



Appeal Decision

Inquiry held on 2, 3 & 4 March 2011

Site Visit made immediately after the close of the inquiry on 4 March 2011

by **Alan T Gray MRICS DipTP MRTPI RICS Accredited Mediator**

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

Decision date: 12 May 2011

Appeal Ref: APP/C1760/A/10/2140657/NWF

Land off Nutburn & Botley Roads, North Baddesley, Hampshire SO52 9EA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Perbury Developments Limited against the decision of Test Valley Borough Council.
 - The application Ref 10/00494/OUTS, dated 4 March 2010, was refused by notice dated 21 September 2010.
 - The proposed development comprises the erection of 44 dwellings with vehicular access from Nutburn Road and pedestrian access from Botley Road.
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Preliminary Matters

1. Although the application was in outline, the means of access to the site were not reserved for subsequent approval. An Environmental Statement (ES) accompanied the application. It was produced in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (as amended). Further evidence regarding nature conservation was produced at the inquiry and in determining this appeal I have taken account of this Environmental Information in addition to the Environmental Statement itself.
2. A signed Section 106 Agreement is in place, potential conditions are agreed between the Council and the Appellants and as a consequence, the Council is not pursuing five of the six reasons for refusal. Its remaining concern is in relation to housing land availability.
3. Following the inquiry, there was a Ministerial Statement entitled *Planning for Growth* and the Parties were invited to comment in writing on its implications for the proposed development. The Appellants and the Council did so, and I have taken account of their post-inquiry representations in determining the appeal.

Decision

4. The appeal is dismissed.

Main Issues

5. There are two, namely:
 - The requirement for and the supply of housing land; and
 - The impact of the proposed development on nature conservation.

Reasons

Introduction

6. The development plan comprises the South East Plan (RSS) 2009 and the saved policies of the Test Valley Borough Local Plan (TVBLP) 2006, which endures until the end of 2011. A Local Development Scheme was approved in 2010. The Core Strategy is being developed and is expected to be submitted for examination in June 2012. It will allocate strategic sites for residential development and should be followed in 2013/14 by the adoption of an Action Area Plan that will address sites in greater detail.
7. Notwithstanding the various changes in status that have recently characterised the RSS, it is agreed that it provides the proper foundation for assessment of housing land supply. The appeal site lies in the open countryside and is protected by saved TVBLP Policy SET03. It is agreed that the site's development for residential purposes would be in unacceptable conflict with that policy unless there were an identified shortfall in housing land supply. Were that the case, PPS3 would encourage favourable consideration of the proposed development, which would be capable of delivering all of its housing by the end of 2013. Moreover, according to the Council's Strategic Housing Land Availability Assessment (SHLAA) 2009, the site is sustainably located and would be a candidate for residential development were it not for its countryside designation.
8. Whether or not there is a shortfall however, there is also a need to consider the potential impact of the proposed development on nearby nature conservation interests.

Nature Conservation

9. The Nutburn Meadow Site of Importance for Nature Conservation (SINC) lies immediately to the north-west of the appeal site, while the Emer Bog Special Area for Conservation (SAC) and Baddesley Common Site of Special Scientific Interest (SSSI) lie about 1km to the north. The SAC and SSSI are largely coincident. Two of the reasons for refusal related to nature conservation and although they were not pursued, nature conservation needs to be considered in the context of this appeal. The Council's first concern was in relation to potential habitat effects and mitigation measures, while the second concern was specifically for the ecological effects on bats.
10. There is a bat mitigation strategy which meets the appropriate regulatory tests and ensures that the *favourable conservation status* of bats will be maintained¹. There is no outstanding objection from any statutory or non-statutory consultee and I am satisfied that subject to mitigation and protection, the proposed development would present no threat to bats and there would be no conflict with saved TVBLP Policy ENV05.
11. Turning to habitat effects and mitigation measures, there are no outstanding concerns in relation to the Nutburn Meadow SINC and I am satisfied here also, that subject to abandonment of the proposed rural footway and other appropriate mitigation measures, the proposed development would not have any adverse effect upon the SINC. I am therefore satisfied that there is no

¹ Document A3 Appendix 7

conflict with saved TVBLP Policy ENV04 so far as the SINC is concerned, but the Emer Bog SAC and Baddesley Common SSSI considerations are more complex.

