Department for Communities and Local Government

Our Ref: APP/M2325/W/15/3004502

Colin Griffiths Esq.
Managing Director
Satnam Planning Services
17 Imperial Square
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13 February 2017

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY WARTON EAST DEVELOPMENTS LTD
LAND OFF LYTHAM ROAD, WARTON, LANCASHIRE
APPLICATION REF: 14/0410

1. I am directed by the Secretary of State to say that consideration has been given to the report of P.W. Clark MA, MRTPI, MCMI, who held a public local inquiry on 12, 13 and 14 July 2016 and made site visits on 14 July 2016 into your client's appeal against the against a failure by Fylde Borough Council to give notice within the prescribed period of a decision on an application for outline planning permission (as amended) for the erection of up to 350 dwellings in accordance with application ref: 14/0410, dated 11 June 2014.

2. On 12 February 2016, this 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 relates to proposals for residential development over 10 units in an area where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority, or where a neighbourhood plan has been made.

Inspector's recommendation and summary of the decision

3. The Inspector recommended at IR 253 that the appeal be allowed and planning permission granted subject to the conditions set out in the IR (at page 56). The Secretary of State agrees with the Inspector's conclusions and agrees with his recommendation. He has decided to allow your client's appeal and grant outline planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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Procedural matters

4. As described by the Inspector at IR6, the details to the proposed access to the appeal site were changed several times prior to the appeal being made but no further changes were requested during the course of the appeal. Furthermore, he notes that the scheme considered by the Council concerned a proposal for up to 375 dwellings, and that your client sought to reduce this to 350 dwellings before the inquiry was held. The Secretary of State notes that this is the basis on which evidence has been given, the report has been written and the recommendation has been made. He is therefore satisfied that no interests will be prejudiced by making his decision on that basis.

Matters arising since the close of the inquiry

5. On 16 November 2016 the Secretary of State referred back to the parties to invite representations on the implications, if any, of a letter dated 11 August 2016 from Bryning-with-Warton Parish Council. The Secretary of State has taken the representations (listed at Annex B) into account in reaching his decision. As these representations were circulated to the parties the Secretary of State does not find it necessary to reproduce them here. Copies may be obtained on written request to the address at the foot of the first page of this letter.

Policy considerations

6. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

7. In this case, the development plan consists of the saved policies of the Fylde Borough Local Plan As Altered, October 2005. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR IR24-29.

8. With regard to the Inspector's remarks on the emerging Bryning-with-Warton Neighbourhood Plan (BWNP) at IR34-37, the Secretary of State notes the Neighbourhood Plan Examiner's conclusions (IR36) that there is no certainty that the BWNP would be compatible with European Union obligations (IR36), that his recommendations would fundamentally alter the content of the Plan, and that the Plan has not progressed since the publication of the Examiner's Report in April 2016 (IR37). Given the early stage of preparation and the outstanding objections to it, the Secretary of State affords it minimal weight.

9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Community Infrastructure Levy (CIL) Regulations 2010 as amended.

Emerging plan

10. The emerging plan comprises the Fylde Local Plan to 2032. Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The

Secretary of State notes that the plan was submitted to him for examination on 9 December 2016.

Main issues

11. The Secretary of State agrees with the Inspector that the main issues are those set out at IR156-157.

Habitats Regulations Assessment

12. The Secretary of State recognises that the Ribble and Alt Estuaries Special Protection Area (SPA) and Ramsar Site and the Ribble Estuary Site of Special Scientific Interest (SSSI), and the Newton Marsh SSSI are important sites for wintering birds and migratory birds in spring and autumn (IR159), but agrees with the Inspector (IR160) that the distance between the appeal site and the intervention of existing development is such that direct disturbance to species on the protected sites is unlikely. The Secretary of State shares the Inspector's view that the most likely impacts from the appeal proposal are a loss of habitat functionally linked to a protected site, increased recreational pressure on the protected site, and changes in water quality in watercourses hydrologically linked to a protected site (IR160).

13. The Secretary of State has carefully considered the Inspector's analysis at IR161-163, and like the Inspector, he considers that provided the two conditions suggested by Natural England are imposed on any permission so that mitigation measures are secured as part of the proposal, the appeal proposal would be unlikely to have a significant effect on the designated sites either alone or in combination. For that reason, he agrees with the Inspector's conclusion (IR170) that no Appropriate Assessment is necessary.

