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# Appeal Decision

Hearing held on 16 August 2012  
Site visit made on 16 August 2012

**by P W Clark MA MRTPI MCI**

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

**Decision date: 3 October 2012**

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**Appeal Ref: APP/K2610/A/12/2172754**

**65 Salhouse Road and farmland off Salhouse Road, Rackheath, Norfolk NR13 6PD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Dennis Jeans Developments Ltd against Broadland District Council.
  - The application Ref 20111272, is dated 23 August 2011.
  - The development proposed is residential development and ancillary works.
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## Decision

1. The appeal is allowed and planning permission is granted in outline for residential development and ancillary works at 65 Salhouse Road and farmland off Salhouse Road, Rackheath, Norfolk NR13 6PD in accordance with the terms of the application, Ref 20111272, dated 23 August 2011, subject to the conditions set out in the Appendix to this decision.

## Procedural matters

2. The application is made in outline form. At this stage approval is sought for the principle of development. The only details for which approval is being sought are of one of the accesses proposed (on to Salhouse Road, for vehicles, pedestrians and cyclists). Details of other accesses, appearance, landscaping, layout and scale are not submitted for approval.
3. Although the application was made in outline with scale a reserved matter, it was not accompanied by the statement of the upper and lower limits for height, width and length of each building proposed, which is required by Article 3(4) of the Town and Country Planning (General Development Procedure) Order. Nevertheless, the Council validated and registered the application. The deficiency is made good with a statement of upper and lower limits which accompanied the appellant's appeal statement.
4. By the conclusion of the hearing, a signed and dated planning obligation had been submitted. In addition to providing for affordable housing and public open space, it would provide financial contributions to green infrastructure, and library and school expansion to serve the development. I am satisfied that these contributions would be proportionate to the scale of the development and, for the reasons stated in paragraphs 12 and 20, are necessary for the

development to be found acceptable. The provisions of the agreement therefore comply with the CIL regulations and have been taken into account.

### **Application for costs**

5. At the Hearing an application for costs was made by Dennis Jeans Developments Ltd against Broadland District Council. This application is the subject of a separate Decision.

### **Main Issues**

6. There are four. They are the effects of the proposal on;
  - European or Internationally protected sites
  - The principle of development in this location, including its effects on
    - The supply of housing in the locality and
    - The relationship with the suggested Rackheath eco-town
  - Highway safety (raised by third parties, not the Council), and
  - Public expectations of involvement in the planning process

### **Reasons**

#### *Habitats Regulations Assessment*

7. The Council asks that consideration be given to the Habitats Regulations requirements by determining whether an appropriate assessment is required and, if so, carrying out said assessment, prior to the determination of the appeal. The concern arises from the Habitats Regulation Assessment (HRA) of the Joint Core Strategy for Broadland, Norwich and South Norfolk (JCS). Although elements of the JCS were remitted for reconsideration following a judicial review, the HRA remains valid.
8. The approach to be taken in considering a development proposal that might affect a site protected under the Habitats Regulations is set out in ODPM Circular 06/2005. The first stage in the process is to establish whether the proposed development is directly connected with, or necessary to, nature conservation management of the protected area. That is not the case with this appeal proposal so consideration passes to the second stage. The second stage is to determine whether the proposal is likely to have a significant effect on the interest features of the site (or sites), either alone, or in combination with other plans or proposals.
9. The HRA of the JCS, published in February 2010, identified potential direct and indirect impacts on the Broads SAC and the Broadland Ramsar and SPA from land take for development within 2-3km of the designated sites. The Assessment concluded that with the inclusion of specific mitigation measures, it is highly unlikely that the JCS policies would have a significant direct or indirect impact on European and Ramsar designated sites. In any event, the appeal site lies more than 3km from any designated site and so direct and indirect impacts from this appeal proposal may be excluded.
10. The HRA of the JCS also considered potential in-combination and cumulative impacts from development within the JCS and other relevant local authority

areas on a much wider range of protected sites. It concluded that uncertainty remains regarding the potential in-combination and cumulative effects associated with water resources, water efficiency, growth and tourism on European and Ramsar designated sites resulting from planned growth within the Greater Norwich Development Partnership area (within which the appeal site lies). However, it asserted that this uncertainty can be reduced and any significant effects avoided through three specified measures.

