



Appeal Decision

Hearing held on 10 February 2016

Site visit made on 11 February 2016

by **Peter Rose BA MRTPI DMS MCM**

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

Decision date: 31 March 2016

Appeal Ref: APP/F2605/W/15/3027972

Land south of Dereham Road, Mattishall, Norfolk

- 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 Gladman Developments Ltd against the decision of Breckland District Council.
 - The application Ref: 3PL/2014/1143/O, dated 27 October 2014, was refused by notice dated 26 January 2015.
 - The development proposed is the erection of up to 90 dwelling houses with associated infrastructure.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application as originally submitted is for outline planning permission with all matters reserved for approval except for access.
 3. As part of the appeal, the appellant has requested two changes be considered to the originally submitted scheme. The first relates to reducing the number of dwellings to 'up to 65'. The second relates to amended arrangements for access. Both these changes reflect the terms of a second, later application submitted to the Council in response to the refusal of planning permission which forms the subject of this appeal. That second application has not been formally determined by the Council and is not subject to appeal, but was to be recommended for approval by the Council's officers.
 4. The Planning Inspectorate's Procedural Guide Planning Appeals - England July 2015 (the Procedural Guide) makes clear that the appeal process should not be used to evolve a scheme. Even so, I have had regard to *Bernard Wheatcroft Ltd v Secretary of State for the Environment and Another 1982*, and to related submissions, and do not consider any interests would be prejudiced by considering a limitation on the appeal scheme to 65 dwellings as proposed by the appellant should I otherwise conclude, having regard to all relevant matters, that the appeal should be allowed.
 5. In relation to access, the amended scheme would propose materially different arrangements to that subject to appeal. In particular, the main access to the development would still be sited in Dereham Road but would be positioned a distance estimated by the appellant to be some 125 metres to the east, and
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opposite other, different dwellings. That amendment has not been the subject of publicity as part of this appeal proposal and I note significant concern previously expressed by third parties relating to traffic and associated matters in response to the Council's original publicity of the appeal scheme. Whilst the amended access has been publicised as part of the second application, that application is not before me as part of this appeal. In the absence of appropriate publicity, I find the appeal proposal would be so changed as to potentially prejudice the interests of third parties.

6. I also heard representations from third parties at the hearing that an opportunity would be taken to challenge the officer recommendation to grant planning permission for the second application prior to any formal Council decision and this had not yet been available. The Council confirmed that the revised plan was not part of the documents which formed the basis of the authority's decision in relation to the appeal proposal and has not been otherwise considered by the Council's Committee.
7. In response to my concerns towards third party interests regarding the implications of considering the revised access, the appellant indicated at the hearing that, in such circumstances, it would propose that all matters of access should be deleted from the appeal proposal and that access should instead remain as a further reserved matter for future consideration. The Council raised no objection to this amendment although I heard misgivings from third parties who consider access to be integral to the scheme and requiring consideration from the outset. Whilst I find the proposal to be less meaningful in the absence of access details, the form and content of the application is, in the first instance, a matter for the appellant's discretion. All aspects of access would remain to be considered and to be approved as appropriate, and I do not consider any third party interests would be prejudiced on that basis. I therefore propose to determine the appeal in the absence of access, and no further consideration was given to matters of access at the hearing.
8. The Council's decision notice also includes reference to the need for archaeological evaluation (Reason 3). The main parties advised that objection has now been resolved following submission of further details.
9. Although matters of appearance, layout, landscaping and scale were not formally submitted for determination as part of the appeal application, the submission is accompanied by significant illustrative details to which I have due regard. These include a Development Framework Plan (the DFP).
10. The appeal is also accompanied by a Unilateral Undertaking made under section 106 of the Town and Country Planning Act 1990 which has been signed and executed as a deed dated 30 July 2015. A further Deed of Variation dated 18 February 2016 has also been submitted and signed by the local planning authority.
11. I consider the appeal on the above basis.