The character of Warton, its services and facilities

14. For the reasons given by the Inspector at IR172-179, the Secretary of State agrees with the Inspector that the proposal would not alter the fundamental character of Warton. Although all parties accept that the appeal proposal contravenes Local Plan policies SP1 and SP2 which set limits to development for Warton, the parties also accept that both these policies are out of date or satisfied. The Secretary of State accepts the Inspector's conclusion (IR180) that the proposals would comply with local Plan policy HL2(1) which requires housing developments to be acceptable in principle.

The highway network

15. For the reasons given by the Inspector at IR181-185, the Secretary of State accepts the Inspector's conclusion that with the recommended conditions, the proposed development would not cause the capacity of the highway network to accommodate the cumulative effects of development in Warton to be exceeded. He therefore agrees with the Inspector that the proposal would therefore comply with criterion 9 of Local Plan policy HL2 (IR186).

Air quality

16. For the reasons given by the Inspector at IR187-190, the Secretary of State agrees with his conclusion (IR191) that although background air quality in the eastern part of Warton may have higher levels of pollutants than surrounding areas and be the poorest quality in Fylde, it is not, in absolute terms, poor. In terms of air quality, he accepts the Inspector's conclusion that Warton is suitable as a residential location. Like the Inspector, the

Secretary of State observes that the appeal proposal would accord with Local Plan policy EP26 which would not permit development which would give rise to unacceptable levels of air pollution.

Housing

17. The Secretary of State has considered carefully the Inspector's analysis of the Council's housing land supply shortfall at IR192 – 197. He accepts that the Council can only demonstrate a supply of housing land of between 3.5 and 4.8 years. In terms of the housing requirement, the Secretary of State agrees with the Inspector (IR195) that the proposal represents the equivalent of a year or nearly a year's requirement, or 16-20% of the total five year requirement for the whole of Fylde. He therefore accepts the Inspector's conclusion that it would represent a highly significant contribution to housing land supply in the borough and notes that the proposal accords with the Council's requirement to supply 30% affordable housing (IR198).

Other matters

18. In terms of highway safety, the Secretary of State acknowledges that Lytham Road is a busy main road but its accident record is not out of the ordinary (IR199). In terms of flooding, the Secretary of State notes the Inspector's comment (IR 200) that the part for the appeal site that is in Flood Zone 3 has no housing proposed there and the access would have to be elevated above flood level to connect to the A584 which is already elevated to pass over the Pool Stream at that point. Turning to surface water flooding in the south-east and south-west corners of the site, the Secretary of State agrees with the Inspector that there is no evidence to suggest that acceptable details of surface water drainage could not be devised and submitted for approval (IR201).

Sustainable development

19. In terms of the economic role of sustainable development, the Secretary of State has carefully considered the Inspector's analysis at IR203-212. The Secretary of State agrees with the Inspector that the site is located on land of the right type in all respects apart from it not being brownfield land (IR205), and the development would have limited traffic impacts and would provide safe access and would avoid flood risk (IR207). Furthermore, he agrees that even though the site is not located in a town centre, it would enhance or maintain the vitality of a rural community which has been identified as a sustainable location. The Secretary of State agrees with the Inspector that the proposal scores moderately well in terms of accessibility to local services and agrees with his conclusion that the site is located in the right place (IR211). Overall, he accepts the Inspector's conclusion that despite the negative characteristic of the site being greenfield land, the site scores highly in terms of the economic role of sustainability.

20. Turning to the social role, the Secretary of State agrees with the Inspector (IR215) that the proposal would make a highly significant contribution to housing land supply in the borough, and scores well in terms of accessibility to local services. He therefore accepts the Inspector's conclusion that in terms of the social role of sustainability, the site scores well (IR216).

21. In regard to the environmental role of sustainability, the Secretary of State has considered the Inspector's analysis at IR217-219, and accepts his conclusion that given the mitigations and enhancements which could be achieved through conditions, the development of this appeal site would only be moderately adverse (IR220).

22. In taking account of the Framework as a whole and the need for housing in Fylde which is such that greenfield sites will inevitably be used, the Secretary of State concludes, in agreement with the Inspector, that the proposal is sustainable development. He agrees too that adverse impacts are relatively few and minor and would certainly not outweigh the benefits (IR 221).

