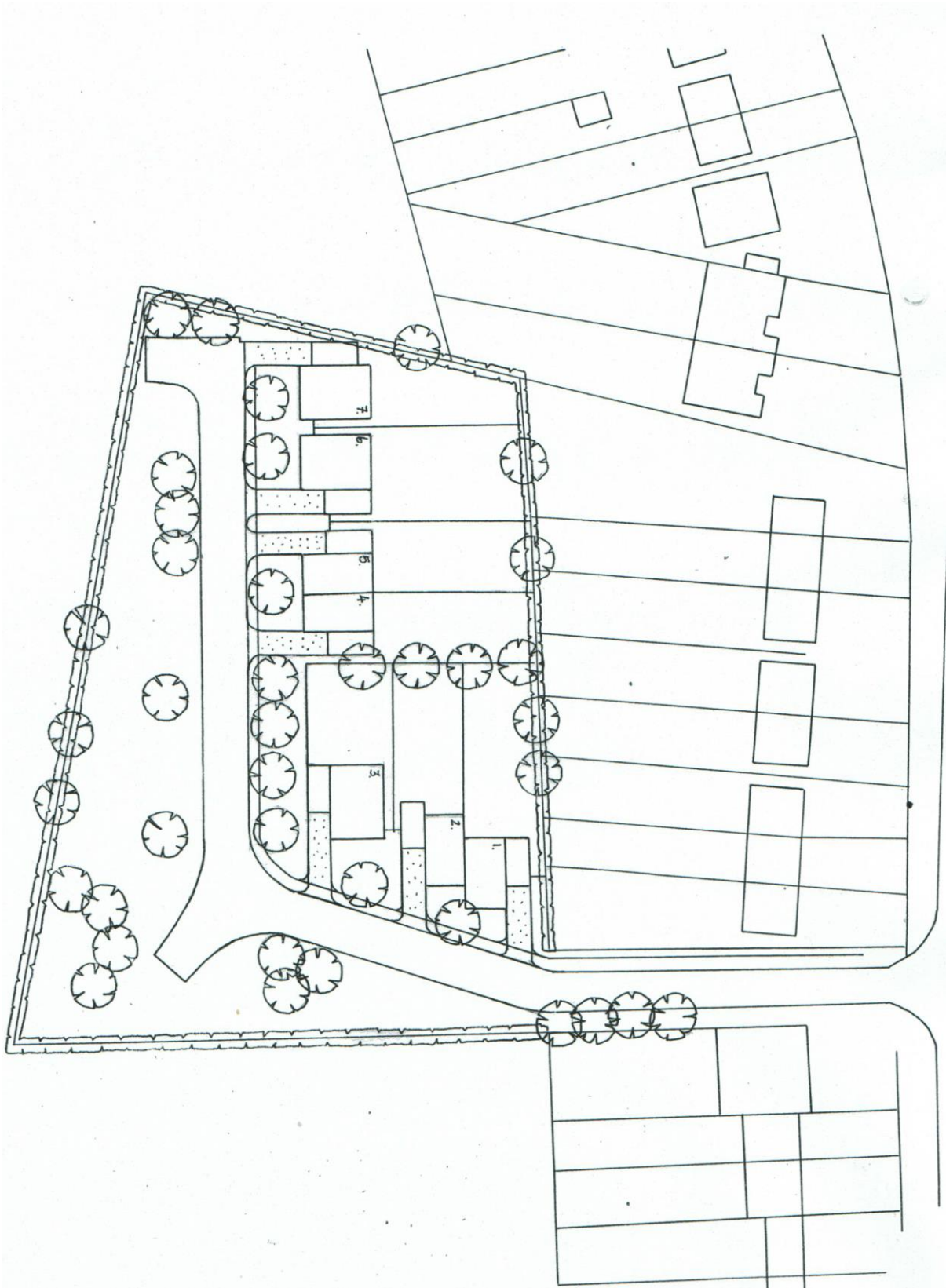




APPENDIX B



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## Appeal Decision

Hearing held on 21 January 2014

Site visit made on 21 January 2014

**by Elaine Benson BA (Hons) Dip TP MRTPI**

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

Decision date: 19 February 2014

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**Appeal Ref: APP/T0355/A/13/2206932**