Main Issues

12. The main issues are:

- (a) what effect the development may have upon the character and appearance of the appeal site and the surrounding area, and;

(b) possible implications of flooding, both for the development, and arising from the development.

Reasons

Character and appearance

13. The appeal site comprises some 4.0 hectares of open farmland on the western edge of Mattishall. The site fronts Dereham Road to the north. This facing part of Dereham Road is predominantly residential in character and comprises a variety of relatively large dwellings set in generous plots and of contrasting forms and designs. The site is bounded by further dwellings to the east and by Old Hall Road to the west. To the south, the site adjoins further open land.
14. The appeal site has the character and appearance of open countryside and is part of a wider expanse of similar land extending south. Whilst enclosed by hedgerows to the front and partially by further hedgerows and trees along other boundaries, the open, rural character of the site is a significant feature of this part of the village's setting and is particularly evident in approaching the site from Dereham Road to the west.
15. The appeal site lies outside the Settlement Boundary defined by the development plan where a generally restrictive approach to new residential development applies.
16. The appellant's illustrative DFP for up to 90 dwellings identifies a density of 34 dwellings per hectare. The corresponding plan for up to 65 dwellings indicates a density of 24 dwellings per hectare. Both plans include significant provision for landscaping, and particularly along the site's southern boundary where a filtered edge unoccupied by dwellings is proposed consistent with the adjacent open countryside. Even so, I note that the Council's calculations indicate the density of existing housing opposite to be significantly lower than that proposed.
17. The appellant's Landscape and Visual Impact Assessment (the LVIA) identifies direct effects on landscape to be limited to the internal area of the site, and to be at a local level only. It acknowledges the inevitable change in the fundamental character of the existing field but considers this to be moderated by integration of the development into the surrounding landscape through appropriate design and extensive new planting. It identifies the western edge of Mattishall as a post-war housing expansion and suggests the nature of the site and the gateway location lend itself to the natural extension of Mattishall without undue effect on the wider open agricultural character.
18. I note that the site itself is not designated for any specific landscape importance. Given the indications in the DFP of significant areas of planting and other open space around its southern, north western and north eastern perimeters, I find the immediate impact upon the physical, landscape character of the site itself to be modest, although a hard built frontage, contrasting with the open existing countryside, would be created along Dereham Road.
19. Visual effects with regard to specific views and upon wider visual amenity, however, are more significant. In particular, the existing contribution of the appeal site as part of an open, rural setting to the village, and contributing to a similar surrounding character would be lost. Despite proposed landscaping, the scheme would have the inherent character and appearance of built form, and

- the DFP suggests this would still be evident along boundaries to the site with dwellings likely to be evident above boundary landscaping.
20. Notwithstanding concerns regarding the visual impact of a residential development in this setting, including from third parties, matters of appearance, layout and landscaping do not form part of the application subject to this appeal and remain to be fully and properly assessed in due course should this appeal be allowed.
21. Nevertheless, I find the proposal would lead to a harmful loss of open countryside contrary to the existing character and appearance of the appeal site and its surroundings. The proposed introduction of built form outside the defined Settlement Boundary, albeit at the edge of the settlement, would be mitigated to some degree by the proposed landscaping, but the appeal site is still part of a wider pattern of open countryside and contributes to the distinctiveness of the setting accordingly.
22. I therefore conclude that the proposed development would be harmful to the character and appearance of both the appeal site and surrounding area. Accordingly, the development would be contrary to Policies CP 11 and DC 2 of the Breckland Council Core Strategy and Development Control Policies Development Plan Document 2001-2026 Adopted December 2009 (the DPD). Policy CP 11 seeks to protect and enhance the landscape of the District for its own intrinsic beauty and for other benefits including the rural character. Policy DC 2 seeks to permit new housing development within existing settlement boundaries, including lower density developments in appropriate rural locations and at the edges of settlements. Policy SS 1 of the DPD also sets out the broad spatial strategy for development in Broadland. Mattishall is identified as a Local Service Centre Village where the strategy is defined to be primarily around service protection and enhancement and development to meet local needs.
23. The scheme would be also be inconsistent with the National Planning Policy Framework (the Framework) which identifies the legitimacy of promoting or reinforcing local distinctiveness, and which establishes a core principle to recognise the intrinsic character and beauty of the countryside. The Framework further states that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. Whilst the landscape carries no formal designation, the Minister of State for Housing and Planning's letter dated 27 March 2015 affirms the importance of the impact of development upon landscapes outside designated areas.
24. I acknowledge the appellant's concerns regarding a degree of inconsistency between Policy CP 11, which seeks to protect the landscape, and the terms of the Framework, which seeks to recognise the beauty of the countryside and, in accordance with the separate advice of the Framework in such instances, I shall attach weight to Policy CP 11 to the extent that it is consistent with the Framework.