11. The three measures are;

- the implementation of green infrastructure developments;
- the allocation of greenspace to protect specific natural assets and designated sites and implemented through Area Action Plans and;
- the implementation of water infrastructure improvements and water efficient measures as recommended in the Water Cycle Study, enforced through the Anglian Water Services Water Resource Management Plan.

12. The appeal proposal is accompanied by a s106 planning obligation which, amongst other things, provides for an index-linked financial contribution to the County Council for the provision of green infrastructure. The appeal proposal lies outside any proposed allocation of greenspace to protect specific natural assets and designated sites. The appellant's submitted Infrastructure Overview Statement contains a pre-development report by Anglian Water Services confirming that the development will be required to pay for off-site reinforcement works and a contribution to the Heigham to Mousehold Transfer strategic scheme. A planning condition (11) can require the submission of a scheme of water efficiency measures and their implementation. It is therefore possible to conclude that the mitigation measures necessary to avoid significant in-combination and cumulative effects on a wider range of protected sites would be in place.

13. I therefore conclude that, with the planning obligation and condition in place, the development would give rise to no direct or indirect effect on any protected site and that, in combination with other plans and proposals, it would give rise to no significant effect on any protected site. Accordingly, no appropriate assessment is required. I am supported in this conclusion by the response of Natural England to consultation on the proposal. Natural England is the Secretary of State's scientific adviser on the subject of biodiversity. Its response does not suggest any need for assessment under the Habitats Regulations.

#### *The principle of development*

14. Both parties agree that, whatever method of calculation is used, there is not a supply of specific deliverable sites sufficient to provide five years' worth of housing supply assessed against local requirements. The Greater Norwich Development Partnership Five Year Supply of Housing Assessment Base Date 1 April 2011 shows that such would remain the case even if the Joint Core Strategy for Broadland, Norwich and South Norfolk were fully adopted. The contribution which the proposal would make towards meeting the need for housing in the area would therefore be an undoubted benefit.

15. Paragraph 49 of the National Planning Policy Framework advises that housing applications should be considered in the context of the presumption in favour of

- sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. Paragraph 119 of the Framework advises that the presumption in favour of sustainable development does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined but I have already concluded that no appropriate assessment is required in this case.
16. The presumption in favour of sustainable development is explained in paragraph 14 of the Framework. For decision-taking, where the development plan is absent, silent or relevant policies are out-of-date, it means granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole or unless specific policies in the Framework indicate development should be restricted.
  17. One of the core planning principles, set out in paragraph 17 of the Framework, is that planning should be genuinely plan-led. The Broadland District Local Plan (Replacement) adopted in May 2006 remains in force. Its policy GS1 would permit development within defined settlement limits but refuse permission outside the limits. The site is outside the defined development limits for Rackheath but in view of the housing supply situation, this provision of the development plan is clearly out-of-date.
  18. The Joint Core Strategy for Broadland, Norwich and South Norfolk (JCS) was the subject of a legal challenge which resulted in up-to-date policies which would otherwise be relevant to this appeal being remitted for further consideration. Although they have been recently republished for public representation prior to resubmission to the Secretary of State, the previous challenge indicates that they are controversial and so there can be no presumption that they would eventually form part of the adopted development plan for the area. Although there remains the possibility that the preferred settlement pattern and housing quantities eventually adopted for Broadland may exclude this site, in effect the development plan must be regarded as absent or silent on this issue.
  19. There is also concern that benefits of a plan-led approach would be lost if this appeal were allowed. An impression of what these might be can be obtained from three sources. In addition to both the unremitted and remitted policies of the JCS, the latter now republished for public representation, there is also the master plan for Rackheath, nominated as the location for an eco-town in annex A of the government's Planning Policy statement: *Eco-towns; A supplement to Planning Policy Statement 1*.
  20. Examination of these sources establishes that the development and its accompanying s106 obligation would provide (or could be required by condition (8) to provide) proportionately to its size all the benefits of a planned development set out in the remitted and unremitted policies of the JCS or depicted in the Rackheath master plan except;
    - a contribution to a proposal for a new railway station at Rackheath. The appeal scheme would benefit from this proposal but does not include any contribution to its achievement. A site for the station is identified in the Rackheath Master Plan but that is not an adopted plan and has no official

status. Otherwise, no station site is defined; the project is not designed or costed and there is no information about a timetable for a project plan.

