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## Appeal Decision

Site visit made on 20 February 2017

by **Zoe Raygen Dip URP MRTPI**

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

Decision date: 28 March 2017

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**Appeal Ref: APP/G2435/W/16/3162843**

**Land South of The Green, Donington Le Heath, Leicestershire**

- 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 Wrenbury Properties Ltd against the decision of North West Leicestershire District Council.
  - The application Ref 15/00951/OUTM, dated 30 September 2015, was refused by notice dated 7 October 2016.
  - The development proposed is described on the application form as outline proposal for a development of up to 45 dwellings.
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### Decision

1. The appeal is allowed and planning permission is granted for outline proposal for a development of up to 34 dwellings at Land South of The Green, Donington Le Heath, Leicestershire in accordance with the terms of the application, Ref 15/00951/OUTM, dated 30 September 2015 subject to the conditions set out in the schedule to this decision notice.

### Costs

2. Two applications for costs were made by Wrenbury Properties Ltd. One was against North West Leicestershire District Council and the other against Hugglescote and Donington Le Heath Parish Council. Both applications are the subject of a separate decision.

### Procedural matters

3. The application is in outline; with all matters except for access reserved for future consideration. A layout plan has been submitted and I will treat this as indicative only.
  4. During the course of the application the number of proposed dwellings was reduced to 34. I have determined the appeal accordingly.
  5. The appellant has submitted a copy of a signed section 106 planning obligation in respect of affordable housing, bus stop improvement, civic amenity site improvement, education, library provision, affordable housing, travel packs and bus passes, construction traffic routeing and National Forest Planting Scheme. I return to this matter below.
  6. I have given main parties the opportunity to comment on Paragraph 29 of the judgement *Mayowa-Emmanuel v Royal Borough of Greenwich* [2015] EWHC
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4076 which identified that paragraph 32 of the National Planning Policy Framework (the Framework) addresses matters of highway capacity and congestion, rather than highway safety considerations in themselves. I have taken the judgement and the responses by main parties into consideration in my determination of the appeal.

### **Main Issue**

7. The main issue is the effect of the proposal on highway safety.

### **Reasons**

8. The appeal site forms a large area of undeveloped land on the south side of The Green extending to the rear of properties along Midland Road. There are residential properties to the north side of The Green the majority of which have no access to off street parking. As a result cars are parked outside of the houses along the north side of the Green. The south side is subject to a Traffic Regulation Order restricting parking in the form of double yellow lines. The speed limit along the road is 30mph. The proposed development of 34 houses would be served by a single access from the Green.
9. The Council and local residents raise concerns regarding the amount of cars parked on The Green together with speeding cars and the consequent impact on the visibility for vehicles using the proposed new access.
10. The appellants have submitted a transport statement prepared by BSP Consultants 2015 (TS) together with updated information within their appeal statement (AS) following the reduction of the number of dwellings from 45 to 34. The appellant's highways evidence, based upon the nationally recognised TRICS (Trip Rate Information Computer System) database, estimates that the appeal proposal would generate 18 additional vehicle movements within both the morning and evening peak periods. These figures equate to an average of one additional vehicle movement every 3 minutes or so. Although the actual traffic levels may vary from these figures, they provide reasonable estimates based upon the number of dwellings proposed. Traffic generation caused by the new development outside peak periods would be lower.
11. Residents indicate the highway network has become busier over recent years particularly with HGV vehicles and agricultural vehicles using The Green as a shortcut despite there being a weight restriction on the road. Nevertheless, I have no substantive evidence to suggest that the existing highway network is at or near capacity. As a result, the limited number of additional traffic movements caused by the proposal would have very little impact on the capacity of the local highway network.
12. The appellants have undertaken a speed survey carried out in accordance with TA22/81 within the Design Manual for Roads and Bridges (DMRB). The results found that the design speed, based on the 85<sup>th</sup> percentile wet weather journey speed is 31.7 mph in a westerly direction and 30 mph in an easterly direction. Similar results were found by the Parish Council (PC) when undertaking a speed survey. Both the PC and the AS acknowledge that at the time of the survey some cars were parked along the north side of The Green, however cars were only measured that did not stop to allow oncoming cars to proceed. At the time of my site visit there were a number of cars parked on the Green, and from evidence supplied by various parties that situation would appear to be an

