Appeal Decision

Inquiry opened on 25 March 2003

by A D Robinson BA(Hons) DipTP MRTPI

an Inspector appointed by the First Secretary of State

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Date
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Appeal Ref: APP/X0360/A/03/1108315
Land at Former Sewage Works, Marsh Farm, Lower Earley, Wokingham, Berkshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by St James Group Ltd. against Wokingham District Council.
- The application (Ref. F2002/6579), is dated 9 May 2002.
- The development proposed is the development of 149 residential units, formation of new access, associated landscaping and open space.

Summary of Decision: The appeal is allowed and planning permission granted subject to conditions set out in the Formal Decision below.

Procedural Matters

1. The inquiry sat on 25, 26 and 27 March in the Council Offices in Wokingham. An accompanied inspection of the site and its surroundings took place in the late afternoon of 27 March. The inspection took in, amongst other things, the car parks at the Showcase Cinema just off the junction of Lower Earley Way with Reading Road (A329) and the Moat House Hotel near Sindlesham. Local residents attending the inquiry expressively requested me to look at both sites, which lie within the floodplain of the River Loddon.

2. At the inquiry, the appellant made an application for costs against the Council. This application is the subject of a separate Decision.

3. During the course of the Council's consideration of the planning application, the proposed development was significantly revised and this resulted in amended drawings being submitted in November 2002 to reflect the reasons of refusal that the Council had put forward on an identical application on this site. The revision in the proposal also resulted in a series amended documents being submitted. These covered design, transport assessment, flood risk assessment, acoustic assessment, surface water drainage, contamination investigation and remediation proposals and a bat and newt survey. As a result of minor amendments being subsequently made to the internal layout of the scheme, further revisions were made in January 2003 to two drawings: the master plan for the development and site elevations. Full details of the revised drawings and reports that comprise the proposal now before me are set out on pages 2 to 4 of the Statement of Common Ground.

The Main Issues

4. I take the view that there are three main issues in this appeal:

   (i) The effect of the proposal on the character and appearance of the area;

   (ii) Whether the proposed development would give rise to unacceptable risk of flooding; and

(iii) The ability of the services, amenities and infrastructure of the area to satisfactorily accommodate the proposed development.

The Planning Policy Framework

5. Local policy is provided the Berkshire Structure Plan adopted in November 1995 and the Loddon Area Local Plan adopted in August 1995. Although these form a part of the statutory development plan, the appellant makes the point that these Plans have now been overtaken by events, a claim that the Council has not sought to dispute. The Local Plan made housing provisions only up to March 1996, while both the Local Plan and the Structure Plan were written long before the advent of current national planning guidance, especially that on housing. Nevertheless, the Structure Plan is pertinent to the consideration of this appeal in one particular regard, that of setting the level of new housing to be provided within the District up to March 2006.

6. In the absence of an up to date development plan, the appellant and the Council rely on the emerging Wokingham District Local Plan. Although this has not yet been formally adopted, the emerging Local Plan has reached an advanced stage. An Inspector's report has been received following an inquiry into objections and the Council has published modifications that it proposes to make to the Local Plan. Given its advanced stage, I am of the view that the Local Plan should be accorded considerable weight. The fact that the emerging Local Plan now takes into account current national planning consideration on housing adds, in my view, to the importance of the emerging Local Plan.

7. The Council's proposed modifications reflect the Local Plan Inspector's recommendations. As they appeared in January 2003, the modifications identify the northern part of the site, an area of 3.4 hectares, for some 150 dwellings at a density of 44 dwellings per hectare. The identification of the housing element of the site is under Policy WH2, which is concerned with bringing forward housing sites as a matter of priority to meet the Council's strategic housing requirement. The proposed modifications also identify a buffer of at least 120 metres in the southern part of the site between the residential development and Lower Earley Way. With the exception of a relocated pumping station, it is intended that the buffer is to include only public open space under Policy WR4 and a Greenway under Policy WR6.

8. The relevant national planning guidance includes PPG3 "Housing". This seeks the use of previously developed sites in urban areas in preference to using greenfield sites. It also stresses the importance of developing sites in locations where jobs, services and facilities are accessible by alternatives means of transport to the car and emphasises the need to make full and effective use of sites. Also relevant are PPG13 "Transport", which underlines the importance of locating development where there are alternative ways of travel to the car, and PPG25 "Development and Flood Risk", which stresses the importance of developers carrying out risk assessments on a site by site basis. PPG25 also emphasises the lead role played by the Environment Agency in, amongst other things, providing advice on individual planning applications.

Inspector's Reasoning

Effect on Character and Appearance of the Area

9. The site lies on the southern edge of Lower Earley, a residential area to the south-east of Reading that has seen substantial development from about the 1970s onwards. The site comprises an area of about 6.1 hectares that was occupied by a sewage treatment works. This was demolished in the 1980s with materials from the demolished buildings and structures being used to infill the treatment works. The result is that drainage and soil cover is poor with little to encourage the revegetation of the site to a natural state. For the most part, the site is covered with thin, low growing scrub.

10. Access to the site is currently from Hornbeam Drive, a residential cul-de-sac to the north. From Hornbeam Drive a track leads to a small pumping station in the centre of the site. The other feature of note is a small open lagoon along the southern boundary of the site. This serves as an overflow facility for the pumping station at times of high flows in the sewerage system.

11. The northern boundary of the site adjoins a housing estate, while the southern boundary is to Lower Earley way, the B3270, which connects the residential areas of Lower Earley to the A329(M) and M4 motorways. A belt of young trees marks the southern boundary of the site. A well established hedgerow containing a number of mature oak trees marks the western boundary of the site. Beyond the hedgerow is an area of open space. A less well established and somewhat gappy hedgerow is along the eastern edge of the site. Beyond this lies an area of informal open space, which contains a number of individual trees, groups of trees and shrubs. This area lies within the floodplain of the River Loddon.

12. There is no disagreement between the appellant and the Council as to the principle of what use the site should be put to, the northern part for housing and the southern part for public open space. Nor is there any disagreement that the proposed development is consistent with most of the pertinent requirements of the emerging Local Plan. These include Policies WH6 in respect of variety of housing, WH7 regarding the provision of affordable housing, WR4 concerned with increasing the provision of open space, WR6 dealing with the provision of Greenways in Lower Earley and WR7 in respect of making open space available in residential development. The dispute centres around the overstepping by the proposed development of the line identified in the Local Plan Inspector's report and again in the Council's proposed modifications as marking where housing should end and the open space should begin. This line is identified in both documents as being 120 metres from Lower Earley Way.

13. I recognise that whatever line is finally put into place will, in effect, mark the settlement limit of Lower Earley and the beginning of the countryside where the restrictive policies contained in the Structure Plan and the emerging Local Plan towards development would apply. It seems to me that one of the main considerations in setting the boundary at 120 metres is to ensure that the residential development on the northern part of the site is well screened from Lower Earley Way. This would lead to Lower Earley Way being placed within a rural setting, comprising the landscaped buffer zone of the site, and the adjacent expanses of open space, to the north and the meadows along the River Loddon to the south. The line also seeks to prevent the visual and physical encroachment of Lower Earley into the Loddon Valley.

