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## Appeal Decision

Inquiry Held on 15 and 16 November 2021

Site visit made on 15 November 2021

**by G Rollings BA (Hons) MAUD MRTPI**

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

**Decision date: 17<sup>th</sup> December 2021**

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**Appeal Ref: APP/H0738/W/21/3279168**

**Land south of Green Lane, east of the railway line and west of A67, Yarm**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Theakston Estates Limited against the decision of Stockton-on-Tees Borough Council.
  - The application Ref 18/0910/OUT, dated 23 April 2018, was refused by notice dated 7 June 2021.
  - The development proposed is an outline application with all matters reserved except for access for approximately 300 dwellings (use class C3) including landscape, open space and infrastructure.
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### Decision

1. The appeal is allowed and outline planning permission is granted, with all matters reserved except for access, for approximately 300 dwellings (use class C3) including landscape, open space and infrastructure at Land south of Green Lane, east of the railway line and west of A67, Yarm in accordance with the terms of the application, Ref 18/0910/OUT, dated 23 April 2018, subject to the conditions listed in the schedule attached to this decision.

### Preliminary Matters

2. The application form indicates that all matters of detail are reserved for future determination, apart from access. I confirmed at the Inquiry that the proposed masterplan and landscaping plan layouts are indicative only.
3. As well as the formal site visit, on which I was accompanied by both parties and several interested parties, I undertook solitary informal visits on 14 and 16 November. During the latter, I observed morning peak traffic at the Leven Road / Thirsk Road intersection. I also drove along the local roads and routes identified by interested parties and visited the highways sites of proposed mitigation.
4. Following discussion with the main parties at the Case Management Conference held on 1 October, I opened the Inquiry intending to hear evidence relating to the two reasons for refusal as set out in the Council's decision notice, together with submissions from interested parties. On the former, the reasons for refusal constituted two main issues, relating to highway safety, and character and appearance.
5. The appellant proposed several highways-based measures to mitigate the traffic impact of the appeal scheme, and one of these was a road widening

scheme on Leven Road comprising around 180 metres of works, on which the Council's reasons for refusal were based. Without the works, the Council contended that increased queuing by vehicles at the intersection would result in a severe cumulative impact to highway safety, together with other concerns regarding traffic movements, pedestrian safety and the widening's impact on the character and appearance of the affected area. I will subsequently refer to the 'no-improvement' scenario as the zero mitigation scheme.

6. At the exchange of evidence, the appellant proposed 60m and 90m alternatives to the 180m widening scheme. Following pre-Inquiry discussions between the main parties, the Council accepted the 90m scheme represented an improvement on the 180m proposal, but maintained objections on highway safety with specific regard to access/egress of affected properties. However, it accepted that the proposed traffic increases modelled from the 90m scheme would not result in a severe impact to highway safety, and that its character and appearance objections were resolved. I accepted the 90m scheme at the Inquiry, having considered that no parties would be prejudiced. Thus, the Council's second reason for refusal was no longer contested.
7. Following examination of the Council's highways witness at the Inquiry, the main parties agreed that the difference in queuing times between the 90m and zero mitigation schemes did not warrant the latter to be considered as having a severe impact. As such, the first reason for refusal was no longer contested, and the Council withdrew its objection to the scheme.
8. However, there are a high number of objections to the scheme from interested parties. A major concern is the proposed highways impact. Accordingly, I will examine this in the main issue of my decision, considering also the proposed 90m and zero mitigation schemes proposed by the appellant. I accept that the 60m and 180m options proposed by the appellant are not suitable, for the reasons put forward by the main parties.

### **Main Issue**

9. The main issue is the effect of the proposed development on highway safety, with particular regard to the effects and mitigation of traffic and queuing of vehicles.

