

11 March 2009

Our Ref: APP/G1630/A/08/2066580

Mr N Surtees
Barton Willmore
Theale Court
11-13 High Street
Theale
BERKSHIRE
RG7 5AH

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 - SECTION 78
LAND WEST OF FARM LANE, LECKHAMPTON, GLOUCESTERSHIRE, GL53
0NN
APPLICATION REF: 07/01012/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Robert Mellor BSc DipTRP DlpDesBEnv CEnv DMS MRICS MRTPI, who held a public inquiry between 29 October and 20 November 2008 into your client's appeals against a failure by Tewkesbury Borough Council to give notice within the prescribed period of a decision on an application for outline planning permission for development comprising approximately 360 dwellings (i.e. up to 365 dwellings); creation of general amenity areas and formal open space; creation of landscaped areas; new accesses for vehicles, pedestrians and cyclists; sustainable drainage measures, including balancing facility; and associated engineering and service operations in accordance with application reference 07/001012/OUT, dated 25 June 2007.
2. On 26 January 2008 the appeals were recovered for the Secretary of State's determination in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990. This is because the proposal raises policy issues relating to residential development which would significantly impact on the Government's objectives to secure a better balance between housing demand and supply and to create high quality, sustainable, mixed and inclusive communities.

Inspector's recommendation and summary of the decision

3. The Inspector has recommended that the Appeal be dismissed and planning permission refused. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and with his recommendations. A copy of the

Inspector's report (IR) is enclosed. All paragraph references, unless otherwise stated, are to that report.

Procedural Matters

4. In reaching her decision, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment)(England and Wales) Regulations 1999 (IR3). The Secretary of State is content that the Environmental Statement complies with the above regulations and, together with other documents submitted to the public inquiry, that sufficient information has been provided for her to assess the environmental impact of the application.

Policy considerations

5. In deciding the application, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
6. In this case, the development plan comprises the Regional Spatial Strategy for the South West (RPG10), published in 2001; the saved policies of the Gloucestershire Structure Plan Second Review, adopted in November 1999; and the Tewkesbury Borough Local Plan, adopted in March 2006. In the case of the Gloucestershire Structure Plan, the policies were "saved" by the Secretary of State by direction issued under paragraph 1(3) of Schedule 8 to the Planning and Compulsory Purchase Act 2004 on 27 September 2007 until such time as the new RSS is adopted. She considers that the policies most relevant to this case are those set out by the Inspector at IR22 – 26.
7. The Secretary of State has taken into account the emerging RSS for the South West. Her proposed changes were published for consultation on 22 July 2008 and so she affords its policies significant weight. The policies she considers most relevant to this appeal are set out in IR27.
8. Other material considerations which the Secretary of State has taken into account include: Planning Policy Statement 1 (PPS1): *Delivering Sustainable Development* and its supplement *Planning and Climate Change*; Planning Policy Guidance note 2 (PPG2): *Green Belt*; Planning Policy Statement 3 (PPS 3): *Housing*; Planning Policy Statement 7 (PPS7): *Sustainable Development in Rural Areas*; Planning Policy Guidance note 13 (PPG13): *Transport*; Planning Policy Guidance note 17 (PPG17): *Planning for Open Space, Sport and Recreation*; Planning Policy Statement 25 (PPS25): *Development and Flood Risk*; Circular 11/95: *The Use of Conditions in Planning Permission*; and Circular 05/2005: *Planning Obligations*. The Secretary of State has also taken into account the Fields in Trust guidance "Planning and Design for Outdoor Sport and Play", published in 2008.

Main issues

9. The Secretary of State agrees with the Inspector on the main considerations upon which she should base her decision are those set out at IR235.

Development Plan

10. The Secretary of State has had regard to Local Plan policy SD2, and agrees with the Inspector that endorsement by the RSS is a key requirement of this policy (IR243). She agrees with the Inspector, for the reasons set out in IR237-242, that the proposal conflicts with the development plan because the site has not yet been identified as an appropriate location for strategic development through the RSS process as the final RSS has yet to be approved and may change, and because the RSS requires joint working on urban extensions which has yet to take place (IR243).
11. The Secretary of State has gone on to consider whether there are any material considerations which outweigh the conflict with the development plan.