14. The Council makes much of the line being recommended by the Local Plan Inspector, but the recommendation reflects what was being put forward at the time of the Local Plan inquiry. No alternative positions or alignments of the line were suggested to the inquiry. I share the appellant's view that it is legitimate for individual planning applications to suggest alternatives to the line set out in the Local Plan Inspector's report. The acceptability of any alternative depends, in my view, on the objectives for the buffer zone not being prejudiced and there being benefits to an alternative position or alignment of the line.

15. The first thing to say about the line recommended by the Local Plan Inspector is that it is not a reflection of any feature on the ground. It does not follow any topographical feature such as a sharp break of slope, nor does it reflect any physical elements such as a line of mature trees or well established hedgerow. Another thing to say about the line is that it does not follow any distinct line along Lower Earley Way. The reality is that there is considerable variation in width of the buffer zone that has already been provided along the road. The open spaces immediately to the west and east of the site provide a much wider separation between the road and the closest housing than the emerging Local Plan envisages for the site. Further to the west, the buffer zone narrows considerably and at one point, beyond Meldreth Way, almost disappears. To the east and close to the junction of Rushey Way with Lower Earley Way, the buffer zone is again significantly narrower than that envisaged for the site.

16. Over much of the middle of the site, the proposed development oversteps the line by about 13 metres. However, the development would be pulled back significantly from the line at its western and eastern ends. To my mind, the variation in the line of the development would make for more visual interest than a straight line. The set back of the western and eastern corners would also have a benefit in terms of visual impact. The pulling back of the dwellings at these corners would reduce the visual impact of the development when viewed obliquely from the adjoining area of open space and also the longer view from where Paddick Drive joins Lower Earley Way to the south-west. This is a significant advantage over a scheme taking development up to the straight line suggested by the Local Plan Inspector and in the Council's proposed modifications.

17. The overstepping of the line in the middle of the site would not, in my assessment, compromise the laudable objective of ensuring that development in the northern portion of the site is well screened from Lower Earley Way. The development that would overstep the line recommended by the Local Plan Inspector would still be in excess of 105 metres away from the edge of the road. When seen from the road, the difference in visual impact of the nearest dwellings in the proposed development and those keeping to the 120 metre line would be barely discernible. I recognise that the buffer zone would be slightly reduced. I also accept that it would have to accommodate a new pumping station and an underground system for storing the surplus flow from the sewerage system in time of storm. Nevertheless, there would still exist, in my view, ample opportunity for thickening the existing planting along the edge of the site to provide, when established, an effective screening of the development.

18. The Council makes much of the access from Lower Earley Way providing a view of the development. The Council makes the point that the Local Plan Inspector rejected access being taken from the road, partly because of views that would be obtained of the development through the gap in the roadside planting brought about by the construction of the new road. However, I concur with the appellant's assessment that placing a kink in the

access road would go some way to reducing views straight into the development. Of more importance would be the appellant's proposal to thicken the planting to the rear of the existing belt of trees on both sides of the access road. This would significantly narrow the field of vision from Lower Earley Way. Cumulatively, these measures together with the distance of the nearest properties from Lower Earley Way would ensure that opportunities for views of the these dwellings through the roadside gap would be limited and the impacts insignificant.

19. The Council makes much of the clearance of roadside vegetation to create the necessary visibility splays at the new access, but much of this clearance would involve the removal of the brambles and scrub that has been allowed to proliferate in the ditch alongside Lower Earley Way. Very few of the trees within the site are likely to be removed to provide visibility.

20. The Council also emphasises the impact of the so called "wall" of development that would overstep the line identified by the on-going Local Plan process. To call this part of the development a wall is to exaggerate. The dwellings and garages would be separated by gardens. The landscape strategy indicates that trees would be planted in front of the dwellings in the northern part of the buffer zone. In time, trees are also likely to be planted in the gardens. The gaps between the properties and the likely planting would mean that this part of the project would not resemble a continuous wall of development. The impact of this part of the scheme from Lower Earley Way has already been discussed. In my assessment, views of it are likely to be limited and its impact insignificant because of the width of the buffer zone and the proposed planting within it.

21. The limited impact of the development has to be set against other considerations. It is clear from the agreed housing land availability figures that, without urgent action, the District looks likely to fall seriously short of its strategic housing requirement for the period up to 2006. The Council maintains that it has addressed the problem by identifying various priority housing sites, including the appeal site, which can be developed by then. The Council claims that the development could be built by 2006 if the appellant stuck to the settlement line identified through the Local Plan process and submitted an amended scheme that respects this line. This is to miss the point. In terms of the proposed change to the position of the line there is no demonstrable harm. Indeed, there are advantages in moving the line in the manner proposed. Granting planning permission now would reduce the barriers to the development getting off the ground and being completed by 2006.

22. The appellant's scheme also satisfies many of the Government's objectives for the provision of new housing. It uses previously developed land. It is in a location that is accessible to schools, services and local facilities by means of transport other than the car. It is of a density that makes full and efficient use of the site. It provides a variety of dwelling sizes and it makes an appropriate contribution to the supply of affordable housing within the District.

23. A number of local residents express reservations about the design of the development. They are particularly concerned about the inclusion within the development of three storey properties and the level of parking provision being made within the site. The reservations expressed by local residents are understandable. The scheme being put forward is of a very different nature to the development that characterises much of the development that has taken place in Lower Earley over the last twenty or thirty years. However, the development

that has taken place in the area is very much a product of its time both in terms of design, density and residential road layout. The approach taken in Lower Earley in previous years is no longer appropriate. To my mind, the proposal is an imaginative way of delivering higher densities and providing a development that is capable of producing a real sense of community. The level of parking provision is consistent with current national planning guidance, which seeks to limit parking opportunities as a way of encouraging travel by alternative means of travel to the car.

24. I conclude on this issue, therefore, that the proposal would not adversely affect the character and appearance of the area. While the development would not strictly accord with all aspects of the emerging Local Plan, namely, in respect of the maintaining the buffer zone being put forward in the Council's proposed modifications that it intends to adopt, it achieves the Local Plan's objectives of screening the proposed development from Lower Earley Way. The line of the development now being put forward has a number of advantages, being more imaginative than that suggested by the Local Plan and reduces the impact of the western and eastern corners of the development where it can be seen obliquely from the adjacent areas of open space. The development also has other benefits, including bringing forward housing to meet a severe shortfall in the amount of housing land that is available and a scheme that satisfies wider sustainability objectives.

Risk of Flooding

25. The prevailing concern of the local residents is that the development would increase the risk of flooding in the area. A number of local residents produced copies of maps appearing on the Environment Agency's web site and which appear to show much of the site lying within the indicative floodplain as defined by the 1968 flood, the worst historic flood event in the locality. However, the Agency confirms that although the indicative floodplain map represents the best information available, it does not take into account ground levels on the site or detailed flood levels on the site. Accordingly, the Agency has recommended that a detailed flood risk assessment be carried out. This recommendation accords with national planning guidance in PPG25.

26. The appellant's assessment looks at observed levels from the 1968 flood, a 1 in 50 year event. A detailed topographical survey of the site was also carried out. The survey shows that levels across much of the site have been raised above the level of the 1968 flood. The assessment concludes that a single site level of 39.82 metres AOD would be an appropriate estimate for a 1 in 100 year flood. This places much of the proposed development outside of the indicative floodplain. However, this is not the end of the matter. PPG25 suggests that an assessment should go one step further and take account of the potential impact of climate change. After discussion with the Agency, an allowance for climate change would result in a flood level of 39.97 metres AOD.

