

Ms Gill Ellis  
Boyer Planning Ltd  
Groveland House  
Church Road  
Windlesham  
Surrey GU20 6BT

Our Ref: APP/R0335/A/08/2084226

20 August 2009

Dear Madam,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY TAYLOR WIMPEY UK LIMITED and  
HOMES & COMMUNITIES AGENCY (formerly ENGLISH PARTNERSHIPS)  
FORMER RAF STAFF COLLEGE (THE PARKS), BROAD LANE, BRACKNELL,  
BERKS RG12 9DD  
APPLICATION: REF 08/00116/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mr Edward A Simpson JP BA(Hons) MRTPI, who held a public local inquiry on various dates between 10 February and 6 April 2009 into your clients' appeal against a decision of Bracknell Forest Borough Council (BFBC) to refuse outline planning permission for the erection of 781 dwellings (maximum 1150 dwellings within the entire development)(now reduced to 1120) including 336 affordable dwellings (maximum 437 affordable dwellings across entire development)(now reduced to 426); retention and remodelling of Ramslade House together with an extension of 260 sq m to provide community facilities with ancillary uses; new commercial/community floorspace (use classes A1/A3/B1a/D1/D2) of 670 sq m; provision of 18.29ha of open space (a total of 19.37ha across the entire development); formation of new vehicular access from Elizabeth Close and provision of internal access roads, parking and landscaping at the former RAF Staff College (The Parks), Broad Lane, Bracknell, Berks RG12 9DD in accordance with application number 08/00116/OUT, dated 6 February 2008.

2. On 17 September 2008, the appeal was 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 because the appeal involves proposals for residential development of over 150 units, or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

**INSPECTOR'S RECOMMENDATION AND SUMMARY OF THE DECISION**

3. The Inspector recommended that the appeal be dismissed. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where

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stated, and agrees with his recommendation. A copy of the Inspector's full report (IR) is enclosed for the main parties. Other interested parties, for whom only the Inspector's conclusions are enclosed, can obtain a copy of the full report on request. All references to paragraph numbers, unless otherwise stated, are to that report.

## **PROCEDURAL MATTERS**

4. Prior to the opening of the inquiry, appeal APP/R0335/A/08/2084424 relating to a detailed application for 67 dwellings on 'The Copse', comprising part of the site the subject of the inquiry appeal and also due to be heard at this inquiry, was withdrawn (IR1.3).

5. In reaching his decision the Secretary of State has taken into account the Environmental Statement and the supplement to it, which were submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. The Secretary of State is content that the Environmental Statement complies with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the application.

6. The total scale of development stated in the application as originally made to BFBC assumed an increase in development on the area of the Crescent by 30 units. However, as the application to increase the number of units in the Crescent by 30 was dismissed on appeal in 2008, the total development across the site would now be 1120 units not 1150. For the same reason, the number of affordable units is reduced from 437 to 426 (IR5.6 and 6.3).

7. At the inquiry, an application was made by your clients, Taylor Wimpey UK Limited and the Homes and Communities Agency, for a partial award of costs against BFBC. The Secretary of State's decision on this application is the subject of a separate letter.

## **MATTERS ARISING AFTER THE CLOSE OF THE INQUIRY**

8. Following the close of the inquiry, you wrote to the Planning Inspectorate on 20 May 2009 concerning two other appeal decisions (Ref APP/R0335/A/08/2088746 and APP/R0335/A/07/2052970) and their implications for consideration of matters relating to the Special Protection Area (SPA). As these issues relate to the fallback position which the Secretary of State has addressed at paragraphs 19-20 below, he does not consider that your letter raises any new issues which would either affect his decision, or require him to refer back to parties, prior to reaching his decision.

## **POLICY CONSIDERATIONS**

9. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

10. In this case, the development plan comprises the Regional Spatial Strategy for the South East (the South East Plan (SEP)), published after the close of the inquiry on 6 May 2009; the Bracknell Forest Borough Local Plan (2002); and the Bracknell Forest Borough Core Strategy Development Plan Document (2008) (CS).