PPS1 – Design, Character and Appearance

12. The Secretary of Secretary of State agrees with the Inspector, for the reasons set out in IR245-IR252, that whilst the development of this allocated site would inevitably change its character and appearance, the general form and appearance of the built development would have an acceptable impact subject to more detailed consideration at the reserved matters stage (IR253).
13. The Secretary of State also agrees with the Inspector, for the reasons set out in IR251-IR252, that the poor provision for recreation space on or off-site would also contravene LP Policy SD2 and RCN1 (IR253). She considers that the poor usability of the on-site informal open space, the lack of provision for adult recreation on- or off-site, and the vague proposals for other off-site children/youth creation provision in a stand-alone development would all risk a poor quality development (IR253). She also agrees that the independent approach to landscaping and recreation does not take the opportunities that are likely to be available through the Area of Search (AoS) in the emerging RSS for improving the character and quality of the area and the way it functions (IR253).

Impact on Adjacent Green Belt

14. The Secretary of State agrees with the Inspector, for the reasons set out in IR254, that the appeal proposal would not harm the visual amenities of the Green Belt and would not otherwise affect its aims and objectives or conflict with PPG2 (IR255).

PPS3 - Housing

15. The Secretary of State agrees with the Inspector, for the reasons set out in IR256-IR258, that the Council does not have a five year deliverable housing land supply, as is required by PPS3 (IR260). She gives this significant weight.

16. However, the Secretary of State agrees that, as the appeal site is already part of the notional supply allowing the appeal would not improve the housing supply figures (IR260). She considers that to dismiss the appeal would only harm the 5 year housing land supply position if delays in the RSS and joint working arrangements meant that planning permission on this site could not be issued before early 2010 (outline) or mid 2010 (reserved matters/full permission), meaning that not all of the dwellings could be completed by October 2013 (IR260).
17. Where an up to date five year supply of deliverable sites cannot be demonstrated, as in this case, PPS3 requires that favourable consideration be given to planning applications having regard to the policies in PPS3. The Secretary of State agrees with the Inspector, for the reasons set out in IR259, that, whilst to allow the appeal would help to secure the forecast housing land supply and the provision of a significant amount of affordable housing, the appeal does not meet all the criteria of paragraph 69 of PPS3 (IR260).

PPG13 Transport and Access to off-site facilities

18. The Secretary of State agrees with the Inspector's reasoning and conclusions in IR261-IR272. She considers that the site's location adjacent to Cheltenham accords with the sustainable travel objectives of local, regional and national policy to concentrate housing close to jobs, services and facilities (IR272). She also considers that the proposed public transport and footway/cycle route improvements would provide adequate, if not ideal, opportunities to travel to jobs, services and facilities by means other than the car, although significant car use remains probable (IR272). The Secretary of State agrees that the wider AoS development would be likely to enhance the availability of services and facilities within a shorter walking distance from the appeal site (IR272). The Secretary of State considers that it is likely that suitable on-site parking provision could be provided at the reserved matters stage in accordance with local standards (IR272). The Secretary of State also considers that, for a standalone proposal a contribution to enhanced library provision is not necessary, but that the situation might be different in the context of the wider AoS development (IR272).
19. The Secretary of State agrees with the Inspector that the appellant's suggested measures to control traffic movements on the highway in the vicinity of the appeal site would sufficiently mitigate the traffic impact of the proposal and are acceptable to GCC in respect of the stand-alone development (IR272). However, she also considers that they do not take account of the cumulative traffic impact of the AoS development in respect of which the measures would be uncertain in respect of their implementation, effectiveness, and benefits. Overall, the Secretary of State considers that changes in local traffic patterns would be better addressed in the context of the wider AoS development (IR272).

Whether prejudice to the RSS or Park and Ride

20. The Secretary of State agrees with the Inspector's reasoning and conclusions in IR273-IR287. She considers that the earlier development of the appeal site

would be unlikely to prejudice the location of shared facilities such as a primary school as these could be accommodated elsewhere within the AoS (IR287). She also considers that suitable arrangements can be made for connections to and through the appeal site between other future AoS development at the reserved matters stage if suitable planning conditions are applied (IR287).

