

# STATEMENT OF COMMON GROUND

**APPEAL REFERENCE** APP/W0340/W/17/3183931

**DATE OF INQUIRY** 17th April 2018

## **SITE ADDRESS AND DESCRIPTION OF THE DEVELOPMENT**

Land South of Irish Hill Road and North of Holt Road, Kintbury, West Berkshire.

**Appeal:** *Hybrid application for outline planning permission for the erection of 40 dwellings (14 x 2 bed, 8 x 3 bed and 18 x 4 bed) with associated landscaping and parking with matters of Access and Layout to be considered. Change of use of land to public open space.*

**APPELLANT:** Baylight Properties Ltd

**LOCAL PLANNING AUTHORITY** West Berkshire Council  
LPA Reference : 17/00981/OUTMAJ

## **1 Parties to the Statement**

- 1.1 This Statement of Common Ground has been prepared relating to the site on Land to the south of Irish Hill Road and North of Holt Road, Kintbury, West Berkshire.
- 1.2 This Statement of Common Ground is between the following:-
- West Berkshire Council (the Local Planning Authority); and
  - Baylight Properties Ltd (the Appellant).

## **2 Purpose of Statement (SoCG)**

- 2.1 This Statement identifies the various procedural and planning matters that are agreed between these two parties, as well, as the areas of dispute, relating to the (hybrid application) appeal for 40 units at Land South of Irish Hill Road, Kintbury, West Berkshire, as set out in the cover page of this SoCG.
- 2.2 Plans: It is agreed that the Plans for the Appeal are:
- Site Location Plan
- 192\_PL\_011 Proposed Site Plan
  - 192\_PL\_010 Parameters Plan
  - 16-3330 Illustrative Landscape Strategy
- 2.3 The Appeal Site is outlined in red on the Appellant's Location Plan. Any further description necessary will be provided in evidence.
- 2.4 The Appellant is likely to make an application for a reduced scheme of 32 units to be considered as an alternative to the 40 units appeal scheme pursuant to the principle in Wheatcroft.
- 2.5 The current outstanding planning application has the reference 17/03561/OUTMAJ and was validated by the LPA on 15<sup>th</sup> January 2018. The Council (LPA) refused planning permission on 9<sup>th</sup> March 2018.
- 2.6 The Council advises that, its team of expert witnesses at the Inquiry were involved and kept up-to-date with the progress of the refused 32 units application. They have sought to address matters relating to the refused proposal for 32 units in their proofs of evidence and to assist the Inquiry and the Inspector vis-à-vis its planning merits and impacts accordingly.

### 3 Reasons for Refusal

#### 3.1 The (hybrid) outline planning application for the 40 dwellings was refused on 26th July 2017 for the following reasons:-

1. *The applicant has failed to deliver a completed s106 planning obligation for the supply of the 16 affordable units on the site, in accord with the advice in policy CS6 in the Adopted Core Strategy for West Berkshire and the advice in the NPPF [para 159] and the undoubted need for such additional affordable homes in the District. The application is accordingly unacceptable. In addition, no commuted sum is paid in relation to the future maintenance of the open space on the site, if adopted by the Council.*

2. *The application site lies on a greenfield site outside any defined settlement boundary in the AONB. It is also not an allocated site in the WBCS 2006 to 2026. Given that there is no exceptional need to approve such housing as the Council can demonstrate in excess of a 5 year housing land supply, the application is considered to be clearly contrary to policies ADPP1 and CS1 in the Core Strategy for the District, and policy C1 in the Adopted HSADPD of May 2017. In addition, given its location, it is clearly contrary to policy CS19 in the WBCS. In addition the application is clearly contrary to bullet point 2 in policy ADPP5 in the WBCS.*

3. *The proposed development, by reason of its location on a sensitive open/exposed edge of the existing settlement of Kintbury, in the NWDAONB, will, by virtue of its proposed built form and scale / massing, inevitably have a harmful and demonstrable visual impact upon the very special qualities of the NWDAONB landscape, in this setting. This is considered to be unacceptable, having regard to the advice in policies ADPP5 and CS19 in the Adopted WBCS and the advice in the NPPF paras 115 and 116, in the absence of no exceptional justification for the additional housing.*