**Land rear of 99-119 Whyteladyes Lane, Cookham, Berkshire SL6 1RL**

- 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 J A Copas and Mr R W Copas against the decision of the Royal Borough of Windsor and Maidenhead Council.
  - The application Ref 13/00834, dated 23 March 2013, was refused by notice dated 26 June 2013.
  - The development proposed is erection of 23 affordable housing units, together with access, parking and landscaping.
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### Preliminary Matters

1. The application was made in outline with all matters reserved. Drawings were submitted for illustrative purposes only.
2. Prior to the hearing it became apparent that not all persons with a long-term interest in the appeal site had been notified of the proposed development and served with a site ownership certificate. This relates to a part of the site over which the appellants have access rights. With the agreement of the Council the appellants served the appropriate certificate and all necessary procedures were completed before the hearing. I agree with both main parties that no one would be prejudiced by proceeding with the appeal on this basis. Furthermore, evidence was provided which demonstrated that the relevant party had in any event been made aware of the proposals. In response to a query raised at the hearing it was confirmed that it was not necessary to serve notices on the leaseholders of the flats adjacent to the indicative site entrance.
3. The appellants submitted a Preliminary Reptile Appraisal and Precautionary Method Statement to the Council in advance of the hearing. The Appraisal concludes that there is a negligible risk of any reptile impacts arising from the proposed development, even without the proposed mitigation in place. Nonetheless, a mitigation methodology is proposed in the event that slow worms are found to inhabit the appeal site. The Council confirmed that the Appraisal and the implementation of its recommendations would overcome the concerns expressed in Refusal Reason 3, if controlled by condition. There is therefore no requirement to address this matter further.
4. A completed Unilateral Undertaking under Section 106 of the above Act was submitted following the hearing. This is addressed further below.



## **Decision**

5. The appeal is dismissed.

## **Main Issues**

6. The appeal site lies in the Green Belt. There is no dispute between the parties that the proposed development should be regarded as inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and Green Belt policies in the Royal Borough of Windsor and Maidenhead Local Plan (LP). I agree with that position.
7. The main issues therefore are the effect of the proposed development on the purposes of the Green Belt, its openness, its visual amenities and the appearance of the surrounding countryside. The final issue is whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

## **Reasons**

8. The Framework states that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. It continues that the construction of new buildings in the Green Belt should be regarded as inappropriate. A number of exceptions are identified, including the provision of limited affordable housing for local community needs where it accords with development plan policies specifically addressing the situation. However the appellants confirmed at the hearing that their case is not made on this basis. The appeal proposal therefore does not comply with any of the exceptions identified in the Framework or in saved LP Policies GB1 and GB3 which are consistent with it. It therefore constitutes inappropriate development in the Green Belt.

## **Openness and the reasons for including land within the Green Belt**

9. The appeal site is located on the western edge of Cookham Rise. It comprises part of an open grassed field forming part of the appellants' extensive landholding, Lower Mount Farm. A number of open fields lie to the north, west and south of the appeal site. The illustrative plans show the access to the site as the existing access off Whyteladyes Lane. The proposed development would involve building on open land and therefore by definition would result in a loss of Green Belt openness.
10. The purposes of Green Belt policy include checking the unrestricted sprawl of large built-up areas and safeguarding the countryside from encroachment. In this location the Green Belt serves to separate the villages of Cookham Rise and Cookham Dean (2 of the 3 settlements known as the Cookhams) which are settlements excluded from the Green Belt. If the proposal were to be allowed, there would still be a substantial area of Green Belt farmland between the 2 villages. However, the existing well-defined edge of development formed by the housing on Whyteladyes Lane would be significantly breached. This would be to a greater extent than the incursion resulting from the much smaller scale development at the nearby Arthur Close which is discussed further below.
11. Notwithstanding that the width of the remaining gap would be similar to the gaps in a number of other locations identified by the appellants, they are

longstanding and do not justify the proposed development. I conclude that development of the appeal site would constitute an intrusion or encroachment into the countryside by extending the built-up area of Cookham Rise into the existing gap. This would conflict with LP Policy GB2, criterion A).

