



Appeal Decision

Hearing held on 13 December 2022

Site visits made on 13 December 2022 and 20 February 2023

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th March 2023

Appeal Ref: APP/A2470/W/22/3301737

Land north of Braunston Road, Oakham, LE15 6LZ Easting: 484707,

Northing: 308416

- 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 Jeakins Weir Ltd against the decision of Rutland County Council.
 - The application Ref 2021/1124/MAO, dated 10 September 2021, was refused by notice dated 29 April 2022.
 - The development proposed is Outline application for the development of up to 100 no. dwellings including up to 30% affordable housing, open space, green infrastructure, children's play area and SuDS. All matters reserved except access.
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Decision

1. The appeal is allowed and planning permission is granted for the development of up to 100 no. dwellings including up to 30% affordable housing, open space, green infrastructure, children's play area and SuDS at Land north of Braunston Road, Oakham, LE15 6LZ in accordance with the terms of the application, Ref 2021/1124/MAO, dated 10 September 2021, subject to the conditions set out in the schedule at the end of this decision.

Applications for costs

2. An application for costs was made by Jeakins Weir against Rutland County Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The application is submitted in outline form with approval being sought in relation to the matter of access. The matters of appearance, layout, scale and landscaping are reserved for later consideration. Therefore, I have assessed the appeal upon the plans that have been submitted where they refer to the matters for which approval was sought, although there are also elements shown indicatively that are of relevance in reaching my decision.
4. At my site visit immediately after the hearing misty weather conditions meant that longer views towards the appeal site were not possible. Therefore, I revisited the area unaccompanied at a time when conditions were more favourable in that respect.

Main Issues

5. The main issues are (i) the effect of the proposed development on the character and appearance of the area and (ii) whether the proposed development would contribute to the creation of healthy and safe communities.

Reasons

Character and appearance

6. The appeal site lies immediately adjacent to the built edge of Oakham, alongside the main Braunston Road which connects the settlement with the rural areas around it. It falls outside of the planned limits of development defined in the development plan and is an agricultural field with a topography that rises away from the existing houses and from Braunston Road. At the present time it is devoid of any significant built form other than the presence of two electricity pylons. Consequently, it has an open feel and defines the transition between urban and rural areas. Planning permission has been granted¹ for the erection of 62 dwellings on the opposite side of Braunston Road on a site which, like the appeal site, is located outside of the settlement boundary. The approved development would therefore also result in dwellings beyond the current settlement boundary and would directly impact upon the character and appearance of the area in which the proposed appeal development would be constructed. There is nothing before me to suggest that that permission would not be implemented.
7. The planning application was accompanied by a Landscape and Visual Appraisal (LVA) carried out on behalf of the appellant. This sets out that whilst the proposal would alter the character of the site, the design of the scheme seeks to minimise any potential adverse impact. It includes avoiding higher areas of land above the 135 metre contour line, dedicating approximately 60% of the site area to landscape, Green Infrastructure, public open space, play and habitat proposals, and the incorporation of new native boundary woodland, woodland edge planting and a wet woodland buffer. It would also allow key views from the crest of the hill to be made publicly accessible, would set development back from the eastern boundary adjacent to which existing dwellings are located and set built development back from Braunston Road with a landscaped frontage. The impact of the proposed development from a number of public vantage points was also assessed in the LVA.
8. Prior to the application being presented before the Council's Planning Committee, an independent review of the LVA was commissioned by the Council. The review concurred with the findings of the LVA, and the impacts and benefits that would arise from the appeal development. In particular it was considered that the Concept Masterplan represents an appropriate landscape-led scheme that considers the site's key sensitivities, constraints and opportunities. It was also concluded that an appropriate new western edge to Oakham can be created in this location without resulting in overriding significant landscape and visual effects and that the proposed scheme would improve the current open and rather abrupt settlement edge and create a stronger, softer and more filtered 'green' access to Oakham on the Braunston Road. Impacts on public rights of way would be negligible although users of

¹ 2020/1473/MAO & 2022/205/MAR

Braunston Road and Cold Overton Road would experience moderate adverse effects at worst upon completion of the scheme.