27. It is proposed that plot levels in the development are to be raised above 39.97 metres AOD. Thus, there would be no risk to the development from a 1 in 100 year flood even after an allowance is made for climate change. The achievement of plot levels above 39.97 metres would require some raising of levels within the 1 in 100 year floodplain. To allow for this, a flood compensation scheme has been agreed with the Agency whereby the lower lying south-eastern part of the site will be lowered further to provide for full level for level floodplain compensation.

28. The minimum proposed floor levels of the buildings would be 40.42 metres AOD, which would be above the 1 in 200 year flood after allowing for climate change. The proposed development is thus sustainable in flood risk terms, providing protection from flooding up to a 1 in 200 year standard and providing additional floodplain storage so that flood risk would not be increased elsewhere. Such a level of protection meets the requirements of the insurance industry.

29. Local residents and others submitted photographs showing the area of open space to the east flooded in recent years. However, it cannot be assumed from these photographs that the same holds true of the site. The adjacent open space is at a significantly lower level than the site. Local residents also make much of the flooding that has taken place in recent years in the car parks of the Showcase Cinema and the Moat House Hotel. Local residents claim that this casts doubt on the judgement of the Environment Agency. However, both car parks are close to the banks of the River Loddon and well within the floodplain. In such cases, there is a requirement for the flood capacity to be retained. This is why they flood from time to time. If they were raised above flood levels, this would have the effect of increasing the risk of flooding elsewhere.

30. The Council expresses specific concern about that there was little detail in the planning application to demonstrate that surface water from the site could be adequately drained. The site discharges via a culvert underneath Lower Earley Way to ditches to the south of the road. The Council's concern revolves around conditions where the outfall is below flood level, preventing the discharge of stormwater from the site. This could lead to stormwater backing up, resulting in flooding on the site and possibly beyond. However, further details submitted by the appellant has led the Council to conclude that the use of a hydrobrake as suggested by the appellant to control the rate of discharge would ensure the satisfactory drainage of surface water from the development.

31. I conclude that the development does not give rise to an unacceptable risk of flooding. The raising of plot and building levels provides a high degree of protection from flooding, while the lowering of part of the site would provide sufficient compensation to make up for the loss of capacity through the raising of some plot levels within the floodplain.

Ability of Services, Amenities and Infrastructure to Accommodate the Development

32. Local residents express concern at the effect of the development on school provision in the locality. This was also a concern shared initially by the Council. However, the Council accepts that the £234,000 being offered by the appellant through the Unilateral Undertaking is a sum that fairly represents the provision that needs to be made if the effect of the development on primary and secondary schools is to dealt with.

33. In terms of amenity, the development involves the laying out of a large expanse of public open space and the construction of a network of footpaths in the open space would ensure the completion of pedestrian routes through the adjoining areas of open space. As for formal sports, the appellant is making a contribution towards the provision of a junior football pitch within Lower Earley, while in respect of recreation for much younger children, the development proposes the laying out of two children's play areas within the residential element of the site.

34. Local residents also cast doubt on the acceptability of taking an access to the development off Lower Earley Way. They point to the speed of traffic and also the heavy flows of traffic

using the road at peak travel times. I note that the Council, as local highway authority, has raised no objection on safety or capacity grounds to the proposed access arrangements, which are to be designed in accordance with the appropriate design standards. I also note that the appellant, through the mechanism of the Unilateral Undertaking, is making a contribution of £350,000 towards highway and transportation improvements. Some would go to the installation of signals at the junction of Lower Earley Way with Rushey Way. The contribution would also go towards works to restrict speeds along Lower Earley Way. Both these measures would some way to making local highway conditions safer. The contribution would also go towards improving alternatives to travelling by car, including the improvement of bus shelters and the provision of a cycleway along Lower Earley Way.

35. I conclude on this issue, therefore, that there is nothing before me to suggest that the services, amenities and infrastructure of the area cannot accommodate the proposed development.

Other Matters

36. I have considered all other matters raised at the inquiry and in the written representations, but none is sufficient to outweigh my conclusions on the main issues in this appeal.

Conditions

37. At the inquiry, the appellant put forward a list of suggested conditions in the event that I was minded to allow the appeal. The Council agreed with the conditions being suggested. In my view, the suggested conditions meet the tests set out in Circular 11/95 "The Use of Conditions in Planning Permissions" in that, in particular, they are relevant to the development being proposed, they serve a planning purpose and are reasonable in all other respects. As site investigations have shown, the site is contaminated as a result of its former use as a sewage treatment works. A condition is being attached requiring remediation to be carried out before any dwellings are occupied. To prevent flooding of the site and also to prevent flooding of adjoining areas as a result of the proposed development, a raft of conditions is being imposed. These require agreement over slab heights of buildings and drainage arrangements. They also prohibit the lowering of the height of the part of the site to be developed and raising the contours of the small part that is liable to flood.

38. To ensure that a safe access is provided for the development and the appropriate level of parking for cars and cycles and turning areas is made before the proposed dwellings are occupied, conditions are being attached to this effect. These conditions also make provision for the future maintenance of the roads within the development. To ensure the greening of the development and also to screen it from Lower Earley Way, I am imposing a set of conditions in respect of landscaping. To achieve a high standard of townscape, I am attaching conditions requiring details of materials to be submitted for approval and also requiring all cable services and the like to be put underground.

39. I am attaching a condition requiring the provision of children's play spaces while the development is still in the course of construction and not as an afterthought. To prevent overlooking, I am withdrawing permitted development rights in respect of the creation of new windows on certain elevations and also the introduction of new windows on one plot where the potential for overlooking would be a particular problem. Finally, I am attaching a number of conditions to protect the amenity of those living around the site during construction. These include limiting the hours when construction can take place, ensuring

proper provision for the parking of vehicles and the delivery of materials and taking measures to prevent mud and the like being deposited on roads.

Conclusion

40. For the reasons above, I conclude that the appeal should succeed and I shall exercise my powers accordingly.

Formal Decision

41. In exercise of the powers transferred to me, I allow the appeal and grant planning permission for the development of 149 residential units, formation of new access, associated landscaping and open space on land at Former Sewage Works, Marsh Farm, Lower Earley, Wokingham, Berkshire in accordance with the terms of the application Ref. F2002/6579 dated 9 May 2002, and the plans submitted therewith, subject to the following conditions:

    1) The development hereby permitted shall be begun before the expiration of five years from the date of this decision.

    2) No development shall commence until there has been submitted to and approved in writing by the local planning authority a scheme for the remediation of any contamination found within the site. The scheme shall include a historical investigation, sampling and analysis of current soils, and a scheme of works to address any contamination. The remediation scheme shall thereafter be carried out as approved before any dwelling hereby permitted is first occupied.

    3) Prior to the commencement of development, details of the slab levels of the proposed buildings shall be submitted to and approved in writing by the local planning authority. The finished floor levels of all dwellings hereby approved shall be set at a minimum of 40.42 metres AOD (N). The development as constructed shall not vary from the approved levels.

