



Appeal Decision

Site visit made on 20 January 2011

by Keith Manning BSc (Hons) BTP MRTPI

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

Decision date: 1 April 2011

Appeal Ref: APP/Y1945/A/10/2136251
16 Roughwood Close, Watford WD17 3HN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Matthew Homes Ltd against the decision of Watford Borough Council.
 - The application Ref 10/00012/FUL, dated 6 January 2010, was refused by notice dated 24 March 2010.
 - The development proposed is erection of four detached houses and all ancillary works.
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Decision

1. I dismiss the appeal.

Main Issue

2. The main issue in this case is whether the financial contributions provided for through the medium of the unilateral undertaking¹ submitted would be adequate to mitigate the impact of the proposed development having regard to the broad policy principles set out in Annex B to Circular 05/2005 *Planning Obligations* ('the Circular'). The undertaking provides for contributions in respect of childcare, nursery and primary education, and youth services.

Reasons

3. The appeal site is a large triangular parcel of land at the head of Roughwood Close occupied by a single detached house. This is vacant. Although the main body of the house was largely intact at the time of my visit the roof tiles had been removed, apparently around May 2010, prior to which the roof void had been surveyed for bats. The site is bounded to the north and east by houses in generous plots of varying size and to the west by open land that is within a Green Belt.
4. Planning permission (Ref 10/00855/FUL) for the same development was granted on 7 December 2010, the matter of the putative presence of bats and the matter of contributions² to local services and infrastructure having evidently been resolved to the Council's satisfaction. An informative to that permission states....."The proposal is the same as a previous proposal that was refused planning permission 10/00012/FUL in March 2010 due to the lack of an appropriate planning obligation, and because there was some doubt as to whether protected species of wildlife (bats) might be roosting on the site; but this reapplication has satisfactorily addressed both those matters."

¹ Unilateral Undertaking dated 14 December 2010

² As in completed agreement dated 7 December 2010, a copy of which I requested prior to my decision

5. Having examined the site and its surroundings, I have no reason to take a different view from that of the Council regarding the appropriateness of the development in terms of the principle of the land use or the nature and design of the development as proposed. Moreover, I have no reason, on the basis of the evidence before me, to doubt that the permission would be implemented if this appeal were not to succeed. It therefore represents a clear-cut 'fallback' position for the appellant which is a powerful material consideration. Notwithstanding that the site is no longer classified as previously-developed land to which priority for development is generally to be accorded, the specific merits of what is proposed are no longer, in a practical sense, at issue.
6. The Council's representations were submitted prior to the grant of planning permission and, in the circumstances, there is no need for me to address the matter of nature conservation, which was the subject of its first reason for refusal. Neither is it necessary for me to address the in-principle need for financial contributions to mitigate the impact of the proposed development. It is plainly common ground that some such contributions are necessary and I have no reason to take an alternative view. Moreover, the Council's position is that the full range and extent of contributions sought are lawfully sought in the context of the Community Infrastructure Levy Regulations 2010 that are now in force. The issue therefore revolves around six specific contributions to which the appellant has committed under the terms of the permission now granted and its associated planning obligation, and the absence of those same contributions from the unilateral undertaking submitted in respect of the proposed development I am obliged to consider.
7. In straightforward terms the issue, and hence my decision, turns on whether any or all of the following contributions are necessary and appropriate in the light of the advice in the Circular that such contributions be reasonable, relevant, necessary as a result of and directly related to the proposed development and proportionate to it:
 - Sustainable Transport - £4,500
 - Secondary Education - £16,986
 - Libraries - £795
 - Open space - £3,708
 - Children's playspace - £2,955
 - Health facilities- £1,650

Given the circumstances of this appeal, the content of the unilateral undertaking and that of the appellant's statement, it is effectively common ground between the parties that nursery and primary education, childcare and youth services are appropriately provided for by way of a proportionate financial contribution.