### **Reasons**

10. The cases relied on paragraph 111 of the *National Planning Policy Framework* (2021) (the Framework), notably that any 'severe' cumulative or 'unacceptable' impact on the road network or highway safety respectively should result in the development being refused on highways grounds. Suitable mitigation against any significant capacity or congestion effects is encouraged within paragraph 110.
11. The appeal site has an extant consent for 100 dwellings, with an additional 200 proposed within this appeal scheme. Measures to mitigate traffic generated by the scheme are proposed in the roads around the area and, with the exception of the Leven Road improvements, were considered to be appropriate by the Council. I see no reason to disagree, and consider access routes around the appeal site will effectively manage and mitigate new traffic generated by the proposed appeal development.

12. The 90m mitigation scheme would include the widening of 90m of Leven Road; the part of which is closest to the four-way intersection of Leven Road, Thirsk Road (A67), The Spital (A67) and Spitalfields (the intersection). The existing carriageway would be utilised as two westbound lanes allowing a separate right-turning lane into The Spital, with the northbound road edge widened to accommodate a new eastbound lane. Although the 90m scheme resolved many of the Council's highway safety objections deriving from the earlier 180m widening proposal, both the Council and local residents considered it to be unacceptable on the basis of potentially conflicting traffic movements involving vehicles using the crossovers and driveways of properties directly adjoining the proposed works.
13. The conflict would primarily involve vehicles using the entrances to Nos. 1 and 3 Leven Road. Access to these properties is already limited as a result of the historic front boundary treatment, which constrains the width of the accesses and limits vision of vehicle users, particularly when exiting these properties. The modelling of the 90m scheme demonstrated that eastbound vehicles entering these properties would need to swing into the westbound traffic lanes to properly align with the property entrances. I appreciate that the modelling was undertaken with reference to a larger than average vehicle, but do not accept that proposed road conditions should necessarily restrict residents' choice of vehicle.
14. The vehicular entrances to Nos. 1 and 3 are close to the aforementioned intersection, with limited reaction time available to drivers turning the corner into Leven Road at speed. The proposed mitigation measure of installing 'keep clear' road markings in the westbound traffic lanes could represent a source of confusion for drivers, as they would have no recognisable function. During the Inquiry, I heard representations from local residents who considered that of the two schemes, the zero mitigation option is preferable from a safety standpoint. I consider that introducing conflicting traffic movements of the type proposed would be unsafe and potentially result in accidents. Accordingly, the 90m scheme would result in an unacceptable impact on highway safety and would conflict with Framework paragraph 111.
15. I will now consider the impacts of the traffic volume increases. In both the 90m and zero mitigation scenarios, vehicular travel time along Leven Road would be increased as a result of new queuing at the intersection. Leven Road is not on a direct route from the appeal site; rather, this queuing would derive from increased traffic along the A67, resulting in fewer opportunities for clear turns for vehicles leaving Leven Road. The primary impact would occur during the AM peak, with delays at other times (including the PM peak) limited to only minor increases in queuing time. The base data from which the modelling is derived is not disputed between the parties and takes account of cumulative traffic increases from consented development.
16. The modelling found that the 'base' scenario, which takes account of the existing extant approval for 100 dwellings on the appeal site, would result in a journey time of 4:42 minutes/seconds along Leven Road. Without mitigation, the 'maximum impact' scenario as set out in the modelling would apply to traffic and queuing on Leven Road, resulting in a journey time of 7:51, which takes account of the highways mitigation schemes proposed in other locations. Were the 90m scheme to be built, together with the other mitigation measures, the Leven Road journey time would be 6:59.

