



## Appeal Decision

Inquiry Held on 10 - 12 November 2020

Site visit made on 13 November 2020

**by Patrick Hanna MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10<sup>th</sup> February 2021**

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**Appeal Ref: APP/L2820/W/20/3253498**

**Land off Harborough Road, Desborough NN14 2QY**

- 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 Bowbridge Land Limited against the decision of Kettering Borough Council.
  - The application Ref KET/2019/0606, dated 28 August 2019, was refused by notice dated 16 December 2019.
  - The development proposed is residential development of up to 260 units with all matters reserved except access.
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### Decision

1. The appeal is allowed and outline planning permission is granted for residential development of up to 260 units with all matters reserved except access at land off Harborough Road, Desborough NN14 2QY in accordance with the terms of the application, Ref KET/2019/0606, dated 28 August 2019, subject to the conditions in the attached schedule.

### Procedural Matters

2. The application seeks outline planning permission with access to be determined at this stage. Appearance, landscaping, layout and scale are reserved matters to be considered in the future. I shall determine the appeal on that basis.
3. The Kettering Site Specific Part 2 Local Plan (LP2) was submitted to the Secretary of State on 28 May 2020 for examination, shortly before the submission of the appeal. All parties have had opportunity to comment on this.
4. Revised drawing ADC-1650-DR-002-P8 (Access Junction Layout) introduces changes to the site accesses following completion of a road safety audit. Further consultation was undertaken through Kettering Borough Council (the Council), and neither the Council nor the highways authority (Northamptonshire County Council)(NCC) raised any objection to the revision.
5. In exercise of the powers conferred by Regulations 14(1) and 7(5) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (EIA), the Secretary of State directed on 29 October 2020 that the appeal proposal is not EIA development.

### Main Issue

6. The Council's decision notice gives three reasons for refusal. The level of harm to the character and appearance of Desborough, as set out in the first reason

for refusal, is a matter of agreement, although the weight to attribute to that harm is not. Matters relating to highway safety and capacity, in the second reason for refusal, are no longer disputed by the main parties, notwithstanding that accessibility of the appeal site remains a point of disagreement. Provision of affordable housing and infrastructure, in the third reason for refusal, have been addressed by means of planning obligation, albeit that dispute remains regarding the need for, and deliverability of, a bus service to the site. Although the issue of the Council's housing land supply was raised, the appellant agreed at the inquiry that the Council currently have a five year supply. I return to these matters later in this decision.

7. Given the above, the main issue is whether the proposed development would be in an appropriate location, having regard to the development plan and national policies for housing and accessibility.

### **Reasons**

8. The appeal site is around 11.25 hectares in extent and is enclosed on three sides; to the northeast by the B576 Harborough Road, with the industrial estate beyond; to the southeast by the Straight Furlong byway and the recent Weavers Mead development beyond; and to the southwest by the railway line. The northwest of the site borders open countryside. The site comprises two fields separated and bounded by generally mature hedgerows and trees. The appeal site and its surroundings are not designated or valued landscapes in terms of the National Planning Policy Framework (the Framework).
9. The proposal is accompanied by an illustrative masterplan and a landscape mitigation plan showing the retention of hedgerow boundaries, public open space, surface water attenuation basin, and a network of vehicular roads and pedestrian and cycle paths.

### *Local plan*

10. The development plan includes the saved policies of the Local Plan for Kettering Borough (1995)(KLP), which also defines the settlement boundary for Desborough. The appeal site adjoins that boundary to the southeast and is separated from it to the northeast by the road. The site therefore lies wholly outside of the settlement boundary and in the open countryside. The main parties agree that the settlement boundary is out of date, as it is based on demographic evidence from the 1990s and does not provide for development beyond 2006.
11. Saved policy 7 of the KLP seeks to protect the open countryside, stating that planning permission for development within the open countryside will not be granted except where otherwise provided for in that plan. At the inquiry, the Council's planning witness conceded that this policy was out of date, in terms of housing delivery, on the following analysis of the policy.
12. The title 'Protection of the Open Countryside' is derived from the wording of national planning policy that is long superseded. The first part of the policy uses prohibitive wording to prevent the grant of permission for development within the open countryside, in effect seeking to protect the countryside for its own sake. This goes beyond the advice in paragraph 170 of the Framework, which instead seeks recognition of the intrinsic character and beauty of the