Flooding

25. The scheme is accompanied by a Flood Risk Assessment and has been previously assessed by the Environment Agency (the EA) prior to the transfer of Lead Local Flood Authority (LLFA) responsibilities to Norfolk County Council

- (NCC) in April 2015 as the statutory consultee for surface water drainage. At the time of the Council's decision to refuse planning permission, the EA had no objection to the scheme but subject to appropriate conditions securing mitigation in relation to flooding and drainage and such matters did not form part of the Council's reasons for refusal. The EA also confirmed as part of those discussions that the site was considered to lie within Flood Zone 1 and is not within the fluvial floodplain.
26. The LLFA advises, however, that the appeal site is crossed by a watercourse which flows from south to north and this is culverted in several places, including under Dereham Road. The EA's Flood Map for Surface Water indicates a significant portion of the site adjacent to Dereham Road as being at risk to both 1 in 30 and 1 in 100 year flood events. This information gives an indication of the potential flooding from surface water run-off.
 27. The LLFA has highlighted that the extent of fluvial modelling is not defined in the location of the appeal site and that there is therefore a need to confirm the specific fluvial flood risk to ensure safe development and compliance with the Framework.
 28. The appellant acknowledges the significant implications of flooding and drainage and is of a view that such matters can be appropriately addressed through subsequent more detailed submissions. The application is accompanied by principles for sustainable drainage systems and a range of site-specific measures are proposed, including various site works and associated risk management. The appellant considers that its proposed Surface Water Drainage Strategy would ensure there would be no increased risk of surface water flooding as a result of the proposed dwellings and would reduce the risk of flooding elsewhere. The opportunity would be taken as part of the development to provide a betterment in terms of surface water storage and in managing flood risk to the wider area.
 29. The appellant also acknowledges that the fluvial modelling extent is not defined in the location of the site and that there is therefore a need, before any design is approved, to confirm site-specific fluvial risk in order to ensure safe development.
 30. Whilst Flood Zone compatibility is based around fluvial and tidal flooding, the LLFA refers to the government's Planning Practice Guidance (the Guidance) which advises that other forms of flooding should be treated consistently with river flooding in mapping probability and assessing vulnerability. In this instance, as the watercourse flows in the same location, the LLFA considers the EA's flood map provides a proxy to indicate the likely areas also at risk of fluvial flooding in the absence of the full known extent of Flood Zones 2 and 3 at the local level through further and more detailed modelling of the ordinary watercourse.
 31. The appellant accepts that the current classification of the site as Flood Zone 1 may be due to a lack of fluvial modelling but suggests that, as surface water modelling generally takes no account of hydraulic structures such as culverts and bridges, surface water maps tend to over-predict fluvial risk extents for small catchments. Such an approach as advocated by the LLFA is, nevertheless, acknowledged as a conservative proxy for fluvial flood zones suitable to inform the development scheme.