- intrinsic element of traffic conditions along the Green. I therefore consider that the speed surveys were carried out under appropriate conditions and the results can be taken to be a reasonable assessment of speeds along the road at most times.
13. The PC also refers to data from their Speedwatch Initiative which recorded speeds of 36mph and 44mph. However, I note that these readings were made in the vicinity of Manor Road which is some distance from the proposed access. Furthermore, it is not disputed that some vehicles will travel at speeds above 30mph along the road and both surveys record this.
  14. The Council suggest that from the data in the appellant's statement about a third of vehicles in the survey were travelling above 30 mph in both directions. Nevertheless the figures demonstrate that the large majority of vehicles were adhering to the speed limit or very marginally above it. At my site visit I observed most drivers being reasonably respectful of conditions, but with occasional very obvious exceptions. Furthermore, the presence of parked cars act as a speed restraint in the area. I therefore consider that it has not been demonstrated that there is a significant speeding problem along this stretch of road. Moreover, DMRB is concerned with the 85<sup>th</sup> percentile for design purposes, which in this case has been shown to be around 30mph.
  15. All parties refer to the statistics for Personal Injury Collisions over the past five years. These show that there has been one serious-injury accident on the Green within the proximity of the appeal site which occurred when a parked vehicle was emerging into the carriageway and collided with a vehicle travelling in the opposite direction. Three accidents occurred near to the junction of The Green, Midland Road and Station Road away from the proposed junction on the Green. However, I am not aware of the cause of these. Residents also highlight minor incidents and one refers to at least 9 incidents within 13 years which have resulted in damage to property and vehicles. Nevertheless, such a low incident of accidents would not weigh significantly against the proposals.
  16. The appellant has used the result of the speed surveys to propose visibility splays of 2.4m x 43 m to the left and 2.4m x 54m to the right. Such provision would be in accordance with the national advice contained within the Department for Transport publication Manual for Streets 2007 (MfS) and local advice contained within the Leicestershire County Council's 6C's Design Guide 2007 (DG). Furthermore, the appellant has submitted a copy of a plan showing land in the ownership of the Highway Authority (HA) and it is apparent that the required visibility splays can be achieved in both directions on land owned by either the appellant or the HA. The existing double yellow lines would ensure that cars would not be parked within the visibility spay. Furthermore a condition could be imposed to ensure the visibility splay would be kept clear of vegetation or other obstruction.
  17. It is acknowledged that cars park along the northern side of The Green. At the time of my site visit 1600 -1630 there was a significant number of cars parked, although none opposite the location of the proposed access. I appreciate that this is only a snap shot in time and photos submitted do show incidences of cars parked opposite the site. However, I have no evidence to suggest what time periods or how often such parking would occur. Furthermore, the photographs supplied by all parties show limited numbers of cars parked opposite the proposed entrance to the site.

18. The parking of cars would effectively reduce the carriageway to a single lane. I observed passing cars and vans and while there were some areas where two cars could pass adjacent to the parked cars, equally there were others where the carriageway was too narrow for this to occur. Furthermore, larger vehicles would not be able to pass at the same time as cars. This is reinforced in photographs supplied by the PC. However, I did not see any dangerous driving as vehicles sought to pass each other.
19. The appellant has demonstrated that even if cars are parked along the northern side of The Green, forward visibility along The Green to the proposed site access junction is over 75m in both directions meaning that oncoming drivers/cyclists can see any potential vehicles exiting the site from a distance comfortably beyond the recommended forward visibility distances, I saw that this was a reasonable assessment of visibility from the proposed site access.
20. The Council's concern relates to the ability of drivers of vehicles turning right into the site when travelling eastwards to see oncoming cars because of the slight bend in the road, parked cars and the speed of traffic. I saw that drivers of vehicles travelling eastwards, even with the bend in the road are able to adequately see approaching vehicles whichever side of the road they travel on. The appellant confirms that forward visibility would be greater than the 43 metres required in MfS and the DG. I have seen no evidence from the Council to dispute this. Accordingly adding a right turn would not significantly change the current situation.
21. I note that the HA originally had concerns regarding the ability of HGV vehicles to access the site given the incidence of on street parking. In response the appellant submitted swept path analysis which demonstrates that large vehicles would be able to access the site even with cars parked opposite the site. Furthermore, the access into the site would be widened for the first 10 metres to accommodate larger vehicles.
22. The Parish Council raise concerns that the plans do not show a true representation of the extent of parking and submit their own swept path analysis with what they consider to be a more realistic situation. As a result larger vehicles would need to use the full width of the access road and a pantechicon would need to traverse the footway. The PC raise a number of scenarios which could occur as a result of large vehicles accessing the site.
23. However, I have no substantive evidence to demonstrate that parking occurs to the extent shown in the PC's swept path analysis opposite the site. Even the photos submitted by the Council and PC do not show a solid bank of parked cars opposite the site. Furthermore, the amount of larger vehicles visiting the site once developed is not likely to be significant. Refuse vehicles are likely to attend once a week, otherwise larger delivery vehicles are not likely to be a regular presence. Moreover the HA raised no objections to the proposal in this respect.
24. The build out period for a site of 34 dwellings is unlikely to be lengthy. While larger vehicles would be likely to need to access the site during this period it would be for a temporary period only. The PC also refer to the possibility of the requirement to have large earth moving equipment on site to achieve roads of the required gradient within the DG and the impact this would have on highway safety. However, if such equipment is required it is unlikely to be a regular occurrence.