9. The weight of evidence with respect to the impact on the character and appearance of the area and the surrounding landscape is compelling, consisting of the LVA and its independent review. This evidence is largely unanswered by the Council in its defence of the appeal and the reason for refusal relating to character and appearance. The position that the Council has instead taken is that the proposed development would cause harm to the character and appearance of the area by placing up to 100 dwellings on what is currently an undeveloped agricultural field. At a very basic level, that is an accurate assessment as the proposed new housing would clearly have a notable visual impact on the surrounding area. But it is an argument that fails to engage at all with the points raised in the LVA, including the potential for landscape benefits in addition to housing provision and that the permission on the other side of the road would considerably alter the character and appearance of the surroundings.
10. My site visits encompassed a number of viewpoints set out in the LVA where it had been identified that the site would be visible. I did not visit those viewpoints where it was stated that there would be no impact due to the topography of the land or the presence of vegetation (16, 17 & 18). From the longer vantage points to the south (3, 5 & 6) the visual impact would be greatly reduced by the fact that the site lies at a lower level in the landscape and/or due to intervening vegetation, and because views would be taken against the existing built development that forms Oakham. The proposed development would be more apparent from the view from viewpoint 4 on Cold Overton Road, but again this would be seen against the backdrop of the existing settlement and in conjunction with the proposed woodland planting. Restriction of built development to the lower parts of the appeal site would reduce the impact from that viewpoint.
11. The proposed development would have a greater impact when viewed from Braunston Road on the approach to Oakham (viewpoints 1 and 2), but it would sit in the context of the already permitted housing development. Views away from Oakham (viewpoints 8 and 9) would also be in the context of the approved development to the south of Braunston Road, as would views from viewpoint 7. The site is visible in more glanced views taken between dwellings on the current edge of the settlement (viewpoints 8 to 15), but due to the presence of the existing dwellings the impact on public views would be significantly lessened. It was however evident from my visit to a property that adjoins the appeal site that a significant impact in terms of a change to the character and appearance of the area would occur when viewed from within those properties. But, whilst sensitive from the point of view of the occupiers of those properties, these are not public views from which the overall landscape impact would be observed.
12. The current settlement edge adjacent to the appeal site is formed for the most part by dwellings whose rear elevations face the appeal site, with garden areas generally being between the dwellings and the site boundary. The variation in boundary treatments on the boundary with the appeal site gives a somewhat haphazard visual appearance, and the absence of any substantial landscaping exposes the urban form of the settlement edge, which is in great contrast to the more rural form of the appeal site which lies immediately adjacent to it.

The proposed development would offer an overall opportunity to create a more sensitive and appropriate settlement edge by maintaining a large part of the site as open space and through the implementation of woodland planting. Furthermore, setting the development back from the eastern boundary would reduce the impact when viewed from the nearest dwellings and setting it back from the southern boundary would reduce the impact when viewed from Braunston Road.

13. My attention has been drawn to landscape related work previously undertaken in relation to a Strategic Housing and Economic Land Availability Assessment, and to the fact that development in Zone 4A of the Landscape Sensitivity & Capacity Study 2010, in which the appeal site is located, found that the zone in question had low capacity to accommodate development. Consequently, in 2019 a red rating for possible development was given to Zone 4A, meaning it was not considered suitable for development. However, it is evident that whilst the appeal site was in Zone 4A, that zone also included higher land to the north which forms no part of the development that is before me. The assessments were also only done at a broad level, and without the benefit of the extensive landscape assessment that forms part of the appeal submission. The appeal therefore must be considered on the basis of the information that is available now and the specific proposal, and the previous findings with relation to Zone 4A do not preclude the appeal development from coming forward.
14. In conclusion, the proposed development would inevitably cause harm to the character and appearance of the area, because it would introduce up to 100 dwellings and associated infrastructure onto what is an agricultural field. Whilst the impact would be lessened from some views due to topography, vegetation and the visual relationship to the existing settlement, from others there would be a more significant impact. This would include from the existing dwellings adjacent to the eastern site boundary. However, there would be a number of tangible benefits arising, not least the potential to provide a better settlement edge than that which exists at the present time. It is also of material relevance that the 62 houses on the opposite side of Braunston Road would have an urbanising impact and extend the settlement boundary beyond its current position.
15. Taking all of these considerations together, there would be harm to the character and appearance of the area as a result of the proposed development, but this harm would be moderate due to the mitigating factors. Nonetheless, for this reason the proposed development would fail to accord with Policy CS19 of the Core Strategy 2011 (CS) and Policies SP15 and SP23 of the Site Allocations and Policies Development Plan Document 2014 (SAP), which collectively seek to protect landscape setting. There would also be a conflict with the aims of paragraph 130c) of the Framework, where it refers to landscape setting.
16. The proposal would also not accord with the broader objectives of Policy CS4 of the CS and Policy SP6 of the SAP, which seek to direct development towards established settlements and to restrict new housing development in the countryside. Policy 1 of the Barleythorpe Neighbourhood Plan 2022 states that proposals for residential development in the countryside will be determined in accordance with national planning policies and with local planning policies where they are consistent with national planning policy for the countryside.