- countryside, and only protects designated or valued landscapes, which the site is not.
13. The second part of this policy refers to exceptions that are provided for in the KLP. The Council agreed at the inquiry that the only potentially relevant exception is provided by saved policy RA5, for housing in the countryside. However, the exceptions identified in saved policy RA5 relate to specific development proposals such as agricultural and rural replacement dwellings, affordable housing and gypsy sites. The saved policy does not allow any other assessment or judgement to be made, whereas the Framework requires the supply of housing to meet objectively assessed needs.
  14. The supporting text to saved policy 7, in referring to the importance of the general protection from unjustified development afforded to the open countryside, reiterates these points. The 'general protection' is a direct reference to the prohibitive wording of the policy that development will not be granted. The reference to 'unjustified development' in this case indicates that development that is not compliant with saved policy RA5 will be refused, and again these words do not permit any other assessment or judgement to be made. Furthermore, this supporting text is only an aid to interpretation of the policy but is not in itself policy.
  15. Saved policy 7 can only be applied with reference to defined settlement boundaries, which identify the extent of the open countryside, as explained in the supporting text. In other words, the settlement boundaries cannot be disentangled from this policy. In order to give full weight to saved policy 7, it follows that full weight would also have to be given to the settlement boundaries. This cannot be done here as the settlement boundaries are agreed as being out of date. As a consequence of this objective analysis of the evidence, I find that saved policy 7 is inconsistent with the Framework.
  16. Two appeal decisions in Desborough have been cited as being particularly relevant to interpretation of this policy. Following public inquiry in 2017, a development of 147 dwellings at Willowbrook<sup>1</sup> was dismissed, concluding that whilst saved policy 7 pre-dated the Framework, it was broadly consistent with it, particularly the core principles which recognise the intrinsic beauty and character of the countryside. At Braybrooke Road<sup>2</sup>, 245 dwellings were dismissed in October 2019, with that Inspector finding that on balance he could not disagree with that earlier conclusion.
  17. Although like cases should be decided in a like manner, it is also the case that each proposal must be determined on its merits and based on the submitted evidence. I do not have the same evidence of those previous appeals and, during reasonable cross examination, the Council's planning witness conceded that, on the above basis, saved policy 7 was out of date insofar as it related to housing supply.
  18. Unusually, the Council's case was then subsequently progressed by ignoring that concession, and instead focused on its earlier written evidence. That written position relies heavily upon the above cited appeal decisions. However, that written position was unable to withstand examination on the above basis. This seriously detracts from the persuasiveness of the Council's written case

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<sup>1</sup> Appeal decision APP/L2820/W/16/3149835

<sup>2</sup> Appeal decision APP/L2820/W/18/3215362

and adds weight to my finding that saved policy 7 is inconsistent with the Framework. The Council further assert that saved policy 7 is similar to the policies of the adopted core strategy in the above respects, however objective analysis indicates otherwise, as follows.

*Core strategy*

19. The development plan also includes the North Northamptonshire Joint Core Strategy (2016)(JCS). The vision and outcomes of the JCS aim to create successful and sustainable communities through provision of a network of urban and rural areas; secure provision of the infrastructure, services and facilities needed to sustain and enhance communities and support new development; and deliver urban focused development for vibrant well connected towns, with transformed public transport services.
20. Policy 11 seeks to distribute development to strengthen the network of settlements in line with the identified roles and place shaping principles for urban and rural areas. The appeal site is part of the urban area for the purpose of this strategic policy, as acknowledged in the Council's first reason for refusal, not the rural area. Growth towns such as Kettering will be the focus for major housing development (even in the event of a lack of five year housing supply, which is not the case here). However, the policy states that market towns such as Desborough<sup>3</sup> will provide growth in homes at a scale appropriate to the character and infrastructure of the town, based upon the strong service role that market towns have for local communities and the wider rural hinterland.
21. Supporting advice to this policy on the spatial role of market towns indicates that development requirements will be met through previously developed land, sustainable urban extensions, committed sites and smaller greenfield sites identified in LP2 or neighbourhood plans (NP). Whilst the Council argue that none of these criteria are met, in the current absence of an adopted LP2 or made NP, this aspect of the guidance is of limited assistance, particularly when set against the policy requirement that market towns should provide a role in delivering growth.
22. Housing requirements are provided in policy 28, which sets out a total for the borough of 10,400 dwellings from 2011 to 2031. Policy 29 then distributes this housing requirement between settlements within the borough. For Desborough this is 1,360 dwellings for the same period, or 1496 dwellings if the 10% flexibility buffer indicated in LP2 is applied. Either way, this requirement has already been considerably exceeded; with deliverable commitments agreed to be some 1550 whilst only around halfway into the plan period. On these terms alone, the proposal goes well beyond the expectations of policy 29.
23. Nevertheless, both parties agree that, in light of the Framework's imperative to provide housing, this should not be seen as a cap. Furthermore, it is evident from previous permissions approved by the Council that the existing policy framework provided by the JCS has allowed for growth beyond historic settlement boundaries and above settlement housing requirements.
24. The Council argue that the appeal proposal would, with other committed developments, result in an exceedance of the JCS requirement for Desborough by some 33%, which would not be in line with policy 29. On the other hand,

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<sup>3</sup> The hierarchy of settlements being; growth towns, market towns, villages, and open countryside.

the appellant points out that the appeal proposal would provide an increase over existing permissions of 166 units, representing an increase of just 10%. Either way, incremental increases have the potential at some stage to reach a point where the spatial strategy is harmed. Therefore, the effect of this individual proposal must also be considered in the context of the wider pattern of development in the borough.