25. The appellant states that the proposal would provide footways either side of the proposed access together with non-controlled pedestrian crossings to link the site to the footway on the opposite side of the road which in turn would give access to facilities within Hugglescote. In addition there would be a footpath link within the site to the north-eastern corner of the site to existing footways. The HA has suggested that this should be provided within the highway verge. Despite the comments of the PC regarding land levels I have seen no substantive evidence in the submissions or on my site visit to demonstrate that this could not be achieved. Accordingly I see no reason why the exact location of the footway could not be the subject of a condition.
26. Drawing all the above together there would be a limited number of cars generated by the development, even during the peak period. Visibility splays can be achieved appropriate for the speed of traffic using The Green. Even with cars parked opposite the site larger vehicles would be able to access safely and it is unlikely that there would be a significant number of such movements. Finally drivers of cars turning right into the site when travelling eastwards would have adequate visibility. I therefore consider that the proposal would lead to an environment that would be safe for all users and makes adequate provision for vehicular access together with safe and accessible connections to the transport network.
27. For the reasons above I do not consider that the proposal would be harmful to highway safety. Accordingly, there would be no conflict with saved Policy T3 of the North West Leicestershire Local Plan Written Statement 2002 (LP), emerging Policy IF4 of the North West Leicestershire Local Plan Publication Version 2016 (LPPV), the DG and the Framework. These require amongst other things that safe and suitable access to the site can be achieved for all people and takes account of the impact on the highway network.

#### **Other matters**

28. Concerns have been raised regarding the proximity of the proposed houses to existing gardens and dwellings on Midland Road. However, the submitted layout plan is illustrative and only represents one way of developing the site. Exact details of the siting, design and appearance of the houses would need to be submitted to the Council for further consideration.
29. The appellant has submitted an archaeological desk-based assessment for the site. The report identifies the archaeological potential for medieval and postmediaeval remains within the application area, associated with the historic settlement cores of Hugglescote. Local records also highlighted the potential for the presence of Prehistoric and Roman archaeological remains within the appeal site. I note that Leicestershire County Council's Senior Planning Archaeologist is content for the development to proceed subject to a scheme of investigation and potential mitigation being agreed. I see no reason to disagree with this approach.
30. Concern has been raised regarding the drainage of the site particularly in relation to the capacity of foul sewers. However Severn Trent has confirmed it has no objections to the scheme.
31. The appeal site is outside the limits to development of the settlement and also within a designated Area of Separation which seeks to ensure that Hugglescote and Ellistown remain as two separate and distinct settlements. I saw though

that the appeal site would be in walking distance of bus stops and a range of facilities in Hugglescote that would provide day to day needs for future occupiers with regard to shopping, health, some education and recreation facilities. The proposals to provide a footway would give convenient pedestrian access to the facilities.