Healthy and safe communities

17. Reason for refusal 2 states that the development would add to the existing severe pressure on local services that already fail to meet resident's expectations and would have a detrimental impact on the wellbeing and quality of life of the proposed residents. This is referred to by both the Council and by interested persons as primarily relating to the provision of school places, the provision of healthcare at doctor's surgeries and the provision of leisure facilities.
18. The appellant's evidence submitted with the appeal and presented at the hearing is that there is not a shortage of school places or capacity at the local doctor's surgeries. The Council has not presented its own empirical evidence to counter this. Whilst there is clear dissatisfaction expressed by interested parties about the service levels offered by the main doctors in Oakham, this appears to relate to how the surgery is operated and not to capacity. I note that there are discussions regarding the future of the Catmose leisure centre and that there is no swimming pool in Rutland.
19. However, even if the situation were not as described in the appellant's evidence on the matter, there is a mechanism in the form of the Community Infrastructure Levy to secure money to provide for the service provision needed as a result of the development. This is the approach the Council has chosen to adopt to secure necessary infrastructure provisions and therefore is the correct way to address the matter relating to reason for refusal 2.
20. In conclusion therefore, the proposed development would not conflict with the objectives of the Framework to provide healthy and safe communities.

Other Considerations

Paragraph 11d) of the Framework

21. The parties agreed in the Statement of Common Ground that there was less than a 5 year housing land supply. However, after the hearing had closed, the Council published a nine-month update report of the Five-year Land Supply & Developable Housing Land Supply Report, running to the date of 31 December 2022 (the nine month update). It sets out that the Council's revised position is that it can demonstrate a 6 year housing land supply and therefore that the 'tilted balance' set out by paragraph 11d) of the Framework should not be triggered because of the current housing land supply situation. At the hearing, interested parties also made representations on the possibility of an increase in housing land supply. The appellant however contends that the methodology of the nine month update is flawed and that a number of identified sites should not be included within it. The appellant's alternative figure puts the housing land supply at 3.2 years.
22. There are two sites² included within the nine month update which have planning applications pending determination and therefore do not benefit from planning permission. The relevant assumptions set out in Tables 8 and 9 of the Five-year Land Supply & Developable Housing Land Supply Report May 2022 (the May report) state that the delivery of sites that are allocated but without permission will be identified based on active discussions with the site promoter.

² 2021/1101/MAF Land adjacent to Empingham Road (North of Wooton Close) and 2019/0524/OUT Land North of Leicester Road Uppingham

Whilst a Proof of Evidence pertaining to a separate appeal case has been provided, in the case of the Empingham Road site this offers only the Council's view that *there is every chance development will be completed within the five year supply period up to 2027*. There is no commentary offered on the Leicester Road site, other than reference to the assumption in Table 9 of the May report.

23. Accordingly, there is no evidence of active discussions taking place with the site promoters to establish when delivery of the Empingham Road and Leicester Road sites might take place. As they do not have the benefit of planning permission, and there is no apparent certainty when exactly they may do, and applying the assumptions set out in the May report, I cannot be sure whether any of the dwellings relating to these two sites would ultimately be delivered within the 5 year base period starting from 1 April 2022. This being the case, the 102 dwellings that would be provided by those two permissions cannot be relied upon and should be removed from the supply at this time.
24. Furthermore, the sites which gained planning permission post the May report have delivery periods that are aligned to the current base date of 1 April 2022. However, the Park Lane³ and Stapleford Road⁴ sites were only granted planning permission in November 2022 and December 2022 respectively. Their expected delivery is therefore in effect running early, when considered against the assumptions set out in Table 9 of the May report. Applying the assumptions instead to the dates on which those permissions were granted would mean that a proportion of the dwellings outlined for delivery in Year 5 (2026/27) would in fact be expected to be delivered beyond 5 years of the 1 April 2022 base date. This further reduces the housing supply within the defined 5 year period.
25. On the basis of the evidence in the Proof of Evidence for the separate appeal, the Cold Overton Road⁵ site would be expected to deliver 10 dwellings in Year 5. There is no explanation in the Proof as to why the Uppingham Road⁶ site would be expected to deliver 7 dwellings in Year 2 (2023/2024) and applying the assumptions in Table 9 those 7 dwellings would instead be expected in Year 5. As the delivery with regard to both of these sites is also tied back to the beginning of the base period and these are permissions granted post 1 April 2022, it is probable that not all of their dwellings would be delivered within 5 years of the base date of 1 April 2022.
26. Because the base date has remained the same it is difficult to establish in any meaningful way as to how many of these dwellings could be expected to be delivered beyond the end of the 5 year period on 31 March 2027. But with the removal of the 102 dwellings that do not yet have permission, along with the removal of a proportion that would be expected to be delivered outside of the 5 year base period because they did not have planning permission on the base date of 1 April 2022, the robustness of the nine month update and the ability of the Council to demonstrate a five year housing land supply is brought into considerable doubt. In such a circumstance it is reasonable to revert back to the previous position set out in the May report (and the subsequent Half Year Update Report November 2022) that the Council cannot demonstrate a 5 year