8. Appendix 28 of the appellant's statement contains a selection of appeal decisions in which various aspects of the policy and practice of the Council and the County Council in respect of contributions are considered and the weight to be attached determined. However, it is evident from reading those decisions that many turn on the specific circumstances and evidence before the Inspector, which I am not party to. For example, in the case of the appeal referenced APP/B1930/A/06/2006963, it is clear that the Inspector considered

- a contribution towards sustainable transport schemes would be justified but that, in its absence, the requisite measures could in that case be secured by a planning condition; and I note that condition 12) of that decision puts that conclusion into effect.
9. The Council, on the other hand, maintains that its approach within the Hertfordshire context is frequently supported by Inspectors and, notwithstanding the individual examples put before me by the appellant and the lack of specificity in the Council's statement, I have no evidence to suggest that is not generally the case.
 10. Bearing the above points in mind, I consider the issue in the circumstances specific to this case having regard to the advice in the Circular, which sets out the broad principles regarding the negotiation of planning obligations appropriate to specific sites and allows for pooled contributions and the application of formulae and standard charges. These approaches are most relevant, it seems to me, in circumstances where development is likely to have an incremental impact on the capacity of physical and social infrastructure in the locality that needs to be mitigated and cannot be addressed by the imposition of planning conditions. Hence financial contributions to such infrastructure proportionate to the likely impact of a specific development can, in practice, only be sought through the medium of a planning obligation.
 11. It is against that background that I consider the disputed contributions sought. The relevant development plan policy background is comprehensively documented in the appellant's submission, albeit that the Regional Spatial Strategy remains in force. However, it seems to me that the most relevant development plan policies are the saved policies of the Watford District Plan 2000 ('the local plan'), amongst which IMR2 is of particular significance because it sets out the Council's approach to planning obligations, listing those other policies concerning specific topics³ which might create the need for a planning obligation. The Council points out, in its statement, that use of formulae and standard charges with a view to pooling contributions is encouraged by the Circular and that the circumstances of Watford, with significant reliance for housing provision on smaller sites, are particularly appropriate for that approach, providing developers with a clear view in advance of what is likely to be needed and expected in any particular case.
 12. I have no reason to disagree with that analysis, albeit that the Circular makes clear that such mechanisms should not be applied in a blanket fashion but rather applied to the circumstances of any particular case. Given that the Council considers that the contributions sought are consistent with the policy requirements set out in paragraph B5 of the Circular, it follows that its position that the tests of the Community Infrastructure Levy Regulations 2010 would also be satisfied is a consistent one, the central question in respect of each contribution being whether the circumstances of the particular development at issue do in fact necessitate the contribution sought. I am conscious that in no instance does the appellant effectively contest the proportionality, as opposed to the necessity, of what is sought. If that were the case then, logically, a different amount would have been offered through the medium of the unilateral undertaking in respect of any contribution considered necessary but disproportionate.

³ Written Statement - Table 9

13. As it is, the undertaking makes no contribution in respect of the following matters and it is therefore primarily to the necessity or otherwise of the contributions sought by the Council that I now turn my attention.

Sustainable Transport

14. I note that the County Council's email of 6 July was a response to a query following a single appeal decision in which the Inspector was unable to divine what mitigation was required in respect of highways. However, I also note that the Inspector in the case referenced above considered that the additional residents in that case would be likely to have a significant impact on local transport need and that a contribution towards sustainable transport schemes that would be related to the effect of the proposal would be justified, albeit he imposed a condition requiring a scheme of mitigation as opposed to the £8,500 contribution sought.
15. It seems to me that small increments of development, such as the scheme at issue, must cumulatively put additional strain on transport infrastructure and, whilst not necessarily creating a highway safety objection as a consequence of additional traffic generation, would fall within the purview and intentions of local plan policies T4, T7, T9 and T24, which collectively seek to promote more sustainable travel within the Borough Council's area. The appellant refers to the County Council's email of 6 July 2010 and describes the South West Hertfordshire Transport Plan as "aspirational". Insofar as it aspires to deliver a programme of improvements set out in a periodically reviewed action plan, that must inevitably be the case. However, it is clear from paragraph B21 and B22 of the Circular that a discrete piece of infrastructure need not be individually justified but rather addressed through pooled contributions, the scale of which may be set out in advance as through the use of the '*Planning obligations guidance – toolkit for Hertfordshire*' document published in January 2008. Although not part of the development plan or formally adopted, apparently, as a supplementary planning document as such, it is nevertheless published in advance, as advised by the Circular and has been approved as guidance by the County Council following consultation. Amongst other things, it provides an indication of sought contributions based on parking standards and bedroom numbers, which seems to me to be a reasonable starting point, at least, for negotiations concerning a specific scheme.
16. In the light of the above considerations it merits weight as a basis for negotiating the contributions appropriately derived from individual small housing schemes to be pooled for use on local schemes identified in the Local Transport Plan and in urban transport plans to enhance non-car accessibility within the catchments of new development, albeit not the greater weight that a more formal document would attract. Moreover, it seems to me that the intention of the Circular's advice would be undermined if the approach that has been established through the toolkit were not to be applied consistently, albeit that very consistency might arguably be described as a blanket approach. Thus, while I acknowledge that there is degree of opacity in the County Council's approach that would also run counter to the Circular's advice, I am not persuaded that the contribution sought is, in principle, unnecessary; and that being so, I would not regard a nil contribution as acceptable. However, I consider that an obligation is the appropriate means of securing financial contributions, whatever the appropriate amount, and, in the absence of specific evidence to demonstrate that the approach in the toolkit generates a sought contribution that would be disproportionate to the development proposed in

