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# Appeal Decision

Inquiry held on 19 & 20 May 2009

Site visit made on 20 May 2009

by **Simon Hand MA**

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

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**Decision date:**  
**11 June 2009**

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**Appeal Ref: APP/K0425/A/09/2093279**

**Former BCUC Site, Marlow Hill, High Wycombe, HP11 1SX**

- 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 Fairview New Homes Ltd against the decision of Wycombe District Council.
  - The application Ref 08/06318/FUL, dated 20 May 2008, was refused by notice dated 12 December 2008.
  - The development proposed is the erection of 106 new dwellings, associated car and cycle parking, landscaping and infrastructure.
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## Decision

1. I dismiss the appeal.

## Procedural Matters

2. The appellant provided a set of revised plans that took into account some of the criticisms made by the Council at application stage and the parties were happy to consider those plans. In my view the changes are relatively minor, affecting some of the roof profiles and turning dormers into gables etc, and no-one will have been prejudiced by their introduction. I have thus considered the appeal on the basis of the revised plans.

## Main issues

3. Firstly, whether the design of the proposal would be commensurate with the requirements of the site and secondly whether the appellant should provide an element of affordable housing or not.

## Reasons

4. The site lies on the east side of the A404 Marlow Hill, a busy dual carriageway. It is surrounded to the east and north by housing. Fair Ridge and The Spinney to the east make up a typical suburb of detached houses, while School Close to the north is made up of larger houses in more spacious grounds. To the west, across the road is a large school with substantial playing fields with more houses to the north while to the south there is a sports centre, also with extensive grounds. The whole area is dominated by trees, which virtually hide the site from the road and largely mask the sports centre, school and housing. Further north the road plunges down a steep, tree lined hill, until one finds oneself in High Wycombe town centre. To the south, next to the sports centre site is Handy Cross, a junction with the M40, which forms the principal access point to the town from this direction.
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*Design – role of the site as a gateway*

5. The Council have decided that this is a weak entrance to the town in urban landscape terms and have identified it as one of three 'Key Areas of Change' in their Core Strategy. Policy CS4.3 refers directly to this 'M40 Gateway' area of change, while there is a Council produced concept statement for the redevelopment of the sports centre site with prestigious offices, a new leisure centre and a coachway/park and ride.
6. There was much discussion at the inquiry as to the role the appeal site should play in the M40 Gateway. The Key Area of Change identified in CS4.3 is a long narrow area, running west and east along the M40 for some distance, with the Handy Cross junction at its centre. Because of the size of the area, the policy is necessarily not site specific, but does state at (i) "*Gateway to the town - establishing the Handy Cross junction and its environs as a celebrated entrance to the town with high quality new buildings heralding a sense of arrival*". It was not disputed that the site lies within the environs of Handy Cross. However, I agree with the appellant that nowhere is there a requirement for an iconic or gateway building on the appeal site.
7. The Concept Statement for the sports centre site does clearly envisage it as a gateway site, and although I was advised to give this little weight by the Council, it is the only evidence for the Council's design rationale in the area, albeit of a very illustrative nature. It does however support the appellant's contention that a gateway/landmark building should be on the sports centre site, which is the actual gateway to High Wycombe; and that the appeal site should be treated rather differently, but still with high quality buildings that serve to support the sense of arrival created at the gateway itself.
8. This view appears to have been supported by officers who, in pre-application discussions specifically requested that a landmark building should not be provided on the site, and by members when they refused the application. The first reason for refusal, which deals with design, clearly states that the proposal "undermines the distinctiveness and particular character of the area contrary to policies G3...". It goes on to highlight the harmful impact the design has on the quality and character of Marlow Hill and the "alien and jarring juxtaposition of this overly-intensive proposal with the established character of the area" which it notes comprises suburban houses or institutions in spacious grounds. All of this suggests to me that the Council considered the proposal to be too large, out of scale and excessive in area of much smaller scale housing. The reason for refusal also notes the design "fails to contribute towards the aims of Policies CS3 and CS4.." and quotes (i) from CS4.3 which I have noted above, but this seems subsidiary to the main problem that it is out of character. Yet at the inquiry the Council maintained the design was not dramatically iconic enough, and that until the sports centre site is redeveloped the appeal site should act as a standalone gateway.
9. I have some sympathy with the appellant's claim that the first they heard of the requirement for an iconic building was at the inquiry. It seems common sense to me that the appeal site plays an important but subsidiary role to the sports centre site, that it should contribute towards the aims of CS4.3, but that it is not the gateway to High Wycombe and that it is not suitable for an iconic building, whatever that may be. This interpretation also provides a best fit

with the Council's policies, its aims for the sports centre site and members thinking as revealed through the refusal notice.