32. On the basis of the EA's map the LLFA estimated at the hearing that well over a third of the site should be regarded as being within Flood Zones 2 or 3, and considered this would mean significantly different schemes to those indicated in the respective DFP's for both up to 90 and up to 65 dwellings.
33. Accordingly, the LLFA considers that the DFP should either be modified to reflect the flood risk constraints based upon the currently available information, or that more detailed modelling is required to reflect the site-specific risk. I also note that the Council does not have an up-to-date Strategic Flood Risk Assessment in place and nor has the scheme been subject to any sequential testing.
34. Although the LLFA has no recorded or investigated incidences of flooding at this location, considerable evidence has been provided to this appeal by local residents of significant and recent flooding. The LLFA contends that the photographic and other evidence submitted supports the implications of the flood map that the site is at significant risk of flooding. The recent evidence of local residents is also that the lower lying land in the north-west of the site has been the subject of particular water accumulation. I also saw at my visit how the site slopes down towards Dereham Road and forms part of a significant wider pattern of drainage in that direction and beyond from adjacent land.
35. Whilst only illustrative, the LLFA has raised concerns that the DFP indicates proposed housing to be located within the main areas of flood risk and where there has been historic flooding. The LLFA is also concerned that the proposed surface water drainage scheme would not work if part lies within an area already at risk of flooding. Compensatory storage areas would need to be adjacent to, but outside, potential areas of flooding. The LLFA considers that Flood Zones 2 and 3 need to be defined and the most vulnerable parts of the development should occupy areas of lowest risk consistent with the Framework and the advice of the Guidance. This modelling would also inform wider residual risk mitigation such as raising finished floor levels and other relevant design details.
36. The LLFA also highlights that, whilst setting properties 6 metres from the watercourse would enable the watercourse to be maintained, such easements may not be sufficient to ensure they would not be at risk of flooding. The LLFA further advises that the mere presence of existing drainage ditches around the site would not in itself prevent flooding.
37. There would also be other issues to address around maintenance of watercourses and culverts beyond the appellant's immediate control. Various concerns have also been raised in relation to neighbouring sites, and including implications for the required aridity of Rosie Curston's Meadow, and those matters would require further consideration as appropriate.
38. I am in no doubt of the serious challenges posed by flooding and related issues, both to the living conditions of residents and as a constraint to future development of the site. Further, whatever solution may be appropriate as part of any future development would have significant implications for the scale, layout and overall form of any development. Whilst the appellant's strategy for addressing such matters may, in principle, be appropriate, I do not have sufficient information before me to find that an appropriate scheme of mitigation would be in place to support the particular scale of development proposed. It is clear that any scheme of mitigation would be likely to have

- significant implications for the substance of the development, and this could include requirements for easements, for the location and extent of water storage areas, and for possible retention of open space.
39. The Framework attaches importance to managing flood risk and advises that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. It advises that, when determining planning applications, local planning authorities should only consider development appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment and where, following a Sequential Test and possible Exception Test, development within the site is such that the most vulnerable development is located in areas of lowest flood risk. The Framework further advises that, when determining planning applications, local planning authorities should ensure that development is appropriately flood resilient and resistant.
 40. The Framework also advises that Local Plans, and by implication subsequent decisions, should be supported by Strategic Flood Risk assessment taking account of advice from relevant flood risk management bodies. More detailed advice is set out in the Guidance which states that, for the purposes of applying the Framework, areas of risk from all sources of flooding are included but, for fluvial (river) flooding, this is principally within Flood Zones 2 and 3. It further advises that the Sequential Test should not normally be necessary for development proposals in Zone 1 unless information indicates there may be flooding issues, and that the Sequential Test should be applied to all sources of flooding. The Guidance indicates that a Sequential Test is not normally required for development on sites allocated in development plans accompanied by a Sequential Test, but the appeal site is unallocated within the DPD.
 41. The Guidance also offers a Flood Risk Vulnerability Classification which identifies buildings used as dwelling houses as 'More Vulnerable' of five categories. It further indicates that development of 'More Vulnerable' uses is appropriate in Zones 1 and 2 but that an Exception Test would be required for Zone 3a if the Sequential Test were to demonstrate that it is not possible for development to be located in zones with a lower probability of flooding. The Guidance also advises that the Sequential Test should take account of surface water and other sources of flooding.
 42. Policy DC 13 of the DPD requires new development to be located in areas at least risk of flooding and for schemes to minimise flood risk to people, property and places. It states that all development proposals in areas at risk of flooding will be expected to provide a Flood Risk Assessment commensurate with the scale of the flood risk and recognising all likely sources of flooding. Suitable measures to deal with surface water arising from development proposals will be required to minimise the impact to and from new development.
 43. The site lies within an area of significant flood risk. Furthermore, the site is the subject of serious known, but significantly undefined, flooding problems and on a not infrequent basis. Notwithstanding the proposed mitigation as outlined, I find the outstanding risk of flooding to be considerable.
 44. I therefore conclude that the proposed development would give rise to serious unaddressed implications for flooding contrary to Policy DC 13 and contrary to the expectations of the Framework.

