



Appeal Decision

Site visit made on 10 April 2024

by **S J Lee BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 June 2024

Appeal Ref: APP/M2840/W/23/3323136

Land between Old Railway Line and John Clark Way, Rushden NN10 0FL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Connolly Homes Ltd against the decision of North Northamptonshire Council.
 - The application Ref is NE/21/00518/OUT.
 - The development proposed is for up to 39 residential dwellings (all matters reserved except access)
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Decision

1. The appeal is allowed and outline planning permission is granted for up to 39 residential dwellings (all matters reserved except access) at land between Old Railway Line and John Clark Way, Rushden NN10 0FL in accordance with the terms of the application, Ref NE/21/00518/OUT, subject to the conditions in the attached schedule.

Preliminary Matters

2. The application was made in outline with all matters reserved apart from access. I have treated any plans illustrating potential landscaping schemes or the siting and scale of buildings to be indicative only. I have amended the description of development above to remove the superfluous reference to site's location.
3. A signed and dated S106 agreement has been submitted with the appeal. The Council's appeal statement confirmed that if a S106 agreement were submitted then their reasons for refusal relating to affordable housing, the effect on the Nene Valley Gravel Pits Special Protection Area (SPA) and infrastructure provision would fall away. I have considered the appeal on this basis. Although the S106 refers to public open space provision, the Council's statement does not suggest that this reason for refusal has been satisfied. I address these matters in more detail below.
4. A revised version of the National Planning Policy Framework (the Framework) was submitted following the submission of the appeal. The relevant policies have not however changed significantly and thus there was no need to ask the parties for any additional comments.

Main Issues

5. Having regard to the above, the main issues in this appeal are:

- Whether the site offers a suitable location for residential development having regard to local planning policy, with particular regard to the provision of flats;
- Whether the development would provide sufficient open space, and;
- The effect of development on flooding and drainage.

Reasons

Development Plan

6. The appeal relates to an open, undeveloped and overgrown plot of land which sits between John Clark Way and the railway line. To one side is a large warehouse and to the other is vacant land which is of a similar character to the appeal site. There is housing on the opposite side of John Clark Way, but this is some distance away due to the width of the road and the presence of a large bund. There is also housing to the other side of the railway line.
7. The description of development does not refer to flats and thus there is no guarantee that this is what would come forward through any reserved matters application. What is effectively being applied for is the principle of residential development. However, the illustrative material suggests that flats is what would be intended. The various assessments of development carried out by the appellant have also been on this basis. Policy H4 of the Rushden Neighbourhood Plan (RNP) (2018) seeks to control flats in Rushden. This is ostensibly due to the disproportionate number of flats that have been delivered in the area in recent years. The policy states that that flatted development will only be supported where it meets one of four criteria.
8. The most relevant criterion to this appeal is where the physical or financial constraints of a site are such that it would not be possible to provide smaller one- or two-bedroom houses or maisonettes. While outside the site boundary, the large warehouse would clearly have some influence on the layout of any development. The scale of the warehouse would also be an important factor in determining the scale and appearance of any proposal. In this context, it would be illogical to not consider the warehouse to be a physical constraint on the development of the site.
9. In this respect, it is noteworthy that the Council's officer report states that if a scheme included 1 or 2-storey housing, even with a mix of flats, there would be potential conflict between these lesser scale dwellings and the warehouse. The report concludes that such a difference may appear discordant and poor overall. I concur with this conclusion. While I acknowledge this judgement was made without the benefit of detailed plans, I would agree that the juxtaposition between the large-scale warehouse and smaller scale housing would be unlikely to result in a satisfactory form of development.
10. The constraints of the site, including the slope, presence of a sewer, the need to mitigate road noise and the effects of warehouse would also constrain the developable area. The appellant has submitted indicative drawings to this effect. While these show only one way in which the site could come forward, the limitations identified appear reasonable and realistic. This would mean that only a relatively small number of dwellings would be able to be accommodated. This in itself would probably not satisfy the requirements of the policy; it is always likely to be the case that flats would deliver a greater number of

dwelling than the alternative. However, the specific constraints of the site and the context it sits in means that a small pocket of dwellings in this location, which would be grouped together in a small part of the site, would also be likely to strike a discordant note in the street scene and relate poorly to neighbouring development.