12. The Framework states that substantial weight should be attached to any harm to the Green Belt. In this appeal the harm by reason of inappropriateness, the loss of openness and encroachment into the countryside attract substantial weight against the proposed development. The conflict with development plan policies GB1, GB3 and GB2 add further weight against the proposal.

### **Visual amenities/Character and appearance of the Green Belt**

13. To the west the field is separated by a mature hedgerow from the wider Lower Mount Farm. This hedge and the shape of the appeal site could in principle provide a new and coherent edge to the settlement. However, the development would be visible from ground which gradually rises towards the west, including from a number of public footpaths. Whilst the layout and appearance of the development are reserved matters at this stage, the dwellings would inevitably be seen against the backdrop of the housing fronting on to Whyteladyes Lane and their back gardens. I conclude that the introduction of built development in this location would cause a moderate degree of harm to the open character and visual amenities of the Green Belt, in conflict with LP Policy GB2 criterion B).
14. Local residents are concerned that local views which were the subject of paintings by Sir Stanley Spencer should be preserved. Their importance is noted in the Draft Cookham Village Design Statement. Whilst there is no doubt about the attractiveness of the surrounding countryside, it has already changed since the date of the paintings, particularly following the construction of the dwellings on Whyteladyes Lane. Nonetheless, as design and layout matters are reserved for later consideration, the visual impact of the proposed development on the identified views cannot now be properly assessed.

### **Other Considerations**

#### **Housing need**

15. The proposal is entirely for affordable housing. Its provision would go some way towards meeting the need for significant levels of affordable housing across the borough identified in the Council's Housing Need Study (2005) and Housing Strategy 2008-2011. In rural areas the need amounted to 185 dwellings per annum. Although the 2005 Study is not area specific, the appellants concluded that a high proportion of this particular need is within the Bisham and Cookham Parish as it is one of the Borough's largest rural settlements in population terms. The more recent Cookham Housing Need Report (commissioned by Cookham Parish Council) identifies a need for 23 affordable homes in the locality. However this report appears to reflect the aspirations of a few people; is based upon a low return of the postal survey and the identified need is not fully qualified.
16. The housing need assessments are Borough wide and the evidence indicates that affordable housing does not necessarily have to be provided in Cookham. The Council's rural exceptions Policy H4 (which I agree with the main parties is not relevant to this appeal proposal as Cookham Rise is not identified in the LP

as a Recognised Settlement) is intended to address rural housing needs, setting out the criteria under which affordable housing would be permitted. Whilst a wider need for affordable housing is accepted by the Council and I consider this need is satisfactorily demonstrated in this appeal, the evidence of the number of dwellings required in Cookham is not convincing. This can therefore be given limited weight.

17. Local residents suggested that there is no requirement for the proposed affordable dwellings, drawing attention to local needs affordable housing that is already provided by Housing Solutions Ltd, a registered social landlord (RSL), some of which remained vacant for some time. In addition, the RSL has recently sold Payton House, a care home which is to be redeveloped for market housing. However, there is no empirical evidence to suggest that the periods of vacancy referred to or the sale of Payton House were due to lack of demand for affordable dwellings in the locality. Accordingly, I have given this factor little weight.
18. The appellants state that the appeal site is available, that affordable housing is deliverable and that the development would meet an identified need. Although the number of units required are, in my view, uncertain, I conclude that the general need for affordable housing attracts significant weight in support of the appeal proposal.