this instance, I have no basis for concluding that the contribution to sustainable transport would be excessive.

17. For the above reasons, I conclude that a contribution in respect of sustainable transport is necessary.

Secondary Education

18. The appellant accepts that financial contributions to the County Council's education service, in accordance with policy H10 of the local plan, to mitigate the impact of the development upon it are, in principle, appropriate. There is no contention concerning the contributions sought for nursery and primary education, in respect of which there is an acknowledged current shortfall in provision.
19. The contention concerning secondary education arises, it appears, because of an adequacy of capacity in the short term but an emerging capacity issue in 2015/16 and 2016/17. However, it seems to me that the mitigation of impact on the schools system can only be addressed through the formulaic approach because it is not possible to say that children from the proposed development will necessarily attend a local publicly funded school, whether that be for the purposes of nursery, primary or secondary education, or indeed what families will occupy any particular development. Moreover, parental choice considerations, especially at secondary level, make it inevitable that demand cannot necessarily be conceived of in terms of administrative boundaries. What is relevant is the totality of demand arising from new development and in any event the Circular recognises that pooled contributions can address cross-authority impact. For that reason I do not consider it inappropriate for the development at issue in this instance to make no contribution to secondary education on the premise that the facilities funded might be used by children from outside the district. Unless private education is opted for, or in the unlikely event of family houses containing no children, the proposed development will directly give rise to a demand for facilities and again the intentions of the Circular can only properly be served by a degree of consistency. Appendix 1 to the toolkit sets out explicitly the cost on a per pupil basis, taking into account variation over time as developments are initially occupied before settling towards an assumed norm for established residential areas.
20. Although it seems that capacity would not be an issue locally until 4 or 5 years from now, it also has to be borne in mind that the lifetime of a permission is generally three years and that a development commenced at the end of that period might not be fully occupied until around that time. Again, this militates in favour of a standardised approach consistently applied. Moreover, the size of the houses proposed suggests to me that they are likely to be occupied by families with older children in any event.
21. For these reasons, I do not consider that there is a convincing argument in this case to depart from the normal expectation in the local planning authority and County Council area that a proportionate financial contribution to secondary education facilities to mitigate the impact of residential development should be effected through the medium of a planning obligation. I conclude that the calculated contribution sought is necessary and appropriate.

Libraries

22. The improvement of the Central Library facilities in Watford, within the catchment of which the proposed development falls, is arguably an action to address an existing deficiency, as the appellant maintains. However, policy H10 of the local plan provides for contributions in respect of community facilities and it seems to me that there must be some impact to be mitigated in any event as a direct consequence of additional households and the toolkit makes it clear that pooled contributions will only be used to provide library facilities relevant to the development in question. Whilst at first sight the link might seem tenuous, the logic of pooled contributions to social infrastructure, as advised by the Circular, leads me to the conclusion that there is a sufficiently direct link between new development and local library services to satisfy the relevant test and Appendix 1 to the toolkit explains how the pool of contributions is anticipated to be used. Moreover, there is an explicit basis for calculating the contributions that does not seem to me to lead to a disproportionate outcome.

23. For these reasons, I consider the library contribution sought to be justified.

Open space

24. The Council's letter of 16 July 2009 confirms that the proposed development is not in an area of open space deficiency and on that basis simply proposes to halve the normal contribution sought. The approach appears to be derived from the Council's Planning Obligations Statement of 2008, whereas SPG10, which is formally adopted supplementary guidance, deploys formulae based on assumed land values that are not current, albeit there is provision to vary according to the circumstances of the site and hence scope for a more precise negotiation.

25. I am not persuaded that policy L8 of the local plan, which recognises that there may be situations where there is sufficient provision within the locality, supports in those circumstances the concept of a halved contribution as suggested, as opposed to one based on a more refined negotiation. Although the policy is clear that all residential development may be expected to have some impact on open space resources, I am not persuaded in this instance that the amount of the contribution sought is adequately justified in the specific circumstances of the site's locality and directly related to it, notwithstanding that the principle of a contribution is embedded in the relevant adopted policy.

