



Appeal Decision

Hearing held on 13 December 2023

Site visits made on 12 and 14 December 2023.

by Tamsin Law BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2024

Appeal Ref: APP/D0515/W/23/3327578

Land off Upwell Road, March, PE15 9EJ

- 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 Allison Homes against the decision of Fenland District Council.
 - The application Ref F/YR22/0062/O, dated 17 December 2021, was refused by notice dated 22 June 2023.
 - The development proposed is described as "outline planning application for residential development of up to 110 dwellings alongside associated site infrastructure and open space – all matters reserved except for access."
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Decision

1. The appeal is allowed and planning permission is granted for residential development of up to 110 dwellings alongside associated site infrastructure and open space – all matters reserved except for access at Land off Upwell Road, March, PE15 9EJ in accordance with the terms of the application, Ref F/YR22/0062/O, dated 17 December 2021, subject to the conditions in the attached schedule.

Preliminary Matters

2. The appeal proposal was submitted in outline with the means of access being considered at the outline stage. Notwithstanding that, an indicative block plan together with other illustrative material has also been provided. However, with the exception of the site access, the details shown on the additional particulars are not being considered at the outline stage. I have therefore treated these drawings as being indicative to show a possible way of developing the site.
3. The appeal is supported by a S106 Agreement (S106). The final S106 was not completed prior to the hearing. I therefore agreed a short extension of time following the close of the hearing for the parties to deal with that. The final S106 was duly received on 19 December 2023. The Council has confirmed that it is necessary and reasonable, responding to the nature, type and scale of the proposed development. There is nothing compelling before me to disagree. I have therefore taken it into account.
4. I undertook an unaccompanied site visit on the afternoon of 12 December 2023 to enable me to familiarise myself with the site. At that time, I viewed the site from Cavalry Drive, Upwell Road, Clydesdale Close, Cleveland Bay and nearby public rights of way and permissive routes. I undertook a further site visit of the appeal site itself and immediate environs the day after the hearing.

5. A revised version of the National Planning Policy Framework (The Framework) was published with immediate effect on 19 December 2023. Policies within the revised Framework are material considerations which should be taken into account in decision making. Main parties have been given an opportunity to comment on the new Framework and I have taken into account any subsequent comments received in arriving at my decision.

Main Issue

6. Whether or not the appeal site would be a suitable location for the proposed development, having regard to development plan policy and the Framework.

Reasons

7. The appeal site is located on the south of Upwell Road and to the east of Cavalry Drive and currently consists of open agricultural land. Due to the dwellings that front on to Upwell Road and Cavalry Drive (including Clydesdale Close and Cleveland Bay) there are limited views of the site from the highway. A permissive footpath runs along the western boundary of the site with a public right of way running along its southern boundary. There are clear views across the site, and to the countryside beyond it, from these footpaths owing to the absence of any significant landscaping. That said, it is clear that the appeal site lies on the edge of the built-up area.
8. Policy LP3 of the Fenland Local Plan (2014) (LP) sets out that the majority of the districts housing growth should take place in and around March, Wisbech, Chatteris and Whittlesey. Policy LP3 defines March as a Primary Market Town. LP Policy LP4 sets an approximate target of 4,200 new dwellings for March, of which around 3,100 of these are set out in plan allocations. It is anticipated that the remaining dwellings would come forward through windfall sites.
9. LP Policy LP4 allows for small scale housing proposals on the edge of market towns where they comply with other policies in the LP, namely LP16 which covers a number of matters such as character and appearance, amenity space and living conditions. Whilst there is reference in the policy to large scale housing being 250 dwellings or more there is no definition of small-scale housing within the policy or its reasoned justification.
10. In 2014 the Council produced a 'Guidance and Clarification Note about Policy LP4 Part B – Criteria for Assessing Housing Development Proposals (so-called "windfall policy)" (the guidance note) which set out that for the purposes of LP Policy LP4 any site between 1 and 249 dwellings may be acceptable. The guidance note was produced to help clarify Policy LP4 and has not been adopted as policy or as supplementary planning guidance. Nevertheless, during the Hearing I was advised that the guidance note has been used in decision making for many years.
11. Whilst there is no reference to policies within the Council's reason for refusal during the Hearing, they confirmed that they were concerned regarding the amount of housing being delivered on windfall sites undermining the delivery of housing allocations. Additionally, they considered that the proposal did not comply with LP Policy LP4 due to the number of dwellings combined with its location, to the rear of properties on Upwell Road and Cavalry Drive, meaning it would not appear as small scale.