³ 2020/0942/OUT Land off Park Lane, Ketton

⁴ 2021/1263/OUT Land near Stapleford Road, Whissendine

⁵ 2021/1423/MAO Cold Overton Road, Langham

⁶ 2021/0794/MAF Land off Uppingham Road, Oakham

housing land supply. Accordingly, the tilted balance is engaged on the basis of housing land supply.

27. In the Statement of Common Ground, the main parties also agreed that the most important policies for determining the appeal are out of date for substantive reasons relating to age and inconsistency with The Framework. This stems from the fact that Policies CS4 and CS9 of the CS and Policy SP6 of the SAP are based upon an outdated housing requirement based on 2004 household projections. This too would trigger the tilted balance set out by paragraph 11d) of the Framework. The Council's present position on this is not clear in light of their changed position on housing land supply and they have provided no express explanation of this point. There is however an admission in the Council's most recent submissions that they have had to be pro-active in making planning decisions which are considered appropriate and in line with paragraph 11d) of the Framework to boost housing supply.
28. The fact that there has been a reliance on the tilted balance to deliver housing supply does nothing to dispel the previous common ground position that the main parties shared on the age of the policies and that they run contrary to the aim of boosting the supply of housing as set out in the Framework. It would appear that if housing had only been approved in line with the constraints set out by Policies CS4, CS9 and SP6, the Council would have been significantly constrained in its attempt to deliver its required housing numbers. This means that Policies CS4, CS9 and SP6 do not serve to boost housing supply in line with the requirements of the Framework, and in that respect are out of date. There is nothing substantive before me to suggest that the position on the most important policies being out of date has changed, and accordingly the tilted balance is engaged for this reason as well.
29. The proposed development would bring a number of benefits. These include the delivery of the market housing itself and the provision of affordable housing, the latter of which the main parties are in agreement that there is an acute need for. This would be delivered in a location that would have good access to the services and facilities that are available in the established settlement of Oakham. There would also be economic benefits through additional spend in the local economy, social benefits through the provision of a mix of new housing and environmental benefits including those relating to an improvement of the settlement edge, the provision of open space and the creation of habitats and biodiversity net gain. Collectively, these considerations carry significant weight in favour of the proposal.
30. The adverse impact of granting planning permission for the proposed development relates to the moderate harm caused to the character and appearance of the area, including the conflict with paragraph 130c) of the Framework that I have identified. However, this impact does not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Accordingly, the presumption in favour of sustainable development set out within paragraph 11 of the Framework applies.

Other Matters

31. A main passenger and freight railway line runs through the centre of Oakham, in a north to south direction. When travelling across the main urban area, it is only possible for vehicles to cross the railway line via one of two level

crossings, referred to as the Barleythorpe and Brooke Road crossings. At times when the crossings are down, road traffic is held on the public highway until such time as the train has passed through. The concerns raised by interested parties relate to the potential for the appeal proposal to add to the number of vehicles queuing when the level crossings are down and to a potential increase in the frequency of the periods when the crossings are down, owing to an increase in passenger and freight trains in the future. This includes a potential increase related to the proposed Hinckley National Rail Freight Interchange.