- a Bus Rapid Transit route via Salhouse Road. The appeal scheme would benefit from this proposal but would not contribute to its implementation. However, the project is not designed or costed and there is no information about a timetable for a project plan.
- A contribution to a new household waste recycling centre. There is no information about the design, costing or timetable for a project plan for this proposal.

From this, it follows that although there is a presumption in favour of developing this site for housing, to allow this appeal now might lead to the loss of some of the benefits of the plan-led approach. However, there is no information of the timescale within which those projects would have progressed to a point where a proportion of their implementation costs could be ascribed to the current appeal proposal.

21. The government publication *The Planning System: General Principles* advises that in some circumstances, it may be justifiable to refuse planning permission on grounds of prematurity where a DPD is being prepared or is under review but has not yet been adopted (as in the present case). *General Principles* distinguishes between the extremes of a DPD at the consultation stage with no early prospect of submission for examination (when refusal on grounds of prematurity would seldom be justified) and a DPD submitted for examination with no representations in respect of relevant policies. In the present case, the relevant policies of the DPD have been published for representations but have not been resubmitted for examination and in any event are likely to be controversial, a situation closer to the first example than the latter. This suggests that to dismiss this appeal on grounds of prematurity would be inappropriate.
22. *General Principles* also advises that refusal of permission on grounds of prematurity may be appropriate where a proposed development is so substantial, or where the cumulative effect would be so significant that the permission would prejudice the DPD by predetermining decisions about the scale, location or phasing of new development. The current case represents less than 1% of the total quantity of housing development in Broadland which is envisaged in either the East of England Plan or the JCS. The contribution which it might be expected to make to the three plan-led projects identified above, were they to be progressed to an implementation stage, would be equally insignificant.
23. I conclude that some of the benefits of a plan-led approach would be lost by allowing this appeal but most would be achieved through conditions or through the planning obligation. I have considered whether a restricted time-limit for the commencement of this development should be imposed so as to bring any renewal of permission into a time period where the full benefits of the plan-led approach could be captured but there is no information of a date by which the remaining benefits would have progressed to a point where the contributions expected from the development of this site could be identified. In any event it is clear that they would be so small as to be insignificant. Likewise, the quantity of development proposed in this appeal scheme is so small that it would have no prejudicial effect on the outcome of the JCS preparation

process. The principle of development of this site for housing is therefore acceptable at the present time.

### *Highway Safety*

24. No objective evidence was supplied to substantiate residents' concerns about the volume of traffic on Salhouse Road. Between the roundabout to the south-west of the village and the level crossing to the north east of the village it comprises a long, straight, flat road which might be expected to invite speeding. Despite that, the records which were supplied show a surprisingly close average observance of the speed limit. It was reported that the police are in regular attendance to enforce the speed limit. Although that may be evidence of an endemic or potential problem, a solution would lie in the regulation of the highway, not the dismissal of this appeal.
25. All roads are dangerous to a degree but the accident statistics supplied do not lend support to the idea that this road is more dangerous than would be normal. The junction on to Salhouse Road would be designed to the more demanding standards for visibility of the *Design Manual for Roads and Bridges* rather than the less demanding standards of *Manual for Streets* (MfS) which would also be acceptable in a developed location. The development can be required by condition (4) to be carried out in accordance with the detailed plans for the junction.
26. Although I cannot doubt the truth of residents' anecdotal evidence of tailbacks from the railway crossing 130 m away obstructing sightlines at times, the operation of the level crossing occurred during my site visit, at the time of the evening peak, the effects of which did not lend support to the idea that adequate safety levels would not be met. Likewise, the distance between the junction of the development on to Salhouse Road and the junction of Eva Road is about twice that required by normal standards to avoid driver confusion.
27. The junction onto Salhouse Road would be shared with the existing cul-de-sac serving a number of dwellings fronting on to Salhouse Road. MfS paragraph 6.7.3 observes that local authorities have often argued that the larger the site, the more likely it is that a single access could be blocked for whatever reason. The Council and the appellant both agree that the number of dwellings served from the single access should not exceed 100 and so the number of dwellings permitted on the appeal site would be limited to 80 by condition number (5).
28. With the appropriate conditions in place, I conclude that the proposal would not give rise to an unacceptable risk to highway safety. The proposal would comply with local plan policies GS3(d) and TRA14 which are concerned with the achievement of highway safety in new developments.