12. March is a Primary Market Town where, according to the LP, the highest amount of housing in the Council area is proposed to be delivered. LP Policy LP9 identifies a number of housing allocations in March, ranging in size from 500 to 2,000 dwellings along with related infrastructure. LP Policy LP4 states that large scale housing proposals, i.e., 250 dwellings or more, on the edge of market towns are directed towards these allocations. Such schemes not on allocations would be refused.
13. I accept that, the Council being able to demonstrate a 5-year housing land supply, means that there have been homes provided on the ground for local people over and above the identified need. Nevertheless, the PPG¹ states that the standard method for calculating local housing need provides a minimum number. This is echoed in the Framework (paragraphs 61, 76 and 77), and there is no reason that it should be considered a ceiling.
14. In relation to the Council's concerns regarding windfall delivery, whilst allocations are in place, the evidence before me details that in the years between 2011/2012 and 2020/2021 only 434 dwellings have been provided on the allocated sites out of a total provision of 3,906 dwellings, with the remaining and majority coming from windfall sites. Despite the evidence detailing that windfall sites have been more favoured by developers, the Council has not produced any evidence that allocations are not being delivered as a result of the large amount of windfall sites being approved, nor that they will be prevented from doing so over the remainder of the plan period. Indeed, the Council highlighted at the Hearing that there have been recent applications on allocated sites in March. As such, I cannot conclude that the proposal would undermine the delivery of allocated sites.
15. The proposal would adjoin the built development of March, a Primary Market Town. It would involve the construction of 110 dwellings. The LP states that over the plan period March will need to expand by 4,200 dwellings to accommodate the minimum housing need in the area. Whilst the proposal would be located behind Upwell Road and Cavalry Drive, this is not uncommon in housing development or in the nearby area, with Upwell Park being located to the rear of Upwell Road and Eastwood Avenue being located behind buildings that front on to St Peter's Road. Based on these housing figures, the scale of allocated sites in the settlement, and the location of the proposal, the construction of 110 dwellings in this location would be small scale.
16. As such, in light of the above, the proposal would comply with LP Policy LP4 which seeks to ensure that development is provided within or on the edge of market towns or on housing allocations.

Other Matters

17. During my site visits I noted that roads close to Cavalry Primary School became congested around school drop-off and pick-up time. The proposal would be in close proximity to the school, as such future occupiers would likely walk children to the school. The improvements to the nearby highways, dropped kerbs and tactile paving, would improve the legibility of the highway allowing for improved pedestrian access. Moreover, as the vehicular access point itself would not be in particularly close proximity to the school, increases

¹ Housing Supply and Delivery - Paragraph: 001 Reference ID: 68-001-20190722

in traffic are unlikely to result in conflicting vehicular movements at either end of the school day, or additional traffic around the school relative to any other development site in March.