17. Whilst initially the Council considered the increase in journey time to 7:51 to represent a 'severe' impact which would warrant prevention of development as specified within Framework paragraph 111, it withdrew this position during the course of the Inquiry. The increase between the base and maximum impact of the zero mitigation scheme would be just over three minutes, and two minutes for the 90m mitigation scheme. Whether zero or 90m mitigation schemes, there would be a significant impact on Leven Road traffic.
18. Neither the Framework nor the *Stockton-on-Tees Borough Council Local Plan* (2019) defines what might constitute a severe impact. I heard during the inquiry that the modelling does not take account of 'human' factors, such as the possibility of drivers on the A67 politely allowing others to turn from Leven Road, or the question of whether drivers would avoid Leven Road altogether and seek alternative routes. Although these occurrences would be of chance and cannot be relied upon to result in a substantial change from the modelling, they nonetheless have a small beneficial impact on the balance.
19. Much residential development has taken place in Yarm in the past few years, all of which would have had a cumulative impact on local traffic conditions and led to increasing congestion. The modelling indicates that the same would occur as a result of both the extant and proposed developments on the site. Considering the other traffic mitigation measures proposed, the Leven Road impact would be the largest. However, the increase within the zero mitigation scheme of around three minutes – or roughly the time it would take a driver to listen to one song in the car, as I heard at the Inquiry – in one localised area, would result in an significant impact, but this could not be defined as severe. Accordingly, the zero mitigation scheme would be appropriate.
20. I therefore conclude that the proposed zero mitigation version of the development would not have a harmful effect on highway safety. Although it would result in additional queuing of vehicles in Leven Road, there would be appropriate mitigation for traffic in other locations, and the impact would neither have an unacceptable impact on highway safety, nor residual severe cumulative impacts on the road network. There would be no conflict with the Framework, including paragraph 111.

## **Other considerations**

### *Interested parties*

21. Interested parties raised other concerns, including potential contribution of queuing traffic to air pollution. The appellant's *Air Quality Assessment* (2018) indicates that the receptor points located within existing residential areas would not be subject to significantly harmful increases in either nitrogen dioxide or particulates. Mitigation of construction and other effects would be specified by planning conditions.
22. Many of the other concerns relate to highways matters, which would be addressed through the proposed mitigation measures. There was some concern that much development had occurred in Yarm in recent years, leading to cumulative pressure on infrastructure and loss of green space. The former is addressed through the planning obligation using standard Council requirements for development. The site is not designated open space and has extant approval for development. Measures would be incorporated on the site

to ensure that there would be sufficient capacity to manage drainage and site runoff using sustainable methods that do not contribute to local flood risk.

#### *Affordable housing*

23. Although the Council can demonstrate that it has a five-year housing land supply, the *Stockton-on-Tees Strategic Housing Market Assessment (2016)* identifies an annual need for 240 affordable homes during the operative period of the Local Plan. This is the most up-to-date study of housing need and informed the Local Plan; in particular, Policy H4 which includes the requirement for 20% of new homes to be affordable on larger sites. The level of demand for affordable housing within the borough meant that this target was raised from the 15% required within the previous Local Plan. Nonetheless, this would still only meet around half of the need. The 60 new homes to be provided on a tenure split of 70% affordable rented and 30% intermediate housing would therefore make a substantial beneficial contribution to the local supply of affordable housing, and are a positive benefit of the proposal in favour of approval.

#### *Planning obligation*

24. A countersigned and dated section 106 agreement was submitted during the Inquiry. The heads of terms had previously been agreed between the main parties. Given that an obligation may constitute a reason for granting planning permission only if it meets the tests set out in Regulation 122 of the *Community Infrastructure Regulations 2010* and paragraph 57 of the Framework, it falls to me to reach a finding on its acceptability.
25. New infrastructure would be provided to ensure that additional demand from new users generated by the development could be addressed. This includes the highways improvements previously discussed, which I have found to be necessary to ensure that the traffic impact of the proposal is acceptable, and are in accordance with Policy TI1 of the Local Plan. Additional measures relating to affordable housing provision are necessary to support its delivery for the reasons set out in the previous section of this decision.
26. Contributions intended to provide both primary and secondary places at local schools have been calculated in accordance with the Council's standard formula and payable when the 90<sup>th</sup> and 180<sup>th</sup> market dwellings are occupied. A contribution towards employment and training during the construction phase is intended to support the development of local skills and jobs, and a further contribution, towards the provision or improvement of open space, recreation and sports facilities is also included. These are in accordance with Policies SD6, SD7 and TI2 of the Local Plan, together with the Council's *Supplementary Planning Document 6: Planning Obligations (2008)*. The various sums within the obligation are justified and I am satisfied that the Council could rely on the document to secure the contributions. Moreover, I am content that the obligations meet the requirements of the statutory and acceptability tests.

