
Appeal Decision

Site visit made on 4 April 2017

by B Bowker Mplan MRTPI

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

Decision date: 2 June 2017

Appeal Ref: APP/F2415/W/16/3165557

Land to the south of London Road, Great Glen, Leicester, Leicestershire LE8 9FL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr Paul Johnson against Harborough District Council.
 - The application Ref 16/01382/OUT, is dated 24 August 2016.
 - The development proposed is outline planning application (all matters reserved, except for access) for up to 19 no dwellings, including affordable housing.
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Decision

1. The appeal is allowed and outline planning permission is granted for (all matters reserved, except for access) up to 19 no dwellings, including affordable housing, at Land to the south of London Road, Great Glen, Leicester, Leicestershire LE8 9FL, in accordance with the terms of the application Ref 16/01382/OUT, dated 24 August 2016, subject to the conditions in the attached schedule.

Preliminary Matters

2. The proposal as submitted is for outline planning permission with all matters reserved apart from access. Appearance, landscaping, layout and scale are reserved for later consideration and the appeal has been determined on this basis.
3. The Council state that had it been in a position to determine the application, it would have granted planning permission for the proposal subject to conditions.
4. Comments were sought from the parties regarding the effect of a recent Supreme Court judgement¹ on the appeal proposal. The appeal has been determined taking into account these comments and the judgement.

Main Issues

5. Based on the evidence before me, the main issues are:
 - Whether the proposal makes adequate provision for education, transport, affordable housing, community facilities, and open space; and,

¹ Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG, Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council

- Whether the proposal would preserve; the setting of the Grade II listed building known as The Sycamores; the setting of the Grade II* listed building known as St Cuthbert Church; and the significance of a non-designated heritage asset.

Reasons

Planning Obligations

6. The appeal site forms part of a wider open field located outside the development limits of the village of Great Glen as defined by Local Plan (LP) Policy HS/8. Consequently the proposal would be contrary to LP Policy HS/8. Planning permission has been granted for 9 dwellings on land to the immediate east of the appeal site under Council ref 16/00321/FUL. The adjoining site is under the same ownership as the appeal site.
7. The appeal proposal is accompanied by two versions (Obligation 'A' and Obligation 'B') of a signed and dated unilateral undertaking which, insofar as being implementable, are acceptable to the Council. Whilst both versions contain the same contribution types, the parties disagree on which obligation would meet the relevant statutory tests. I return to this matter later after considering each contribution sought in light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010. The contributions relate to the following matters.
8. Primary and Secondary School provision: CS Policy CS12 states that when appropriate, development will be required to contribute to funding elements of the Infrastructure Schedule. A need to extend existing primary and secondary schools is identified within CS Appendix 2. Leicestershire County Council's (CC) Planning Obligation Policy provides further guidance regarding cost, local need and specific local projects. The CC confirm that the contributions would comply with pooling restrictions imposed by the CIL regulations. Consequently, I consider both obligations to be compliant with the statutory tests.
9. Transport and Libraries: The CC seek financial contributions towards bus passes, travel packs and library provision for future occupants of the development. CS Appendix 2 refers to a package of Smart Choice Initiatives to help reduce levels of car use and library provision and the CC's Planning Obligation Policy provides further details, including policy justification and costings. The contributions are for future occupants of the development so in this respect would be compliant with CIL pooling restrictions. The contribution to library provision would be the first used for the identified project and thus would be compliant with CIL pooling restrictions. Consequently, these obligations would pass the statutory tests.
10. Affordable Housing: CS Policy CS3 requires 40% of the total number of dwellings proposed to be affordable with further guidance and justification provided in the Council's Planning Obligations Supplementary Planning Guidance (SPG) document. Based on the evidence submitted, I am satisfied this obligation meets the relevant statutory tests.
11. Public Open Space and Community Facilities: contributions are sought towards community facilities, open space and greenways, cemeteries, and children and young people's provision. Justification is cited from CS Policy CS12 and these infrastructure types are listed in CS appendix 2. Reference is also made to a

number of policies from the emerging Great Glen Neighbourhood Plan (GGNP). However, I understand that examination of the GGNP is yet to commence. Consequently, GGNP policies attract limited weight only.