18. The submitted drawings, transport assessment and transport assessment addendum and the comments made by the Highways Authority support the proposal. Whilst I acknowledge the concerns raised by local residents, in the absence of any cogent evidence to the contrary, subject to conditions and the S106 securing the provision of improvements to nearby roads, namely dropped kerbs and tactile paving, and improved public footpaths, the proposal would not have a harmful impact on pedestrian and highway safety.
19. Local residents note that appointments are limited at the local surgeries and there are waiting lists at local schools. However, I have not been provided with any substantive evidence to demonstrate that local GP provision is in such an undersupply that the financial contribution requested, secured by the S106, would not mitigate the proposal and aid in improvements to the service. Similarly, I have not been provided with any substantive evidence regarding school places and no contribution has been requested.
20. Due to its location, bound on two sides by roads and residential development, the site would ultimately be viewed as part of a wider residential development. Whilst there would be a loss of agricultural land, the site is more spatially and visually linked to the residential development of March rather than the open land to the south and east.
21. Local residents have raised concerns regarding the potential for the proposal to increase surface water and associated flooding to neighbouring properties. It is noted that submissions from interested parties' detail that nearby properties suffer from flooding. The response from the Mid Level Commissioners note that this is largely related to surface water sources and the failure to maintain watercourses.
22. The appeal is supported by a topographical survey of nearby watercourses and a Flood Risk Assessment (FRA). The submission details that with a suitable cellular feature that a drainage system at the site could accommodate a 1 in 100 year + 40% rainfall event. The surface water run-off for the site would, at a minimum, match the existing pre-developed greenfield run-off rate. I note the concerns raised by the Mid Level Commissioners and local residents, however subject to conditions and a detailed layout at reserved matters I am satisfied that the proposal would not increase run off. I am also mindful that the Lead Local Flood Authority is satisfied with the details provided within the submitted evidence.
23. In relation to foul water, both the pre-planning assessment report and the consultation response provided by Anglian Water state that the proposal would fall within the catchment of the March Water Recycling Centre (MWRC). Both documents state that there is available capacity within this to treat the flows from the proposed development. Whilst I note comments made by local residents in relation to flows being overwhelmed and the anecdotal comments contained within from Anglian Water representatives, I have not been provided with evidence to demonstrate that the MWRC cannot accept flows from the proposal. In light of the comments made by Anglian Water, I consider that the proposal, in relation to foul water, is acceptable.

24. Regarding the living conditions of future occupiers with regards to noise and air pollution, the proposal is supported by an air quality screening assessment and rapid health impact assessment. Additionally, I have had regard to consultation responses from Environmental Health who consider that subject to mitigation, which will be conditioned, there would be no adverse impacts on nearby residents. In light of the submitted evidence, and in the absence of anything sufficiently compelling to the contrary, the proposal would not have a harmful effect on the living conditions of future occupiers.

Conditions

25. A list of conditions was provided within the Statement of Common Ground (SoCG). A plans condition is required in the interests of certainty. To protect highway safety and living conditions of nearby residents, a construction management plan should be provided. In light of this condition, a further condition setting out specific construction hours is not required. However, to protect living conditions of future residents, details of, and any mitigation for, potential noise disturbance are required. I consider that conditions regarding construction environmental management plan, external lighting, and contamination are necessary in order to ensure that the biodiversity and environment of the area are safeguarded during construction and lifetime of the development.
26. I consider that conditions regarding surface water drainage are necessary in order to ensure that surface water is appropriately managed for the lifetime of the development, however a condition requiring confirmation of the completion of works is not necessary. Conditions regarding highway and footpath improvements, a travel plan, emergency access, gates and road standards are necessary in order to ensure a safe access and to promote the use of alternative methods of travelling. To ensure that any archaeological interests are properly recorded and investigated, a condition is necessary to secure a written scheme of investigation.
27. With regards to a condition limiting the number of dwellings at the site. However, while the illustrative plans show that 110 can be successfully accommodated, there is no robust evidence that this is a maximum that could be compatible with the area. The layout, including any necessary open space will be assessed as part of any reserved matters application. As such, the need for the condition has not been demonstrated, so I have not imposed it.
28. Conditions requiring finished floor levels, green easements, landscaping and requiring the reserved matters to demonstrate high quality development are not necessary as these matters will be dealt with at reserved matters stage. I see no reason that these conditions should be included.
29. I have made some revisions to the Council's suggested conditions in the interests of clarity and to ensure compliance with the Framework. A number of the Council's conditions include seemingly generic lists of the information required to be submitted and reference to other guidance. However, such is not necessary for the conditions to be precise or enforceable. Other than in respect of the construction management plan, where the list identifies specific areas of potential harm that need to be mitigated, I have, therefore, not included such lists so as to allow the parties to agree the relevant information and guidance against which it should be assessed for this specific site and at the time that agreement for the details is sought.