25. It is self-evident that the proposal would not result in such growth that the market town of Desborough could challenge the position and status of Kettering as the growth town for the borough. Rather, the appellant's submitted statistical analysis indicates that the proportion of development between the two settlements would remain broadly the same. As a baseline, the JCS housing requirements for Kettering and Desborough represent some 59.5% and 13.1% of the total borough housing requirement respectively.
26. The appellant argues that the additional growth that the Council is already planning for adjusts those figures to 62.2% and 12.6%, indicating a small swing towards the growth town and away from Desborough. When the appeal proposal is added to this, this would change to 61.0% and 14.3%, which represents an overall increase of 1.5% to Kettering and 1.2% to Desborough, indicating balanced growth between the two settlements. Finally, the figures also suggest that the other market towns in the borough will not significantly change, reducing by no more than 1% each.
27. On that basis, I find that a broad trend of equivalence in distribution is indicated. The JCS requirement and the proposed figures are not so significantly different that the proposal would result in significantly skewing or distorting the distribution of housing between the two settlements. Nor do these figures suggest that there would be any dilution effect on Kettering as the growth town for the borough.
28. As a consequence, the strong policy focus on growth towns as the most sustainable locations for development, followed by market towns, would be maintained. Given that this analysis is only looking at any harm to the spatial strategy, it could be considered that this is not a particularly precise tool for determining the acceptability or otherwise of new development sites. However, no compelling competing evidence has been submitted, with the Council's case relying heavily on the previous Braybrooke appeal decision on this point.
29. That decision similarly considered oversupply of the housing requirement in Desborough. That Inspector found a supply of 39% exceeding requirements to be very significant, with the potential to distort the spatial strategy. However, the current appeal can be clearly distinguished from that one. The Braybrooke decision was based on what is described as "common sense" in establishing when the tipping point in distorting spatial strategy had been reached.
30. Whilst in this current case the matter remains one of planning judgement, I have also been provided with statistical evidence that points to the above different conclusion when the spatial strategy is considered, not just against the market town, but across the borough as a whole. Furthermore, saved policy 7 was not found to be out of date in that appeal, which was additionally acknowledged by that Inspector as being a finely balanced case.
31. The Council also allege harm to the plan-led system. Whilst the JCS dates from 2016, the age of the KLP and the current site allocations are such that faith in

the planning system is unlikely to be harmed by this proposal, notwithstanding the cited appeal decision for Cornwall<sup>4</sup> which in any case relates to a different policy framework. The first reason for refusal also refers to policies 1 and 13 of the JCS. However, policy 1 simply requires accordance with the development plan and reflects the Framework's presumption in favour of sustainable development. Policy 13 provides for rural exceptions but is not applicable to this appeal which is within the urban area.

### *Emerging plans*

32. The appeal site is identified as a preferred option for development in the draft Desborough Neighbourhood Plan (2017). This concludes that, despite the distance to the town centre, the site provides a good location for up to 260 units with minimal impact to the physical and social structure of the town. Nonetheless, there has been no further progress in making the plan, which consequently attracts very limited weight.
33. LP2 is at submission stage only and hence attracts limited weight. This proposes an up to date settlement boundary for Desborough. That submission boundary is shown as unchanged from the 1995 KLP in respect of the appeal site, which would remain wholly outside it. The appeal site had been promoted but not progressed, with the housing allocations background paper concluding that the site scores poorly primarily in terms of accessibility to facilities.

### *Accessibility*

34. Policy 8 of the JCS sets out place shaping principles requiring that development should create connected places and make safe and pleasant streets, with walkable neighbourhoods. Policy 15 states that connectivity will be strengthened and will improve access from the edge of town to their centres by focusing on main radial routes and rebalancing design towards pedestrians, cyclists and public transport. The sole point of dispute on this matter relates to the necessity, and deliverability, of a bus service to the appeal site.
35. The site is located on the periphery of the settlement. Whilst adjacent to an employment centre and close to a petrol garage with associated convenience store, the main local services and facilities are located in the town centre, some 1300 metres from the appeal site. This walk would be likely to take some 15 minutes, longer on the uphill return or for those with less mobility. The nearest bus stop with regular services is some 450 metres from the southern access to the appeal site, or some 230 metres to a limited morning peak only service. Given the size of the site, the furthest proposed dwellings could be some 350 metres more distant.
36. Such distances would not be excessive on an occasional basis. However, these distances are not likely to encourage modal shift for day to day journeys, nor achieve any improvement of access between the edge of the town to its centre. Taken together, I find that an enhanced bus service would be necessary as mitigation. This is proposed to be addressed by means of a developer contribution, with new bus stops also to be provided on Harborough Road and within the site, such that all new dwellings would indicatively be within 250 metres of a bus stop.