4. *The proposal would generate additional traffic, cyclist and pedestrian movements on Newbury Street which is sub-standard in respect of carriageway and footway widths, exacerbated by parking on both the carriageway and footways, which would adversely affect road safety and the flow of traffic, contrary to Policy CS13 of the West Berkshire District Core Strategy 2006 to 2026.*

5. *The proposed development would result in the increased use of the Newbury Street / Station Road junction which is sub-standard in respect of visibility for vehicles turning right (north) from Newbury Street on to Station Road, which would adversely affect road safety and the flow of traffic, contrary to Policy CS13 of the West Berkshire District Core Strategy 2006 to 2026.*

6. *The application is considered to be unacceptable since the enjoyment of local footpath users in the vicinity of the application site will be harmed by the significant intrusion of built development in the open countryside. This is considered to be contrary to the advice in the NPPF para 75.*

**3.2 The (hybrid) outline planning application for the 32 dwellings was refused on 9th March 2018 for the following reasons:-**

*1. The applicant has failed to deliver a completed s106 planning obligation for:- i) the supply of the required 13 affordable units on the site, contrary to policy CS6 of the West Berkshire Core Strategy (WBCS, adopted July 2012) and the policies and provisions of the NPPF (including §50) regarding the provision of affordable housing; ii) the satisfactory provision and future maintenance of public open space on the site contrary to policy CS14 of the WBCS and policies RL1, RL2 and RL3 of the West Berkshire District Local Plan (Saved Policies 2007). The application is accordingly unacceptable.*

*2. The proposed development is on a greenfield open countryside site outside of any defined settlement boundary in the AONB. Also it is not an allocated site in the WBCS and/or the Housing Site Allocations Development Plan Document (HSADPD). Given that the Council can demonstrate in excess of a five year housing land supply (5YHLS), there is a presumption against new residential development outside of settlement boundaries and there are no exceptional policy provisions which would justify approving such housing, the application is considered to be unacceptable and contrary to policies ADPP1, ADPP5 and CS1 of the WBCS (adopted July 2012), and policy C1 of the HSADPD (adopted May 2017) which. In addition, given its location, it is contrary to policy CS19 of the WBCS.*

*3. The proposed development, by reason of its location on a sensitive open/exposed edge of the existing settlement of Kintbury, in the North Wessex Downs Area of Outstanding Natural Beauty (AONB), will, by virtue of its proposed built form and scale / massing, have a harmful landscape and visual impact on the character and appearance of the landscape, and fail to conserve and/or enhance the character of the AONB and have a harmful and demonstrable visual impact upon the special qualities of the AONB landscape, in this setting. This is considered to be unacceptable, contrary to policies ADPP5, CS14 and CS19 of the WBCS and the relevant policies and provisions of the NPPF (including §109 & §115).*

*4. The application is considered to be unacceptable since the enjoyment of local footpath users (public rights of way (PROW) which comprise part of the district's Green Infrastructure) in the vicinity of the application site will be harmed by the significant intrusion of built development in the open countryside. This is considered to be contrary to WBCS policy CS18, and the relevant provisions of the NPPF (including §75 and §114).*

#### **4 List of relevant West Berkshire Council Policy Background**

##### **4.1 The statutory Development Plan for West Berkshire comprises:-**

- The West Berkshire Core Strategy 2006-2026 (adopted 2012); "the WBCS"
- The West Berkshire Housing Site Allocations Development Plan Document 2006- 2026 (adopted May 2017); "the HSADPD"
- The West Berkshire District Local Plan 1991-2006 (Saved Policies, 2007, as amended in July 2012 and May 2017 upon adoption of the two Development Plan documents above); "the WBDLP"
- The Stratfield Mortimer Neighbourhood Development Plan (adopted 2017); "the SMNDP"
- The Replacement Minerals Local Plan for Berkshire (2001) Saved Policies;
- The Waste Local Plan for Berkshire (1998) Saved Policies.

The development plan documents particularly relevant to this appeal are the WBCS, the HSADPD and the WBDLP.