    4) No development, including domestic gardens except those shown on the approved plans, shall take place within the flood envelope as defined by the 1 in 100 year flood level of 39.82 metres AOD (N).

    5) No dwelling hereby permitted shall be first occupied until level-for-level compensatory flood storage works up to the 1 in 100 year flood level have been carried out in accordance with the details of the submitted flood risk assessment carried out by Peter Brett Associates and dated November 2002.

    6) No spoil or materials shall be deposited or stored on that part of the site lying within the area of land liable to flood as shown on figure 5 in the flood risk assessment carried out by Peter Brett Associates and dated November 2002.

    7) There shall be no raising of ground levels on that part of the site lying within the area of land liable to flood as shown on figure 5 in the flood risk assessment carried out by Peter Brett Associates and dated November 2002, other than as agreed as part of the submitted floodplain compensation scheme.

    8) No development shall commence until there has been submitted to and approved in writing by the local planning authority a scheme for surface water source control

measures. The development shall not be carried out except in accordance with the approved details.

9) No development shall commence until there has been submitted to and approved in writing by the local planning authority a scheme for surface water drainage works. The development shall not be carried out except in accordance with the approved details.

10) No soakaways shall be constructed in contaminated ground.

11) No development, other than that required by this condition and by condition 17, shall commence until the vehicular access onto lower Earley Way has been formed and provided with visibility splays as shown on approved drawing No. 12467-0001 revision C as prepared by Peter Brett Associates. The land within the visibility splays shall be cleared of any obstruction exceeding 0.6 metres in height and maintained clear of any obstruction exceeding 0.6 metres in height at all times.

12) No dwelling hereby permitted shall be occupied until the road serving it has been provided in accordance with the approved drawings and until visibility splays of 2.4 metres by 2.4 metres have been provided at the intersection of the driveway serving the dwelling and the adjacent footway, dimensions to be measures along the edge of the driveway and the back of the footway from their point of intersection. The visibility splays shall thereafter be kept free of all obstacles to visibility above a height of 0.6 metres.

13) No dwelling hereby permitted shall be occupied until a Management Plan for the future maintenance of on-site access roads, paths and courtyards has been submitted to and approved in writing by the local planning authority.

14) No development shall commence until a scheme to provide a continuous footway on the eastern side of Elderberry Way from the site to Kilnsea Drive has been submitted to and approved in writing by the local planning authority.

15) Precautions shall be taken for the duration of the construction period to prevent the deposit of mud and similar debris, including blown litter, on the adjacent public highways in accordance with details to be submitted to and approved in writing by the local planning authority prior to the commencement of the development.

16) No part of any building hereby permitted shall be occupied or used until the vehicle parking and turning spaces herein approved that serve the building have been provided. Thereafter, the vehicle parking and turning spaces shall not be used for any purpose other than the parking and turning of vehicles.

17) Prior to the commencement of building operations on site, provision shall be made to accommodate all site operatives, visitors and construction vehicles loading, off-loading, parking and turning within the site during the construction period, in accordance with details to be submitted to and approved in writing by the local planning authority. Thereafter, the approved provision shall be retained and used at all times.

18) No building shall be occupied until space for the parking of bicycles has been provided in accordance with the approved drawings.

19) No development shall take place until full details of both hard and soft landscaping works have been submitted to and approved in writing by the local planning

authority. The details shall include proposed finished levels or contours; means of enclosure; hard surfacing materials; minor artefacts and structures; retained landscaping features (together with details of measures for their protection during the course of development); planting plans, specifying species and plant sizes; a buffer zone 5 metres wide alongside the ditch on the southern boundary of the site; and a programme for the implementation of the landscaping works. All hard and soft landscape works shall be carried out in accordance with the approved details.

20) Any tree or plant which comprises part of the approved landscaping works and which dies, is removed or becomes seriously damaged or diseased within a period of 5 years from the completion of the landscaping shall be replaced in the next planting season with a tree or plant of similar size and species to that which was originally planted.

21) A landscape management plan, including long term design objectives, management responsibilities, timescales and maintenance schedules for all landscape areas, other than privately owned domestic gardens, shall be submitted to and approved in writing by the local planning authority prior to the occupation of the dwellings for their permitted use. The landscape management plan shall be carried out as approved.

22) No development shall commence until details of all boundary treatments, including a scheme for their phased implementation, has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details. The approved boundary treatments shall thereafter be maintained at all times otherwise approved in writing by the local planning authority.

23) Before the building operations hereby permitted are commenced, samples and details of the materials to be used in the external surfaces of the buildings shall be submitted to and approved in writing by the local planning authority and no materials other than those approved shall be used.

24) Provision shall be made for services, including cable TV pre-ducting, to be placed underground. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification) no overhead wire cables or other form of overhead servicing shall be placed over or used in the development of the application site or subsequently.

25) No development shall take place until there has been submitted to and approved in writing by the local planning authority details of the design, layout and arrangements for future maintenance of two Local Equipped Area for Play ('LEAPS', as defined in the National Playing Fields Association document, "The Six Acre Standard – Minimum Standards for Outdoor Playing Space", 2001). No more than 60 dwellings hereby permitted shall be built and occupied until the first of these LEAPs has been provided and opened for use by children; and no more than 135 dwellings hereby approved shall be built and occupied until the second LEAPs has been provided and opened for use by children, unless otherwise agreed in writing by the local planning authority.

26) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that

Order with or without modification) no additional windows or similar openings shall be constructed in the first floor level or above in the side elevations of the dwellings hereby permitted except for any which may be shown on the approved drawings.

27) The side windows at first floor level and above on plot 42 shall not any time be glazed other than with obscure glass.

28) Works related to the construction of the development hereby permitted, including works of demolition or preparation prior to the commencement of building operations, shall not take place other than between 0800 and 1800 hours on Mondays to Fridays, between 0800 and 1330 hours on Saturdays and at no time on Sundays or Bank or Public Holidays.

Information

42. This decision does not convey any approval or consent that may be required under any enactment, by-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

43. An applicant for any approval required by a condition attached to this permission has a statutory right of appeal to the Secretary of State if that approval is refused or granted conditionally or if the authority fails to give notice of its decision within the prescribed period.

44. A separate note is attached setting out the circumstances in which the validity of this decision may be challenged by making an application to the High Court.