#### **Site availability**

19. In accordance with LP Policy H3 affordable housing is likely to come forward on sites that are greater than 0.5 acres or which result in a net increase of 15 or more units. Smaller schemes could also be developed by a RSL. Against this policy background the appellants assessed sites with the potential to deliver affordable housing in the Cookhams by following a sequential approach.
20. Their assessments were based on the Council's Strategic Housing Land Availability Assessment (SHLAA). Its most recent update in 2011 identifies only 2 potential housing sites in Cookham where planning permission has been sought. The first is land adjacent to Hedsordene, Lower Road where the principle of residential development for 2 units is acceptable. As its size is below the relevant thresholds, it is unlikely that affordable housing would be delivered here. The second site is Payton House, Gorse Road referred to above. Planning permission has been granted for its redevelopment to provide 16 open market dwellings, with no requirement for affordable housing. It is also acknowledged that very high land values in the locality constrain the provision of affordable housing.
21. The only other unconstrained Cookhams site identified in the SHLAA is the Cookham Gas Holder site. It is identified as being capable of delivering up to 40 units and would therefore meet the affordable housing threshold. However, it has been identified as a potential housing site for over a decade. Despite a development brief being adopted in 2003 it remains partly operational and significant capital costs would be required to make the site suitable for housing. Whilst there is no evidence to suggest that it would come forward in the short term, nor are there reasons to doubt that it can reasonably be considered as a potential housing site. However this site is not deliverable in accordance with the terms of the Framework. As the SHLAA notes, its potential is to be clarified.



22. The SHLAA identifies a further 8 potentially deliverable small sites. They too are likely to be below the affordable housing threshold. In addition, 3 are within Flood Zones 2 and 3 and for this reason are considered unlikely to be sequentially preferable in accordance with the Framework.
23. On the basis of these assessments, the appellants consider that the need for affordable housing would not be met on sites in the Cookhams which lie outside the Green Belt; that affordable housing can only be delivered through development in the Green Belt and that there are no alternative available sites. As the villages are bordered by the Green Belt the appellants conclude that almost any site would be subject to the same or similar constraints as the appeal site. Their evidence regarding potential housing sites in the identified Green Belt areas, conservation areas and on flood plains and their comparative assessments of the development potential of those sites are persuasive. Furthermore, the Council's representative indicated at the hearing that he would not necessarily disagree with the appellants' conclusions about the identified alternative sites.
24. Cookham Parish Council wrote to the appellants in July 2011 enquiring whether they had land available for affordable housing. The emerging Local Plan also identifies the appeal site and the remainder of the field as a potential area for future housing development. The case made for development of the appeal site in the Edge of Settlement Analysis (the Analysis) is consistent with the appellants' case. They consider that this evidence indicates that the only available option which would meet the affordable housing need in full is the release of land in the Green Belt and in particular the appeal site.
25. However, the Analysis and the 'preferred options' proposals are subject to change as part of the consultation process. They are at an early stage in the development plan processes and can therefore be given little weight in this decision. The Council does not dispute the conclusions reached about the supply of affordable housing land, and there are no justifiable reasons to disagree.
26. The lack of availability of alternative sites and the fact that such sites will, in all probability, need to be provided in the Green Belt provide significant weight in favour of the appeal.

#### **Other Matters**

27. I have considered the background of the nearby Arthur Close development which the appellants refer to. In 2006 planning permission was granted on appeal<sup>1</sup> for the construction of 4 flats and 4 houses although the site is located within the Green Belt. The Inspector concluded that the need for affordable housing in Cookham Rise was sufficient to outweigh the harm by reason of inappropriateness.
28. In reaching this conclusion he stated that the proposals met the tests set out in the superseded Planning Policy Guidance Note 3: Housing (PPG3) in respect of the provision of affordable housing for a small rural community for which there was an identified need. Specifically, he notes in paragraph 23 of that decision that "it is clear from the advice in PPG3 that the fact that the land is Green Belt does not exclude it from being suitable as a rural exception site". These

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<sup>1</sup> APP/T0355/A/05/1187660

factors, along with the site's status as previously developed land amounted to the very special circumstances he identified. This decision significantly predates the publication of the Framework and the national planning policy context which applied at that time is materially different to that which applies today. Accordingly, limited weight can be given to this example.