12. The Council raise no concern that financial contributions to offsite open space provision are proposed as opposed to on-site provision and appendix 6 of the Council's 'Provision for Open Space Sport and Recreation 2015' document anticipates such scenarios. Further guidance on costings and space and recreation requirements are also provided in the document. However, I share the appellant's concern that no specific projects or evidence regarding pooled contributions have been provided for the contributions. Consequently, it has not been demonstrated that these contributions meet the statutory tests. Brief reference is made to a project at a recreation ground in Great Glen. However, with no evidence regarding the number of existing contributions to this project, this contribution also fails the statutory tests.
13. Monitoring fees are anticipated by both Councils respective SPD and SPG documents and with no reason to the contrary, I am satisfied these contributions meet the statutory requirements.
14. Turning to the two different obligations submitted. Obligation 'A' relates to development involving up to 19 dwellings at the appeal site, whilst obligation 'B' includes both development at the appeal site and 9 dwellings granted planning permission on land to the immediate east. The appellant considers that Obligation B is not necessary as the Council have already deemed the adjoining development to be acceptable on its own merits. However, as the Council state, the obligations now sought could not have been secured from the previous permission owing to the 10 dwelling S106 threshold set by Planning Practice Guidance.
15. The High Court Judgement² cited by the Council has a number of similarities with the appeal proposal. The judgement involved a site adjoined by two extant permissions in the same ownership that overall were considered to be read as the same development. Similar circumstances apply to the appeal proposal before me. The appellant queries the policy basis to require Obligation B. However, as noted within the judgement, the absence of a local policy covering this matter would not prevent the decision maker from considering the relevant case law. A similar appeal case³ is also referred to by the Council to support its approach. Taken the above into account, I find the Council have put forward a compelling case in support of Obligation B.
16. In reaching this view, I have considered the arguments against Obligation B put forward by the appellant. However, despite not flagging up the need for Obligation B earlier on and irrespective of some turns of phrases contained in the Committee Report, the Council's overall case is clear in that they do not consider the sites as separate in planning terms. I note that the subdivision of the land was not planned and acknowledge that the adjoining development could commence without the contributions sought. In addition, the appellant might not be the eventual site developer. However, these factors do not alter my conclusion that for planning purposes, the appeal and adjoining site form a single site.

² New Dawn Homes Limited v SSCLG & Tewksbury Borough Council [2016] EWHC 3314

³ APP/D0515/W/16/3143155

17. Based on my reasoning above, the appeal site would form part of a larger whole which would encompass up to 28 dwellings. It follows that Obligation A would fail to meet the statutory tests. In this respect, I am satisfied that Obligation B would meet the relevant statutory tests. Therefore I conclude that the proposal would make adequate provision for education, transport, affordable housing, community facilities, and open space. Consequently the proposal would meet CS Policy CS 12, the requirements of which have been outlined above.

Heritage assets

18. I have a statutory duty under section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving a listed building or its setting, a consideration the Court have held to be of considerable importance and weight.
19. The site is within the setting of Grade II listed building The Sycamores which includes curtilage listed buildings. The planning permission to the immediate east of the appeal site abuts The Sycamores. Consequently, I agree with the Council's assessment on this matter which takes into account the permission granted at the adjoining and intervening site. On this basis, the setting of The Sycamores would be preserved in accordance with the statutory requirement and the relevant provisions of the National Planning Policy Framework (the Framework).
20. Historic England express concern that the proposal would harm the significance of the Grade II* Listed Church of St Cuthbert by virtue of its effect on its historical landscape context and resultant loss of ridge and furrow earthwork. The Council identify that the ridge and furrow earthwork forms part of a wider non-designated heritage asset.
21. However, taking into account the limited extent of ridge and furrow earthwork lost and the permission granted for development to the immediate east of the site, the proposal would have a negligible effect on the setting of St Cuthbert Church and on the significance of the non-designated heritage asset. Consequently the setting of St Cuthbert Church and the significance of the non-designated heritage asset would be preserved as anticipated by the statutory requirement and the relevant provisions of the Framework.

Other matters

22. The Council's Ecologist has raised concern that additional Local Wildlife Site indicator species may have been missed by the appellant's survey. Consequently, the status of the site as a priority habitat under the Leicester, Leicestershire and Rutland Biodiversity Action Plan cannot be ruled out. However, I agree with the assessment contained within the Council's Committee Report that should the site be classified as a priority habitat, adequate compensation and mitigation could be secured at the reserved matters stage alongside a requirement to undertake a new habitat survey.
23. Concerns have been raised regarding the capacity of the highway network and of health care services to accommodate the proposal. However, based on the evidence before me, dismissing the appeal on these grounds would be unjustified.