12. So far as Emer Bog and Baddesley Common are concerned, the ES concluded that the *proposed development* would be unlikely to have a significant effect². But it is necessary also to consider whether there might be such an effect *in combination with other plans or projects*. The conservation interests associated with Emer Bog and Baddesley Common are described in the citations and it is the heath/mire/bog vegetation that attracts precautionary concern.
13. The bog is recovering from post-war ploughing damage. Potential threats to vegetation arise from human activity, hydrology and the adequacy of the grazing regime. The Hampshire and Isle of Wight Wildlife Trust (HIWT) are the current owners of most of the bog and common. They have re-introduced grazing which is very likely to have enhanced vegetational diversity and that is not in dispute. The bog is vulnerable to changes in hydrology which could result in material degradation of its structure and function³, but the proposed development would not contribute to that in combination or alone⁴.
14. There are potentially adverse implications for the grazing regime and the integrity of the site from human activity and importantly, additional recreational activity including dog walking. Taking the traditional approach to assessment, the *source* would be the proposed development, the *receptor* would be the vegetation and the *pathways* would be the routes connecting the appeal site with the SAC and their characteristics.
15. Relative studies suggest that as the source, the proposed development would probably add only 7/8 additional dog-owning households, few of whom would be likely to walk the shortest (but least attractive or safe) return trip to Emer Bog of around 2.6km, or the longest (and most attractive and safe because it is wholly off-road) of around 4km on a regular basis as pathways; nor would they be likely to drive as there is no dedicated car parking. The Visitor Survey⁵ revealed that 77 walkers with 62 dogs visited Emer Bog and Baddesley Common in 14 survey hours and whilst it represents only a snapshot, it seems unlikely that the proposed development would add significantly to existing pressures which HIWT describes as *manageable*.
16. There is no evidence of a present threat to the vegetation as receptor, despite the evidence from the Visitor Survey and from the post-inquiry site inspection of dogs running freely. As custodian of the bog HIWT encourages visitors and does not prohibit unleashed dogs onto a site that is open day and night. No recreational problems affect the bog or common or the stock which grazes its vegetation, which HIWT describes as *robust*. Moreover, there are no public rights of way over the bog. The rights are permissive and could be, but have not been withdrawn. A boardwalk traverses the bog, walkers are very unlikely to leave it and equally unlikely to allow their dogs to stray into the deep and treacherous peat which abuts.
17. I find it challenging to conclude that the few dogs which could be kept in some of the proposed dwellings and were likely to be walked all the way to Emer Bog

² Document I3 paragraph 4.6.9

³ Document A4 paragraph 5.41

⁴ Document A7

⁵ Document A5

- or Baddesley Common would be likely to have a significant effect on the vegetation or represent a *step change* in recreational use, as HIWT suggests. Other residential developments are planned in the area, but even if they were likely to generate recreational pressures, they would also have to avoid harmful effects through provision of mitigation measures, as are proposed in this case.
18. Mitigation measures would encourage the diversion of recreational activity away from the bog through the provision of a financial contribution to Forest Park (a planned sub-regional recreational provision), and the provision and management in perpetuity of a small recreational site in Nutburn Road, close to the appeal site. Whilst Forest Park is relatively remote from the appeal site it could be easily accessible by car which the SAC is effectively not because it lacks dedicated car parking; and Forest Park would thus offer additional recreational opportunities. So too would the small off-site recreational provision. It would not be provided until after the occupation of 30 of the 44 proposed dwellings, but that does not seem unreasonable to me.
19. Consequently, I am persuaded that the mitigation measures would be effective and I do not regard the provision of more mitigation land per capita elsewhere as significant because the affected interests differ – common grazing as opposed to nesting birds⁶.
20. The position of Natural England requires comment. Although an objection was initially made and has never been formally withdrawn, there are unambiguous indications that the objection would be overcome by the provision of the proposed mitigation measures⁷.
21. In my view there is no need for an appropriate assessment to be undertaken because the proposed development would be unlikely to have a significant effect on the integrity of the protected sites, either alone or in combination with other plans or projects. Mitigation measures would offer additional surety in relation to the SAC and the SSSI, and the *mere probability* of a significant effect is unfounded. I am satisfied also that there would be no conflict with TVBLP Policy ENV01.