##### **4.2 All the development plan policies that are of any relevance to the appeal proposal, or are referred to in the various submissions are listed below. The degree of their relevance to the appeal proposal varies from policy to policy. Their status (i.e. whether policies are up to date), degree of relevance and weight to be afforded to any of these policies in the planning balance remain areas of dispute between the parties.**

##### **4.3 West Berkshire Core Strategy (2006-2026) (WBCS) (adopted July 2012 - post NPPF) policies:-**

###### **i) Spatial Strategy Area Delivery Plan Policies (ADPP)**

- ADPP1: Spatial Strategy
- ADPP5: North Wessex Downs Area of Outstanding Natural Beauty (AONB); and

###### **ii) Core Policies (CS)**

- CS1: Delivering New Homes and Retaining the Housing Stock
- CS3: Sandford Strategic Site Allocation
- CS4: Housing Type and Mix
- CS5: Infrastructure Requirements and Delivery
- CS6: Provision of Affordable Housing
- CS13: Transport
- CS14: Design Principles
- CS15: Sustainable Construction and Energy Efficiency
- CS16: Flooding
- CS17: Biodiversity and Geodiversity
- CS18: Green Infrastructure
- CS19: Historic Environment and Landscape Character

**4.4 West Berkshire Housing Site Allocations Development Plan Document (HSADPD) (adopted May 2017) policies:-**

- GS1: General Site Policy
- HSA26: Land to the East of Layland's Green, Kintbury (site reference IN006 and KIN007) – "... provision of approximately 10 dwellings...."
- C1: Location of New Housing in the Countryside
- C3: Design of Housing in the Countryside
- P1: Residential Parking for New Development.

**4.5 West Berkshire District Local Plan (WBDLP) 1991-2006 (Saved Policies 2007)**

- RL.1: Public Open Space Provision in Residential Development Schemes
- RL.2: Provision of Public Open Space (Methods)
- RL.3: The Selection of Public Open Space and Recreation Sites

**4.6 Upon adoption of the HSADPD in May 2017 policy C1 above superseded WBDLP saved policy HSG1, which was removed from the list of saved policies of the WBDLP.**

**4.7 A list of other relevant "policy" related documents includes:-**

- Various Landscape Characterisation and Sensitivity Assessments
- The Berkshire Strategic Housing Market Assessment (SHMA) (Feb 2016)
- The SA/SEA to the HSADPD
- The Strategic Housing Land Availability Assessment (SHLAA) (2013)
- The West Berkshire Planning Obligations SPD (2014), in particular sections on affordable housing and public open space
- The West Berkshire Quality Design SPD (2006)

**5 MATERIAL CONSIDERATIONS**

**5.1 National Planning Policy Framework (NPPF) and its accompanying Planning Policy Guidance (PPG) are relevant as *material considerations*.**

**5.2 A draft NPPF has been published for consultation. It is common ground between the parties that, whilst this consultation document is a material consideration, it carries minimal weight in the decision making process until adoption.**

**6. RELEVANT PLANNING HISTORY OF THE APPEAL SITE AND SURROUNDINGS**

**6.1 There is no relevant history of determined planning applications at the appeal site, with the exception of the appellants' two proposals by the appellants for 40 and 32 units respectively.**

6.2 Two outline applications for 72 and 32 dwellings respectively (ref. nos. LPA 15/03346 & 17/00756 and PINS Ref 3158306 & 3177099) at Land North of Irish Hill Road, approximately 100 m to the northwest of the appeal site were refused planning permission and the subsequent conjoined Inquiry appeals were dismissed on 27.11.2017.

6.3 HSADPD allocated sites KIN006 and KIN007 at Land to the East of Layland's Green were granted planning permission (ref. no. 16/02191/OUTMAJ) for 11 dwellings on 18.05.2017 and subsequently for 18 dwellings on 08.03.2018 (ref. no. 17/03336/FULEXT).

**7 PREVIOUS MAJOR RESIDENTIAL APPEAL CASES IN THE COUNTRYSIDE, OUTSIDE AND ADJACENT TO SETTLEMENT BOUNDARIES IN WEST BERKSHIRE AND THE ISSUE OF THE FIVE YEAR HOUSING LAND SUPPLY (5YHLS).**

7.1 There have been a number of such appeals in West Berkshire (Appendix SoCG1). The relevance of and weight to be afforded to each of these previous appeal decisions remain matters of dispute between the parties, which will be commented on and addressed as part of the parties' evidence at the Inquiry.