Overall Planning Balance

Other Matters

45. I have considered all other matters raised, including loss of agricultural land, possible implications of the location of village services relative to the appeal site, implications for crime, and for noise and disturbance, and suggestions of lack of local employment for future residents. These have not been raised as objections by the Council and I have little reason to find harm in those regards.
46. Issues have been expressed regarding traffic implications but the highway authority's previous concerns have been addressed and the authority would be satisfied for those matters to be accommodated by way of planning conditions.
47. Concerns are raised regarding possible ecological implications of the development, but the scheme is accompanied by an Ecological Appraisal and no objection is raised by the Council.
48. The issue of sewage has also been identified by residents but I have no reason to conclude that a development of the site as proposed would itself adversely impact upon existing local difficulties.
49. NCC makes reference to the possible need for mineral safeguarding, but that matter was subsequently agreed to be addressed by way of a planning condition. It is not identified as a reason for refusal and the detailed implications would remain to be addressed should the appeal be allowed.
50. Concerns have been raised by residents adjacent to the eastern boundary of the site regarding implications for their living conditions, particularly in terms of security and the relationship to any proposed open space. The full implications for security would be a matter for further assessment as part of future submission of reserved matters, and the position of open space within the site, whilst indicated on the illustrative DFP, is not a matter for formal determination as part of the current application. In relation to further concerns regarding loss of views, the Courts have established that private views are not in themselves regarded as a planning matter even though there may be a financial impact upon the value of houses from which such a view may be lost.
51. I have noted the report prepared for the Council's Planning Committee recommending the grant of planning permission for the second, later application of the site involving up to 65 dwellings as referred to in my Procedural Matters.
52. A Screening Opinion has been offered by the Council in relation to Environmental Impact Assessment concluding that an Environmental Statement was not required. I have also had regard to the appellant's Statement of Community Involvement and to references to pre-application discussions.
53. References have been made to an emerging Mattishall Neighbourhood Plan (the NP) and I am mindful that a core principle of the Framework is for planning to be genuinely plan-led, empowering local people to shape their surroundings, and with succinct local and neighbourhood plans setting out a positive vision for the future of the area.
54. Nevertheless, the NP process in Mattishall is in its early stages and I note that a draft plan has yet to be published. Although concerns were raised that the

development would be inconsistent with what may emerge in the NP, such suggestions are in the nature of speculation as no such NP currently exists. Further, the government's Guidance advises that refusal of planning permission on grounds of prematurity will seldom be justified where a draft Local Plan has yet to be submitted for examination or, in the case of a Neighbourhood Plan, before the end of the local planning authority publicity period.