*Design – the proposal itself*

10. It was accepted at the inquiry there is a tension between the demands of policy G3 that development should maintain and reinforce local distinctiveness and of CS3 and CS4.3 which envisage a significant change in the area with high quality new buildings heralding a sense of arrival. It was also accepted there is little local distinctiveness to reinforce, other than standard suburban housing. Thus it was agreed that while development of the site should pay attention to the housing to the east, a strong building on the Marlow Hill frontage is needed to support the 'sense of arrival' that CS4.3 is keen to foster. The stepping up of development from domestic scaled properties close to the existing houses towards the more dominant flats on the road frontage was also considered reasonable. Setting aside their demand for an iconic building, the Council's main concerns were that the buildings proposed were not of sufficient architectural quality in such an important location.
11. I do not accept that the Council's opposition to the design of the buildings was based on no more than an "I do not like it" approach. The Council provided a detailed design critique of the proposals as a whole and specifically of Blocks A, B and the terraced housing. However, I was not convinced by the criticisms. A design approach that sees the buildings closest to the existing houses take its design cues from those houses and then builds to a more modern structure close to the road seems sensible as it helps integrate the development into the existing surroundings whilst also providing the sense of arrival required on the Marlow Hill frontage. Thus a development with a mix of styles would not be inherently out of place. The revised proposals seem to me to carry this off successfully and I agree with the appellant's architect that the proposal is a "contemporary design that takes elements of the traditional and re-interprets them in a modern way".
12. Block A is a large building but the use of materials and the gables break up the frontage to create interest, whilst the corner features, or towers, are separated by flat roofs from the central section and so have individual presence. In particular the south-west corner, which would be the most prominent part of the development and therefore the most important in helping with the sense of arrival, would be distinctive without being over-dominant or out of place. The rear of the block is simpler without being bland or unrelieved. The set back from the boundary of the site to the road of 7-8m is also more than sufficient to provide for replacement tree planting.
13. Similar criticisms were levelled at block B and have similarly little force. I have more sympathy with the critique of the terraced housing. I agree that the hipped roof terraced blocks do look more like flats than houses, but I do not think this makes them illegible in design terms. I also consider the roof pitch to be shallow and so the dormers would be rather elongated and the flank walls would appear over-large. However, these are minor criticisms that do not significantly detract from the overall impact of the scheme.
14. In my view there is also a tension between the Council's desire for a strong landscaped edge to Marlow Hill and for a landmark building. Much was made of

the 'processional way' quality of the main road as it drops down towards the town and this is largely created by the abundance of trees. The site is already bordered by mature trees and these will be retained or replaced, depending on their quality. When in leaf these trees thoroughly screen the existing site and contribute significantly to the 'processional way' effect. The proposed landscaping will continue to contribute in the same way, but will screen Block A to a much lesser degree. Block A will be closer to the road than the existing buildings and be taller and more dominant. This seems to me to be an acceptable compromise between the landscaping demands of the site in its wider context and the requirement for a sense of arrival. I can see no need for thicker tree planting and a denser understorey as suggested by the Council, as this will merely serve to hide the building they wish to see as a landmark.

15. Local residents were concerned at the size of the blocks facing houses on Fair Ridge. However, the three detached houses are of a similar scale to those they face, while the element of block B that is diagonally opposite the last house in Fair Ridge, before it turns the corner is also two storeys. The three storey element of block B faces the flank wall of the corner house on Fair Ridge and so would have little impact. Diagonally opposite the corner house will be the three storey part of block A with the taller tower structure further away. I think there is sufficient separation for that not to be overbearing. In fact it will provide a landmark entrance to the estate.
16. I note the concern of some local residents that the car parking arrangements could lead to a car dominated frontage within the site. However, on-street parking mixed with pedestrian access is a good way of ensuring surveillance and encouraging low speeds and greater safety. The parking spaces themselves would be broken up by tree planting, and so on balance I consider the car parking arrangements to be acceptable. I also note the numbers provided would meet the Council's requirements.
17. In conclusion therefore I consider the scheme to have been well designed. It would present an attractive frontage to Marlow Hill that would help with the Council's aims to provide a sense of arrival, whilst also integrating with the suburban housing behind the site and providing for replacement tree planting to retain the 'processional way' effect. It does not conflict with policy G3 and helps contribute to the aims of CS3 and CS4.3.

*Affordable housing - policy*

18. Policy CS13 states that affordable housing will be sought "subject in every case to the physical circumstances of the site and anticipated market conditions". In this case the Council require 26 affordable homes. The appellant has provided evidence, the accuracy of which the Council does not challenge, that demonstrates the site would not be viable if 26 homes were affordable. The appellant calculates that with no affordable housing the profit margin for the development will be 13.3%. The usual margins for a developer would be between 15% and 20%, but in these more straightened times, where risk is greater, margins of 20-30% would not be uncommon. Thus even without the burden of any affordable housing, the development is only just viable. I have been given no reason to doubt the appellant's figures, the first issue is thus whether there is any support in policy to enable a developer to avoid all affordable housing contributions on the grounds of viability alone.