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<sup>4</sup> Appeal decision APP/D0840/W/19/3224526

37. The specific bus service would still need to be designed out, with potential pooling of resource with an urban extension development at Desborough North to extend a service beyond Desborough Grange to Market Harborough via the development site. As a minimum, NCC indicate the contribution from the appeal site would release resource from the network to extend an hourly service to the site, which therefore would improve access to the town centre facilities from its periphery. The Council are also concerned that no trigger has been agreed for commencement of this service. However, there is no substantive evidence to persuade me that the statutory body for delivering sustainable and public transport measures in the region, acting reasonably, would not utilise the secured contribution to improve the bus service as appropriate for the site.
38. The Council indicate its decision in 2019 to grant permission partially outwith the settlement boundary of Desborough at Buxton Drive<sup>5</sup> was intended to reduce the pressure for developing what they consider to be less sustainable and accessible sites outside the settlement boundary. However, for the reasons given, I do not find the appeal site to be in an inaccessible location.

#### *Conclusion on main issue*

39. The proposal would be sited in the open countryside outside the settlement boundary for Desborough, conflicting with saved policy 7 of the KLP. It would also considerably exceed the expectations of housing delivery for Desborough as set out in the core strategy and, despite this requirement not being a maximum, this would be contrary to policies 1 and 29 of the JCS. However, the proposal would be of a scale that would not distort the overall spatial strategy of the JCS for the reasons given above and it would also be in an accessible location. As such, there would be no conflict with policies 8, 11, 13, 15 or 28 of the JCS.
40. Overall, despite the conflict with some policies, I conclude for the reasons given above that the proposed development would be in an appropriate location having regard to the development plan and national policies for housing and accessibility. I return to the weight afforded to conflict with some policies in the planning balance.

#### **Other considerations**

##### *Character and appearance*

41. The Council no longer contend that the proposal would conflict with policy 3 of the JCS, which deals with landscape. At the inquiry, it accepted the harm caused by the proposed development on the character of Desborough is largely a matter of agreement with the appellant, save for the weight to be afforded to that harm. The proposal would inevitably cause some residual landscape harm given the existing greenfield nature of the site. However, the adverse impact upon the wider landscape character is agreed to be minor. In visual terms, the short term harm from the proposal is agreed to be major adverse, as experienced from the existing development and the intervening public right of way. Even so, the implementation and establishment of mitigation planting and enhancements would, over five to ten years, reduce the overall residual effects to moderate adverse. I see no evidence to disagree with these findings.

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<sup>5</sup> Planning application ref KET/2017/1019

42. Indeed, from my observations, the existing enclosure of the site is such that it is well related to the existing built development of the settlement. When approaching Desborough from the north, the development of the site would read as aligning with the existing well-established settlement edge formed by the imposing Rigid Containers factory building. Furthermore, the extent of area over which the adverse visual effects would be experienced is limited and, whilst residents of the existing development would inevitably experience a significant change, it is well established and widely known that there is no right to a view. Overall, subject to appropriate mitigation measures, the level of harm caused by the proposal is proportionate to the context of this visually contained site.

#### *Highways*

43. Traffic modelling indicates that two junctions would be affected by the proposal. Firstly, the junction of Gold Street, Rothwell Road and High Street in Desborough currently operates below theoretical capacity and, as a direct result of the proposal, would at times exceed this capacity. This junction would also be subject to adverse effects arising from Desborough North which in itself requires improvements to be implemented to all four legs of the junction. In the event that the current appeal proposal were to be implemented prior to completion of the Desborough North improvement works, more modest and interim realignment works to Gold Street have been agreed by the main parties. Secondly, the roundabout junction at Desborough Road and Bridge Street in Rothwell would also operate at or over theoretical capacity. A financial contribution towards minor kerb widening and white lining works would be secured in order to improve capacity at this junction.
44. The revised accesses to the appeal site would be taken from two new junctions off Harborough Road, based on a scheme that has been agreed with NCC following road safety audit, including consideration of HGV traffic. No substantive evidence has been submitted to persuade me to disagree with those expert conclusions. Driver behaviour and speed limit offences on Harborough Road are existing traffic enforcement issues that cannot be remedied through this planning appeal.