11. This combination of factors leads me to conclude that a scheme comprising of one or two-bedroom dwellings or maisonettes would be unlikely to deliver an acceptable form of development. It is therefore unlikely that such development would be capable of being granted planning permission. Without planning permission, such development could not come forward and thus would not be possible. This is a direct consequence of the physical constraints, characteristics and context of the site. On this basis, there would be no opportunity cost to the Council in terms of 'missing out' on smaller houses, as these are unlikely to be deliverable in any event. The development would still provide housing more generally which would contribute to the overall supply of the district.
12. I am therefore content that, on the balance of probability, the physical constraints of the site would not allow for the delivery of smaller one- or two-bedroom houses or maisonettes. As such, the development would meet the exceptions for flats set out Policy H4. Therefore, there would be no conflict with this policy, which seeks to control the delivery of flats within Rushden.

Open space

13. The dispute between the parties relates to the amount of open space that would, or could, be provided. The application is in outline with all matters reserved except for access. The description of development is also for 'up to' 39 dwellings. The final number of dwellings proposed, scale, layout and landscaping scheme would all have some influence on the amount of open space required and what could be provided on site. The S106 agreement also requires the agreement of an open space plan. The appellant therefore has an opportunity to address this issue through the reserved matters application and deliver an acceptable, policy compliant scheme.
14. I see nothing in either the relevant policies or the associated Open Space Supplementary Planning Document (SPD) which suggests financial contributions for off-site open space could not be provided in principle. The supporting text to RNP Policy CL2 specifically states that there may be situations where certain developments will not provide scope to incorporate open space into a layout design. In such instances, it recognises that financial contributions may be sought towards the provision of new off-site spaces, or the improvement of existing facilities. The SPD is also clear that in some cases commuted sums may be sought for off-site provision or improvement. There is nothing in either document which suggests contributions would only be sought in 'exceptional circumstances'.
15. I am conscious that the S106 agreement does not include provision for off-site contributions. Nevertheless, there would only be a need for these where the reserved matters application did not provide sufficient on-site space. Without detailed plans in place, it would be premature to conclude that such contributions would be necessary in any event.

16. There is some dispute between the parties as to how much open space would be needed. RNP Policy CL2 points to the SPD as the guide. This states that developers are required to meet the *overall* space provision, which implies a contribution toward all typologies, albeit this is in the context of the scope for financial contributions in certain circumstances. The SPD also states that under particular circumstances, a degree of flexibility to the individual types of space requirement may be considered. Allied with the scope for off-site financial contributions, it appears that there is therefore some degree of flexibility about the amount of on-site open space that would be needed to be considered 'adequate' in the context of the relevant policies. Again, this would need to be considered once a full understanding of both the need for, and provision of, open space had been identified through any reserved matters proposals.
17. Based on the evidence before me, I am not persuaded that residential development on this site could not deliver adequate open space in principle. This would be dependent on a range of factors, including scale, layout and landscaping, that can be adequately addressed at the reserved matters stage. Therefore, I see no reason in principle why the development would conflict with RNP Policies EN1 and CL2 or Policy 8 North Northamptonshire Joint Core Strategy (JCS) which seek to ensure adequate provision of open space.

Flooding

18. The appellant has submitted additional technical evidence with the appeal in relation to flooding and surface water drainage. This concludes that the only realistic and viable option would be to discharge surface water to the existing sewers via geo-cellular tanks. I note the Local Lead Flood Authority's (LLFA) original concerns were that insufficient evidence had been provided to satisfy them that this solution would be the only viable option and whether the tanks would be sufficient in terms of capacity. They also raised concerns about the management and maintenance of any drainage scheme.
19. The appellant has sought to address the issues raised by the LLFA. There is nothing to suggest the additional evidence is not robust or was not carried out to the necessary requirements. While discharge to the existing sewer may be the least desirable option, the mitigation hierarchy nevertheless allows for it. The evidence also identifies scope for appropriate measures for management and maintenance.
20. Given the application is made in outline, the final drainage strategy will be dependent on the detail of any reserved matters application. I have seen nothing, however, that would lead me to conclude that an appropriate solution to drainage issues could not be identified. There is therefore no reason why the final details of both the drainage scheme and management arrangements could not be agreed at that stage. An appropriate planning condition would, however, be needed to allow the Council to assess and approve any scheme accordingly.
21. Subject to this, the development would not result in unacceptable harm in relation to flooding or drainage. Therefore, there would be no conflict with JCS Policy 5 which seeks to reduce the risk of flooding.