7.2 In view of these appeal decisions and evidence, the appellants hereby agree, as they have already indicated, the validity and do not challenge any issue in respect of the figures published within the Berkshire SHMA (Feb 2016). Furthermore, both parties agree that 665dpa is at the moment the OAN figure as set out in the Berkshire (including South Bucks) SHMA (Feb 2016), which is being used as the basis to calculate the West Berkshire Five Year Housing Land Supply.

7.3 The Council considers that it can demonstrate a 5YHLS.

7.4 The Council considers that its housing supply policies (namely Core Strategy policies ADPP1, ADPP5 and CS1 and HASDPD policy C1 - in so far as it relates to the settlement boundaries) are up-to-date. For that reason the Council considers that the NPPF para. 14 tilted balance does not get engaged in this respect and that the appeal should be determined in accordance with the policies of the development plan unless there are other material considerations to justify otherwise (s38(6) of the 2004 Act).

7.5 The appellants disagree with the Council's view above. They consider that the Council cannot demonstrate a 5YHLS or have an up to date local plan and therefore consider that the NPPF para 14 tilted balance applies. This matter therefore remains an area of dispute between the parties.

7.6 It is common ground that in January 2018 the Council published a revised Local Development Scheme (LDS) which included an updated timetable for the review of the Local Plan (to cover the time period to 2036). This shows the adoption of the Local Plan Review is now scheduled for November 2020.

## **8 Heritage**

- 8.1 Both parties agree that the appeal proposal would not have a materially adverse impact on the setting of the Kintbury Conservation Area or the setting, character and/or appearance of any other Heritage Asset, whether designated or not, including the Grade II Listed Park House to the north west and Hamstead Holt House to the south east. In this respect the Inspector would still need to have regard to and address if appropriate matters relating to the statutory s66 and s72 tests if he/she considers that they apply in this case.

## **9 Highways / Transport**

- 9.1 Further to the recent Inspector's findings, comments, conclusions and decisions on the two conjoined Kintbury appeals on north of Irish Hill Road (Appendix 9), in respect of matters relating to highway/transport issues and in particular the situation in Newbury Street and also the Station Road junction, the Council agrees as per its Statement of case and also discussed and agreed between the parties, that it no longer intends to pursue its objections and concerns in respect of the highway matters referred to in reasons for refusal 4 and 5. Both parties agree that it shall not be necessary to provide transport/highways expert witnesses and evidence at the Inquiry.

## **10 Affordable Housing**

- 10.1 The appellants have indicated that they are minded to deliver policy compliant affordable housing on site and that they are in the process of drafting a s106 Unilateral Undertaking in this respect. The Council considers therefore that the matters relating to affordable housing provision and delivery referred to in reason for refusal 1 can be satisfactorily addressed, provided the appellants prepare a satisfactory s106 UU on time for the Inquiry. In view of the Council considers that the matter can clearly be addressed by the appellants and that it should not be necessary to pursue this issue at the Inquiry.

## **11 Public Open Space (POS)**

- 11.1 Similarly to section 9 above, the appellants have indicated their intention to provide sufficient policy compliant on-site public open space (POS) and equipped play area (LEAP). Delivery of these matters is to be addressed through conditions and their future management and maintenance, including relevant funding if necessary, through the appellants' forthcoming s106 UU. The Council considers therefore that these matters, as referred to reason for refusal 1 can be addressed satisfactorily and both parties agree that they do not intend to produce expert witnesses and evidence specific to POS at the Inquiry.