Housing Land

22. Housing completions have been low in the plan period so far with 554 completions against the RSS expectation of 980 and there is therefore a shortfall.
23. The five year housing requirement for 2011/12-2015/16 could be calculated in different ways, but it is agreed that it would be in the order of 1120 dwellings if calculated on the residual basis favoured by the Council:

Requirement 2006-2026	3920
Less Completions 2006/7-2010/11	554
Net Requirement	3366
Annual Requirement (3366÷15)	224
5 Year Requirement (224x5)	1120

⁶ Document H3 The *Dilly Lane* Judgment

⁷ Document A4 Appendix 21 & Document A9

24. The Appellants' calculation relies on the principle that historic shortfalls in housing completions against the annual average envisaged in the RSS should be accommodated within the predicted requirement:

Requirement 2006-2026	3920
Annual Requirement (3920÷20)	196
5 Year Requirement (196×5)	980
But~	
Completions (2006/07-2010/11)	554
Therefore~	
Shortfall (980-554)	426
If shortfall spread over 5 years~	
5 Year Requirement (980+426)	1406
If shortfall spread over 10 years~	
5 Year Requirement (980+277)	1257
If shortfall spread over 15 years~	
5 Year Requirement (980+142)	1122

25. I prefer the traditional, residual approach because it reflects common practice as recognised by GOSE⁸. I do not see the approach as being seriously in conflict with RSS Policies H1 or H2. The former is concerned with the plan period as a whole, while the latter refers simply to addressing backlogs without specifying how. It seems to make sense to spread any shortfall over the remaining plan period rather than over an arbitrary alternative. The fact that another Council's requirement⁹ was calculated by spreading the shortfall over a shorter period does not imply any particular endorsement of that approach or imply that it could be applicable in Hampshire, where annual completions are not regarded as targets or ceilings, but merely starting points. I therefore conclude that the five year requirement is 1120 dwellings. The Appellants concede that there is no statistical significance between 1122 and 1120.

26. There is also another prediction by the developer of Redbridge Lane (Nursling) who is also the promoter of an alternative site at Bargain Farm (Nursling). It suggests a five year requirement of 1060¹⁰. However, it was calculated by reference to completions in 2009/10 and ignores the predicted completions in 2010/11 taken into account by the Council and by the Appellants. The 1060 figure should therefore be discounted in favour of 1120, in my opinion.

27. In allowing the recent appeal for the Redbridge Lane development, my colleague declined to be specific as to the requirement figure and instead identified a range¹¹. Circumstances have changed since that inquiry. It occurred in the period of uncertainty following revocation of the RSS and in the

⁸ Document C1 Appendix 4

⁹ Document A3 Appendix 9

¹⁰ Document IP1 Trustees of the Barker Mill Estates

¹¹ Reference A/10/2127652

absence of a traditional framework for calculating the requirement. I do not see the same need to avoid reaching a specific conclusion on the figure to be used now that the RSS is reinstated and I must rely upon the present data, as opposed to the figures upon which he relied.