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Patrick Clarkson, of Queen's Counsel	Instructed by Shoosmiths, Solicitors, of The Lakes, Northampton NN4 7SH
Assisted by Mr David Forsdick, of Counsel	
He called	
Mr Ian Tant BSc (Hons) BTP MRTPI	Partner with Barton Willmore Partnership, Planning and Design Consultants, of Beansheaf Farmhouse, Bourne Close, Calcot, Reading RG31 7BW
Mr John Thompson MA Dip Arch RIBA	Chairman of John Thompson and Partners, Architects, of 77 Cowcross Street, London EC1M 6EJ
Mr Jay Partridge BSc (Hons) MPhil ALI	Principal of Partridge Associates, Landscape Consultancy, of Unit 4, Solent Works, North Close, Lymington, Hampshire SO41 9BU
Mr Howard Fielding MA MEd PGCEd	Of Fielding Consultants, Educational Consultants, of 11 Belsize Park, London NW6 4RX

FOR THE LOCAL PLANNING AUTHORITY:

Mr Rupert Warren, of Counsel	Instructed by the Solicitor to the Council.
He called	
Mr Jim Dunning BSc (Hons) DipTP MRTPI	Team Leader (Policy and Plans) with the Council
Mr Stephen Reed BEng CEng MICE	Traffic and Transport Team Leader for Parkman Ltd for the term that the firm is commissioned by the Council to provide engineering expertise
Mr Christopher Emerson BSc MA PGCEd	Acting Director of Education with the Council. Gave evidence instead of Miss Helen Rowlay who was indisposed

INTERESTED PERSONS:

Mr R F Bradshaw	Councillor on Earley Town Council. Of 3 Loddon Bridge Road, Earley, Reading RG6 7EW
Mr Douglas Walrond Eur Ing MEng CEng MIMechE	Of 11 Kitwood Drive, Lower Earley, Reading RG6 3TA
Mr Colin Wells	Of 77 Paddick Drive, Lower Earley, Reading RG6 4HF
Mrs Mary Thompson	Of 4 Hambleton Close, Lower Earley, Reading RG6 3TD
Mrs Fiona Rolls	Councillor on the District Council and on Earley Town Council. Of 14 Tiptree Close, Earley, Reading
Mr David Choppin	Councillor on Earley Town Council. Of 13 Luckmore Drive, Earley, Reading

Mrs Julie Williams BSc (Hons) DipTP MRTPI	Of Martin & Pole Nicholas, Chartered Surveyors, of 24 Friar Street, Reading RG1 1DP. Representing Earley Town Council.
Mr David Swindells	Councillor on the District Council. Of 12 Culford Close, Lower Earley, Reading RG6 3AS
Mrs Diana Buckley Carpenter	Councillor on the District Council. Of 8 Stanton Close, Earley, Reading RG6 7DX

DOCUMENTS

Document	1	List of persons present at the inquiry
Document	2	Council's notification letter and list of persons notified
Document	3	Bundle of representations received in respect of an earlier appeal, now withdrawn, for a duplicate planning application on this site and accepted by the Planning Inspectorate as relating to the current appeal
Document	4	Statement of Common Ground, dated March 2003
Document	5	Supplementary Statement of Common Ground together with appendices, dated March 2003
Document	6	Extract from Office of the Deputy Prime Minister's web site in respect of preparing for floods. Submitted by Mr Wells
Document	7	Road safety audit carried out at proposed access from Lower Earley Way by MJH Associates for the appellant. Submitted by Mr Clarkson
Document	8	Bundle of documents appended to Mr Dunning's proof of evidence
Document	9	Bundle of documents appended to Mr Reed's proof of evidence
Document	10	Bundle of documents appended to Miss Rowlay's proof of evidence
Document	11	Agenda of the Council's School Organisation Committee Meeting of 14 October 2002 to discuss School Organisation Plan, 2002 – 2007. Submitted by Mr Warren
Document	12	Fax of response by Mr Emerson to Mr Fielding's letter of 24 March 2003 in respect of education provision issues. Submitted by Mr Clarkson
Document	13	Association of British Insurer's letter of 25 March 2003 to appellant in respect of flooding and insurance risk. Submitted by Mr Forsdick
Document	14	Bundle of documents appended to Mr Tant's proof of evidence, including statements of evidence from Mr Weitzel on surface water drainage, Mr Balchin on transport matters and Mr Jenkins on flood risk
Document	15	Bundle of documents appended to Mr Partridge's proof of evidence
Document	16	Bundle of documents appended to Mr Fielding's proof of evidence
Document	17	Letter from Council's Acting Director of Education of 13 March 2003 to Mr Tant in respect of education contributions requested from appellant. Submitted by Mr Clarkson
Document	18	Letter from Thames Water Property Services Ltd of 6 March 2002 to the Council in respect of the Local Plan Inspector's recommendation to allocate the appeal site for housing. Submitted by Mr Warren
Document	19	Bundle of documents appended to Councillor Buckley Carpenter's proof of evidence
Document	20	Question being put to the Council Meeting of 27 March 2003 by Councillor Buckley Carpenter
Document	21	Extract from minutes of last Council Meeting. Submitted by Councillor Buckley Carpenter

Document 22 Agreed conditions
Document 23 Unsigned copy of Unilateral Undertaking and Copies of HM Land Registry entries. Submitted by Mr Clarkson
Document 24 Letter from the Council of 20 March 2003 to Peter Brett Associates, appellant's transport consultants, in respect of financial contribution towards highway works. Submitted by Mr Clarkson
Document 25 Signed copy of Unilateral Undertaking. Submitted by Mr Clarkson
Document 26 Costs decision in respect of appeal at Fender Lane, Moreton (APP/W4325/A/01/1058371). Submitted by Mr Clarkson
Document 27 Letter from the Environment Agency of 24 March 2003 to Earley Town Council in respect of the Agency's flood history database for the Lower Loddon. Submitted by Councillor Buckley Carpenter

PLANS

Plan A Bundle of application plans and drawings as revised and submitted in November 2002 and January 2003
Plan B Bundle of plans in respect of the historic flood plain. Submitted by Mr Bradshaw
Plan C Bundle of plans and drawings in respect of flood risk and the impact of house types on parking requirements. Submitted by Mr Wells
Plan D Extract of proposed modifications to Local Plan in respect of the appeal site. Submitted by Mr Dunning
Plan E Bundle of plans appended to Mr Partridge's proof of evidence
Plan F Plan showing the various amendments to the settlement boundary referred to at the inquiry. Submitted by Mr Partridge
Plan G Drawing showing the view of Lower Earley Way of the closest proposed properties on the various settlement boundaries. Submitted by Mr Partridge

PHOTOGRAPHS

Photo 1 Bundle of photographs of flooding in the locality. Submitted by Mr Bradshaw
Photo 2 Bundle of photographs appended to Earley Town Council's statement. Submitted by Mrs Williams

Costs Decision

Inquiry opened on 25 March 2003

by A D Robinson BA(Hons) DipTP MRTPI

an Inspector appointed by the First Secretary of State

The Planning Inspectorate
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Date
4 JUN 2003

Costs application in relation to Appeal Ref: APP/X0360/A/03/1108315
Land at Former Sewage Works, Marsh Farm, Lower Earley, Wokingham, Berkshire

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by St James Group Ltd for a full or partial award of costs against Wokingham District Council.
- The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the development of 149 residential units, formation of new access, associated landscaping and open space.

Summary of Decision: The application for a full award fails. The partial award is allowed in the terms set out below in the Formal Decision and Costs Order.

The Submissions for the Appellant

1. As paragraph 5 of Circular 8/93 dealing with the award of costs in planning and related proceedings makes clear, a guiding principle of the costs regime is that the planning system should not delay, inhibit or prevent development that could reasonably be permitted. Where a Council acts unreasonably in refusing planning permission, it is at risk as to the full costs of the preparation for and attendance at an inquiry. In addition, Circular 8/93 makes it clear that a Council has to act reasonably in identifying and pursuing its reasons for refusal. The Council is at risk as to costs if it withdraws a reason for refusal late in the day without there being a material change of circumstances (paragraph 12 of Annex 2 of the Circular); if it fails to call evidence to support its reasons for refusal (paragraph 8 of Annex 3); if it fails to heed the advice of statutory consultees without good reason (paragraph 9 of Annex 3); if it is unduly swayed by local opinion that is not founded on valid planning reasons (paragraph 15 of Annex 3); or if its actions result in expert witnesses having to attend the inquiry for no good reason.