#### **Planning Balance**

27. The concerns raised by local residents can be addressed through conditions, although I acknowledge that some impacts of the development, such as the predicted traffic increase on Leven Road, cannot be wholly mitigated. However, the impacts would not be severe. The affordable housing provision is

a benefit of the scheme and would contribute to meeting the local need for such homes. On balance, the proposal complies with the Framework and the development plan for the area, and there are no material considerations to indicate that permission should not be granted.

### **Conditions**

28. I have assessed the conditions proposed by the parties at the Inquiry against the tests set out in the Planning Practice Guidance (PPG)<sup>1</sup>. This includes the necessity of pre-commencement conditions, for which the appellant's written consent has been provided. Conditions originally numbered 12, 14 and 15 on the agreed conditions list have been removed as they would be more appropriately dealt with within the reserved matters applications.
29. Of the remaining conditions within the schedule attached to this decision, Conditions No. 1 through 6 are included for the absence of doubt and in the interests of proper planning, and for Nos. 1 and 3, to ensure that the reserved matters are submitted in a timely manner. No. 7 has been imposed to ensure the provision of the relevant infrastructure and other facilities for each phase. Nos. 8, 9 and 20 have been included in the interests and highway safety, with Nos. 8 and 20 additionally to ensure that users are able to access the site in a safe and appropriate manner.
30. Conditions No. 10, 11, 12 and 19 are included to reduce flood risk over the lifetime of the development, with Nos. 10 and 19 additionally to ensure the proper treatment of drainage, and No. 12 for the proper disposal of foul water. Nos. 13 and 14 are included to ensure the protection of trees during construction of the scheme, with No. 14 additionally to assist their long-term retention. No. 14 has been retained within this decision (as opposed to the reserved matters stage) as it concerns 'in principle' works relating to more than one reserved matter. Condition No. 15 is specified to promote sustainable development, with Nos. 16, 18 and 24 to protect living conditions of surrounding occupiers and mitigate the effects on construction.
31. Condition No. 17 is imposed in the interests of the character and appearance of the development and to minimise flood risk. No. 21 is intended to encourage sustainable non-car modes of transport. No. 22 is included to conserve any protected species and their habitats, and No. 23 is needed to ensure that risks from land contamination to users of the site are minimised, and to ensure that the development can be carried out in a safe manner.

### **Conclusion**

32. For the reasons given above I conclude that the appeal should be allowed.

*G Rollings*

INSPECTOR

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<sup>1</sup> PPG reference ID: 21a-003-20190723; revision date: 23 07 2019.

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY

Philip Robson  
of Counsel

Instructed by Julie Butcher, Chief  
Solicitor, SBC

He called

Joanne Roberts BEng (Hons) MCIHT

Transport Strategy and Road Safety  
Manager, SBC

Also appearing

Elaine Atkinson MSc

Principal Planning Officer, SBC

### FOR THE APPELLANT

Christopher Katkowski QC  
Constanze Bell  
Junior Counsel

Also appearing

Phil Wooliscroft MSc HNC

Partner, Eddisons Chartered  
Surveyors

Christopher Harrison BA(Hons) DipTP  
MRTPI

Managing Director, Theakston Land

### INTERESTED PERSONS

Cllr Dan Fagan

Helen Moore

Jack Whisker

Tom Howson

Councillor, Yarm Ward

Local resident

Local resident

Local resident

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

INQ 1 Appellant's Opening Submissions

INQ 2 Opening Submissions on Behalf of the LPA

INQ 3 Affordable Housing Requirement Statement

INQ 4 s106 Agreement (four copies, countersigned and dated)