Other Matters

22. Thew S106 agreement includes provision for 30% affordable housing, bus passes, financial contributions toward healthcare, libraries and mitigation for

any harm that could be caused to the SPA. As set out above, it also sets out requirements relating to the provision of open space.

23. The 30% affordable housing provision is consistent with relevant policies. I am therefore content that the obligation is necessary, directly related to the development and fairly related in scale and kind to the development. I have noted the Council's concerns about how the affordable housing might be delivered. However, this again is an issue that can be adequately addressed at reserved matters stage. There is no reason in principle why this would render the development unacceptable at this stage.
24. The site is located within 3km of the Upper Nene Valley Gravel Pits SPA. The Council's SPA Supplementary Planning Document and JCS Policy 4 indicate that recreational activity associated with residential development has the potential to impact on protected bird populations. There is no evidence to suggest the development would not have such an impact in this case. The Council have identified that appropriate financial contributions can be directed toward their Strategic Access Management and Monitoring strategy. The S106 includes such provision and I am content that the financial contribution meets the statutory tests and would serve to mitigate the potential harm to the SPA.
25. The development would lead to an increase in demand for local library and health care services. The obligations secure funding on a pro-rata basis to mitigate the local impacts. As such, I am content the contributions meet the statutory tests. The agreement also requires the appellant to provide bus passes to cover a specific period. This would assist in promoting sustainable travel and thus I consider this to be an acceptable obligation. The development would need to deliver on-site open space and the obligation includes an appropriate mechanism to ensure delivery. As such, the open space obligation would also meet the statutory tests.
26. The application was made with two potential options for accessing the site. The main difference appears to relate to whether the development would need to provide access to another site elsewhere. My reading of the evidence suggests that this would not be necessary and thus 'Option B' would be satisfactory. The local Highway Authority have raised no objections in relation to the safety of the access or the effect of the development on the operation of the highway network. I have seen nothing that would lead me to a different conclusion. The state of the road, or enforcement issues, are outside the scope of the appeal and do not justify withholding permission. The level of parking provision would be dependent on the final number of dwellings proposed. However, there is nothing to suggest insufficient levels of parking would be provided within the site or that this would result in problems elsewhere.
27. The appearance, layout and scale of development are all reserved matters. The illustrative material suggests one way in which the site could be developed, but this may not be the final form proposed. The Council would therefore have the opportunity to assess the quality and effect of any design in due course. The development would result in the loss of a relatively small open area. However, there would be scope for mitigation through open space provision and landscaping. The site is relatively small, not accessible to the public and somewhat unremarkable in terms of local character. As such, I do not consider the loss of this space would cause unacceptable harm in principle.

28. The presence of the road, railway and warehouse all have the potential to affect the living conditions of future occupants. This is something that would need to be assessed as part of the reserved matters application. Nevertheless, I am satisfied there would be sufficient space within the site to accommodate development without causing unacceptable harm to living conditions of future occupants. Similarly, development could be delivered sufficiently far from existing dwellings to ensure no harm would be caused to their living environments, particularly in terms of noise or disturbance. Potential issues caused during construction could be addressed by a suitably worded planning condition. There is no substantive evidence to suggest the development would lead to unacceptable impacts on health, air quality or crime.
29. The appellant's ecological assessment did not identify the presence of any protected species on the site. There is no reason to conclude that development would result in unacceptable harm to biodiversity. The final effect, and scope for mitigation and biodiversity net gain, would again be dependent on the final scale and layout of development and the details of any landscaping scheme. These are all matters that can be assessed and controlled at reserved matters stage and would not justify withholding outline permission.
30. The Council's officer report concludes that the site is within the defined settlement boundary of Rushden. This is therefore considered a sustainable location and is a suitable location for development in principle. Reference has been made in some representations to the cumulative effect of development with other schemes. However, there is no substantive evidence to suggest that the local services and infrastructure could not accommodate an additional 39 dwellings even with other development in place. The application does not make specific provision for older people. However, this is not a policy requirement and thus does not weigh against the proposal.
31. Matters relating to the energy efficiency of any dwellings and/or the provision of electric vehicle charging points are dealt with by building regulations. There would be no justification for withholding outline planning permission on this basis.