Children's playspace

26. Family houses, even if set in private gardens, may reasonably be expected to give rise to at least some impact on children's playspace resources. It is clear from the Council's letter of 16 July 2009 that children's playspace provision would fall to be addressed as a consequence of policy L9 of the local plan as amplified by SPG10. The latter provides, at paragraph 10.4.5, a clear requirement and a straightforward means of informing site-specific negotiation as advocated by paragraph B33 of the Circular. However, it is not clear from the Council's letter how the standard charge is to be applied, bearing in mind that the standard charge is a minimum of £985 per dwelling and the sum in contention is £2,955, rather less than the £3,940 that would be predicted on that basis.

27. Given the clarity of the adopted policy and guidance, I consider that in the circumstances of the site a contribution would be justified but there is less clarity as to whether or not the amount in contention is appropriately calculated if the starting point for negotiation is the standard charge.

Health facilities

28. Policy H10 of the local plan indicates that contributions to community facilities required as a direct result of the proposed development may be required by the Council. Doctors' surgeries are mentioned in the explanation to the policy and the Council's letter of 16 July 2009 does no more than mention a study undertaken on behalf of the Primary Care Trust. Having read this study, which is simply appended to the Council's Planning Obligations Statement, I am not persuaded that it forms an appropriate basis upon which to negotiate a contribution from the development proposed, bearing in mind that it appears to be predicated on the proposition that "any new residential development (that is in excess of ten units) will have an immediate impact in the terms of demand for primary care".

29. In any event, it is essentially a discursive document, albeit that a tariff is suggested, and does not seem to me to have any status as guidance for developers in the manner intended by the Circular. The basis upon which a contribution simply to 'health facilities' in the Borough of Watford as a whole is sought is, in my view, inconsistent with the policy principles of the Circular. There is insufficient basis for negotiating related or proportional contributions in respect of small increments of proposed residential development such as that proposed in this instance and, bearing in mind the funding arrangements for healthcare in general, I am not persuaded that even the relatively modest contribution sought is justified.

Transparency

30. The explanation to policy IMR2 of the local plan states, at paragraph 12.27, that..... "S106 payments are held in separate accounts and are rigorously audited. They are monitored and reported regularly to Council and therefore available for public inspection. Full reporting back to developers is undertaken to show how and where their contributions have been used." The Council's *Planning Obligations Statement* also makes it clear that procedures are in place to ensure that an audit trail exists to relate contributions to specific expenditure. Similar arrangements and opportunities for tracking expenditure are explained in section 16 of the County Council's toolkit. On the basis of such arrangements being in place, I have no reason to consider that either council would not be able to demonstrate a clear audit trail between contributions made and infrastructure provided, or otherwise fail to accord with the principles embodied in paragraph B21 of the Circular.

Overall conclusions

31. I have considered the cases put by the parties in terms of both general principles and specific contributions and in the light of the broad policy principles set out in Annex B to the Circular taken as a whole, including the advice on formulae, standard charges and pooled contributions. In most cases I have concluded that a contribution to infrastructure provision by the relevant authorities would, in the circumstances, be justified, albeit I acknowledge that there is a lack of certainty as to exactly when, how and where the contributions sought would be deployed. However, this is a small housing scheme which

would combine with others to impact on public infrastructure and the mitigation of such impacts in those circumstances, it seems to me, must inevitably involve the sorts of mechanisms advocated by the Circular and operated by the relevant local authorities in this case, including those designed to ensure transparency in the deployment of specific contributions in the context of their being pooled for use alongside others.

32. Although there may be scope for negotiation regarding proportionality in the case of some of the contributions sought; in only one case, health facilities, am I persuaded that a nil contribution would be acceptable. In all other cases, I am of the view that failure to provide a contribution would lead to conflict with the intentions of local plan policy IMR2 and relevant topic based policies. For this reason, the financial contributions provided for through the medium of the unilateral undertaking submitted (which, by reason of their omission, would be nil in respect of all the disputed contributions) would not be adequate to mitigate the impact of the proposed development having regard to the broad policy principles set out in Annex B to the Circular.
33. No material considerations have been identified which would be sufficient to outweigh the resulting conflict with the intentions of the development plan and I therefore conclude that the appeal should be dismissed.

Keith Manning

Inspector