Planning conditions

23. The Secretary of State has given consideration to the Inspector's analysis at IR226-252, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework.

Planning obligations

24. Having had regard to the Inspector's analysis at IR225, the planning obligation dated 14 July 2016, paragraph 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR225 that the obligations comply with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework, are necessary to make the development acceptable in planning terms, directly related to the development, and are fairly and reasonably related in scale and kind to the development.

Planning balance and overall conclusion

25. For the reasons given above, the Secretary of State considers that the appeal scheme would be contrary to Local Plan policies SP1 and SP2 which set limits to the development of Warton. However these policies are out of date because they were only intended to guide the development of Warton up to 2016 and because these are policies that would have the effect of controlling the supply of housing and the Council cannot demonstrate a five-year housing supply.

26. With planning obligations in place the appeal complies, or could be made to comply by condition, with all other Local Plan policies. Where compliance has been contested by the parties, the Secretary of State finds that the proposals comply with Local Plan policy HL2(1) which requires housing developments to be acceptable in principle, HL2(9) which requires highway safety to be a criterion in considering housing development and policy EP26 which would not permit development which would give rise to unacceptable levels of air pollution. Taking a broad view of the development plan as a whole, the Secretary of State concludes that the appeal proposal accords with its remaining relevant parts.

27. Given that policies for the supply of housing are out of date, the Secretary of State considers that paragraph 14 of the Framework is engaged. The Framework advises that in such cases, permission should be granted unless the adverse impacts of so doing would significantly and demonstrably outweigh the benefits when assessed against policies in the Framework, taken as a whole, or specific policies in the Framework indicate that development should be restricted. The Secretary of State has already concluded at paragraph 22 above that that is not the case in this appeal.

Formal decision

28. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants outline planning permission for the erection of up to 350 dwellings in accordance with application ref: 14/0410, dated 11 June 2014 (as amended), subject to the conditions set out in the Annex B to this letter.

29. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

30. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

31. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

32. A copy of this letter has been sent to Fylde Borough Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Philip Barber

Authorised by Secretary of State to sign in that behalf

Annex A

SCHEDULE OF REPRESENTATIONS

Representations received in response to the Secretary of State's letter of 16 November 2016

Party	Date
Anthony Wood Clerk for Bryning-with-Warton Parish Council	11 August 2016
Mr M Evans Fylde Council	18 November 2016
Mrs J King	22 November 2016
Colin Griffiths Satnam Group	5 December 2016
Mr Graham Lamb Pegasus Group	6 December 2016
Mr M Evans Fylde Council	9 December 2016
Mr Graham Lamb Pegasus Group	12 December 2016
Jessica Ashworth Chair of Bryning with Warton Neighbourhood Plan Steering Group	14 December 2016
Tony Guest	16 December 2016
Sally Wright WRAPP	16 December 2016

Annex B

APP/M2325/W/15/3004502

1) No development shall take place until a plan detailing the phasing of development and the allocation to each phase of a share of a total open space provision of not less than 2ha including a LEAP/LAP has been submitted to and agreed in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

2) Details of the access within each phase of the site, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins on the phase in question and the development shall be carried out as approved.

3) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.

4) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

5) The access on to Lytham Road to the development hereby permitted shall be carried out in accordance with approved plan number SK21338-12. No dwelling shall be occupied until the details shown on the approved plan have been completed and made available for use. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (or any equivalent Order following the revocation or re-enactment thereof) the area indicated as an area to be kept free of obstruction to visibility shall thereafter be kept free of any obstruction higher than 0.6m above the level of the carriageway.

6) No greater quantity of housing shall be built than that which would give rise to traffic generated by the development no greater than that forecast in the submitted Transport Assessment 140603/SK21338/TA02 June 2014 by SK Transport Planning Ltd.