Conclusion

30. The appeal scheme would accord with the development plan and there are no material considerations worthy of sufficient weight that would indicate a decision otherwise. The appeal should therefore, subject to the conditions in the schedule below, be allowed.

Tamsin Law

INSPECTOR

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 plan: Location Plan - L--/LOCATION/01
5. No development shall commence until a site wide Construction Management Plan (CMP) has been submitted to and approved in writing by the Local Planning Authority. The CMP shall include the consideration of the following aspects of construction:
 - a) Construction and phasing programme;
 - b) Contractors' access arrangements for vehicles, plant and personnel including the location of construction traffic routes to, from and within the site, details of their signing, monitoring and enforcement measures;
 - c) Details of a temporary facilities area clear of the public highway for the parking, turning, loading and unloading of all vehicles visiting the site during the period of construction;
 - d) Construction hours which shall be carried out between 0800 hours to 1800 hours Monday to Friday, and 0800 hours to 1300 hours on Saturday and at no time on Sundays, Bank or Public Holidays, unless in accordance with agreed emergency procedures for deviation;
 - e) Delivery times and collections / dispatches for construction purposes shall be carried out between 0800 to 1800 hours Monday to Friday, 0800 to 1300 hours on Saturdays and at no time on Sundays, bank or public holidays, unless otherwise agreed in writing by the Local Planning Authority;
 - f) Soil Management Strategy having particular regard to potential contaminated land and the reuse and recycling of soil on site, the importation and storage of soil and materials including audit trails.
 - g) Noise impact assessment methodology, mitigation measures, noise monitoring and recording statements;
 - h) Vibration impact assessment methodology, mitigation measures, monitoring and recording statements;

- i) Details of any piling construction methods / options, as appropriate;
- j) Dust mitigation, management / monitoring and wheel washing measures in accordance with the provisions of Control of dust and emissions during construction and demolition, and road sweepers to address depositing of mud on immediate highways;
- k) Use of concrete crushers;
- l) Prohibition of the burning of waste on site during demolition/construction;
- m) Site artificial lighting including hours of operation, position and impact on neighbouring properties;
- n) Drainage control measures including the use of settling tanks, oil interceptors and bunds.
- o) Screening and hoarding details;
- p) Access and protection arrangements around the site for pedestrians, cyclists and other road users;
- q) Procedures for interference with public highways, including permanent and temporary realignment, diversions and road closures;
- r) External safety and information signing and notices;
- s) Implementation of a Stakeholder Engagement/Residents Communication Plan, Complaints procedures, including complaints response procedures; and
- t) Membership of the Considerate Contractors Scheme.

The approved CMP shall be adhered to throughout the construction period and must demonstrate the adoption of best practice.

6. The submission of reserved matters as required by condition No 1 shall include a scheme for the provision of external lighting together with a light impact assessment. The report must include an Iso contour plan and demonstrate that any proposed lighting will be within parameters set in accordance with the Institution of Lighting Professionals Guidance Notes for the Reduction of Obtrusive Light GN01:2011, having regard to the relevant Environmental Zone, that being (E2) rural areas.

Furthermore, the report shall demonstrate that biodiversity interests are not adversely affected and shall include the following:

- a) identify those areas/features on site that are particularly sensitive for ecological constraints that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and
- b) show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

All external lighting shall be installed in accordance with the specifications and locations set out in the strategy, and these shall be maintained thereafter in accordance with the strategy. Under no circumstances should any other external lighting be installed without prior written approval from the Local Planning Authority.