2. The position here is clear. First, there is a proposed allocation, which the Council accepts should be accorded significant weight, for housing. This is for immediate release to meet existing needs. Second, the development is to take place on a site that is in a sustainable location and which involves developing previously developed land. Third, the allocation has led to a proposal that meets the density and housing mix being sought by the Council and provides affordable housing. Fourth, it does not create any adverse impacts upon neighbours, is appropriately designed, brings landscape benefits, can be safely accommodated on the local highway network, does not give rise to flooding or drainage issues and makes an appropriate contribution to local infrastructure. On the other side is the Council's point that the bringing forward of the development by 13 metres would have a detrimental effect on the perception of the site from limited viewpoints on Lower Earley

Way such as to give rise to a degree of harm that warrants the refusal of planning permission.

3. In October 2002 the Council resolved that the parallel planning application was to be refused for 11 reasons. There was no reason for refusal on design, drainage or flooding. The planning application that is the subject of the appeal was amended to take account of the reasons for refusal. The Council accepts that the amended proposal overcomes its objections on density, traffic mitigation, internal access arrangements, noise and contamination. Subsequently, the Council's Executive approved the Local Plan Inspector's recommendation that the site be allocated and identified for immediate release. This effectively overcomes the reasons for refusal in respect of the site not being allocated and being premature as it would prejudice consideration of the Local Plan Inspector's report.

4. The other reasons for refusal have become more limited in extent. The erosion of the undeveloped strip of land alongside Lower Earley Way and the obtrusiveness of the development in landscape terms have become the overstepping of the line identified in the Local Plan Inspector's report. The inadequacy of services in the locality is now limited to the amount that the development should contribute to local schools. The reason for refusal that the flood and drainage mitigation measures were not fully detailed and the impacts could not be assessed has become a lack of information on drainage.

5. The report to the committee meeting of February 2003 contained a clear and unambiguous recommendation for approval. It was written by the same officers who had earlier recommended the eleven reasons for refusal on the parallel planning application. As far as the officers were concerned the only outstanding issue was the terms of the Section 106 Obligation. The recommendation reflected the officers' view that the line now being put forward represented an improvement; there was an alternative means of providing access to the site and this met all the standards; and there was agreement in principle to a contribution being made to education. The only outstanding issue on education was the amount of the contribution. The recommendation was based not only on the officers' judgement but also on the Environment Agency having no objection in principle; the Agency having accepted the appellant's surface water drainage strategy; the absence of any objection from the Council's drainage advisors; and there being no objection from the Council's landscape consultee.

6. The elected members ignored this advice. On the line, they expressed concern that a significant part of the site fell outside the settlement boundary in the earlier adopted Local Plan and that they were concerned at the status of the designation of part of the site for housing in the emerging Local Plan. On design, they expressed concern about the design of the proposed dwellings, considering them to be inappropriate. On drainage, they considered that there was insufficient information but gave no indication of what was missing and why the Environment Agency's assessment was wrong. Their objection on the adequacy of local services was at a time when the Council was asking for £719,000 for education, a figure much larger than its current demand.

7. Following receipt of the reasons for refusal, the appellant sought to resolve remaining issues so as to avoid the need for an inquiry. On drainage, the appellant's drainage consultants provided the Council's drainage advisors with more information and detailed designs. This was more than would normally be provided at this stage. The Council's drainage advisors recognised that this level of detail was in excess of what was needed for development

control purposes. They agreed with the appellant's consultants that the development could be satisfactorily drained. On design, the elected members were sent full colour versions of the plans, elevations and drawings that they already had. No changes in design were sought. There was a meeting to try to resolve the design issues but this got nowhere because officers were unable to set out what the issues were. On education, there were further discussions. On the issue of the line, nothing further could be done. The Council's view seems to be that if the development oversteps the line, there is a breach of the emerging Local Plan. No harm is identified.

8. The Council's evidence exchanged in March 2003 simply concluded that there was overstepping of the line. There was no assessment of the harm caused by the overstepping. The design evidence raised generalised concerns. The education evidence reduced the contribution being asked for to £501,000. The drainage evidence agreed with that being put forward by the appellant's consultant.

9. The report to committee later in March was at a time when much of the costs could still have been avoided. The report confirmed the Environment Agency's earlier position and confirmed that the Council's drainage advisor accepted that there was no drainage issue. The design documents were drawn to the attention of elected members. The report recommended that a putative reason for refusal existed only on the grounds of the contribution to be made to education provision but pointed out that this could be resolved by the grant of planning permission on a duplicate application subject to the conclusion of an Obligation.

10. The elected members ignored their officers' advice and repeated their drainage reason for refusal. They saw no reason to remove the overstepping of the line reason for refusal, despite no harm having been identified. However, they dropped the design reason for refusal although the information that they based this withdrawal on had always been available to them. They were warned as the consequences of what they were doing. It is quite clear that elected members were refusing to make a decision they sensibly had no choice but to make.

11. At the inquiry, the appellant still faced a putative reason for refusal on drainage although there has been no evidence against the appellant's position on drainage. The Council is passing the buck for making the decision to the Inspector. Wholly new information on education provision in the District came forward late on the first day of the inquiry. This was weeks, if not months, late. The Council's case on the line still did not contain any evidence as to impact of overstepping the line by up to 13 metres. Nevertheless, the way that this aspect of the Council's case was being put forward required landscape and design witnesses to be called.

12. The Council has been clutching at straws and has been doing so since February. It should have granted planning permission in February subject to the satisfactory completion of a Section 106 Obligation on education. This would have avoided the need for an inquiry.

13. In terms of the line, the fact that the question of impact is a matter of judgement does not mean that the Council can simply raise the line issue and go on to say that it was open to it to refuse planning permission on this basis when there is no rational basis for the refusal. The issue now comes down to the difference in impact between a straight line and that being put forward by the appeal proposal from three viewpoints on Lower Earley Way and which give rise to demonstrable harm. The question is what harm? The Council's planning

witness has been unable to assist. He ventured the answer to the Inspector's question that it was important that Lower Earley Way is not seen as going through the built-up area of Lower Earley, but as a road 'set apart'. This is all very well but it does not tell anyone but the impact of the 13 metres difference in the line to be taken by the proposed development. He accepted that in assessing the impact, landscaping and distance were important factors. The appeal proposal was accompanied by a detailed landscaping scheme. This, together with a kink in the access road, restricts views from Lower Earley Way into the proposed development. There is no discernible difference in impact between a 120 metres gap and one 13 metres narrower. This was the commonsense view taken by officers writing the earlier committee reports.

14. The position is clearly that the crescents at the two corners of the development improve rather than detract from the interest of the development. These crescents are set up to 30 metres back from the line. The Council has not taken this into account. The reality is that the Council has had to find an argument on which to sustain a reason for refusal in order to provide protection from costs. It has failed to do so. There is no identifiable harm from the difference in the line taken by the appeal proposal and that of 120 metres that is set out in the emerging Local Plan. In any event, the concentration on the precise line is misconceived. The driver behind the allocation of this site is the bringing forward of 3.4 hectares of housing. This has been delivered in an interesting way that does not give rise to design or landscaping issues. The Council has been forced into the position of arguing for a line that has no physical manifestations on the ground in an attempt to defeat an application that is in all other respects entirely acceptable.