### *Public expectations of involvement*

29. The Council refers me to the provisions of the Localism Act which insert paragraph 61W into the Planning Act so as to require developers to consult with local communities before submitting plans. That section of the Act, and the regulations to which it refers, are not yet in force. Nevertheless the appellant carried out a degree of community consultation and sought individual consultation with residents on either side of the proposed access.
30. The Council also refers me to the advice contained in paragraph 69 of the NPP Framework. That encourages local planning authorities to involve all sections

of the community. It does not suggest any failing in the current appeal proposal. Paragraph 66 of the Framework expects applicants to work closely with those directly affected by their proposals to evolve designs that take account of the views of the community. In this case, details of the design in terms of appearance, landscaping, layout and scale are matters reserved for later consideration and are not now before me, or local people.

31. Paragraph B21 of DCLG Circular 03/2009, *Costs awards in appeals and other planning proceedings* advises that planning authorities are expected to consider the views of local residents when determining a planning application. But to carry significant weight, opposition should be founded on valid planning reasons supported by substantial evidence.
32. Local residents' objections are principally on grounds of highway safety, surface water flood risk, amenity and the principle of development. The first and last of these have already been considered and conclusions reached. The other matters are considered below. There is nothing to suggest that local residents' concerns have been overlooked or disregarded in the face of substantial evidence.

*Conditions and other matters.*

33. All other matters raised have been considered but do not lead to a conclusion other than that this appeal should be allowed. The Council raises no issue of residential amenity. In any event, layout (which might give rise to considerations of outlook, privacy or loss of light) and landscaping (which would provide details of walls or fences to provide noise barriers where the new access passes to the side of existing dwellings) are reserved matters for later consideration.
34. There is no information to doubt the truth of residents' assertions that surface water flooding occurs from time to time at the junction with Salhouse Road. Paragraph 3.8 of the appellant's own Flood Risk and Drainage Assessment recommends that the proposed development should have finished floor levels 150-300mm above surrounding ground levels to cope with this. In section 5 it also recommends a Sustainable Drainage System (SUDS) for surface water run-off from the development to ensure that the proposed development would not exceed the existing rate or volume of discharge of surface water from the site. This can be secured by conditions (7) and (10) to ensure that existing off-site conditions are not made worse and so there is no reason to dismiss the appeal on this ground.
35. The Council has suggested 19 conditions in the event of this appeal being allowed. These have been considered in the light of advice contained in government circular 11/95, *the Use of Conditions in Planning permissions*, preferring the model forms contained therein where appropriate. Some of the suggested conditions would duplicate the requirement to submit reserved matters, or could be imposed when those reserved matters are submitted and so are omitted. Other matters (such as the provision of open space) are provided for within the s106 agreement.
36. The first three conditions are required by law. The fourth is included for the reasons set out in paragraph 25 and because the design of the junction was varied during its consideration by the Council, so it is necessary to make clear which drawing is approved. Paragraph 27 explains the reason for condition

number 5. Condition 6 is included for clarity. Paragraph 34 explains the reason for conditions 7 and 10. Paragraph 20 explains that condition 8 would secure some of the benefits of a comprehensively planned development. Condition 9 is necessary to ensure that conditions 4 and 8 are effective. Paragraph 12 explains the reason for condition 11. Condition 12 is required to comply with policy ENG1 of the East of England Plan and with JCS policy 2. Condition 13 is required to ensure that the construction process does not lead to unsafe conditions on the public highway.