11. At the time of the inquiry, the SEP had yet to be published in its final form. However, the Secretary of State notes that it was anticipated by both the appellants and BFBC that the final SEP was likely to be published either before the submission of the Inspector's report or before final determination of this appeal (IR1.4). It was in fact published before the submission of the Inspector's report, and the Inspector has accordingly noted relevant changes in his report. Given this, and having compared the changes between the emerging SEP and the published SEP, the Secretary of State does not consider that there have been material alterations on matters relevant to this appeal to an extent that would affect his decision. This absence of such material alterations means that the Secretary of State is satisfied that there is no need for him to refer back to parties for further representations prior to reaching his decision. In this respect he notes that the Inspector suggests (IR1.5) that the Secretary of State may wish to seek the views of the principal parties regarding changes with respect to the total and annual average housing provision. However, the Secretary of State does not consider it necessary to refer back to parties on this issue as the appellants based their assessment of this matter on the higher, now published, figure (IR7.8), and the Inspector has considered the implications of this (IR15.7.1). The weight to be afforded to this matter is also addressed by the Secretary of State at paragraph 31 below.

12. In reaching this conclusion the Secretary of State has taken into account the fact that the saved policies within the Berkshire Structure Plan (2005) have been replaced by the SEP and so no longer carry any weight.

13. The Secretary of State has also taken account of Circular 06/2005: *Biodiversity and Geographical Conservation – Statutory Obligations and their Impact within the Planning System*, which provides administrative guidance on the application of the law relating to planning and nature conservation as it applies in England. It complements the expression of national planning policy in *Planning Policy Statement 9: Biodiversity and Geological Conservation* (PPS9) and the accompanying *Planning for Biodiversity and Geological Conservation: A Guide to Good Practice*. Together, these provide guidance on the application of the *Conservation (Natural Habitats &c) Regulations 1994* ("the Habitats Regulations") which, in turn, transpose EU Directive 92/43/EEC (21 May 1992) on the conservation of natural habitats and of wild fauna and flora ("the Habitats Directive").

14. Other material considerations which the Secretary of State has taken into account include Planning Policy Statement (PPS) 1, Delivering Sustainable Development; PPS3, Housing; Planning Policy Guidance Note (PPG) 13, Transport; PPG17, Planning for Open Space, Sport and Recreation; PPS25, Development and Flood Risk; Circular 11/95, Use of Conditions in Planning Permission; and Circular 05/2005, Planning Obligations. He has also taken into account as material considerations those documents listed at IR4.8-4.9.

## **MAIN ISSUES**

15. The Secretary of State considers that the main considerations in this case are those set out by the Inspector at IR15.1.3.

## **Overdevelopment**

16. The Secretary of State agrees with the Inspector's reasoning and conclusions on overdevelopment as set out in IR15.2.1-15.2.27 and IR15.8.1-15.8.7. He agrees that the proposal cannot be said to retain, improve and maintain existing recreational facilities and conflicts with policy CS8 (IR15.2.21). He also agrees that reducing the width of the parkland would change its character from one of relatively informal spaciousness to a constrained and regimented open area dominated by formal playing pitches, and that this amounts to a significant harm contrary to the aims of policy CS7, particularly criteria i, iii and vii. The Secretary of State agrees with the Inspector that the appeal proposals would result in a change in the overall open character of the area, constituting overdevelopment to the detriment to the physical and visual setting of the area.

## **Impact on the Thames Basin Heaths SPA**

### Legal Opinions

17. The question of whether or not the appeal proposals have an adverse effect on the integrity of the SPA arises in consequence of regulation 48 of the Habitats Regulations and the Thames Basin Heaths SPA. Regulation 48(1) is to the effect that, before granting planning consent for a project, the competent authority (which in this case is now the Secretary of State) must either be able to conclude that it will not have a significant effect on any protected European site (either alone or in combination with other plans or projects) or, if he cannot do that, he must carry out an appropriate assessment before granting planning permission. Subject to regulation 49 of the Habitats Regulations, if an appropriate assessment is required, regulation 48(5) means that consent cannot be granted if, on the basis of that assessment, it is not possible to ascertain that the project will not have an adverse effect on the protected European site. The Secretary of State does not consider that regulation 49 applies in this case. It is not part of the appellants' case that the development must be carried out for imperative reasons of overriding public interest.

18. BFBC has concluded that, following an appropriate assessment and in the light of the available information and the representations of Natural England (NE), it is unable to satisfy itself that the proposal (in combination with other projects) would not have an adverse effect on the integrity of the SPA. It therefore refused planning permission (ground 7) in accord with regulation 48 and Article 6(3) of the Habitats Directive (IR9.3.3).