15. The Council's resolution of March 2003 still refers to drainage. The Council knew then what the position of its drainage advisor was. Elected members asked no questions of its advisor who had been appointed by them to undertake a critique of the appellant's work in this respect and then simply ignored the advice they were given.

16. The Environment Agency has no objection to the proposal and that had been the position for some time. No one has at any time come up with a reason why the Agency or the appellant's consultants had been wrong in their assessment. Instead, elected members have clambered onto a local bandwagon of: "the site is in the floodplain - our houses will be flooded - no drainage scheme can be delivered". This position is patently wrong.

17. It is not enough for the Council to point to genuine third party concerns. It has to show that there are good grounds for its reason for refusal. It has not. In February, it appointed an advisor to try to prove that the Environment Agency had got it wrong. When the advisor reported, the Council ignored the result. The nonsensical nature of the Council's stance is illustrated by its drainage advisor's evidence which was that it was always obvious that there would be an engineering solution to any drainage issue. The appellant has been put to the cost of preparing expert evidence on something that should never have been an issue, providing further details to persuade elected members of that which they had already been told of and having witnesses available at the inquiry to address a reason for refusal which the Council still adhered to.

18. In respect of design, the Council had all the information that it needed at the time of its original consideration. The reason for refusal was abandoned at the last moment with no change of circumstances to justify the Council's change of heart. As a result detailed

evidence has been prepared, detailed design documents worked up and architects have been present at the inquiry in case the Council raised a design issue.

19. With regard to education, the appellant has always been willing to make an appropriate education contribution when the Council explained its stance. However, rather being faced with a logical figure that fits in with the documents that were presented, the appellant has been faced with constantly changing figures, changing data and changing methodologies. The first time that the appellant saw the Council's education request was on 13 March. The appellant tried on many occasions to clarify the scale and nature of the request.

20. Even at the end of the first night of the inquiry, the Council was submitting a new document that had not been previously disclosed and which had been sought weeks before and which changed the whole basis of the calculation of the contribution. As a result, the appellant could not negotiate or agree an appropriate level of contribution despite its willingness to do so.

21. In any event, this matter should not have been an impediment to the Council making an "in principle" decision to grant planning permission for the duplicate planning application because the grant could have been made subject to the conclusion of a Section 106 Obligation, as suggested by the Council's officers. As a result, expert evidence has had to be prepared, the appellant's education witness has had to attend the inquiry and inquiry time has been taken up on an issue that any reasonable planning authority would have been able to agree much earlier.

22. The Council has been given a clear and unequivocal recommendation on two occasions. On both occasions it has ignored the expert advice of its officers and others and ignored its own emerging policies. It has sought to construct a reason for refusal because the elected members were not prepared to take what may have been an unpopular decision. The Council has raised issues and then dropped them. It has failed to provide information to settle the level of the education contribution. The Council has come to this inquiry with effectively one point, the impact of a change in the width of the gap between the development and Lower Earley Way. This is a matter of only 13 metres. This is an absurd position. Thus, a full award of costs should be made. Alternatively, a partial award should be made under each of the heads set out above.

The Response by the Council

23. This is a proposal for the development of a priority site in the emerging Local Plan. It is not surprising that the appellant feels frustrated. However, there is a need for caution. It is important to look at the facts of the case.

24. Unreasonableness in terms of the award of costs in planning proceedings is a high hurdle and does not equate with being wrong or even badly wrong. The second hurdle that must be surmounted before a costs application can be successful is that there must be the incurring of unnecessary expenditure.

25. The appellant has sought to imply improper motives to the Council in that unpopular decisions were avoided. The evidence does not support this. The issues in respect of the settlement boundary, drainage, design and the contribution to education provision are all specific matters on which justification needed to be provided.

26. With regard to the application for a full award of costs, to say that the adverse impact of the development when seen from Lower Earley Way as a result of overstepping the line represents the Council's case is a travesty of the case being put forward on harm. The appellant's planning witness accepts that the issue of the line is one of where the settlement boundary is to be drawn. This is of importance in Structure Plan policy terms as to where restrictive countryside policies begin. The appellant's planning witness also accepts that the 3.4 hectares allocation gave rise to the settlement boundary in the Local Plan Inspector's report. The Council has not ignore its emerging policies, its stance is an application of those policies. This was made quite clear in one of its putative reasons for refusal, in the Council's Rule 6 statement and in evidence. It was also made plain in the letter of 20 March from the Council's planning officers to the appellant's planning consultant. The appellant has missed the point about visual harm. Landscape impact does not equal visual impact. The impact of overstepping the line is a planning point. Finally, as the appellant's design witness conceded, judgements on these matters are subjective. Judged fairly, this reason for refusal was based on a policy objection and a degree of harm that elected members felt would result. The appellant makes much of having to attend the inquiry. The overstepping of the line and the conflict with emerging policy would alone have brought the parties to the inquiry.

27. In respect of the application for a partial award of costs, it is necessary to look at each topic separately. On the overstepping of the line, the appellant has said that there is no rational basis for the council's stance. This is simply a submission that cannot be fairly made. It is alleged that elected members ignored the advice of their officers and ignored other relevant matters. This allegation does not fit with the evidence. Elected members had had regard to officers' reports. They were also aware of the Local Plan background. They struck a balance, which was along the same line as the Local Plan Inspector's conclusions.

28. The Council accepts that a development would need to be serviced by an access from Lower Earley Way. The Council's case does not depend upon the access being acceptable in isolation. Rather, it is a combination of the proximity of the development to Lower Earley Way and the view of the development along the access. This is a matter of fact and degree. No unreasonableness shown. The appellant's planning witness acknowledged the open nature of the Loddon Valley. The extent to which the development is seen in this setting is a matter of judgement.

29. As for drainage, the appellant is not right in saying that the Council is passing the buck. Elected members gave weight to the relevant material considerations. Third parties raised concerns that were pertinent both for the Council and for the inquiry. Not unreasonable for the Council to have regard to them. Paragraph 8 of Annex 3 of Circular 8/93 indicates that planning authorities are expected to produce evidence in support of their stance and paragraph 9 says that elected members are not bound to accept the technical advice of their officers. The test is that they have to show that there are reasonable planning grounds for taking the stance that they do. In this case, elected members have taken account of matters that are relevant material considerations. The question is of the weight that should be given to these considerations. The site lies next to the flood plain in an area in which local residents feel great concern about flooding. There is significant third party objection to the proposal on this ground. The appellant would have had to call expert evidence on flooding and drainage in any event to meet third party concerns.

30. On design, the point here is the Council's late withdrawal of its evidence. Elected members did not have the large scale perspective views before them until their meeting of 19 March. At that meeting, they took these into account, which led to a decision not to rely on design arguments. Annex A of PPG1 "General Policy and Principles" indicates that drawings and perspectives can assist assessments on design. In any case, it was necessary for the appellant's design and landscape witnesses to give evidence in dealing with the first reason for refusal, the overstepping of the line.