7) No more than 15% of the development hereby approved shall be occupied until the completion and bringing into use of

a) The Preston Western Distributor Road

b) The relocation of BAE Systems gate from Mill Road to the road known variously as Liberator Way, Typhoon Way and Thunderbolt Avenue

c) The works at the junction of Church Road, Lytham Road and Highgate Lane required by conditions 16 and 17 of appeal decision APP/M2325/A/14/2217060

8) No dwelling hereby approved shall be occupied until a MOVA/UTC control has been installed and brought in to use at

a) the Church Road/Lytham Road/Highgate Lane junction

b) the Lytham Road/Mill Lane junction and

c) the junction of Lytham Road and the road known variously as Liberator Way, Typhoon Way and Thunderbolt Avenue

9) No dwelling shall be occupied until details of travel mode share targets for the development and measures to achieve them (a Travel Plan) have been submitted to and approved in writing by the local planning authority. The development shall be carried out and retained in accordance with the approved details.

10) No dwelling shall be occupied until it has been provided with a Visitors Pack which shall have been previously submitted to and approved by the local planning authority, highlighting the sensitivity of the Ribble & Alt Estuaries to recreation activity and highlighting alternative recreational opportunities. The Visitors Pack shall thereafter be kept available in the dwelling for the use of future occupants.

11) No development shall take place on any phase of the site until details of foul and surface water drainage for that phase have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details. No dwelling shall be occupied until it is provided with its drainage as approved.

12) No development shall take place on any phase of the site until details of finished floor levels and external ground levels of each plot on that phase have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

13) No development shall take place on any phase of the site until an intrusive site investigation of the nature and extent of contamination and unexploded ordnance has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any new construction begins on that phase. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate that phase of the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. That phase of the site shall be remediated in accordance with the approved measures before new construction begins. If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the relevant phase of the site shall incorporate the approved additional measures.

14) No development shall take place within any phase of the site until a programme of archaeological work for that phase has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.

15) No development shall take place on the relevant phase until details of the pedestrian and cycle access to Canberra Way at the north-western corner of the site and to Butlers Meadow at the south-western corner of the site (both shown indicatively on the illustrative master plan accompanying the application) have been submitted to and approved in writing by the local planning authority. No dwelling on the relevant phase shall be occupied until the relevant pedestrian and cycle access shall have been completed and made available in accordance with the approved details.

16) The external fabric of any dwelling hereby approved having a direct line of sight to Lytham Road and the boundary fences around their rear or private amenity areas shall be constructed so as to comply with the sound reduction performance recommended in section

5 of the Noise Impact Assessment by Resource & Environmental Consultants Ltd reference 90342R2.

17) No dwelling on any particular phase shall be occupied until the public open space allocated to that phase has been laid out and made available for its intended purpose. The public open space shall be retained thereafter in accordance with a maintenance scheme which shall have been submitted to and approved by the local planning authority before development commences on the relevant phase. No dwelling on the last of any phase of the development which includes residential dwellings shall be occupied until the LEAP/LAP and all the public open space on all phases has been laid out and made available for its intended purpose.

18) In this condition "retained tree" means an existing tree or hedgerow which is to be retained in accordance with the recommendations contained in section 5 and drawing 60072-002 of the Arboricultural and Hedgerow Assessment reference 60072P1R4 by Resource and Environmental Consultants Ltd dated 2 June 2014 and paragraphs (i) and (ii) below shall have effect until the expiration of 1 year from the date of the first occupation of the last completed dwelling for its permitted use.

i. No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998 (Tree Work).

ii. If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.

iii. The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority.

19) None of the ponds and ditches shown on figure 2 of the Ecological Survey and Assessment reference 2013_089 by ERAP Ltd dated September 2013 (Updated June 2014) shall be removed or filled in except in accordance with details submitted and approved in compliance with other conditions of this permission. A buffer zone of 10m around the edge of each pond shall be kept free of development.

20) No clearance of any vegetation in preparation for or during the course of development shall take place during the bird nesting season (March to July inclusive) unless an ecological survey has first been submitted to and approved in writing by the local planning authority. Should the survey reveal the presence of any nesting species, then no clearance of any vegetation shall take place during the bird nesting season until a methodology for protecting nest sites during the course of the development has been submitted to and approved in writing by the local planning authority. Nest site protection shall thereafter be provided in accordance with the approved methodology.

21) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

The hours of site operation

the parking of vehicles of site operatives and visitors

loading and unloading of plant and materials

storage of plant and materials used in constructing the development

the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate

wheel washing facilities

measures to control the emission of dust and dirt during construction

a scheme for recycling/disposing of waste resulting from demolition and construction works.

[ENDS]