*P. W. Clark*

Inspector

Richborough Estates



## **APPENDIX – Conditions**

- 1) Details of access (other than that onto Salhouse Road at number 65), 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 begins 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 begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The access on to Salhouse Road hereby permitted shall be carried out in accordance with approved plan number 2510.02, revision E.
- 5) The details required by condition (1) shall not include provision for more than 80 dwellings.
- 6) The details required by condition (1) shall include the provision of fire hydrants, walls and fences and street lighting.
- 7) The details required by condition (1) shall show finished ground floor levels raised above ground levels in accordance with the recommendations of paragraph 3.8 of the Flood Risk and Drainage Assessment dated August 2011 – version 3 by Bingham: Hall Associates.
- 8) The details of access required by condition (1) shall include a pedestrian and cycle path from a point on the south-western boundary of the site suitable for connection into the existing path leading westwards through the tree belt to the rear of properties in Canfor Road to a point on the north eastern boundary of the site suitable for a connection onward to adjoining land and also a pedestrian and cycle path from a point on the south-eastern boundary of the site suitable for a connection into the existing trackway to the side of number 93 Salhouse Road to a connection with the above first mentioned pedestrian and cycle path.
- 9) Before any dwelling is first occupied, the roads, footways and cycleways shown in the approved details of access shall have been completed in accordance with those approved details.
- 10) The details of layout required by condition (1) shall include details of foul and surface water drainage. No dwelling shall be occupied until the foul and surface water drainage scheme has been completed in accordance with the approved details.
- 11) No development shall take place until details of water efficiency measures to comply with section 6 of Anglian Water Services' pre-development report dated 06/06/11 submitted with the application and to comply with level four of the Code for Sustainable Homes for water 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.

No dwelling shall be occupied until the water efficiency measures have been completed.

- 12) No development shall take place until a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of the development from decentralised and renewable or low carbon energy sources or to reduce the development 's energy consumption by 10% has been submitted to and approved in writing by the local planning authority as part of the reserved matters submissions required by condition (1). The development shall be carried out in accordance with the approved details which shall be retained as operational thereafter.
- 13) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- i) the parking of vehicles of site operatives and visitors
  - ii) loading and unloading of plant and materials
  - iii) storage of plant and materials used in constructing the development
  - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - v) wheel washing facilities
  - vi) measures to control the emission of dust and dirt during construction
  - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works.

Richborough Estates

## APPEARANCES

### FOR THE APPELLANT:

David Lander MRTPI	David Lander Consultancy
David Futter MCICE	Director, David Futter Associates
Andrew Bingham CEng	Bingham: Hall Associates
MCIWEM MIHT	
John Pugh-Smith	Of Counsel
Dennis Jeans	Appellant

### FOR THE LOCAL PLANNING AUTHORITY:

Ben Burgess BA DipTP DipUDP	Planning Projects Manager, Broadland District Council
Paul Harris MTP DipUD	Planning Policy Team, Broadland District Council

### INTERESTED PERSONS:

Cllr Steve Buckle	District Councillor
Neil Greenfield	Parish Councillor and local resident
Clair Hollidge	Local resident
Julie Playford	Local resident

## DOCUMENTS

- 1 Joint Core Strategy for Broadland, Norwich and South Norfolk; Habitats Regulation Assessment
- 2 Technical Briefing Note by Aspect Ecology – Habitats Regulations
- 3 Paul Harris correction to Council statement
- 4 Natural England; Conservation Objectives for ten protected sites
- 5 S106 agreement
- 6 East of England Plan; Vision and Objectives
- 7 Joint Core Strategy for Broadland, Norwich and South Norfolk Regulation 19 Publication and Sustainability Appraisal consultation, August 2012
- 8 Greater Norwich Development Partnership. Publicity pack for proposed submission
- 9 Rackheath Eco-town masterplan
- 10 Comments on suggested conditions
- 11 Letter of interest from Dove Jeffery Homes
- 12 Letter from Bidwells enclosing letter of interest from Persimmon Homes
- 13 Adopted policies of the JCS indicating potential benefits of plan-led process
- 14 Letter notifying date time and place of hearing