31. On education, a result could have been achieved if the two education witnesses had not disagreed. The elected members thought that this was a matter of importance that should not be left for negotiation through a Planning Obligation. The agreed basis for the appellant's contribution to education provision complies with national advice. Such matters are not ones of exact science. Still differences between the two sides in the detail, but the agreed basis for the contribution is a reasonable mid point. It is regretted that the matter took so long to be resolved, but this was down in part to illness of one of the Council's officers.

32. A full or partial award of costs is resisted.

Conclusions

33. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

34. The Council's Rule 6 statement indicates that had it been in a position to issue a decision in this case, planning permission would have been refused for four reasons. The first is that part of the proposed residential development lies outside the area for this purpose in the emerging Local Plan. The second is that insufficient information has been provided to demonstrate that the site can be drained without affecting future occupiers of the proposed properties and those living in the existing properties surrounding the site. The third is the inappropriateness of the design of the dwellings and the fourth is the unacceptable impact that the proposal would have upon the amenities of the area.

35. With regard to the application for a full award of costs, I share the Council's view that its putative first reason for refusal involves more than just a matter of the visual impact of the proposed development when seen from Lower Earley Way. It is also a matter of policy. Whatever line is taken by the development represents, in effect, the settlement boundary for this part of Lower Earley. This is of significance because it represents where the settlement ends with all that implies in terms of a more supportive stance taken by policy towards development in settlements and where the countryside begins and where local policy adopts a generally restrictive position towards development. The line seeks to mark the distinction between settlement and countryside in physical and visual terms by separating and screening the development from Lower Earley Way.

36. The line that the Council seeks to safeguard is one that has come from the late stages of the process of preparing and considering the emerging Local Plan. As such, it is to be given considerable weight. Where an overstepping or variation of the line is proposed, as in this case, the benefits and disadvantages of a new line against strictly adhering to the one

identified by the Local Plan Inspector need to be carefully balanced. This is a matter for evidence.

37. I do not consider that the Council took all relevant factors into account, such as the visual interest in having a varied rather than a straight line and the benefits of setting back the two crescents of dwellings at the corners of the development. Nor do I consider that the Council carried out a full and detailed visual assessment of the difference between the proposed and the Council's preferred line. Nevertheless, it seems to me that the Council was able to put forward sufficient evidence to support its position on this reason for refusal. While I do not share the Council's stance, as should be clear from my appeal decision, it seems to me that the Council has not acted unreasonably in this respect.

38. The appellant makes much of elected members rejecting the views advanced by their officers in respect of the line. However, I share the Council's view that the test is whether sufficient evidence can be advanced to justify the decisions taken by elected members. In my view, the Council's evidence, while not compelling, was sufficient to justify the stance taken by elected members. Given the divergence of views between the appellant and the Council as to the merit of the line being put forward as part of the appeal proposal, I take the view that this reason for refusal alone would have brought the parties to the inquiry. Accordingly, I consider that the application for a full award of costs fails.

39. In respect of the application for a partial award of costs, it is necessary to look at the four putative reasons for refusal separately. The first reason can be dealt with in short order. It should be apparent from the preceding paragraphs that I take the view that the Council has been able to produce sufficient evidence to support this reason for refusal and thus it has not acted unreasonably.

40. In respect of the drainage reason for refusal, it seems to me that the elected members at their meeting in March 2003 had full and very detailed information available to them from both the appellant's drainage consultant and the Council's drainage advisor which demonstrated that the development could be drained without detriment to those living in the proposed houses and in existing homes. They also knew that the Environment Agency had no objections. Despite this information, the elected members at this meeting resolved to maintain a drainage reason for refusal. In doing so, they acted unreasonably.

41. Although elected members are not bound to accept the technical views of their officers they must have good planning reasons for taking a different stance. The evidence to the inquiry of the Council's drainage advisor was that an engineering solution was always available to deal with the surface water drainage from the development. It is clear that the elected members had no grounds for coming to the view they did and in doing so the Council was unable to put forward evidence of any substance at the inquiry to support the elected members' view.

42. Although by the time that the elected members considered this matter in March 2003 the appellant had already prepared evidence, a different decision by elected members would have meant that the need for the appellant's drainage expert to attend the inquiry could have been avoided. I do not accept the Council's view that the drainage concerns of third parties would have required the attendance of this expert. This could have been handled by way of submissions.

43. In any case, I consider the level of detail on drainage required at this stage by the Council was unnecessary. To my mind, drainage details could have been required through the imposition of an appropriately worded condition. Accordingly, I take the view that the Council has acted unreasonably in this respect and as a consequence, expenses have been incurred unnecessarily. As such, I consider that the application for a partial award of costs with regard to drainage should succeed.

44. As for design, this reason for refusal was withdrawn very late in the day. The withdrawal took place well after the appellant's design witness had prepared his evidence and shortly before the inquiry was due to take place. A withdrawal of a reason for refusal so late in the appeal process is clearly unreasonable. It led to work being undertaken unnecessarily.

45. I do not subscribe to the Council's view that the attendance at the inquiry of the appellant's design witness and the preparation of his evidence was pertinent in considering the visual impact of the proposed development when seen from Lower Earley Way. It was not. The visual impact was essentially a matter for the appellant's landscape witness and both parties' planning witnesses. It concerned screening, distances and viewpoints. Although the nature of the closest elements of the housing element of the development to Lower Earley Way was relevant in terms of height and mass, this was primarily a matter for the landscape assessment. I consider that the Council has acted unreasonably in respect of design and expenses were unnecessarily incurred. As such, an application for a partial award of costs on this matter should, in my view, succeed.

46. As for the effect of the development on education provision, there was never any doubt once the Council first raised this that the appellant was prepared, in principle, to make an appropriate financial contribution. However, the figure that the Council had in mind kept changing for no discernible reason and that the documents on which the need for and scale of the contribution had to be based also kept changing. In addition, the most up to date and relevant document, the Schools Organisation Plan, was not made available until the end of the first day of the inquiry despite repeated requests by the appellant for this to be made provided earlier. To my mind, this amounts to unreasonable behaviour.

47. Given that the appellant was willing to make a contribution, it should have been possible for elected members to have resolved that if planning permission were to be granted it should be subject to a Planning Obligation setting out the basis for the education contribution. In effect, the elected members would have been acknowledging that the level of contribution is a matter for detail and a matter for negotiation and need not hinder or delay the proposal as a whole. Instead, evidence had to be prepared and the appellant's education witness had to be called. Expense was unnecessarily incurred and the Council's unreasonableness in this matter leads me to conclude that an application for a partial award of costs on the education issue should succeed.

Formal Decision and Costs Order

48. In exercise of my powers under Section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990, and all other powers enabling me in that behalf, I HEREBY ORDER that Wokingham District Council shall pay to St James Group Ltd, the costs of the appeal proceedings limited to those costs incurred in respect of the Council's putative second, third and fourth reasons for refusal, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal under Section 78 of the Town and Country Planning Act 1990 against the failure of the

Council to determine within the prescribed period of time an application for the development of 149 residential units, formation of new access, associated landscaping and open space on land at Former Sewage Works, Marsh Farm, Lower Earley, Wokingham.

49. The applicant is now invited to submit to Wokingham District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Supreme Court Costs Office is enclosed.

Alan D Robinson

Inspector