19. The Secretary of State has carefully considered all the evidence and the legal opinions that have been provided on this matter. He considers that under regulation 48 the plan or project which is to be considered and assessed is that for which planning permission is being sought and that is a development of 781 units. The Secretary of State considers that this requirement under regulation 48 applies notwithstanding the review requirements of regulation 50. The requirement under regulation 48 to scrutinise the proposal as a whole means that the Secretary of State agrees with the Inspector that the proposal should be assessed for its potential impact on the SPA for 781 dwellings (IR15.3.9).

20. The Secretary of State recognises that this conclusion represents a departure from those conclusions reached on similar matters in the decisions referred to in paragraph 8 above. However, he considers that this inconsistency is justified in view of the significant additional legal advice provided on this point in the context of the present appeal.

#### Preamble

##### Changes in SEP policy

21. The Secretary of State agrees with the Inspector's assessment of the changes in RSS policy as set out in paragraphs IR15.3.13-15.3.21. The Secretary of State agrees that the appropriate standard of sustainable alternative natural green space (SANG) provision is 8ha per 1000 population (IR15.3.20). On this basis he agrees that the shortfall in the provision of on-site SANG is 2.36ha (IR15.3.19). On the matter of any potential implications as a result of the change to the SEP policy NRM6 requiring that mitigation measures be delivered "prior to occupation and in perpetuity", the Secretary of State considers that the Habitats Regulations already require that mitigation is secured before planning permission is granted and therefore considers that there is no need to refer back to parties on this point. The Secretary of State takes it that references to "in perpetuity" are as defined in the "Perpetuities and Accumulations Act 1964".

##### Quality of on-site SANG

22. As regards the quality of the proposed on-site SANG, for the reasons given by the Inspector at IR15.3.22-15.3.34, the Secretary of State agrees with him that the quality criteria for an individual SANG, as required for bespoke solutions such as that proposed for the appeal site are, or can be met, and that those that can be met can also be the subject of appropriate conditions (IR15.3.35).

##### Provision of off-site SANGs

23. Matters relating to the provision of off-site SANGS are addressed by the Inspector at IR15.3.36-15.3.47 and IR15.6.30. The Secretary of State shares the concerns of both NE and the Inspector about the appropriateness of South Hill Park in terms of catering to development beyond 400m (IR15.3.37 and 15.3.38). He also observes that, as a result of the appellants' ownership of South Hill Park they are unwilling to contribute at the normally anticipated rate to the provision of off-site SANGs (IR15.3.45), and that there is no agreement on this matter (IR15.3.46).

24. A further consideration in this matter relates to the appellants' offer to make contributions towards BFBC's strategic SANG sites in accordance with BFBC's identified tariff (IR9.3.26). The Secretary of State notes in this respect that, on the basis of the 8ha standard, BFBC's suite of off-site SANGs would have the capacity to mitigate the core strategy housing provision (IR15.3.40). However, there has been no agreement between parties on where any off-site SANG might be located which, in the Secretary of State's opinion, amounts to a reasonable amount of uncertainty in terms of satisfying the requirements of the Habitats Regulations. The Secretary of State does not consider that the imposition of a Grampian condition

provides him with sufficient certainty to conclude that probability or risk of significant effects on the SPA can be excluded.

25. The Secretary of State has taken into account secondary mitigation measures, and agrees with the Inspector that it is not possible to say that these would have the equivalence of 2ha (IR15.3.44).

26. Having carefully considered all of the relevant matters relating to the appeal scheme and the mitigation and avoidance measures proposed, the Secretary of State considers that these are not sufficient to exclude the possibility that the integrity of the SPA will not be adversely affected or that there will be no likelihood of significant adverse effects on the SPA.

#### Biodiversity

27. The Secretary of State agrees with the Inspector, for the reasons given at IR 15.4.1-15.4.5 and IR15.8.11, that the impact on biodiversity as a result of the appeal proposals would not constitute a harm, would tend overall to enhance and protect biodiversity, and would not conflict with Core Strategy policies CS1 or CS7ii in so far as they relate to biodiversity (IR15.4.5).

#### Highways and traffic

28. The Secretary of State agrees with the Inspector's reasoning and conclusions regarding highways and traffic as set out in IR15.5.1-15.5.10. He agrees that the appeal proposal will have no greater highway and traffic implications for the local road network than the approved and partially implemented scheme (IR15.5.10).

#### Conditions

29. The Secretary of State has considered the proposed conditions in the light of the Inspector's comments at IR15.6.2-15.6.31 and IR15.8.13, and national policy as set out in Circular 11/95. He considers that the proposed conditions as amended by the Inspector comply with the policy tests in that Circular. However, he does not consider that they overcome the reasons for dismissing the appeal.

