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## Appeal Decision

Site visit made on 2 August 2016

**by Jonathon Parsons MSc BSc (Hons) DipTP Cert (Urb) MRTPI**

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

**Decision date: 19 September 2016**

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**Appeal Ref: APP/D0515/W/16/3148821**

**North of 38 Henry Warby Avenue, Elm, Cambridgeshire PE14 0BT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr P Land (Gemdome Ltd) against the decision of Fenland District Council.
  - The application Ref F/YR15/0614/F, dated 25 June 2015, was refused by notice dated 11 February 2016.
  - The development proposed is a residential development of 30 dwellings.
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### Decision

1. The appeal is allowed and planning permission is granted for a residential development of 30 dwellings at North of 38 Henry Warby Avenue, Elm, Cambridgeshire PE14 0BT in accordance with the terms of the application, Ref F/YR15/0614/F, dated 25 June 2015, subject to the following conditions on the attached schedule.

### Procedural Matters

2. A Unilateral Undertaking dated 21 July 2016 has been submitted securing contributions for the provision of affordable housing, education and waste services. The Council were consulted on this and I will discuss this later in my decision.
3. During the determination of the planning application, the proposal was amended by replacing grouped car parking with individual spaces to the sides of individual dwellings. This was in response to comments of County Highway and Police Architectural Liaison Officer and for the avoidance of doubt, the appeal has been considered on this basis.

### Main Issues

4. The main issues are (a) the effect of the proposal on the living conditions of the occupiers of adjacent dwellings on Henry Warby Avenue, having regard to traffic noise and disturbance, (b) the provision for affordable housing, education and waste services and (c) whether the proposal would provide an appropriate location for housing having regard to national and local policy and the principles of sustainable development.
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## Reasons

### *Living conditions*

5. The proposed 30 dwellings would be accessed off a turning head in Henry Warby Avenue. The development would comprise 21 two-bed and 9 three-bed dwellings, along with some open space. The existing turning head lies between front-facing semi-detached dwellings at 40-46 (even) Henry Warby Avenue and the side garden and flank of a semi-detached dwelling at No 38 which has a conservatory to the rear. These dwellings have car parking to the sides.
6. The existing turning head would be extended to form a vehicular access with footways either side. This highway would be between 2.8m and 5m approximately from the dwellings at Nos 40 and 44. On the opposite side of the highway, the footway would be on average approximately 0.6m from the side of the rear garden at No 38. There is some dispute between parties as to the traffic movements that the development would generate. Taking the Council's higher figures, it is estimated that there would be 180 movements a day. However, even taking this into account, the movements for this scale of development would not be great given that they would be spread over a day, with just 10% of these at peak times. Furthermore, there would already be some traffic movements associated with cars leaving and exiting the neighbouring properties and with traffic using the turning head.
7. For these reasons, the increased levels of traffic would not harm the living conditions of the occupiers of neighbouring properties by reason of significant increased levels of noise and disturbance. Accordingly, the proposal would comply with Policy LP16 part (e) of the Fenland Local Plan (FLP) 2014 which amongst other matters, requires all development to ensure that the amenities of neighbouring uses to be not adversely impacted upon in terms of noise, light pollution and loss of privacy.

### *Affordable Housing, Education and Waste Services*

8. An obligation secures a contribution of £15,000 towards the provision of off-site affordable housing, £40,000 towards the provision of education facilities and £5,000 towards waste management. Additionally, there is a monitoring contribution of £1,500.
9. FLP Policy LP5 states that the Council will seek the provision of 25% affordable housing which would equate to the provision of approximately 8 affordable housing dwellings on this site. Affordable housing can be provided off-site through a financial contribution negotiated with the Council based on a formula. It is indicated that proposals will be expected to comply with the target but the Council will negotiate with the developer if an accurate viability assessment indicates that this cannot be achieved.
10. A viability report indicates that a full contribution in accordance with 25% level would hinder the development coming forward. Therefore, on this basis, I find the contribution has been fully justified and would be fairly and reasonably related in scale and kind to the development. It would comply with FLP Policy LP5 and would represent a small benefit of the scheme. Accordingly, I find the contribution meets the tests of Regulation 122 of the Community Infrastructure Regulations (CIL) 2010 (as amended) and I have taken this part of the obligation into account in my decision.