Conditions

32. In addition to the standard conditions limiting the lifespan of the planning permission and the timescale for submission of reserved matters, I have imposed a condition specifying the relevant drawings as this provides certainty. As all matters apart from access are reserved, there is no need to include illustrative or sketch plans in this condition, or those providing details such as refuse vehicle tracking. For the same reason, I have imposed a condition setting out what specific details would be expected as part of any reserved matters application.
33. In the interests of the living conditions of future occupants, I have imposed a condition requiring the submission of an acoustic report and associated mitigation measures. I have amended the suggested condition to make it clear that the report should be submitted with any reserved matters application for buildings and be implemented prior to occupation. This will provide clarity and certainty.
34. Conditions limiting the working hours of any construction, prohibiting burning of materials, measures to control dust and the agreement of a construction

method statement are all necessary to protect the living conditions of existing nearby residents and the operation of businesses.

35. There is some evidence that the area has potential for archaeological interest. I have therefore imposed a condition requiring a scheme of investigation to be agreed and carried out prior to development taking place. I have amended the Council's suggested wording in the interests of clarity and effectiveness. A condition requiring the submission of a construction environmental management plan is necessary in the interests of protecting biodiversity during construction.
36. I have imposed a condition requiring the submission of a foul water drainage scheme. However, to address points discussed above, I also included a condition requiring the details of a surface water management scheme and associated management and maintenance details. Notwithstanding the additional technical evidence supplied, the final drainage strategy would need to have regard to the final layout in any event. There would also be a need to confirm the management and maintenance details. On this basis, I do not consider this to be an unduly onerous condition. In the interests of highway safety and the living conditions of future occupants, I have imposed a condition requiring the access to be implemented prior to occupation.
37. I have made alterations to a number of suggested conditions in the interests of clarity and effectiveness. This includes removing references to situations where the local authority could approve alternative arrangements outside the scope of a formal process. I do not consider such references are necessary or appropriate.

Conclusion

38. The proposal would be consistent with the development plan and there are no material considerations that would outweigh this. Therefore, for the reasons given above, the appeal should be allowed.

S J Lee

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale, ("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 three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two 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 drawing nos: Site Location Plan – 18838-1001; Site Access Plan - Option 2, ref: 18836-JOHN-5-103 Rev A.
- 5) The details required to be submitted in accordance with condition 1 above shall include full details of:
 - The materials to be used in the construction of the external surfaces.
 - Details of both hard and soft landscaping.
 - Details of boundary treatment.
 - Finished floor levels of all buildings and associated external ground levels.

The development shall thereafter be carried out in accordance with the approved details prior to the first occupation of the dwelling hereby approved and shall thereafter be retained and maintained in perpetuity.

- 6) Any reserved matters application for buildings on the site will be accompanied by a detailed acoustic design report to be approved by the local planning authority. Details shall include but not be limited to the provision of acoustic modelling and details of noise mitigation measures. Noise mitigation measures shall demonstrate good acoustic design and rely, where possible, upon the layout, orientation of the dwellings, internal layouts and window design to achieve good noise conditions both internally and externally. Noise mitigation measures specified in the approved scheme shall then be carried out in accordance with the approved details prior to first occupation of any dwelling hereby approved and be retained thereafter.
- 7) No demolition or construction work (including deliveries to or from the site) that causes noise to be audible outside the site boundary shall take place on the site outside the hours of 0800 and 1800 Mondays to Fridays and 0800 and 1300 on Saturdays, and at no times on Sundays or Bank Holidays.
- 8) No development shall take place (including demolition, ground works, vegetation clearance) until a construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following.
 - a) Risk assessment of potentially damaging construction activities.