21. The Secretary of State agrees with the Inspector that, as a stand-alone development, the appeal scheme would not warrant a financial contribution to a park and ride scheme for the A46 and neither would it prejudice the location of such a scheme (IR287). However, in the context of a wider AoS development, the Secretary of State considers that the appeal site should not be credited with any spare capacity on the A46 and this may warrant a contribution to park and ride provision from this and other developments. Like the Inspector, the Secretary of State considers that the amount of all contributions to shared transport infrastructure, including public transport, should be shared equitably (IR287).
22. The Secretary of State considers that the disputed arrangements for payments towards necessary infrastructure would risk that infrastructure not being provided when required and would risk prejudice to the delivery and quality of the wider AoS development (IR287). She also agrees that, following any confirmation of the AoS and the definition of which land is to be developed for what purpose, the need for and funding of the infrastructure would be better addressed through the joint working mechanism being established by the Councils and by negotiation between the Councils (including Cheltenham Borough Council) and a consortium of developers (IR287).

Surface Water Flooding

23. The Secretary of State agrees with the inspector, for the reasons set out in IR288-IR290, that the appeal scheme development would reduce, and not increase, the risk of off-site water flooding; and would not prejudice future options for addressing flooding problems at Warden Hill (IR291).

Planning Obligations and Conditions

24. The Secretary of State agrees with the Inspector's reasoning and conclusions in IR293-IR295 on the proposed planning conditions. She considers that the conditions comply with Circular DoE 11/95. She also considers that the proposed planning obligations comply with ODPM Circular 5/2005. However, the Secretary of State does not consider that the imposition of conditions or the proposed Section 106 Undertakings would overcome her reasons for refusing the appeal.

Overall conclusions

25. The Secretary of State considers that the proposal is not in line with the development plan, even though the principle of developing the site in this location for this amount of housing was established by the Local Plan.

26. The Secretary of State accepts that there is no identifiable five year supply of housing in an area identified by the emerging RSS as a primary focus for development in the South West. She considers that this is a factor which weighs heavily in favour of the scheme, in line with PPS3. However, the Secretary of State also considers that to allow the appeal now would be likely to prejudice the development of the urban extension and especially the infrastructure necessary to achieve a high quality development. In particular, she considers that the disagreement about what infrastructure is appropriate, and how it should be funded, would impact on the deliverability of the whole AoS.
27. The Secretary of State considers that, in the event that the AoS development does not go ahead, the submitted planning obligations and existing spare capacity in infrastructure would make adequate provision for a stand-alone development, with the exception of provision for recreational open space for children and adults, which would be inadequate. She considers that on-site provision would not achieve the landscape benefits that would be available by positioning additional open space along the southern edge of the development. Provision for adults would be inadequate, whether on or off site.
28. Overall, the Secretary of State concludes that the appeal proposal does not accord with the key Policy SD2 of the Local Plan and would also prejudice the emerging RSS. In spite of the potential housing benefits, the accepted principle of development in the Local Plan and the fact that the majority of the proposed infrastructure provision is acceptable for a stand-alone development, she does not consider these outweigh the deficiencies she has identified and, in the circumstances of this particular case, she is satisfied that there are no material considerations of sufficient weight to determine the appeal other than in accordance with the development plan.

Formal Decision

29. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendations. She hereby dismisses your client's appeal and refuses planning permission for outline planning permission for development comprising approximately 360 dwellings (i.e. up to 365 dwellings; creation of general amenity areas and formal open space; creation of landscaped areas; new accesses for vehicles, pedestrians and cyclists; sustainable drainage measures, including balancing facility; and associated engineering and service operations in accordance with application ref: 07/001012/OUT, dated 25 June 2007.

Right to challenge a decision

30. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application in the High Court within six weeks of the date of this letter.

31. A copy of this letter has been sent to Tewkesbury District Council and other interested third parties.

Yours faithfully,

Mark Plummer

Authorised by the Secretary of State to sign in that behalf