11. FLP Policy LP13 states that planning permission will only be permitted if it can be demonstrated that there is, or will be sufficient infrastructure capacity to support and meet all the requirements arising from the proposed development. Developers will either make direct provision or will contribute towards the provision or will contribute towards the provision of local and strategic infrastructure.
12. In terms of education provision, the County Council has received updated data from the NHS which suggests a reduction in birth rates in Elm over the next 4 years. As a result, the original contributions sought would not be required because the reduced birth rates have freed up capacity at a local primary school. Accordingly, I find the contribution does not meet the tests of Regulation 122 of CIL and I have not taken it into account in my decision.
13. Turning to the waste services contribution, the proposed development falls within the Wisbech. Within the RECAP Waste Management Guide, planning policy justifies the contribution with a formula which is reflected in the total sum in the obligation. On this basis, I find the contribution to be fairly and reasonably related in scale and kind to the development. Accordingly, I find the contribution meets the tests of Regulation 122 of CIL and I have taken this part of the obligation into account in my decision.
14. The obligation sets out a monitoring for each contribution but I am not persuaded that any of the requirements would be exceptionally difficult to monitor with regard to compliance. For this reason, I am not convinced that the costs of monitoring cannot come within the scope of reasonable everyday functions of the local planning authorities. Accordingly, the fee does not meet the tests of Regulation 122 of CIL and I have not taken it into account in my decision.

*Sustainable development*

15. FLP Policy LP3 sets out the spatial strategy for sustainable growth with the majority of housing growth directed in and around 'market towns'. The purpose of this is to steer most new development to those larger places that offer the best access to services and facilities which helps to reduce the need to travel as well as making the best use of existing infrastructure. Within this spatial strategy, Elm is identified as a 'limited growth village' where a small amount of development is allowed, although at a considerably more limited scale than that appropriate in 'market towns' or 'growth villages'.
16. For a 'limited growth village', FLP Policy LP12 Part A states where proposals within or on the edge of a village, in combination with other development built since April 2011 and committed to be built, increases the number of dwellings by 10% then there should be demonstrable evidence of clear local community support. The Council's statement has confirmed that that the proposal would result in the threshold being exceeded by two dwellings. The Parish Council considers the exceeded figure for the village threshold to be far greater.
17. There has been considerable correspondence and information detailing the figure for dwellings built/commitments since April 2011 between the Council and appellant. In the case of the development at the Dale on Begdale Road, this relates to bedsits rather than dwellings whilst at Cedar Way, there is no confirmation that planning permission has been issued for me to consider it as a commitment. Therefore, on the balance of evidence before me, I find the

figure put forward by the Council and agreed in essence by the appellant to be the most up to date and robust figure available. Nevertheless, based on the pre-application consultation exercise and the level of planning objections, there is no clear local community support for the scheme.