- b) Identification of "biodiversity protection zones".
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
- d) The location and timing of sensitive works to avoid harm to biodiversity features.
- e) The times during construction when specialist ecologists need to be present on site to oversee works.
- f) Responsible persons and lines of communication.
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
- h) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

- 9) There shall be no burning of any material during construction, demolition or site preparation works.
- 10) During the demolition and construction phases the developer shall provide, maintain and use a supply of water and means of dispensing it, to dampen dust in order to minimise its emission from the development site. The developer shall not permit the processing or sweeping of any dust or dusty material without effectively treating it with water or other substance in order to minimise dust emission from the development site. The developer shall provide and use suitably covered skips and enclosed chutes, or take other suitable measures in order to minimise dust emission to the atmosphere when materials and waste are removed from the development site.
- 11) No development shall take place until a programme of archaeological work in accordance with a written scheme of investigation, has been submitted to and approved in writing by the local planning authority. This written scheme will include the following components, completion of each of which will trigger the phased discharging of the condition:
 - (i) Fieldwork in accordance with the agreed written scheme of investigation;
 - (ii) Post-excavation assessment report (to be submitted within six months of the completion of fieldwork)
 - (iii) Completion of post-excavation analysis, preparation of site archive ready for deposition at a store (Northamptonshire ARC) approved by the local planning authority, completion of an archive report, and submission of a publication report: to be completed within two years of the completion of fieldwork.
- 12) No development shall commence until details of a scheme for the provision of foul water drainage on and off site has been submitted to and approved in writing by the local planning authority. No dwellings shall be occupied until the works have been carried out in accordance with the approved scheme.

- 13) No development shall take place until a detailed surface water drainage scheme for the site has been submitted to and approved in writing by the local planning authority. The submitted details shall:
- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and,
 - iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The development shall be carried out in accordance with the approved details. The surface water drainage scheme shall be managed and maintained thereafter in accordance with the approved management and maintenance plan.

- 14) No development shall take place, including any works of demolition, until a Construction Method Statement (to include any demolition works) has been submitted to and approved in writing by the local planning authority. The approved plan shall be adhered to throughout the construction period. The Statement shall provide for:
- 1. The size, number, routing and manoeuvring tracking of construction vehicles to and from the site, and holding areas for these on/off site;
 - 2. Site layout plan showing manoeuvring tracks for vehicles accessing the site to allow these to turn and exit in forward gear;
 - 3. Details and location of parking for site operatives and visitor vehicles (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);
 - 4. Details and location where plant and materials will be loaded and unloaded;
 - 5. Details and location where plant and materials used in constructing the development will be stored, and the location of skips on the highway if required;
 - 6. Details of any necessary suspension of pavement, road space, bus stops and/or parking bays;
 - 7. Details where security hoardings (including decorative displays and facilities for public viewing) will be installed, and the maintenance of such;
 - 8. Details of any wheel washing facilities;
 - 9. Details of a scheme for recycling/disposing of waste resulting from demolition and construction works (including excavation, location and emptying of skips);
 - 10. Details of measures that will be applied to control the emission of noise, vibration and dust including working hours. This should follow Best Practice detailed within BS5288:2009 Code of Practice for Noise and Vibration Control on Construction and Open Sites;

11. Details of any highway licenses and traffic orders that may be required (such as for licences for any structures / materials on the highway or pavement; or suspensions to allow the routing of construction vehicles to the site);
12. Details of the phasing programming and timing of works;
13. A construction programme including a 24 hour emergency contact number;
- 15) Prior to the first occupation of the development the proposed access shall be laid out in accordance with the approved plans surfaced in a hard bound material and drained within the site. The access, surfacing and drainage shall thereafter be maintained and retained as such in perpetuity (notwithstanding the provisions of Schedule 2, Part A, Class F of The Town and Country Planning (General Permitted Development) (England) Order 2015, or any instrument revoking or re-enacting that Order).