29. A completed Unilateral Undertaking (the Undertaking) was submitted following the close of the hearing. It provides for affordable housing to be secured in perpetuity and for contributions towards infrastructure requirements to be made. Sufficient evidence was provided with the appeal to justify these payments, including the requirements of the Council's Adopted LP Policies and its Supplementary Planning Document 'Planning Obligations and Developer Contributions' and the Council identified where the monies sought would be spent. The requirements of Regulation 122 of the Community Infrastructure Levy and of Paragraph 204 of the Framework are satisfied as the obligation is necessary to make the development acceptable in planning terms; it is directly related to the development; and, is fairly and reasonably related in scale and kind to the development. The Undertaking's infrastructure provisions address the Council's 4<sup>th</sup> Reason for Refusal and had the appeal been allowed, the Undertaking would have been necessary in order to allow the development to proceed.
30. The concerns of local residents about the effect of additional housing on local infrastructure would be addressed by these provisions. Conditions could have been attached to address other concerns had the scheme been otherwise acceptable, including those requiring consultation with statutory undertakers. Access is available to the appeal site from the road and the site is well related to local services and facilities. In this regard the scheme would be sustainably located. However, this is not a matter which weighs in favour of the proposal it merely adds no further harm against. I have considered all other matters raised, including the passage of a gas main across the site which could have been addressed at reserved matters stage.

### **Conclusion**

31. I have concluded that the development would cause substantial harm due to its inappropriateness, the harm caused to openness and to one of the purposes of including land in the Green Belt. The conflict with development plan policies adds further weight against the development. Further moderate harm against the proposal would be caused by its impact on the character of the area and the visual amenities of the Green Belt.
32. On the other hand significant weight is given in favour of the proposal due to the need for affordable housing. Some further weight is given to the lack of available alternative sites and the fact that other sites are also likely to be in the Green Belt.
33. However, the Government have made it clear in their Ministerial Statement of 1<sup>st</sup> July 2013 that unmet demand for housing is unlikely to outweigh the harm to the Green Belt and other harm so as to constitute the very special circumstances justifying inappropriate development in the Green Belt.
34. Having balanced all the material considerations in this case, it is my judgement that the considerations in favour of the development are insufficient to amount to the very special circumstances necessary to clearly outweigh the substantial



harm caused by inappropriate development in the Green Belt and the other harms I have identified. Very special circumstances to justify the development have not been demonstrated and the appeal should therefore be dismissed.

*Elaine Benson*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANTS:

Mr J Collinge	Planning consultant
Mr G Copas	Appellant
Mr J Copas	Appellant's son

### FOR THE LOCAL PLANNING AUTHORITY:

Mr P Carey	Principal Planning Officer, Royal Borough of Windsor and Maidenhead Council
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### INTERESTED PERSONS:

Mr T Denniford FRICS	Chairman, The Cookham Society
Councillor Mrs F Hewer	Cookham Parish Councillor
Mrs J Rotbart	Local resident
Mrs J Keene	Local resident
Mrs N Hayes	Local resident
Mr L Roberts	Local resident
Mr R Scarfe	Local resident and Member of The Cookham Society

## **DOCUMENTS**

- 1 a) Borough Local Plan: Preferred Options Consultation (Jan 2014) & b) Extract - Chapter 7 Housing
- 2 Draft Section 106 Agreement.
- 3 a) Edge of Settlement Analysis & b) Extract – Cookham Rise – Area west of Whyteladyes Lane
- 4 Letter from National Grid to The Cookham Society
- 5 Design Statement Annex B Relevant Stanley Spencer Paintings
- 6 Completed S106 Agreement submitted after the Hearing