55. I have also had regard to the references made to all other planning decisions.

Five year housing land supply

56. The Framework requires the local planning authority to identify and update annually a supply of specific deliverable housing sites sufficient to provide five years' worth of housing relative to its full objectively assessed needs for market and affordable housing.
57. It is common ground that the Council is unable to demonstrate a five-year supply of housing land. The Council does not have a formally agreed, up-to-date housing target that has been assessed through local plan examination, although that will be addressed through an emerging local plan. The authority's latest data set out in its Statement of Five Year Housing Land Supply July 2015 refers to a DPD requirement for 19,100 new homes up until 2026 and some 11,369 homes remaining to be delivered. The document identifies a five year housing land supply of 3.72 years using the Sedgefield methodology, and 4.54 years following the Liverpool approach. The Council also acknowledges that a 20% buffer would need to be applied to any future supply to reflect previous under-delivery in accordance with the requirements of the Framework.
58. In the absence of a five-year supply of deliverable housing land, it follows, by virtue of paragraphs 47 and 49 of the Framework, that relevant policies in the development plan for the supply of housing are to be considered out-of-date. Further, by virtue of being out-of-date, relevant provisions of the presumption in favour of sustainable development under paragraph 14 of the Framework are also engaged, should the scheme be found to constitute sustainable development.

Unilateral Undertaking

59. The Undertaking and Deed of Variation make commitments to various matters to mitigate the impact of the development, including contributions to education, library facilities, open space, public footpaths and allotments. A commitment is also made to provide affordable dwellings equating to at least 40% of the total number of dwellings in response to Policy DC 4 of the DPD. Questions were raised at the hearing regarding the viability of the affordable housing, but that is the proposal as committed by the Undertaking and I have little evidence to doubt in that regard.
60. A concern has been raised regarding details of the transfer of the affordable housing. An issue has also been raised that the proposed library contribution would exceed the threshold of five pooled contributions required by Regulation 123 of the Community Infrastructure Levy (CIL) Regulations 2010. The Deed of Variation addresses both these matters, and the library contribution would instead relate to relevant information technology facilities.

61. The Council also raises concern regarding the rate of delivery of the open space as set out in Schedule 2 of the Undertaking, but the appellant has explained how the programme would reflect the physical development of the site extending from Dereham Road and which I find to be reasonable.
62. The Undertaking identifies alternative formulae for calculation of the Primary and Sixth Form Education contributions. At the hearing, the appellant indicated no preference, and nor did either NCC or the local planning authority. I have regard to the formal requirements of the Norfolk County Council Infrastructure, Service and Amenity Requirements for New Development Planning Obligations Standards April 2014 and to the accompanying representations, and I find the second formula in each instance makes the more appropriate provision to accommodate future needs given likely variations in existing and future school numbers.
63. Subject to the above matters, the local planning authority and NCC have offered evidence of compliance with the relevant provisions set out in Regulations 122 and 123 of the CIL Regulations and this is not disputed. I have also had regard to the Framework, and to the relevant advice of both the Guidance, and of the Procedural Guide.
64. The Council has raised no objection to the content of the Undertaking as a deed and I find the documents to be generally fit-for-purpose.
65. Accordingly, I take into account the commitments and accompanying terms as outlined above as considerations of my decision.

Sustainable development

66. The Framework makes clear that housing applications should be considered in the context of the presumption in favour of sustainable development.
67. The purpose of the planning system is to contribute to the achievement of sustainable development. Sustainable development is defined by the Framework with reference to the policies in paragraphs 18 to 219 taken as a whole. At the heart of the Framework in paragraph 14 is a presumption in favour of sustainable development. The Framework further identifies economic, social and environmental dimensions to sustainable development.
68. The scheme would undoubtedly provide considerable housing benefits, in terms of both affordable and market provision, and such benefits would be consistent with the social dimension of sustainable development. The investment represented by the development would also be consistent with the economic dimension. The undisputed economic benefits would include investment in construction and related employment for its duration. Benefits would also encompass an increase in local household expenditure and demand for services, and financial contributions to the Council through New Homes Bonus receipts. It is also agreed common ground that the location is one which benefits from sustainable modes of transport and is close to existing facilities, and the scheme is accompanied by commitments to a Framework Travel Plan.
69. In environmental terms, however, whilst the site has no designated landscape status by virtue of its inherent quality, the scheme would still introduce built form at the expense of open countryside out-of-keeping with the surrounding character south of Dereham Road. This would be contrary to the Framework's aspirations for planning to recognise the intrinsic character and beauty of the

countryside, and to promote local distinctiveness. The implications of flooding also remain an open question. Against those considerations, the scheme would yield further environmental, and accompanying social, benefits in terms of public open space, allotments and a community orchard, and would also seek to enhance the biodiversity of the site.