28. There is disagreement also about the supply side of the equation. The Council considers that some 1181 dwellings could be completed. The vast majority of that supply (95%) would be produced on two approved developments, with 775 dwellings at Abbotswood (Romsey) and 350 at Redbridge Lane (Nursling). That is questioned by the Appellants who suggest 570-630 for the former and 190-275 for the latter, with total completions of 816-961. Furthermore, the competing developer suggests 500 for the former and 350 for the latter, with completions of 906 dwellings in total.
29. The range of competing predictions for completed dwellings is therefore 816/906/961/1181, representing some 3.64/4.04/4.29/5.27 years' supply if consistently calculated using the Council's methodology. The variations arise principally from the predicted rate of completions on the two large sites and it is therefore necessary to explore the differing predictions.
30. Circumstances have changed since the Redbridge Lane appeal and the rate of completions would not necessarily be the gloomy one which clearly influenced the successful outcome. As regards Abbotswood, the Council's optimistic view is that development should proceed quickly. The developers have acquired the site and there should be resulting pressure for progress. All but one of the pre-commencement conditions have been discharged; all enabling works can be undertaken, with commencement shortly and completion six months thereafter; and neither principal highways nor strategic open space applications are likely to delay the housing parcels reserved matters application, which is likely to be approved in June/July 2011. Construction should begin thereafter and despite the need for undergrounding of cables and upgrading of off-site sewers, 75 dwellings could be completed by the end of March 2012.
31. The Appellants are more pessimistic. They rely on a range of predicted completions with only 30 dwellings (at best) within the year. But even on that single figure the five year supply would still be secure. The site is being developed by a consortium of the Appellants and three major house builders who are likely to produce 775 dwellings in five years, as the developer's own recent prediction confirms¹². That is an important prediction attracting considerable weight and persuading me that this site should make a substantial contribution to housing supply within the five year period.
32. Turning to Redbridge Lane, the site is less challenging to develop and two or three major house builders could deliver 350 dwellings over five years, as predicted¹³. I am not persuaded by the Appellants' arguments that such predictions are simply unsubstantiated assertions because there is no substantial evidence to undermine them. The site's permission is for *up to* 350 dwellings, but I see no reason to suppose that the developers would not choose to make full use of the permission. I realise that they could not be forced to maximise the number of dwellings, but that argument could be applied to many, if not most permissions.

¹² Document C1 Appendix 10 & Document A2 Appendix 6

¹³ Document IP1 paragraph 3.14

33. There is much to be done to secure the completion of dwellings, especially at Abbotswood, but also at Redbridge Lane. There are uncertainties and there is considerable scope for delay if implementation becomes complicated by physical or regulatory obstacles. Nevertheless, both the developers and the Council stand to gain by steady implementation and I think it would be inappropriate to make predictions on a pessimistic basis for these sites in isolation unless pessimism were a consistent characteristic of all housing land supply calculations for the Borough. Were there evidence of serious delay it would be right to modify predictions accordingly, but that is not the case. Market forces could affect the rate of completions, but it seems to me that they could also affect demand and it would therefore be inappropriate to make an adjustment for only one side of the equation, especially as economic predictions lack certainty.
34. PPS3 seeks a wide range and choice of housing and no new houses are presently planned for North Baddesley. However, it seems to me that the policy aspiration can be met by the developments at Abbotswood and Redbridge Lane, with three developers at the former and two or three at the latter, coupled with smaller developments in Romsey, which are included in the supply. PPS3 also encourages the identification of a further supply for the longer term, but it seems to me that the SHLAA is helpful in that regard. There is a significant need for affordable homes locally, but I do not believe that the relatively small contribution of this site would be a sufficient reason to overlook the adequacy of housing land and the development plan's provisions.
35. I am satisfied that there is a five year supply of housing land as envisaged in PPS3 and there is therefore no overriding reason to release this site for development, contrary to TVBLP Policy SET03. Had I found that there was not a five year supply it would have been appropriate to consider whether the alternative site at Bargain Farm cast doubt on the suitability of the appeal site to address the shortfall, but in view of my conclusion I do not propose to do so.
36. Serious concern about the urgent need for better definition of settlement boundaries was expressed by colleagues when reporting on objections to the current TVBLP in 2005. These concerns have not yet been addressed, but it is clear that revision was envisaged through the anticipated development plan process rather than the unplanned release of a housing site¹⁴.