#### *Planning obligation*

45. Arrangements for the provision and maintenance of open space amounting to not less than 2.53 hectares would be necessary in order to meet the community facilities, place shaping and green infrastructure requirements of policies 7, 8 and 19 of the JCS, to be implemented before occupation of more than half the dwellings. Policy 30 requires affordable housing of at least 30% for developments within market towns, in order to assist in the creation of sustainable mixed and inclusive communities, and this level of provision would be secured by the obligation.
46. A costed contribution would be secured to ensure adequate capacity at the road junction in Rothwell, for the above reasons. The education contribution derives from policies 7 and 10 of the JCS and would be directly based on a multiplier of dwelling size to ensure adequate capacity at early years, primary and secondary school levels, as is the library contribution to expand or enhance facilities. The contribution to the bus service, as discussed above, would be calculated on a per dwelling basis. The travel plan and pass seek to promote modal shift as required by local and national policy. Finally, a contribution to



primary health care is necessary to address capacity issues in local surgeries, based on average household size, to accord with policies 7 and 10 of the JCS.

47. For these reasons, I am satisfied that all of the above obligations are necessary, directly related to the development and fairly related in scale and kind. They comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 and paragraph 56 of the Framework.

*Other matters*

48. An ecological assessment has been undertaken, and the site is agreed to have relatively low ecological value. One tree identified as being in poor arboricultural condition has been assessed as having medium potential for bat roosts, and further surveys and mitigation measures would be required should this tree be identified for felling as part of the reserved matters applications. Furthermore, although some existing landscape features may be lost as a result of the development, such as hedgerows to provide access, an overall net biodiversity gain through additional planting and habitat provision will be secured by condition. The potential use of the Weavers Mead play areas and open space by residents of the appeal proposal would be offset by provision of its own such facilities.
49. Whilst local residents currently use the site for amenity and walking, no formal rights of way exist within the site that require protection. Nonetheless, it is necessary that appropriate connectivity be provided between the appeal site and the Straight Furlong byway, notwithstanding concerns about potential anti-social behaviour. The site has not been identified as best and most versatile agricultural land, due to its wetness. From a geotechnical and ground stability perspective, the site is identified as being suitable for residential development. Matters of residential amenity, including privacy and overlooking, could be appropriately dealt with at the detailed stage. Whilst brownfield development is suggested as preferable to greenfield development, I must assess the proposal that is before me on its merits.

**Planning balance and conclusion**

50. Even though I have found that policy 7 is not wholly consistent with the Framework, the main parties agree that the basket of policies that are most important for determining the appeal are not out of date, such that the so called 'tilted balance' of paragraph 11(d) of the Framework is not engaged. The decision should therefore be made in accordance with the development plan unless material considerations indicate otherwise.
51. I attach limited weight to harm arising from conflict with saved policy 7 and the settlement boundary, given my above findings with regard to consistency with the Framework. Whilst policy 29 is an up to date development plan policy setting out clear expectations for housing delivery in Desborough based on objectively assessed need tested through examination, it is nonetheless agreed that it is not a cap on housing. Moderate weight is attributed to the harm arising from conflict with this policy, given the conclusion reached on the lack of harm to the overall spatial strategy. Overall, I conclude that the harm caused by the conflict with the development plan when read as a whole would be no more than moderate.

52. Only limited harm would be caused by the conflict with LP2 given its emerging status. Any harm to the plan-led system would also be limited, due to the lack of up to date site allocations. The proposal would result in the development of a greenfield site in the open countryside. However, there would be no more than moderate adverse effects after the initial period and, for the reasons given above relating to the limited extent of such effects and the general visual containment of the site, I afford this harm limited weight.
53. The provision of at least 30% affordable housing, amounting to up to 78 affordable homes, is a benefit of significant weight in light of the agreed need on both a local and national level. The Framework's emphasis on significantly boosting the supply of homes requires me to also attach significant weight to the provision of up to 182 units of market housing, notwithstanding that the Council can demonstrate a five year housing land supply and have achieved delivery targets under the Housing Delivery Test. Furthermore, the appellant indicates that the first completions could be delivered by 2023. Both parties agree that significant weight should be afforded to supporting economic growth and, given the scale of the appeal proposal I do not disagree, notwithstanding that paragraph 80 does not mandate that a specific weight should be applied.
54. Environmental enhancement through biodiversity net gain is a benefit, albeit one of limited weight, as is the potential for the proposal to create new construction jobs. The creation of new homes for economically active people that can contribute to sustaining existing facilities is also of limited weight, given the established status of Desborough as a market town. Provision and maintenance of public open space, provision of travel pass, and contributions towards the bus service, highways improvements, education and library services are necessary to mitigate the effects of the development and are neutral in the planning balance.
55. Overall, the harms caused by the development would be no more than moderate. On the other hand, the benefits of the appeal proposal are significant. I therefore conclude that the benefits outweigh the harm, even though the benefits could be the same from any residential development. The material considerations in this appeal indicate that permission should be granted contrary to the development plan, subject to the conditions in the attached schedule.