70. I therefore find that the scheme would offer considerable benefits consistent with the Framework. Of particular weight would be up to 90 new homes, or up to 65 should I consider that to be more appropriate, in a District which is unable to demonstrate a five-year housing land supply. The associated affordable housing benefits would be significant. The likelihood is also that the flooding implications would significantly limit the number of dwellings which could be accommodated on the site. That being the case, the proportion of unbuilt land within the scheme thereby available for landscaping and other treatment sympathetic to the local open rural character is likely to be significant.
71. Further, Policy DC 2 seeks to impose a general restriction on development outside defined limits and thereby acts as a constraint to future housing supply. It is therefore a policy relevant to the supply of housing for the purposes of the Framework, and I have noted references made to other relevant decisions in this regard. As the Council is unable to demonstrate a five-year supply of housing land, it follows that, for the purposes of paragraph 49 of the Framework, this policy is to be considered out-of-date insofar as it constrains the supply of housing.
72. Given the extent of landscaping and of other open space indicated on the DFP, and the site's location at the edge of the settlement and opposite existing housing, I find the harm to character and appearance to be relatively limited when moderated by the little weight I attach to the countryside location by virtue of the required status of Policy DC 2. This would be particularly so when allied to an appropriate detailed design to the scheme sensitive to its rural location.
73. I also note that the appeal site is one of several sites in and around Mattishall identified for possible residential development as part of the Council's Breckland Local Plan Part 1 - Preferred Directions December 2015 consultation document. Whilst only having a consultative status, this does indicate possible development of 77 dwellings and the document also identifies possible proposals for other sites similarly located outside the existing Settlement Boundary.
74. Nevertheless, I find that that the seriousness of the unresolved flooding issue, in terms of the real threat to people, property and places, and the accompanying considerable weight to which I attach, allied to the limited environmental harm, would be such that the scheme as set out in the application subject to this appeal would not constitute sustainable development.

Summary of Planning Balance

75. The implications of flooding for possible development are unresolved and until such time as the accompanying risks and necessary mitigation are fully modelled, the development capacity of the site remains an open question. The implications are not a subsequent detail remaining to be resolved. Rather, the

- implications of flooding will significantly shape and inform the reserved matters, particularly layout, scale and landscaping. They would also influence the eventual density of development.
76. The DFP indicates housing within the areas of greatest risk of surface water flooding, and within the lower lying part of the site to the north-west, and the available development land is finite. If this area of built development were to be displaced, it would have implications for layout and physical form elsewhere. The DFP indicates a filtered edge to the site linking to adjacent open countryside to the south. This would be a very necessary feature of the scheme and would take the form of public open space, allotments and a community orchard. Given an undoubted need to retain such a relationship to adjacent land to the south, displacement could, in turn, have implications not just for layout of the built area but also for the overall scale of built development which could be accommodated within the site. A similar implication would also arise in relation to possible re-location of the proposed water retention facilities from the northern side of the site.
77. Similarly, the overall design approach indicated by the DFP involving a strong built frontage to Dereham Road is also open to some question. If the main frontage to Dereham Road is not to accommodate built form, this would have the benefit of removing a potentially hard urban edge to the development in views south, but it would similarly reduce the available space for built form.
78. Aside from matters of character and appearance, the dispute between the parties relates to the possible implications for such development of potential flooding and, more particularly, whether that matter should be resolved in advance of any decision to grant planning permission. The appellant contends the matter can be deferred for later submission, whilst the Council maintains the significance of the issue to be such that it requires address at the outset.
79. I recognise that the process of seeking outline planning permission is about first seeking to establish principles of development in order to allow other more detailed matters to follow. I also accept that any satisfactory scale of development would, in its literal interpretation, meet the terms of 'up to' 90 or of 'up to' 65 dwellings as appropriate. Such terms do, however, expressly define an upper threshold of development. Any subsequent permission would carry with it an acceptance that particular number of dwellings might be accommodated and to which formulation of the subsequent reserved matters would inevitably be directed. From the evidence before me, I am not satisfied that a threshold of either 90 or 65 dwellings would be acceptable in planning terms.
80. The advice of the Framework is that decision-making should be pro-active and that conditions should be used to make unacceptable development acceptable. The Framework and Guidance are also clear as to the tests of appropriate conditions and I consider it would be unreasonable to condition the scale of a development as part of a permission in the absence of knowing whether such development could be physically accommodated in the first place.
81. I do not regard outstanding questions relating to flooding and associated matters as a secondary, incidental consideration but as a primary determinant of the scale and form of any future satisfactory development of the site. It also follows that, although the Council's decision identified concerns around density,