Planning Balance

24. It is common ground between the parties that the Council cannot currently demonstrate a 5 year supply of housing land. Based on the evidence before me, I have no reason to disagree with the parties acceptable on this matter.
25. Consequently, in accordance with paragraph 49 of the Framework, policies for the supply of housing cannot be considered up to date. Thus, the weight I afford to the conflict of the proposal with housing supply policies LP Policy HS/8 and CS Policy CS17 is limited. In such circumstances, paragraph 14 of the Framework indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
26. A number of benefits are associated with the proposal. The proposal would be close to the village of Great Glen, identified by the Council as having reasonable levels of local services; the proposal would support these services and thus lead to economic and social benefits. The proposal would also secure economic benefits by increasing local spending power in the area and by supporting construction employment.
27. As the site is within walking and cycling distance to the village centre and benefits from good public transport links, environmental benefits would arise by reducing dependency on private vehicular transport. Social benefits would also arise as a result of the proposal's contribution to affordable housing and to local housing supply. Significantly, in the context of the Council being currently unable to demonstrate a five year supply of housing, the proposal would contribute up to 19 dwellings to housing supply. This is a benefit that attracts significant weight in favour of the appeal. Finally, the proposal would preserve the setting of The Sycamores and St Cuthbert Church and the significance of the ridge and furrow earthwork non-designated heritage asset.
28. No adverse impacts are before me that would significantly and demonstrably outweigh the benefits associated with the proposal when considered against the policies of the Framework taken as a whole. This includes the conflict of the proposal with housing land supply policies LP Policy HS/8 and CS Policy CS17 which attracts limited weight against the appeal. Therefore, based on my reasoning above, the proposal would simultaneously achieve economic, social and environmental objectives and thus represent sustainable development for which the Framework carries a presumption in favour of.

Planning conditions

29. The conditions in the attached schedule are based on those suggested by the Council. Where necessary, the conditions have been amended in the interests of clarity and precision as required by Planning Practice Guidance.
30. A condition requiring the submission of reserved matters is required in view of the outline nature of the application. A condition specifying the relevant plans is necessary in the interests of certainty as is the condition relating to land levels. A condition relating to details of existing trees at the site is necessary based on comments made by the County Ecologist, and in the interests of character and appearance. A condition requiring the implementation of the landscaping measures at the adjacent site (within the appellant's ownership) is

included in the interests of character and appearance and the setting of the listed building at The Sycamores. Conditions nos 19-25 are necessary in the interests of highway safety and sustainable transport.

31. Conditions relating to archaeological works are necessary based on the County Archaeologist comments. Conditions regarding permeable surfaces and surface water drainage strategy are necessary based on comments made by Seven Trent Water and the Lead Local Flood Authority. However, as the responsibility to discharge planning conditions lies with the Local Planning Authority, these conditions have been altered accordingly.
32. Conditions to secure acceptable refuse and recycling provision and construction details are necessary in order to secure satisfactory living conditions for future and nearby occupants and in the interests of highway safety. Conditions requiring an ecological buffer zone, a habitat survey and a badger mitigation strategy are necessary based on comments made by the County Ecologist and in the interests of biodiversity.

Conclusion

33. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be allowed subject to the attached schedule of conditions.

B Bowker

INSPECTOR

Attached – schedule of conditions

Schedule of conditions

- 1) Details of the 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 takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: FRA 206 SUR 001, 15414-TOPO, 15049/104 Rev A, FRA-206-SK-001 but only in respect of those matters not reserved for later approval.
- 5) The landscape details to be submitted in accordance with Condition 1 shall include details of all existing trees on the site, and shall confirm

- which are to be retained and which are to be removed. No hedgerows or trees shown to be retained shall be felled, pollarded or otherwise removed during or after the construction period.
- 6) The landscape details to be submitted in accordance with Condition 1 shall include details of the position and design (dimensions and materials) of all boundary and surface treatments (including details of paths, driveways and all public areas). The boundary and surface treatments shall be provided to each dwelling before that dwelling is first occupied, or in accordance with an approved phasing plan.
 - 7) No development shall commence on site until details of storage facilities for refuse and recycling materials (wheelie bins) have been submitted to and approved in writing by the Local Planning Authority. The storage facilities shall be provided for each dwelling in accordance with the approved details before that dwelling is first occupied and, thereafter, shall be retained as such in perpetuity.
 - 8) No development shall commence on site (including any site clearance/preparation works), 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:
 - a) the parking of vehicles of site operatives and visitors;
 - b) loading and unloading of plant and materials;
 - c) storage of oils, fuels, chemicals, plant and materials used in constructing the development;
 - d) the erection and maintenance of security hoarding, including decorative displays and facilities for public viewing, where appropriate;
 - e) wheel washing facilities;
 - f) measures to control the emission of dust and dirt during construction;
 - g) a scheme for recycling/disposing of waste resulting from site preparation and construction works;
 - h) measures for the protection of the natural environment;
 - i) hours of work on site, including deliveries and removal of materials;and
j) full details of any piling technique to be employed, if relevant.
 - 9) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
 - 10) No development shall take commence until a programme of archaeological work, comprising an earthwork survey of the development area, has been detailed within a Written Scheme of Investigation, submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions; and:
 - The programme and methodology of site investigation and recording
 - The programme for post-investigation assessment
 - Provision to be made for analysis of the site investigation and recording
 - Provision to be made for publication and dissemination of the analysis and records of the site investigation