32. The planning application was accompanied by a Transport Assessment (TA) which was reviewed both by Leicestershire County Council as the Highway Authority (HA) and on their behalf by a specialist transport consultant. Further information was provided to address concerns raised and the TA was adjusted to address considerations relating to changes in behaviours during and as a result of the Covid-19 pandemic. The conclusion of this assessment is that the highway network has the capacity to safely absorb the traffic that would be expected to be generated by the appeal development, including with reference to the matter relating to the two level crossings. Whilst I acknowledge that interested parties have made a number of representations in relation to how the level crossings currently operate and the impact of the frequency at which they are currently down, there is detailed technical evidence before me to demonstrate that there would not be harm to highway safety or to the surrounding highway network as a result of the proposed development. In light of this and in the absence of any objection from the HA, there is compelling evidence that the impact of the proposed development would be acceptable in highway terms.
33. Further concern has been raised by interested parties with respect to the potential future increase in rail traffic, and a recent letter from Network Rail dated 14 November 2022 was provided at the hearing. This letter is not able to provide an estimate with respect to future train passenger demands (which would drive the frequency of passenger trains), but it does anticipate a slight increase in freight trains up to the year 2030 and an increase of up to two trains per hour each way between 2030 and 2040. There would also be additional freight usage if the Hinckley National Rail Freight Interchange is built, although this does not have planning permission. But in summary, it appears likely that there will be an increase in train traffic of some degree along the line that dissects Oakham in the future, and the result of this would be that the level crossings would be down more often.
34. The crux of this matter is what impact the appeal proposal would have in that scenario. More trains would lead to more crossing down time and potentially more delays to the movement of traffic. However, the HA is of the view that the vehicle numbers expected to be generated by the appeal development would not lead to a harmful situation in highway safety terms, and it would not be the development itself that would lead to the longer barrier down times. Whilst interested parties have stated that delays and queuing in turn lead to frustration being expressed by drivers and to inappropriate manoeuvres and use of the highway occurring to circumnavigate the delays, the available accident history in the areas around the level crossings do not support the position of there being such an existing highway safety concern. On the basis of the evidence before me, the proposal would not cause harm to the highway network with specific regards to the level crossings, even if rail traffic does increase.

35. Concern has been raised by interested parties with regard to the potential impact upon biodiversity, trees, flooding and drainage, crime, noise and air pollution, bin collection and highway safety both in terms of the access point to the site and in the wider surrounding area. However, based upon the responses from the relevant consultees and upon the information available to me, there is no evidence that harm would arise with respect to these matters. Furthermore, I am satisfied that, where necessary, any additional measures required could be adequately secured by planning conditions.
36. As the application is made in outline form, the exact relationship to the nearest dwellings has not been established. Whilst there would inevitably be an impact as a result of the construction of dwellings on what is an open field at the current time, the indicative plans indicate that a relationship could be achieved that would be appropriate so not to cause harm to the living conditions of the occupiers of those existing dwellings.
37. As the appeal site is located on the edge of the existing settlement, it has good links to the services and facilities located there and beyond, by a number of means of transport including train. It is stated by interested parties that the bus and rail service is poor, but nonetheless they provide an option and with regard to train travel the submissions with respect to the level crossing suggest there is a frequent service. The fact that there is not a footpath to Braunston does not undermine the sustainability of the site, as main facilities and services are found in Oakham.
38. There is no substantive evidence to suggest that there would be any problems arising from the proposed sustainable drainage features, that there are issues with parking in the town centre which could affect the acceptability of the appeal proposal or that there are limited employment opportunities in the surrounding area. There is also no evidence to suggest that the location of the proposed dwellings would not be compatible with the presence of the two electricity pylons, and there are already existing dwellings located close to these structures. Whilst the proposal does not include the removal of the pylons, these are existing features in the landscape and their retention would have a neutral impact in that respect.
39. The proposal would result in the loss of agricultural land, which is shown to be Grade 3 (good to moderate quality) and Grade 3b (moderate quality) in the Phase I (Desk Study) Appraisal that was submitted with the planning application. The Framework defines the best and most versatile agricultural land as that falling within grades 1, 2 and 3a. It also states that planning decisions should recognise the economic benefits of the best and most versatile agricultural land. It would appear from the various representations made and from what I saw at my second site visit, the appeal site has most recently been used for keeping sheep on. Whilst the proposal would result in the total loss of this agricultural land, its agricultural land grading and the relative size of what would be lost would not cause undue harm to the provision and availability of the best and most versatile agricultural land. It would not therefore conflict with the aims of the Framework in that respect.