a meaningful and realistic assessment of the density of any scheme can only be made once a developable area of land has been identified.

82. Whilst I have no doubt as to the appellant's commitment to fully and appropriately address such matters, the full extent of the risk remains undefined at this time and I am unable to reasonably conclude the implications for any future development of the site. In particular, from the evidence before me, I am unable to reconcile what amount and form of development is likely to be acceptable relative to the serious constraints to development arising from flooding and associated matters and whether such a scheme would be consistent with the descriptions of development as proposed.
83. Whilst not forming part of the Council's reasons for refusing planning permission, the subsequent evidence of the LLFA and of interested third parties clearly demonstrates the significant unresolved harm which accompanies the application as submitted. The application in its current form carries too much uncertainty and too much accompanying risk for such a scheme as proposed to be regarded as a sustainable development compliant with the terms of the Framework. Further, and in any event, my assessment is that the seriousness of the unresolved flooding issue is such that the adverse impacts of the scheme significantly and demonstrably out-weigh the benefits.
84. At the heart of the Framework is a presumption in favour of sustainable development. I find the proposed scheme would fail to comply with that expectation having regard to the development plan and to the Framework as a whole, and that a refusal of planning permission would accord with section 38(6) of the Planning and Compulsory Purchase Act 2004 and with paragraph 12 of the Framework.

Conclusion

85. For the above reasons, the appeal is dismissed.

Peter Rose
INSPECTOR

APPEARANCES

FOR THE APPELLANT:

John MacKenzie	Gladman Developments Ltd
Dr David Lloyd	Hydrock Consultants Ltd
Jonathan Easton	of Counsel

FOR THE LOCAL PLANNING AUTHORITY:

Gary Hancox	Principal Planner, Breckland District Council
Elaine Simpson	Flood Risk Engineer, Norfolk County Council
Nicholas Johnson	Planning Service Manager, Norfolk County Council
Stephen Faulkner	Principal Planner, Norfolk County Council

INTERESTED THIRD PARTIES:

Pablo Dimoglou	Ward Councillor
Paul Claussen	Ward Councillor
Jan Smith	Vice-Chairman, Mattishall Parish Council
Richard Turner	Parish Councillor
Liz Hunton	Parish Councillor
John Gogle	Tenant farmer of appeal site
Jonathan Daw	Local resident and on behalf of Mattishall Matters
Professor Robert Eady	Local resident and on behalf of Mattishall Matters

DOCUMENTS SUBMITTED TO THE HEARING:

BY THE COUNCIL:

1. Notification letters dated 2 June 2015 and 11 January 2016
2. Settlement Boundary plan
3. Policy SS 1 of the DPD
4. Statement of Five Year Housing Land Supply July 2015

BY THE APPELLANT:

5. Subsequent Deed of Variation dated 18 February 2016 (as discussed at the hearing but agreed to be received by 19 February 2016)

BY THIRD PARTIES:

6. Statement from George Freeman MP sent by email dated 9 February 2016
7. Statement from Anna Loake and Steven Mills
8. Historical Evidence of Flooding in Mattishall
9. Copy of letter from John Bingham dated 21 November 2014
10. Copy of letter from Norfolk County Council dated 2 February 2016

Richborough Estates