18. In terms of its other requirements, FLP Policy LP12 Part A states that new development should contribute to the sustainability of its settlement and not harm the wide open character of the Countryside. Any proposal will also need to satisfy the applicable policies of the FLP and environmental criteria (a-k) relating to character and appearance, ecology, heritage, important spaces, loss of agricultural land, danger to people and property and sustainable infrastructure provision considerations which I shall turn to now.
19. in terms of character and appearance, the appeal site would be adjacent to the existing footprint of the village and by reason of its location, the development would not result in coalescence with any neighbouring village or result in ribbon development. Along this boundary with the countryside, there would be open space with the housing stepped back from this to prevent any adverse impact on the character and appearance of the surrounding countryside and farmland. The proposed design and layout of the housing would be similar to the adjoining residential estate. Thus, it would be of a scale and location in keeping with the core shape and form of the settlement so not adversely harming its character and appearance.
20. By reason of the site's location, the development would not extend existing linear features of the settlement or result in ribbon development. In terms of retention of natural features, the public open space is designed to coincide with a 9m drainage byeway. Whilst some boundary vegetation would have to be removed, a landscaping condition could be imposed to provide replacement planting and additional planting within the open space.
21. The appellant's biodiversity checklist indicates the absence of protected species or designation of ecological importance in the vicinity. Whilst there have been comments on the loss of wildlife, including bats and birds, there is little detailed evidence that species may be adversely affected and there has been no objections from the Council on ecological grounds. There are no heritage assets affected by the proposal. As to the importance of this space, I find it to be not of particular visual value by reason of its position mainly between built-up areas and there is already an informal open space provided within the neighbouring residential estate nearby for residents. The appeal site does not comprise land of high agricultural value.
22. In terms of danger to people or property, the site is located within Flood Zone 1 and therefore is defined as having a low risk of flooding. Whilst no response has been Middle Level Commissioners in relation to the proposed drainage of the site, the development would need to accord with their byelaws. In this regard, the public open space has been designed to comply with a 9m byeway of the Drainage Board. Anglian Water has also raised no objection subject to a condition on surface water drainage. On this basis, the development would be served by sustainable infrastructure provision. Furthermore the scheme has been amended in accordance with advice from the Police Architectural Liaison Officer and the County highways. In summary, I would therefore concur with the Council and the appellant that these environmental criteria are met.

Furthermore, the wide open character of the countryside would not be harmed for similar reasons.

23. FLP Policy LP1 states that the strategy is to deliver sustainable growth bringing benefits for existing and new residents and to take a positive approach reflecting the presumption in favour of sustainable development contained within the National Planning Policy Framework (the Framework). In this regard, in the economic dimension, new dwellings would provide employment during construction and the residents would support local services and facilities through financial expenditure. Financial income would be provided to The Council by way of Council tax revenue and new homes bonus.
24. In the social dimension, the creation of 30 new houses would boost housing supply providing accommodation for present and future generations and provide a contribution towards affordable housing. The site is reasonably sustainable with Elm indicated to be served by a primary school, a post office, local shop, and public houses, together with a partial bus service. Whilst the economic benefits would be modest, the social benefits would be significant by reason of the number of dwellings to be built and the affordable housing contribution. In the environmental dimension, the development satisfies the environmental criteria of FLP Policy LP12 Part A.
25. In considering sustainable development, FLP Policy LP3 does set out a spatial strategy for sustainable growth and as previously indicated, the development would marginally exceed the village limit for Elm under FLP Policy Part A. As a result, any adverse impacts arising from this increase would be small and be significantly and demonstrably outweighed by the economic and social benefits detailed above. Accordingly, the proposal would comply with FLP Policy LP1 on sustainable development.
26. Turning to the development plan as a whole, there is lack of clear demonstrable evidence for support of the proposal under FLP Policy LP12 Part A but there is also a lack of identified adverse impacts. For the reasons indicated, the environmental criteria under FLP Policy LP12 Part A are satisfied and the proposal would not harm the wide open character of the Countryside. It would also contribute to sustainable development. The increase above the village threshold under FLP LP12 Part A would be marginal and given this, along with sustainable nature of development identified, the proposal would not conflict with the strategy of the LP in delivering sustainable growth. For this reason, looking at the development plan in the round, the proposal would comply with it as a whole.

#### *Other matters*

27. Cambridgeshire County Council Highways has commented upon the proposal requesting re-arrangement of vehicle parking which has now been amended. No objections were raised with regard to traffic generation and any parking problems arising from the development on Henry Warby Avenue. Furthermore, it was commented that the access width to the development is acceptable. Although I note the concerns on residents on these matters, there is no compelling evidence to point to highway safety issues and therefore I see no reason to disagree with the District Council on the acceptability of proposal in highway safety terms.