#### Unilateral Undertaking

30. The Secretary of State has noted the provisions of the unilateral undertaking and the Inspector's assessment of this in IR15.6.32-15.6.44 and IR15.8.14-15.8.19. He observes that there are a number of elements of this that the Inspector finds unacceptable and that the Inspector does not consider that it would be appropriate to grant planning permission in these circumstances (IR15.8.19). The Secretary of State shares these concerns. In light of his conclusions on the shortcomings in the appeal proposals and having regard to his conclusions on the Habitats Regulations, the Secretary of State does not consider that remedying the matters of concern highlighted at IR15.6.32-15.6.44 would alone have been sufficient to enable him to determine the appeal favourably.

### Housing supply

31. The Secretary of State notes that, in the light of the housing figures in the SEP, there is a shortfall in the five year supply of housing land in Bracknell Forest (IR15.7.1) and that PPS3 requires applications in such circumstances to be considered favourably, having regard to the policies in the PPS. He disagrees with the Inspector that this requirement is diluted by the likelihood that the appeal would only deliver five more homes than the already approved development on the site over a five year period and that these would be in year five (IR15.7.2), as he takes the view that granting planning permission now would offer a degree of certainty in delivery that would not otherwise exist and therefore help to enable a continuous delivery of housing. He agrees with the Inspector that the delivery of an extra 390 homes in a highly sustainable location weighs in support of the proposal (IR15.7.3). In reaching his conclusions on housing need he has taken account of the greater housing requirement established by way of the published SEP. The Secretary of State agrees that the substantial increase in the number of affordable dwellings which would be provided on the site overall is a significant planning benefit (IR15.7.4). He has therefore afforded the contribution that the appeal proposals would make to the housing supply significant weight.

### Residents' contract condition

32. The Secretary of State has noted the Inspector's observations on residents' contract condition as set out IR15.7.6-15.7.8.

### **Overall conclusions**

33. The Secretary of State considers that there are a number of factors which weigh in favour of the proposal and are in line with the development plan. These include its contribution towards meeting housing need (including affordable housing) in a highly sustainable location, and the fact that it would meet development plan policies in relation to biodiversity and is acceptable in terms of highways and traffic matters. However, against these are matters relating to the impact of the proposed development on the character of the area and the provision of open space and recreational facilities. The Secretary of State considers that the appeal proposals represent overdevelopment of the site and the impact of the proposed development would result in a change in the character of the area from one of relatively informal spaciousness to a constrained and regimented open area dominated by formal playing pitches, which amounts to a significant harm contrary to the aims of policy CS7.

34. The Secretary of State notes that it is not part of the appellants' case that, without mitigation, the effects of the appeal proposal in combination with the effects of other plans and projects would not be significant. Whilst he notes that on the basis of an 8ha/1000 population standard, there are in theory sufficient off-site SANGS with the capacity to mitigate for the housing provision required by the SEP, the Secretary of State is not satisfied that there is agreement as to where that should be or how it will be funded. In light of the above, and having carefully considered the Inspector's reasons and all the evidence in relation to the potential effects of the development on the area and the SPA, he is unable to exclude the possibility that the integrity of the SPA will not be adversely affected or that there will be no

likelihood of significant adverse effects on the SPA, so that he cannot allow the appeal.

### **Formal decision**

35. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the erection of 781 dwellings (maximum 1150 dwellings within the entire development)(now reduced to 1120) including 336 affordable dwellings (maximum 437 affordable dwellings across entire development)(now reduced to 426); retention and remodelling of Ramslade House together with an extension of 260 sq m to provide community facilities with ancillary uses; new commercial/community floorspace (use classes A1/A3/B1a/D1/D2) of 670 sq m; provision of 18.29ha of open space (a total of 19.37ha across the entire development); formation of new vehicular access from Elizabeth Close and provision of internal access roads, parking and landscaping at the former RAF Staff College (The Parks), Broad Lane, Bracknell, Berks RG12 9DD, in accordance with application number 08/00116/OUT, dated 6 February 2008.

### **Right to challenge the decision**

36. 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 to the High Court within six weeks from the date of this letter.

37. A copy of this letter has been sent to Bracknell Forest Borough Council and all parties who appeared at the inquiry.

Yours sincerely

Michael Taylor

Authorised by the Secretary of State to sign in that behalf