19. Policy CS13 refers to the Council's Supplementary Planning Document "Developer Contributions" (2007), for detailed advice on the provision of affordable housing. However, this document is silent on the situation where no contribution is forthcoming. The appellant relies on the fact that CS13 says plainly that anticipated market conditions will be a factor and that the explanatory paragraph 4.68 explicitly allows for developers to justify why the requirements of the policy would make their proposal unviable. It seems the Council's policy does envisage less than the full quota of affordable housing if market conditions dictate, but it does not go on to say this could be as much as no affordable housing, but this interpretation is consistent with the wording of the policy.
20. However, the appellant drew my attention to two decisions, one by an Inspector at Jericho in Oxford (G3110/A/08/2070447) and one by the Secretary of State at Badnell's Pit in Maidenhead (T0355/A/08/2073713). In both cases the provision of either less or no affordable housing was considered acceptable by the decision maker.
21. In the Jericho decision (Inquiry, August 2008) the Inspector accepted that the fall in land values since the developer bought the land meant they could not viably providing more than 19 affordable units, 8 less than the policy requirements. However, she went on to note that any shortfall of affordable housing was a serious issue in the area, but the relatively small deficit in affordable housing would be compensated for by the benefits brought forward by the scheme. These were land for a community centre, a public square, a bridge over the canal and various boat repair facilities.
22. In the Badnell's Pit decision (Inquiry September 2008) the Inspector found that providing no affordable housing did not mean a development should be refused. The Secretary of State agreed with this, but also found that "the absence of much needed affordable housing might point to rejecting the appeal" unless one took into account the significant site remediation costs. The Secretary of State went on to find that absence of affordable housing was a "drawback to the scheme" but was outweighed by the "huge environmental benefit" offered by the scheme.
23. In both cases therefore, even though supported by viability arguments, the lack of affordable housing was considered to be a negative element and in both cases could be outweighed by specific positive benefits accruing from the schemes themselves. This seems to me to be a sensible approach in this case. It was not disputed that there was a pressing need for affordable housing in High Wycombe. It is the clear intention of Government Policy as demonstrated in Planning Policy Statement 3 (Housing) and local policy as in CS13 that market housing development should be expected to contribute towards alleviating the affordable housing shortfall. Consequently, although policy CS13 can reasonably be interpreted as allowing viability to be considered when determining the amount of affordable housing to be provided, which in this case would be none, this plan-led conclusion is outweighed by recent decisions by an Inspector and the Secretary of State and by national and local policy all of which emphasise the importance of providing affordable housing. Therefore, like the Secretary of State in the Badnell's Pit case, I find the absence of any affordable housing to be a significant drawback to the scheme. It thus falls to

see whether there are any positive elements sufficient to outweigh this drawback.

*Affordable housing – benefits of the scheme*

24. Payments for open space, transport, fire services, indoor sport and leisure, environmental improvements and education would be provided, but these are not public benefits. They would be made to the Council to compensate them for extra costs arising from an increase in housing in the area.
25. Access through the site to Marlow Hill and The Spinney would be provided, and these routes are not currently available. However, The Spinney route relies on the Council assembling the required offsite land and so may not happen. In any event the benefits are limited to shortening the walk for residents from the estate behind the site to Marlow Hill and are thus of little weight.
26. The appellant relied more on the impact on the site in particular and on housing supply in the District in general if the appeal were refused. In the short term the site would not be developed, but would likely be mothballed until such time as the economy recovered to make its development viable; while the existing buildings on the site would continue to decay, a target for vandals and anti-social behaviour.
27. The appellant contended that the Council's healthy land supply figures were over optimistic. As the recession has begun to bite, especially in the last 12 months, build rates have slowed, or even stopped, and sites with permissions may well not be developed at all, or if they are, at a much slower rate than anticipated. At the same time the government is encouraging Council's to allow housing development to help stimulate the economy. If affordable housing is always required even when this makes a site unviable, other development sites will not come forward and building will grind to a halt.
28. I have some sympathy with these arguments, particularly the impact on future development proposals which may be close to not being viable. Although the arguments on the land supply and build rates are all conjectural, it does seem sensible to assume a slow down from the rates of the last few years. Nevertheless, the situation in the District for which there are actual figures would seem to be very healthy, with delivery of housing significantly above requirements and more than a 6 year land supply for the 5 year period 2009-14. The slow down would have to be serious and long lasting to impact significantly on these figures and at the moment this is difficult to demonstrate. I do not think the case has been made that the development of this site is urgently required.
29. The site itself is not noticeably derelict; indeed it is well hidden by the trees at the moment. If secured properly there is no reason why it should become an eyesore in the short term. Consequently, there does not seem to be a great deal to weigh against the drawback of the lack of affordable housing.