## **12 Areas of Dispute**

- 12.1 The relevance and weight to be afforded to previous residential appeal decisions in the countryside in West Berkshire, the Government "Planning for the Right Homes in the Right Places" Consultation, and the standardised method for local housing need.
- 12.2 The deliverability of certain sites included in the Council's 5YHLS as updated in the published 2017 AMR, which sites the appellants consider that will not deliver housing within 5 years.
- 12.3 Whether the Council can demonstrate a 5YHLS.
- 12.4 Whether the Council's housing supply policies and local plan are up-to-date or out-of-date.
- 12.5 The relevance and weight to be accorded to previous residential appeal decisions in the countryside in West Berkshire.
- 12.6 Whether the 40 units appeal scheme is a major residential proposal in the AONB for the purposes of NPPF paragraph 116.
- 12.7 Whether the appeal proposal by reason of the site's location in the open countryside, adjacent to the village edge and within the AONB, would by reason of its built form, scale and massing have an impact in landscape, character and visual terms on the site, the settlement edge, the rural countryside, the AONB, in this setting, and whether it would cause harm and the extent of such harm and whether this would be contrary to policies in the development plan and the NPPF and provisions in local and national supplementary documents and guidance.
- 12.8 Whether the proposal would cause harm to the use and enjoyment of the surrounding footpaths and rights of way, the extent of such harm if any, and whether it would be contrary to policies and provisions of the Development Plan, the NPPF and legislation.
- 12.9 In accordance with the last provision in the fourth bullet point of NPPF para 14 and Footnote 9 and the "comments within the Supreme Court decision Suffolk Coastal DC v Hopkins Homes Ltd [2017] UKSC 37...." in relation to relevant development plan policies, as to whether there are specific policies in the NPPF and the Development Plan which would indicate that development should be restricted in this case.
- 12.10 Depending on the outcome of 12.3 and 12.8 above whether the tilted balance in NPPF para 14 is engaged as per the appellants contention, or as the Council considers is not engaged.

12.11 The various purported benefits and dis-benefits of the proposal and the weight to be allotted to each of those in the planning balance, including to the Council's development plan policies.

12.12 The planning balance.

12.13 Whether the proposal is sustainable development.

**This Statement of Common Ground is agreed between the following:-**

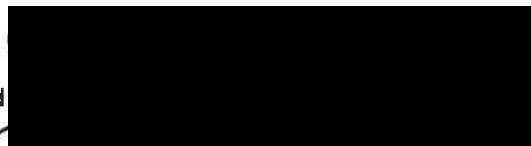
Signed



Dated 19 March 2018

• NIKOLAOS GRIGOROPOULOS  
Planning Consultant instructed by West Berkshire Council (the Local Planning Authority); and

Signed



Dated 19 March 2018

• NICHOLAS COBBOLD  
of Bell Cornwell LLP on behalf of Baylight Properties Ltd (the Appellant).

## APPENDIX SoCG1

### Major Residential Appeal Decisions in the Countryside, Outside of and Adjacent to Settlement Boundaries, West Berkshire

Appeal no.	PINS & LPA refs.	Appeal Site	No. of resi. units	Inquiry Date	Decision Date	Appeal Decision / Outcome
1	2226342 14/00962	Mans Hill, Burghfield Common	210	02/2015	17/03/15	Dismissed
2	2228089 14/01730	Firlands Farm, Burghfield Common	90	06/2015	06/07/15	Allowed
3	3146156 15/02019	Mans Hill, Burghfield Common	64	11/2016	17/01/17	Dismissed
4	3162905 15/02784	Monkey Puzzle Field, Mortimer	50	Scheduled for 08/2017, but withdrawn	02/2017	Withdrawn
5	3143214 14/02480	Hilltop, North Newbury	401	01/2017	23/03/17	Allowed
6	3141449 15/00296	Siege Cross, Thatcham	495	12/2016, Conjoined with appeal no. 7	27/07/17	Dismissed
7	3141449 15/01949	Henwick Park, Thatcham	265	12/2016, Conjoined with appeal no. 6	27/07/17	Dismissed
8	3171827 16/03088	West of High Street, East Ilsley	10	Scheduled for 08/2017, but withdrawn	28/07/17	Withdrawn
9	3153899 15/03456	Garden Close Lane, South Newbury	85	05&06/2017	23/08/17	Dismissed
10	3158306 15/03346	North of Irish Hill Road, Kintbury	72	09/2017, Conjoined with appeal no. 11	27/11/17	Dismissed
11	3177099 17/00756	North of Irish Hill Road, Kintbury	32	09/2017 Conjoined with appeal no.10	27/11/17	Dismissed
12	3152933 16/00658	Benhams Farm, Burghfield Common	43	01/2018 (Hearing)	06/03/18	Dismissed