Planning Balance

40. The proposed development would cause harm to the character and appearance of the area and fail to accord with those policies of the development plan that seek to protect landscape setting. However, in finding moderate harm, I have found that there would be some landscape benefit related to the provision of a better settlement edge than exists at the present time. The fact that a development of 62 houses has been permitted opposite, and also outside of the settlement boundary, is a highly relevant factor in establishing the degree of harm that would be caused, because it too would have a notable physical impact on the landscape. There is a conflict with the development plan policies that seek to restrict new development outside of settlements, however I have noted that there have been inherent difficulties in the delivery of new housing in the context of these policies being applied. There would be no harm to the objective of creating healthy and safe communities.
41. There would be benefits arising from the proposal in boosting the supply of housing, again in the context of the past difficulties in delivering housing supply. Affordable housing would be delivered, and this would help to address the acute need that has been identified. The housing would be delivered in a location that would have good access to the services and facilities of Oakham, a settlement which is identified in the development plan as a focus for new development. There would be other benefits related to economic considerations such as economic output and additional spend in the local economy, social benefits in terms of increasing the mix of housing types and environmental benefits including the provision of open space and the creation of habitats and biodiversity net gain. Furthermore, I have found that the presumption in favour of sustainable development set out by the Framework applies in the circumstances that prevail.
42. These considerations outweigh the conflict with the development plan and indicate that a decision should be made otherwise than in accordance with it. Therefore, planning permission should be granted.

Conditions

43. Conditions relating to the submission of the reserved matters of appearance, landscaping, layout, and scale, the relevant time period for submitting this and for carrying out the development, and a condition confirming the approved plans, are necessary to provide certainty. The parties agree that a condition should also require the reserved matters submissions to be based upon or have regard to a number of documents submitted with the planning application. As there is a general agreement that these are likely to result in an acceptable form of development, and as I have no reason to take a contrary view, it is reasonable to impose such a condition.
44. A condition relating to the submitted Residential Framework Travel Plan is necessary to promote sustainable travel options and a condition relating to Biodiversity Net Gain is required to ensure that net gain is provided at reserved matters stage. A further condition tying the reserved matters submission to the Ecological Appraisal submitted is needed in that regard. Details of ground and finished floor levels are needed to ensure that the visual impact of the proposed development is acceptable and to ensure that there is an acceptable relationship to existing adjacent dwellings. A condition relating to the

implementation of the landscaping scheme that will be submitted and approved at reserved matters stage is needed to ensure that this is implemented.

45. As the appeal site has archaeological interest, a programme of archaeological work is required to be submitted, in accordance with the recommendation of the County Council's Archaeologist. A condition requiring protective fences for trees is necessary to safeguard their health during the construction phase. Several conditions have been requested by the Lead Local Flood Authority to address drainage matters on the site, and it is therefore necessary that those be imposed.
46. Likewise, the conditions requested by the HA with regard to the closing of redundant accesses, off-site highway works, external lighting, tree planting close to the public highway, the drainage of accesses and in terms of the timeframe for the provision of the new principal junction, internal access road and visibility splays are needed to ensure that the necessary standards of construction and highway provision are put in place, and to avoid harm being caused to the public highway. A construction management plan is required in the interests of highway safety and to safeguard the living conditions of the occupiers of nearby dwellings during construction.

Planning Obligation

47. The main parties have completed a Section 106 Agreement which includes obligations to come into effect if planning permission is granted. The obligations relate to affordable housing and open space, as all other required contributions are subject to the aforementioned Community Infrastructure Levy.
48. The affordable housing requirement would secure the provision of affordable dwellings which is in accordance with Policy SP9 of the SAP. The provision and subsequent maintenance of the open space is necessary to meet with Policy SP22 of the SAP. Both obligations therefore pass the statutory tests set out in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010.