### **Conditions**

56. A list of agreed suggested conditions was submitted. Amendments have been made to the wording of some conditions to avoid duplication, for clarity or brevity, and to ensure accordance with the tests in paragraph 55 of the Framework.
57. The application was in outline so Condition 1 for reserved matters is necessary to ensure that the development achieves satisfactory scale, layout, appearance, and landscaping. Conditions 4 and 5 define the parameters and phasing of the development. Condition 3 defining the plans and Condition 6 defining the number of dwellings provide certainty. Conditions 7 and 8 are necessary to preserve the character of the locality. Condition 9 ensures compliance with policy and guidance on accessibility of homes. Whilst the suggested condition regarding maintenance of open space is partially duplicated in the planning obligation, Condition 10 is nonetheless necessary to ensure other areas of landscaping are maintained.

58. Detailed tree, hedgerow, landscape and habitat protection measures are required in the interests of biodiversity, as secured by Conditions 11, 12, 14 and 23. The suggested condition regarding avoidance of the bird nesting season is omitted, as it is adequately covered by Condition 13 for wider biodiversity protection measures during construction. Conditions 15, 16 and 17 relating to surface water are necessary to ensure the site is adequately drained, with the suggested maintenance condition consolidated into Condition 15. Noise sources adjacent to the site require submission of sound insulation measures, as set out in Condition 18. Condition 19 controls the construction of the development, in order to protect the environment and living conditions.
59. Condition 20 is necessary to ensure that any ground contamination at the appeal site is appropriately remedied. The scale of the development justifies the fire protection measures required by Condition 21. A written scheme of investigation is required by Condition 22 to prevent loss of any archaeological remains. Condition 24 is necessary to ensure appropriate access is provided to the site. Conditions 25 and 26 secure off-site highways and bus service mitigation as discussed above. To encourage sustainable transport and ensure connectivity, Condition 27 requires pedestrian and cycle linkages to be provided.

*Patrick Hanna*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT

Giles Cannock QC of Counsel, Kings Chambers  
(instructed by David Hutchison,  
Pegasus Group)

He called:

David Hutchison BSc(Hons) DipTP MRTPI	Pegasus Group
Paul Harris CMLI	MHP Landscape
Simon Tucker BSc(Hons) MCIHT	David Tucker Associates
Richard Cox	Sydney Mitchell LLP

### FOR KETTERING BOROUGH COUNCIL

Stephanie Hall of Counsel, Kings Chambers  
(instructed by Jamie Parsons,  
Kettering Borough Council)

She called:

Theresa Nicholl DipTP MRTPI	Development Team Leader
Jamie Parsons	Planning Lawyer

### FOR NORTHAMPTONSHIRE COUNTY COUNCIL

Martin Draper BEng(Hons) Senior Development Management  
Engineer (Highways)

## **DOCUMENTS**

- 1 Notification, press advert and list of those notified
- 2 Appellant's opening statement
- 3 Council's opening statement
- 4 Planning Statement of Common Ground
- 5 Accessibility Statement of Common Ground
- 6 Bus routes, timetables and accessibility plan
- 7 Email dated 9 November 2020 from James Loader (NCC) to Theresa Nicholl
- 8 Northamptonshire Bus Strategy (January 2013)
- 9 Fixing our Broken Housing market (CD 5.12)
- 10 Planning for the Future (CD 5.13)
- 11 Buxton Drive Design and Access Statement (CD 5.14)

- 12 Buxton Drive committee report (CD 5.15)
- 13 Appellant's 5YHLS appeal decision extracts (CD 6.21)
- 14 Draft Planning Obligation by Deed of Agreement
- 15 Suggested agreed conditions
- 16 CIL compliance schedule
- 17 Off-site roundabout improvements general costings
- 18 Council's closing statement
- 19 Appellant's closing statement
- 20 Planning Obligation by Deed of Agreement, dated 19 November 2020

### **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 for each phase, before any development is commenced in respect of that part of the site to which the approval of reserved matters relates and the development shall not be carried out other than as approved.
- 2) Applications for approval of reserved matters shall be submitted to the local planning authority before the expiration of 3 years from the date of this permission. Applications for approval of reserved matters may be submitted for a full phase or part of a phase.  