INQ 5 *Stockton-on-Tees Strategic Housing Market Assessment 2016*

INQ 6 *Stockton-on-Tees Affordable Housing Viability Study 2016*

INQ 7 *Strategic Housing Land Availability Assessment 2017*

INQ 8 Closing Submissions on Behalf of the LPA

INQ 9a Appellant's Closing Submissions

INQ 9b Schedule: Points of Objection and the Appellant's Response

## **SCHEDULE OF CONDITIONS**

1. Details of the appearance, landscaping, layout, and scale, (hereafter 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. 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.
3. 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.
4. The development hereby approved shall be in accordance with the following approved plans:  
997-001 (Location Plan, April 2018);  
A106907-91-18-C001 (Proposed Site Access Arrangement, November 2016).
5. The total amount of residential units as authorised by this permission shall not following the issue of the permission hereby granted exceed 300 dwellings (C3 Use Class).
6. The development shall be implemented in general conformity with the approved Illustrative Masterplan (ref. 997-100) submitted with the planning application.
7. No development shall take place until a Phasing Programme is submitted to and approved in writing by the Local Planning Authority which shall identify the phasing of infrastructure, landscaping, public open space, accesses, critical drainage infrastructure and residential areas of the development hereby approved. Thereafter the development shall be undertaken in accordance with the Phasing Programme.
8. No development shall take place (except for the purposes of constructing the initial site access) until that part of the access extending 15 metres into the site from the carriageway of the existing highway has been made up and surfaced in accordance with the Council's Design Guide and Specification.
9. Prior to the commencement of development, a Road Safety Audit (Stage 1) relating to the proposed highway improvement works at Crathorne Interchange shall be submitted to approved in writing by the Local Planning Authority in consultation with National Highways.
10. No development shall take place until a scheme for 'the implementation, maintenance and management of a Sustainable Surface Water Drainage Scheme for each phase has first been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details and Phasing Programme, the scheme shall include but not be restricted to providing the following details:
  - Detailed design of the surface water management system;
  - A build programme and timetable for the provision of the critical surface water drainage infrastructure;
  - A management plan detailing how surface water runoff from the site will be managed during the construction phase; and



- Details of adoption responsibilities.
11. The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) & Drainage Strategy dated April 2018 unless updated by the Addendum to Flood Risk Assessment (July 2020).
  12. No development shall take place until a detailed scheme for the disposal of foul water from the development hereby approved has been submitted to and approved in writing by the Local Planning Authority in consultation with Northumbrian Water. Thereafter the development shall take place in accordance with the approved details and the Phasing Programme.
  13. No development shall take place until full details of proposed tree protection has been submitted to and approved in writing by the Local Planning Authority. Such protection shall comply with Section 7, BS 5837:2005 and *Volume 4: NJUG Guidelines For The Planning, Installation And Maintenance Of Utility Apparatus In Proximity To Trees (Issue 2) Operatives Handbook 19th November 2007*, or any revisions or replacements thereof. The requirements of Stockton on Tees Borough Council in relation to the British Standard are summarised in the technical note ref INFLS 1 (Tree Protection), which is available upon request.

Any such scheme agreed in writing by the Local Planning Authority shall be implemented prior to any equipment, machinery or materials being brought to site for use in the development and be maintained until all the equipment, machinery or surplus materials connected with the development have been removed from the site.

14. As part of the reserved matters application for layout and landscaping for the first phase, all trees on site and within 10m of the external site boundary shall be indicated on the Site Survey Plan. These trees shall be assessed in accordance with BS 5837:2012 Trees in relation to design, demolition and construction – Recommendations section 4, or any revision or replacement thereof. The assessment should concur with the proposed site layout and include the following information:
  - A plan to scale and level of accuracy appropriate to the proposal showing the position of every tree on and adjacent to the site with a stem diameter over the bark measured at 1.5 metres above ground level at 75mm and all root protection areas;
  - A tree schedule as detailed in BS 5837:2012 Trees in relation to design, demolition and construction – Recommendations, or any revision or replacement thereof;
  - A schedule of all tree works specifying those to be removed, pruning and other remedial or preventative work;
  - Details of any ground level changes or excavations within 5 metres of the Root Protection Area of any tree to be retained including those on adjacent land; and
  - A statement setting out long term future of the trees in terms of aesthetic quality and including post development pressure.