Planning for Growth

37. The Ministerial Statement reinforces the need to progress development plans, the process is already well underway in Test Valley and the Core Strategy is expected fairly soon. It emphasises the need to maintain a *flexible and responsive supply of land for key sectors including housing*, reinforcing the advice in PPS3, with an *expectation that the answer to development and growth should, wherever possible, be 'yes'*. The appeal site is sustainably located, would secure early jobs and would support local economic growth, but there is a sufficient supply of housing land, which I regard as flexible and responsive. Consequently, I am not persuaded that the latest policy developments reinforce the argument for losing valuable countryside by releasing the site at this time.

¹⁴ Document A6/2 paragraph 3.3.119

Agreement & Conditions

38. The S106 Agreement includes contributions to public open space, transport infrastructure and green infrastructure, and for the provision of mitigation land and affordable housing. Having considered the agreement and its justification, I am persuaded that it satisfies the appropriate statutory tests and places no unnecessary burdens on development.
39. There is an agreed set of conditions which, with appropriate adjustment, would ensure a satisfactory development of the site.

Overall Conclusions

40. The proposed development would have no adverse implications for nature conservation, but there is an adequate housing land supply and therefore no justification for granting planning permission contrary to the provisions of the development plan. Consequently, although an appropriate S106 Agreement is in place and there is an agreed set of conditions in a broadly acceptable form, I am not persuaded to any conclusion other than that the appeal should be dismissed.

Alan T Gray

Inspector

APPEARANCES

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DOCUMENTS, PLANS & PHOTOGRAPHS

Inquiry

- I1 Application Plans
- I2 Statements accompanying the Application (Design & Access, Planning & Transport)
- I3 Environmental Statement
- I4 Addendum to the Environmental Statement & Revised Non-Technical Summary (01.02.2011)
- I5 Bundle of Council correspondence accompanying the LPA Questionnaire (from statutory consultees, neighbours and the Appellant Company)
- I6 Statement of Common Ground between the Appellant Company & TVBC
- I7 Agreed Revised Conditions
- I8 Section 106 Agreement & Deed of Variation

Local Planning Authority

- C1 Graham Smith's Proof of Evidence & Appendices
- C2 Southern Test Valley Five Year Land Supply Calculation (updated to 2010/11)
- C3 Email exchange with Southern Water regarding Abbotswood residential development
- C4 Email exchange within TVBC regarding calculation of the Forest Park contribution
- C5 Email exchange regarding principal highways at Abbotswood residential development
- C6 Email exchange regarding strategic open space at Abbotswood residential development
- C7 Four plans showing enabling works at Abbotswood residential development
- C8 Adrian Trevelyan Thomas's Closing Submissions
- C9 Post-inquiry submissions on the implications of *Planning for Growth*

Appellant Company

- A1 Stephen Morgan's Opening Statement
- A2 James Tarzey's Proof of Evidence & Appendices
- A3 Roger Daniels's Proof of Evidence & Appendices
- A4 Philip Colebourn's Proof of Evidence & Appendices
- A5 Visitor Questionnaire Survey of Emer Bog & Baddesley Common
- A6 Two extracts from the report of the Test Valley Borough Local Plan Review
- A7 Extract from Further Screening report on Test Valley Core Strategy (2008)
- A8 Statement of Suggested Common Ground between the Appellant Company and HIWT
- A9 Email exchange with Natural England regarding the Section 106 Agreement's nature conservation contribution
- A10 Stephen Morgan's Closing Submissions
- A11 Post-inquiry submissions on the implications of *Planning for Growth*

Hampshire & Isle of Wight Wildlife Trust

- H1 John Durnell's Proof of Evidence & Appendices
- H2 Supplementary Evidence
- H3 Transcript of the 'Dilly Lane' Judgment
- H4 English Nature Research Report Number 649 (Dogs, Access & Nature Conservation)
- H5 Two Strategic Housing Land Availability Assessment plans
- H6 Clive Chatters's Closing Submissions

Interested Persons

- IP1 Stuart Irvine's Proof of Evidence & Appendices
- IP2 Stephen Cosier's Statement