*Affordable housing – S106*

30. The appellant also sought to rely on a S106 unilateral undertaking, which was intended to require the appellant or any future developer to provide affordable housing on a sliding scale if and when house prices recovered so that profits

increased. This seems a good idea in principle, but the undertaking has a number of serious flaws. Firstly, it provides for no affordable housing if the appellant begins work within 12 months of receiving permission and then completes the development within 2½ years of commencement. Although I understand the appellant would try to sell units off-plan, so that many may well be sold long before the work is completed, it does not seem right that any upturn in the market should not be factored in at any time. The market could have begun recovery in less than 3½ years and if so the appellant will have effectively avoided the requirement to provide any affordable housing.

31. If the commencement is delayed then a pre-commencement viability appraisal will be undertaken and if the profit situation has changed the appellant will share the profit with the Council. In other words if profit is recalculated to be 15.5%, 6 units of affordable housing will be provided. But the profit will be calculated after allowing for the affordable housing and so baseline profit will have to reach something like 17% before the requirement for 6 affordable houses is triggered. If profits are recalculated to be more the numbers of affordable houses increase proportionally, but on the same shared profit basis.
32. Once the development has commenced, whether on time or not, if it exceeds the build programme date a post-completion viability appraisal will be undertaken once it is completed. Any uplift in profits above 15.5% will then be shared with the Council on a 50/50 basis, in cash, up to an index linked maximum of £2.34m, although it was agreed this would not enable the Council to buy or construct the full requirement of 26 affordable homes off-site.
33. In my view, these clauses all tend to weigh the undertaking in the appellant's favour. In effect as long as house prices do not start to move upwards so that likely profits calculated when construction commences do not exceed roughly 17% they have the usual three year life of the permission to begin construction. Then, once construction begins, the developer has 2½ years to build and reap any benefit of a rising market. Should delays occur, such as floods or severe storms, the costs incurred would be factored into any post-completion viability appraisal, which will in turn impact on profit. I agree with the Council that it seems very unlikely that any combination of events can be reasonably foreseen that would lead to the appellant actually having to provide or pay for any affordable housing. I can understand the appellant wishing to protect himself against a continuing recession, but this undertaking appears to do much more than that. It simply does not seem to be a genuine attempt to meet the affordable housing requirement if at all possible, but rather an attempt to avoid the requirement now and into the future.

#### *Conclusion*

34. Although I find the design of the scheme to be acceptable the failure to provide any affordable housing is a significant drawback for the scheme, which is not outweighed by the positive benefit of allowing a market housing only scheme to go ahead. Further with more than a 6 year land supply there is not an urgent requirement for a market housing only scheme at the expense of any affordable housing. Finally I consider the S106 undertaking to be too weighted in favour of the appellant, and so it adds little to the positive side of the equation. Thus, for this reason the appeal should fail.

*Other matters*

35. The S106 unilateral undertaking also contained clauses making various payments to the Council as outlined in paragraph 24 above. There was some dispute as to the rate of the penalty interest to be levied should any of the payments be late. The appellant was again seeking to use the current state of the market as a reason for levying a lower rate than would be considered normal. While I am not entirely convinced by this argument, had the proposal been acceptable on all other grounds, this factor would not have been sufficient to warrant a refusal of planning permission on its own.

*Simon Hand*

Inspector



## DOCUMENTS

- 1 Notification of the Inquiry, letter from the Council
- 2 Written representations from Councillor Mrs Lesley Clarke
- 3 Signed Statement of Common Ground
- 4 Inspector's report to the Secretary of State on the Badnell's Pit inquiry
- 5 Wycombe District Local Plan proposals map
- 6 Latest housing delivery figures for Wycombe
- 7 Draft S106 unilateral undertaking
- 8 M40 Gateway "A Vision and Options Paper"
- 9 Policy CS4 of the Core Strategy
- 10 Closing submissions for the Council
- 11 Closing submission for the appellant
- 12 Criticism of the unilateral undertaking by the Council



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Mary Grimshaw  
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Your Ref: 08/06318/FUL  
Our Ref: APP/K0425/A/09/2093279/NWF  
Date: 11 June 2009

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Dear Ms Grimshaw

**Town and Country Planning Act 1990**  
**Appeal by <<?Please enter the Appellants name~>>**  
**Site at Former John North Student Hall Of Residence, Marlow Hill, High Wycombe, HP11 1SX**

I enclose a copy of our Inspector's decision on the above appeal.

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Yours sincerely

Stephen Adgey