Details of any statutory of domestic services shall be designed in accordance with *Volume 4: NJUG Guidelines For The Planning, Installation And*

*Maintenance Of Utility Apparatus In Proximity To Trees (Issue 2) – Operatives Handbook 19th November 2007, or any revision or replacement thereof.*

15. Within each phase, no development shall take place until the Local Planning Authority has approved a report provided by the applicant identifying how the predicted CO2 emissions of the development of that phase will be reduced by at least 10% through the use of on-site renewable energy equipment or design efficiencies. The carbon savings which result from this will be above and beyond what is required to comply with Part L Building Regulations. Before the development within that phase is fully occupied the renewable energy equipment or design efficiency measures for that phase shall have been installed and the local planning authority shall have confirmed in writing that it is satisfied that their day to-day operation will provide energy for that phase of the development for so long as the development remains in existence.
16. Within each phase, no development shall take place until a Construction Management Plan for that phase has been submitted to, and approved in writing by, the local planning authority. The Construction Management Plan shall provide details of:
  - the site construction access(es);
  - the parking of vehicles of site operatives and visitors;
  - loading and unloading of plant and materials including any restrictions on delivery times;
  - 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;
  - measures to be taken, including but not limited to wheel washing facilities and the use of mechanical road sweepers operating at regular intervals or as and when necessary, to avoid the deposit of mud, grit and dirt on the public highway by vehicles travelling to and from the site;
  - measures to control and monitor the emission of dust and dirt during construction;
  - a Site Waste Management Plan;
  - details of the HGVs routing including any measures necessary to minimise the impact on other road users; and
  - measures to protect existing footpaths and verges; and a means of communication with local residents.The approved Construction Management Plan shall be adhered to throughout the construction period of that phase.
17. Prior to the commencement of the first dwelling within each phase details of the finished floor levels for that phase shall be submitted to and approved in writing by the Local Planning Authority for each phase or individual dwelling, as appropriate. Thereafter, the development of that phase must be implemented in accordance with the agreed details.
18. Prior to the laying of the foundation of the first dwelling a noise mitigation strategy based upon the principles contained within the "Environmental Noise Assessment" by Sharps Taylor dated 19 April 2018 shall be submitted to and

approved in writing by the Local Planning Authority for each phase or individual dwelling, as appropriate. The noise mitigation strategy may include specific mitigation measures including but not necessarily restricted to acoustic glazing or acoustic barriers. Each phase of development shall be implemented in accordance with the approved mitigation strategy and the mitigation measures retained throughout the lifetime of the development.

19. The buildings hereby approved shall not be brought into use until:
  - The approved scheme has been implemented in full or in part and is fully operational to serve the phase of development or the development as a whole; and
  - A management and maintenance plan of the approved surface water drainage scheme has been submitted and approved in writing by the Local Planning Authority, this should include the funding arrangements and cover the lifetime of the development.
20. Prior to occupation of the first dwelling, details of the pedestrian link between the northern boundary of the application site and Green Lane shall be submitted to and approved in writing by the Local Planning Authority. The approved pedestrian link shall be implemented prior to occupation of the 50th market dwelling hereby approved or in accordance with the phasing plan as approved, and thereafter retained.
21. Prior to the occupation of the first dwelling in each phase, a Travel Plan for that phase, shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. The Travel Plan should follow the timescales and details in The Interim Travel Plan (Report No. A106907). The development in each phase shall thereafter be carried out and operated in accordance with the approved Travel Plan for that phase.
22. All ecological mitigation measures within the Ecological Impact Assessment prepared by E3 Ecology Ltd (April 2018) shall be implemented throughout the development in full in accordance with the advice and recommendations contained within the document.
23. If during the course of development any contamination not previously considered is identified, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
24. No construction/building works or deliveries associated with the construction phase of the development shall be carried out except between the hours of 8.00am and 6.00pm on Mondays to Fridays and between 9.00am and 1.00pm on Saturdays. There shall be no construction activity on Sundays or on Bank Holidays.

End of schedule.