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.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: 001-B (Location Plan); 22180-02 (Interim Gold Street Junction Improvements); and ADC1650/DR/002 Rev P8 (Access Junction Layout).
- 4) Notwithstanding the submitted illustrative masterplan, a Site Wide Masterplan (SWM) shall be submitted to the local planning authority either prior to or alongside the first application for approval of reserved matters for its written approval. The SWM shall include broad areas and quantum of public open space and play areas, sustainable urban drainage, residential development cells, footpath and cycleway links and areas for landscaping, and shall demonstrate how the development provides for a net gain in biodiversity and green infrastructure. The SWM shall also show the distribution of the 30% of the dwellings that comprise the affordable housing. Thereafter, the reserved matters applications shall accord with the approved SWM.
- 5) Prior to or as part of the first reserved matters application a phasing plan for the whole site shall be submitted to the local planning authority for approval in writing. Development shall be carried out in accordance with the approved phasing plan or any subsequent approved revisions thereto.

- 6) The residential development hereby permitted shall not comprise more than 260 dwellings (use class C3).
- 7) No development shall take place within any given phase until details of the existing and proposed site levels and finished floor levels for all buildings within that phase shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 8) No development above slab level shall take place within any phase until samples of the materials to be used in the construction of the external surfaces of all the buildings in that phase shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 9) Alongside any application for approval of reserved matters which includes a dwelling, details of the house types of the dwellings to be constructed as affordable houses and to M4(3) 'Wheelchair user dwellings' of Part M of the Building Regulations 2010 (as amended) shall be submitted to and approved in writing by the local planning authority, and shall amount to at least 3% of the affordable units of the entire application site. The development shall be carried out in accordance with the approved details.
- 10) No dwelling shall be occupied until a scheme detailing arrangements for the ongoing management and maintenance of the public realm, landscape planting and areas of open space within the development (or within each phase if developed in phases), street furniture and any unadopted roads, for a period of 15 years from the completion of the approved landscaping scheme, shall have been submitted to and approved in writing by the local planning authority. The development shall be maintained in accordance with the approved scheme.
- 11) No site clearance, preparatory work or development shall take place until a detailed Arboricultural Method Statement shall have been submitted to and approved in writing by the local planning authority, including details of the following:
  - i) tree protection measures;
  - ii) implementation, supervision and monitoring of all approved construction works within any area designated as being fenced off or otherwise protected in the above tree protection measures; and
  - iii) timing and phasing of arboricultural works in relation to the approved development.

The scheme for the protection of the retained trees shall be carried out in accordance with the approved details.
- 12) The existing hedgerows which are identified for retention on the draft Tree Retention Plan 8932-T-02 in the FPCR Arboricultural Assessment, dated July 2019, shall be retained in perpetuity and shall not be cut down, grubbed out or otherwise removed, or topped or lopped so that the height of the hedge falls below 2 metres at any point, without the written consent of the local planning authority. If any of these hedges are removed without such consent or which die or become severely damaged shall be replaced with hedging plants of such size and species as shall have been approved in writing by the local planning authority within the next planting season following the hedge removal.

- 13) No development shall take place (including demolition, ground works, vegetation clearance) until a Construction Environmental Management Plan (CEMP: Biodiversity) shall have been submitted to and approved in writing by the local planning authority. The CEMP: Biodiversity shall include the recommendations provided in the Avion Ecology Ecological Assessment Report dated 27 July 2018, and the following:
- i) risk assessment of potentially damaging construction activities;
  - ii) identification of biodiversity protection zones;
  - iii) 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);
  - iv) the location and timing of sensitive works to avoid harm to biodiversity features;
  - v) the times during construction when specialist ecologists need to be present on site to oversee works;
  - vi) responsible persons and lines of communication;
  - vii) the role and responsibilities on site of an ecological clerk of works or similarly competent person;
  - viii) monitoring and remedial measures.

The development shall be carried out in accordance with the approved CEMP: Biodiversity throughout the construction period.

- 14) No development shall take place until a Landscape and Ecological Management Plan (LEMP) shall have been submitted to and approved in writing by the local planning authority. The content of the LEMP shall include the recommendations provided in the Avion Ecology Ecological Assessment Report dated 27 July 2018 and the following:
- i) description and evaluation of features to be managed;
  - ii) ecological trends and constraints on site that might influence management;
  - iii) aims and objectives of management;
  - iv) appropriate management options for achieving aims and objectives;
  - v) prescriptions for management actions;
  - vi) preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
  - vii) details of the body or organisation responsible for implementation of the plan;
  - viii) ongoing monitoring and remedial measures; and
  - ix) details of the legal and funding mechanism by which the long-term implementation of the plan will be secured.

The development shall be carried out in accordance with the approved LEMP.

- 15) No development in any phase shall take place until full details of the surface water drainage scheme for the site, based on the BSP Consulting Flood Risk Assessment and Drainage Strategy dated 5 August 2019, shall have been submitted to and approved in writing by the local planning authority, and shall include the following:

- i) verification of the potential for disposing of surface water by means of a sustainable drainage system, based on Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version);
- ii) detailed design (including diameters, invert and cover levels, gradients, dimensions) of all elements of the proposed drainage system, to include pipes, inspection chambers, outfalls/inlets and attenuation structures as required;
- iii) full and appropriately cross-referenced supporting calculations;
- iv) cross sections of control chambers and flow control manufacturers' hydraulic curves;
- v) details of any phasing, including timetables for implementation and completion of the drainage works; and
- vi) 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 scheme.