Conclusion

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

Graham Wraight

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Isabella Tafur – Francis Taylor Building Chambers

Andrew Gore – Marrons

Gary Holliday – FPCR

Ben Hunter – EFM

Brian Plumb - RPS

FOR THE LOCAL PLANNING AUTHORITY:

Maxine Simmons – Planning Consultant

INTERESTED PARTIES:

Cllr Paul Browne – Rutland County Council

Cllr Paul Ainsley – Rutland County Council

Cllr Jim Atack – Braunstone Parish Council

Sammy Munton – Local resident

Jason Bates – Local resident

Janet Taylor – Local resident

Mrs Harvey – Local resident

Ann Wheeler – Local resident

DOCUMENTS

Letter from Network Rail to Cllr Paul Browne, dated 14 November 2022

Copy of the speaking notes of Cllr Jim Atack

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 Reserved Matters shall be based upon the following plans and documents:
 - Arboricultural Assessment – FPCR September 2021
 - Ecological Appraisal – FPCR September 2021
 - HLEF80928 Rev A – Conceptual Drainage Strategy
 - Flood Risk Assessment and Drainage Strategy- RPS 27 August 2021and shall have regard to:
 - The revised Illustrative Master Plan Ref. P21-1316-Rev E.
 - The Design & Access Statement, Armstrong Burton, September 2021, Ref P21-1316_200C) (as amended by the revised Illustrative masterplan and the supplemental comments contained in The Building for A Healthy Life Assessment – 23 December 2021).
- 5) The development hereby permitted shall be carried out in accordance with the following approved plans: P21-1316 001B and JNY11036-01 Rev D.
- 6) The development shall be carried out in accordance with Chapter 9 (Action Plan) of the Residential Framework Travel Plan RPS Version 2, dated 4 April 2022.
- 7) No development shall commence until details of existing and proposed levels of the site, finished floor levels and identifying all areas of cut or fill, have been submitted to and approved in writing by the local planning authority. The layout of the 2 or more storey houses shall take account of the levels change across the site and demonstrate that they will have a satisfactory relationship with the landform, wider visual amenity and adjacent residents. The development shall thereafter be completed in accordance with the agreed scheme.
- 8) The landscaping scheme to be submitted as part of the reserved matters shall be designed in accordance with the indicated Biodiversity Net Gain by FPCR dated March 2022.

- 9) All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details, approved in Condition 1 above, shall be carried out during the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be agreed in writing by the local planning authority. Any trees or shrubs which, within a period of 5 years of being planted die are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species.
- 10) No development shall commence until the necessary programme of archaeological work has been completed. The programme will commence with an initial phase of trial trenching to inform a final archaeological mitigation scheme. Each stage will be completed in accordance with a written scheme of investigation (WSI), which has been submitted to and approved by the local planning authority in writing. For land that is included within the WSI, no development shall take place other than in accordance with the agreed mitigation WSI, which shall include the statement of significance and research objectives, and
- The programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works
 - The programme for post-investigation assessment and subsequent analysis, publication & dissemination and deposition of resulting material. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the WSI.
- 11) No development shall take place until the existing trees on the site, agreed with the local planning authority for inclusion in the scheme of landscaping / shown to be retained on the approved plan, have been protected by the erection of temporary protective fences in accordance with BS5837:2012 and of a height, size and in positions which shall previously have been agreed, in writing, with the local planning authority. The protective fences shall be retained throughout the duration of building and engineering works in the vicinity of the trees to be protected. Within the areas agreed to be protected, the existing ground level shall be neither raised nor lowered, and no materials or temporary building or surplus soil shall be placed or stored there. If any trenches for services are required in the protected areas, they shall be excavated and back-filled by hand and any tree roots encountered with a diameter of 5cm or more shall be left unsevered.
- 12) The development hereby permitted shall be restricted to a maximum discharge rate of 4.3l/s/ha in accordance with Para 10.4 of the Flood Risk Assessment and Drainage Strategy - RPS, 27 August 2021.
- 13) The development hereby permitted shall not commence until full details of the design, implementation, maintenance and management of a sustainable surface water drainage scheme have been submitted to and approved in writing by the local planning authority. Those details shall include:

- a) Information about the temporary storage facilities, means of access for maintenance, the methods employed to delay and control surface water discharged from the site, and the measures taken to prevent flooding and pollution of the receiving groundwater and/or surface waters;
- b) Any works required off-site to ensure adequate discharge of surface water without causing flooding or pollution (which should include refurbishment of existing culverts and headwalls or removal of unused culverts and ditch clearance where relevant);
- c) Flood water exceedance routes, both on and off site;
- d) A full capacity and condition assessment of the existing ditches from the discharge points, upstream for 100m and downstream for 500m;
- e) A timetable for implementation;
- f) Site investigation and test results to confirm infiltrations rates; and
- g) A detailed management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by an appropriate public body or statutory undertaker, management and maintenance by a Residents' Management Company or any other arrangements to secure the operation of the surface water drainage scheme throughout its lifetime.