28. Any construction noise and disturbance would be of short term duration and construction hours can be restricted by way of a planning condition. A Construction Method Statement could also require details of construction vehicle parking and other activities to limit disruption to neighbours. Although schools are indicated to be at over capacity, the County Council comments based on recent information would not support this. There are no doctor's surgeries in the village but this in itself would not be sufficient to not favourably consider the proposal. There has been a dismissed appeal for residential development on this site in 1994 but both local and national planning policies have changed since this date so significantly limiting its weight in this decision.

### **Conditions**

29. Suggested conditions have been considered in light of advice contained in Planning Practice Guidance; for clarity and to ensure compliance with the Guidance, I have amended some of the Council's suggested wording.
30. A condition requiring that the development is carried out in accordance with the approved plans is necessary in the interests of certainty. In the interests of safeguarding the character and appearance of the area, conditions controlling external materials, including hardsurfaced areas, and ensuring the implementation of approved landscaping are necessary. As part of the landscaping requirements, separate conditions have been imposed for means of enclosure and management and maintenance of the open space. In absence of any justification indicating topography issues and from what I saw on my site visit, details of proposed finished levels are not necessary.
31. In the interests of highway safety, conditions are necessary to ensure adequate car parking and turning on the site in accordance with the approved plans. A condition is necessary to secure adequate drainage of the site in accordance with my earlier comments. To ensure safe and neighbourly construction activity on the site, a Construction Management Plan should be submitted for approval and adhered to during the construction period. As part of the details to be submitted, hours of on-site working would need to be approved. Some conditions require the approval of submitted details before development commences. In such instances, the requirements are necessary because the matters covered need resolution early in the development process.

### **Conclusion**

32. For the above reasons and having regard to all other matters raised, including support, I conclude that the appeal should be allowed.

*Jonathon Parsons*

INSPECTOR

### **Schedule of attached conditions**

1. The development hereby permitted shall begin not later than 3 years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 5251-PL01B; 5251-PL02b; 5251-PL03B.
3. No development shall commence until details of the materials to be used in the construction of the dwellings hereby permitted 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.
4. No development shall take place until details of all finishing materials to be used for hard surfacing of the site have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
5. No development shall commence until details of soft landscaping works have been submitted and approved in writing by the local planning authority. These details shall include planting plan; written specifications (including cultivation and other operations associated with plant and grass establishment) schedules of plants noting species, plant supply sizes and proposed numbers/densities where appropriate.
6. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the dwellings hereby permitted, whichever, is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
7. Before the development is first occupied or brought into use a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, shall be submitted to and approved in writing by the local planning authority. The landscape management plan shall be carried out as approved.
8. Prior to the commencement of development hereby approved, details of the design, height and materials of all boundary treatments shall be submitted to and approved in writing by the local planning authority. The approved boundary treatments on each plot shall be implemented prior to the first occupation of the associated dwelling.
9. The scheme for parking and manoeuvring shown on drawing no. 5251-PL01B shall be laid out prior to the initial occupation of the development hereby permitted and these areas shall not thereafter be used for any other purpose.
10. Development shall not commence until surface drainage works for the development have been submitted to and approved in writing by the local planning authority. The approved drainage works shall be completed before the first occupation of the permitted development and retained thereafter in accordance with the approved details.
11. 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. Haul routes to and from the site;
- ii. Hours of on-site working;
- iii. the parking of vehicles for site operatives and visitors;
- iv. the loading and unloading of plant and materials;
- v. storage of plant and materials used in the construction of the development;
- vi. measures, including wheel washing facilities to prevent mud and other debris being deposited on adjacent public highways;
- vii. noise management plan including a scheme for the monitoring of construction noise;
- viii. scheme for controlling dust arising from building and site works;
- ix. pedestrian and cyclist protection; and
- x. any proposed temporary traffic restrictions.

Richborough Estates