7. If during development, contamination not previously identified, is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted to, and approved in writing by the Local Planning Authority a Method Statement detailing how this unsuspected contamination shall be dealt with. Development shall be carried out in accordance with the Method Statement and any remediation retained thereafter.
8. No laying of services, creation of hard surfaces or erection of a building shall commence until a detailed design and management and maintenance strategy of the surface water drainage of the site has been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to the occupation of the dwellings hereby permitted, unless some other phasing is agreed in writing with the Local Planning Authority. Those elements of the surface water drainage system not adopted by a statutory undertaker shall thereafter be maintained and managed in accordance with the approved management and maintenance plan.
9. No development, including preparatory works, shall commence until details of measures indicating how additional surface water run-off from the site will be avoided during the construction works have been submitted to and approved in writing by the Local Planning Authority. The approved measures and systems shall be brought into operation before any works to create buildings or hard surfaces commence and shall thereafter be retained throughout the construction period.
10. Prior to connecting surface water drainage from the site to the watercourse at the eastern boundary of the site, that heads east via 3 culverts, and discharges into Horse Moor Drain, the applicant/developer shall:
 - a) Cut back / strim or mechanically flail and remove all vegetation along the ditch line along the boundary of the site, and the length of the ditch to the outfall to Horse Moor Drain, to provide access to the ditch line;
 - b) Excavate the ditch line to below the outfall(s) of the three culverts that are currently located in the watercourse, ideally to bed level;
 - c) Remove silt from the three culverts such that water can be conveyed through them;
 - d) Create a suitable sump at the point where the new connection will outfall into the watercourse;

- e) Ensure the ditch line has a suitable gradient away from the point at which it is proposed to connect into it, along the length of the ditch for a distance of at least 765m; and
- f) Make good all works disturbed and leave the site in a tidy/clean condition.

11. Prior to occupation of the development hereby permitted, the developer shall upgrade Public Footpath 156/8 to a 3m wide shared use path along the southern boundary of the site, and to a minimum 2m wide footway between the southwestern boundary of the site and the existing tarmacked section of Public Footpath 156/8 between nos. 51 and 47 Cavalry Drive via the permissive path (Woodman's Way), in accordance with details that shall have been submitted to and approved in writing by the Local Planning Authority.

12. Prior to occupation of the development hereby permitted, details of the upgrading works to the side road junctions on the eastern side of Cavalry Drive to include drop kerbs and tactile paving, and the Suffolk Way junction on the western side of Cavalry Drive to include drop kerbs and tactile paving shall be submitted to and approved in writing by the Local Planning Authority. The works shall be carried out prior to the occupation of any dwelling.

13. Prior to the last dwelling being occupied the highway shall be built to adoptable standards as defined by Cambridgeshire County Council Housing Estate Road Construction Specification (current at time of commencement of build).

14. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking, amending or re-enacting that order) no gates or other means of enclosure shall be erected across the vehicular access at its junction with Upwell Road.

15. No development shall commence until a programme of archaeological work, commencing with the evaluation of the application area, that has been secured in accordance with a Written Scheme of Investigation (WSI) that has been submitted to and approved by the Local Planning Authority in writing has been implemented. For land that is included within the WSI, no development shall take place other than under the provisions of the agreed WSI, which shall include:

- a) the statement of significance and research objectives;
- b) The programme and methodology of investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works;
- c) The timetable for the field investigation as part of the development programme; and

- d) The programme and timetable for the analysis, publication & dissemination, and deposition of resulting material and digital archives.

16. The submission of reserved matters as required by condition No 1 shall include details of a non-vehicular access for emergency services separate from the access off Upwell Road. The access shall be implemented in accordance with the approved details prior to occupation of the first house and shall be retained thereafter.
17. Prior to commencement of construction of the access road a noise mitigation scheme within the application site regarding traffic noise from the use of the proposed access road and its impact on occupiers of the adjacent dwellings (No's 81 and 85 Upwell Road) shall be submitted to and approved by the Local Planning Authority. The scheme shall include details of management and maintenance. The development shall be implemented in accordance with the approved scheme prior to occupation of the first house and shall be retained thereafter.
18. Prior to the occupation of any dwelling hereby permitted, a travel plan, including timings for the implementation of any measures shall be submitted to and approved in writing by the Local Planning Authority. The travel plan shall be implemented in accordance with the timings described therein.
19. No development shall take place (including ground works) until a construction environmental management plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.