The development shall not be occupied until the approved scheme has been implemented in full.

- 14) The development hereby permitted shall not commence until Land Drainage Consent has been granted for the outfalls into the adjacent ordinary water courses.
- 15) The redundant existing field access on the southeast corner of the site in Braunston Road shall be closed to vehicular traffic prior to commencement of development and will be physically removed prior to first occupation, in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Details of the means of closures shall include at minimum removal of any hard surfacing and replacement with a grassed verge similar to the adjacent verge areas and replacement of dropped kerb with full height kerb and tie in construction to adjacent carriageway.
- 16) No occupation of the dwellings hereby permitted shall take place until off-site highway works including a bellmouth access, a 2m wide footway from the site access to Glebe Way and the introduction of a 40mph buffer zone between the western site boundary and the 30mph zone as reflected in the Proposed Access Arrangement plan JNY11036-01 Rev D and the Proposed Pedestrian Facilities at Braunston Road/Glebe Way Junction plan JNY11036-02 Rev D have been implemented in full, in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.
- 17) Prior to the first use of any external lighting / floodlighting within the development site, the light source shall be so positioned and shielded, in perpetuity, to ensure that users of the highway are not affected by dazzle and/or glare.

- 18) Any new trees located within 5 metres of the existing or proposed public highway must be planted with root-protection, in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.
- 19) All private shared driveways, vehicular and pedestrian accesses will be designed to prevent the discharge of surface water from the development onto the existing or proposed public highway.
- 20) The proposed principal junction with the existing public highway shall be constructed up to and including at least road base level and be available for use prior to the commencement of any development including the delivery of materials.
- 21) No dwelling shall be occupied until the access road or driveway linking that dwelling to the public highway has been completed to a minimum of base course level and footways/cycleways shall be completed to surface course level. In the event any of the dwellings will be occupied prior to the access road serving that property being fully surfaced then a timetable and phasing plan for completing the roads shall be submitted to and approved in writing by the local planning authority before construction is commenced on the dwelling(s) in question. The access roads and driveways shall thereafter be completed in accordance with the approved timetable and phasing plan.
- 22) Prior to commencement of development vehicle to vehicle visibility splays measuring 2.4 metres x 138 metres to the east and 2.4 metres x 134 metres to the west as shown on approved plan JNY11036-01 Rev D shall be provided and maintained in perpetuity clear of obstruction within 600 millimetres in height above ground level.
- 23) No development shall take place, including any demolition work, until a Construction Management Plan has been submitted and approved in writing by the local planning authority, which will include the following:-
 - a) A scheme for monitoring, reporting and control of construction noise and vibration including hours of working and scope for remedial action.
 - b) A scheme for the control of dust and scope for remedial action in the event that dust is identified as an issue, or any complaints are received.
 - c) A scheme of chassis and wheel cleaning for all construction vehicles to include the details of location and specification of a fully working jetted drive-thru bath type wheel wash system together with hard surfacing laid between the apparatus and public highway in either concrete or tarmac, to be maintained free of mud, slurry and any other form of contamination during the period of construction with all exiting vehicles passing through. A contingency plan including, if necessary, the temporary cessation of all construction operations and movements to be implemented and any affected public highway thoroughly cleaned immediately with mechanical sweepers in the event that the approved vehicle cleaning scheme fails to be effective for any reason.
 - d) Haul routes to the site and hours of delivery

- e) Measures to ensure that vehicles can access the site immediately upon arrival to ensure there is no parking, waiting, loading/unloading or queuing on the public highway.
- f) Details of site compounds, storage area and contractor/visitor parking/turning.
- g) Details of the site enclosure or part thereof and gated site security.
- h) Confirmation of any tree protection measures.
- i) Confirmation that any demolition will be carried out in accordance with the ecological assessment.
- j) Details of site notice with contact details and a scheme for dealing with complaints.
- k) Details of any temporary lighting which must not directly light the public highway.
- l) Phasing plans where necessary.
- m) A scheme for recycling/disposing of waste resulting from the demolition and construction works.
- n) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.

The development shall thereafter be carried out in accordance with the approved Construction Management Plan.

- 24) The development shall be carried out in accordance with the recommendations in Chapter 4 of the Ecological Appraisal by FPCR, dated 7 September 2021 and the submission of reserved matters shall indicate how this will be achieved.

-----End of Conditions-----