- Provision to be made for archive deposition of the analysis and records of the site investigation
 - Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
- 11) No demolition/development shall take place other than in accordance with the Written Scheme of Investigation approved under condition 9.
 - 12) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition 9 and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.
 - 13) A new Habitat Survey shall be completed at an optimal time of year and submitted to the Local Planning Authority in support of the reserved matters application. The report shall identify Local Wildlife Site indicator species on the site and detail proposed mitigation measures.
 - 14) A detailed Badger Mitigation Strategy shall be designed and submitted to the Local Planning Authority in support of the reserved matters application. This should be informed by surveys no more than 12 months old. The agreed mitigation strategy should then be followed throughout the development.
 - 15) The development layout shall include a 5.0m ecological buffer along the western boundary of the site, as shown on Sketch Layout FRA-206-SK-001 Rev A (05.10.16). The layout shall also include a buffer between plot boundaries and existing hedgerows. Existing hedgerows and trees to the northern, western and southern boundaries shall be retained.
 - 16) The landscape details to be submitted in accordance with Condition 1 shall be in accordance with the recommendations within the Landscape Appraisal (Lockhart Garratt, v2 dated 5/10/16) paragraph 4.3.
 - 17) Prior to the occupation of any dwelling on the site, the dwellings, soft landscaping and boundary treatment to the phase 1 site (planning permission 16/00321/FUL or any variation) shall be implemented in accordance with the approved details.
 - 18) No development shall take place until a complete surface water drainage scheme has been submitted to, and approved in writing by the local planning authority. The scheme shall include a complete pipe network model which demonstrates that the downstream network can convey all flows from the combined site, including the restricted flow from phase 2. Full details for the drainage proposal should be supplied, including but not limited to, headwall details, pipe protection details (e.g. trash screens), long sections and full model scenario's for the 1 in 1, 1 in 30 and 1 in 100 year + climate change. Where discharging to a sewer, this should be modelled as surcharged for all events above the 1 in 30 year, to account for the design standards of the public sewers.
 - 19) No development shall take place until the design of the proposed gravel driveways has been confirmed and submitted to and approved in writing by the local planning authority. The design should demonstrate that flood risk will not be increased through the ability of the permeable surfaces to mimic greenfield runoff rates.

- 20) If any vehicular access gates, barriers, bollards, chains or other such obstructions are to be erected they shall be set back a minimum distance of 10 metres behind the highway boundary and shall be hung so as not to open outwards.
- 21) Before first use of the development hereby permitted, drainage shall be provided within the site such that surface water does not drain into the Public Highway including private access drives, and thereafter shall be so maintained.
- 22) The existing vehicular access that becomes redundant as a result of this proposal shall be closed permanently and the existing vehicular crossings reinstated, in accordance with a scheme that shall first have been submitted to and approved by the LPA, within one month of the new access being brought into use.
- 23) Notwithstanding the submitted detail, before first use of the development hereby permitted, a footway shall be completed to the satisfaction of the Highway Authority from existing footways on London Road to the point of the new access to the proposed development and include an additional crossing point for anticipated pedestrian movements east of the proposed site.
- 24) No development shall commence on the site until such time as a construction traffic/site traffic management plan, including wheel cleansing facilities and vehicle parking facilities, and a timetable for their provision, has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and timetable.
- 25) All details of the proposed development shall comply with the design standards of the Leicestershire County Council as contained in its current design standards document. Such details must include parking and turning facilities, access widths, gradients, surfacing and visibility splays and be submitted for approval by the local Planning Authority in consultation with the Highway Authority before development commences.
- 26) Before first use of the development hereby permitted, visibility splays of 2.4 metres by 100 metres shall be provided at the junction of the access with London Road. These shall be in accordance with the standards contained in the current County Council design guide and shall thereafter be permanently so maintained. Nothing shall be allowed to grow above a height of 0.6 metres above ground level within the visibility splays.