- 16) Any subsequent reserved matters application for the development plots shall make reference to the surface water drainage scheme approved under Condition 15. Where any changes are required from the approved surface water drainage scheme, full details shall be submitted, including an updated Flood Risk Assessment which demonstrates the further works or changes that are required. The development shall only take place in complete accordance with the originally approved scheme or the updated scheme as approved in writing by the local planning authority pursuant to that application.
- 17) No part of the development hereby approved shall be occupied until a verification report by a suitably qualified drainage engineer shall have been submitted to and approved in writing by the local planning authority confirming that such scheme as may have been approved under Conditions 15 and 16 has been fully implemented for that part of the site, including details of any performance testing.
- 18) Any application for reserved matters for the dwellings hereby approved shall be accompanied by a scheme for achieving the external and internal noise levels outlined in BS8233:2014 and World Health Organisation Guidelines for any affected dwellings. All works which form part of the scheme shall be completed in accordance with the approved scheme before any respective dwelling is occupied and shall be retained thereafter.
- 19) No development shall take place until a Construction Management Plan (CMP) shall have been submitted to and approved in writing by the local planning authority. The approved CMP shall be adhered to throughout the construction period and the approved measures shall be retained for the duration of the construction.
- 20) No development shall take place until a report by a suitably qualified person which sets out the results of the required site investigation, as set



out in the submitted Phase 1 Desk Study Report by BSP Consulting, dated April 2019, shall have been submitted to and approved in writing by the local planning authority.

Should the site investigation report conclude that site remediation is required, then no development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been submitted to and approved in writing by the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to be carried out during the development. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works.

Within 3 months of completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the local planning authority. If the site is developed in phases this report must be submitted to and approved in writing by the local planning authority within three months of the completion of the remediation measures for each phase.

- 21) No above ground development shall take place until a scheme and timetable detailing the provision of fire hydrants and their associated infrastructure shall have been submitted to and approved in writing by the local planning authority. The fire hydrants and associated infrastructure shall be provided in accordance with the approved scheme and timetable.
- 22) No development shall take place until an Archaeological Written Scheme of Investigation (WSI) shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions, and:
  - i) the programme and methodology of site investigation and recording;
  - ii) the programme for post investigation assessment;
  - iii) the provision to be made for analysis of the site investigation and recording;
  - iv) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
  - v) the provision to be made for archive deposition of the analysis and records of the site investigation;
  - vi) the nomination of a competent person or persons/organization to undertake the works set out within the written scheme of investigation.

The development shall be carried out in accordance with the approved WSI.

- 23) Any application for reserved matters which identify tree T3 for felling, as identified in the FPCR Arboricultural Assessment, dated July 2019 (also identified as TN6 in the Avion Ecology Ecological Assessment Report dated 27 July 2018) shall include a survey of this tree for bat roost potential and details of proposed mitigation. The development shall be carried out in accordance with the approved details.
- 24) No dwelling hereby approved shall be occupied until the site accesses hereby approved onto the Harborough Road shall have been implemented in accordance with drawing ref. ADC1650/DR/002 Rev P8 (Access Junction Layout).
- 25) The development hereby approved shall not be commenced until detailed proposals for the interim localised scheme at the Gold Street junction, as shown on drawing ref. 22180-02 (Interim Gold Street Junction Improvements) shall have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until either the approved scheme has been implemented in full or the scheme shown on drawing ref. Figure 6 of The Grange II Desborough North (dated 4th January 2011) has been delivered.
- 26) No dwelling hereby approved shall be occupied until a scheme shall have been submitted to and approved by the local planning authority for provision of three bus stops (two on Harborough Road and one within the site) together with details of a safe crossing for Harborough Road for the southbound stop. The scheme shall include engineering and construction details of bus stop infrastructure (including trueform-style pole, bus boarder, real time display and wooden shelter) and a timetable for implementation of the site bus stop. No dwelling shall be occupied until the bus stops and crossing on Harborough Road shall have been implemented in full accordance with the approved details. The site bus stop shall be provided in full accordance with the approved details and timetable.
- 27) Any application for reserved matters for layout shall be accompanied by full details of all pedestrian and cycle links both within the site and from the site to the Straight Furlong byway. At least four such links shall be provided for the development. No dwelling shall be occupied in respect of any phase until the approved pedestrian and cycle links shall have been provided for the particular phase in which each is situated.

End of Schedule