32. The nearest bus stop would be about 300m from the site which would be in accordance with the guidance in the Institute of Highways and Transportation's Guidelines for Planning for Public Transport in Developments (1999). The bus stop has a regular service to the larger settlements of Coalville and Leicester which have a wider range of facilities and services than Hugglescote. Therefore the site would be near to local services that would be accessible by other means than the car and in this respect the proposal would contribute to the social and environmental roles of planning as contained within paragraph 7 of the Framework. Even though therefore the proposal would be contrary to Policy S3 of the LP and emerging Policy S3 of the LPPV it would nonetheless be in an accessible location.
33. The proposed houses would extend no further than properties fronting Midland Road and would also be viewed against the back drop of housing on The Green. As a result the proposal would not result in a reduction in the physical separation between the built-up areas of adjoining settlements Hugglescote and Ellistown. Furthermore, I note that this particular Area of Separation would not be carried through to the LPPV.
34. The appeal site was previously used as allotments, but now the site is grassed over. To the south it abuts a railway line where there is some planting. This together with the hedge along The Green and the western boundary of the site would be retained. Bearing this in mind and taking into account the appellants Landscape and Visual Appraisal (LVA), I saw nothing on my site visit that would lead me to disagree with the Council's conclusion in its Committee report that a residential scheme could come forward at the reserved matters stage without having significant visual and landscape impacts.

#### *Obligation*

35. I have been supplied with a certified copy of a Section 106 planning obligation dated 20 February 2017 which secures the provision of various contributions to local facilities and the provision of affordable housing.
36. Key Principle AH2 of the North West Leicestershire District Council Affordable Housing Supplementary Planning Document (the SPD) provides that affordable housing will be sought on all sites of 15 or more dwellings in the Greater Coalville Area where the appeal site is located. Furthermore, Key Principle AH3 requires a minimum of 20% of residential units be affordable. The affordable housing obligation requires that 20% of the houses built on site be affordable.
37. It also provides for financial contributions; to bus stop improvement; a sustainable travel pack for each dwelling together with bus passes; to the improvement of the local civic amenity site; towards the provision of Primary and Secondary education facilities serving the development; and towards the provision of Library services.
38. The Council has indicated that the contributions would not lead to the pooled contributions limit set out in Regulation 123 (3) of the Community

Infrastructure Levy (CIL) Regulations being exceeded. The limitations on pooled contributions do not apply to affordable housing.

39. The National Forest Company's Planting Guidelines expects 20% of the site area to be for woodland and planting. This expectation, together with the requirement for the submission of a construction traffic routeing plan, is also part of the S106 agreement.
40. The obligations within the S106 are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. Therefore, they meet the tests within CIL Regulation 122 and paragraph 204 of the Framework. I have taken them into account in the decision.

### **Conditions**

41. I have had regard to the various planning conditions that have been suggested by the Council and considered them against the tests in the Framework and the advice in the Planning Practice Guidance and have made such amendments as necessary to comply with those documents. In the interests of clarity it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved location plan and one restricting the numbers of houses to be built. Any increase in numbers would require further highway and landscape consideration.
42. The reserved matters should demonstrate compliance with Building for Life 12 through an assessment and this should be required by condition. Conditions regarding the submission of details of the archaeological evaluation of the site and the protection of trees are necessary prior to work commencing on site to ensure no harm is caused to archaeology and trees by any development. Given the proximity of the railway line I concur that conditions are necessary regarding investigation of the land for contamination to ensure that appropriate mitigation takes place should the land be found to be contaminated before any development takes place. Condition 7 is imposed to protect nesting birds. Foul and surface water conditions are applied to ensure the proper drainage of the site. Conditions 10-15 are imposed to protect highway safety.

### **Conclusion**

43. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

*Zoe Raygen*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

- 1) Details of the access (save for the details of vehicular access into the site from The Green), 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 takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission and the development hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
- 3) The proposed development shall be carried out strictly in accordance with the following plans, unless otherwise required by another condition of this planning permission: - Site Location Plan (40261/001)
- 4) A total of no more than 34 dwellings shall be erected.
- 5) No development (except any demolition permitted by this permission) shall commence on site until a Further Risk Based Land Contamination Assessment, as recommended by BSP Consulting report Land south of The Green, Donington Le Heath, Leicestershire Geotechnical & Geo-Environmental Desk Study On behalf of William Builders Ltd Project: 15210 Date 02.10.15, has been submitted to and approved in writing by the Local Planning Authority. The Risk Based Land Contamination Assessment shall be carried out in accordance with:
  - i) BS10175:2011+A1:2013 Investigation Of Potentially Contaminated Sites Code of Practice;
  - ii) BS 8576:2013 Guidance on Investigations for Ground Gas - Permanent Gases and Volatile Organic Compounds (VOCs); and
  - iii) CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004.

Should any unacceptable risks be identified in the Risk Based Land Contamination Assessment, no development shall commence on site until a Remedial Scheme and a Verification Plan is prepared, and submitted to, and agreed in writing by the Local Planning Authority. The Remedial Scheme shall be prepared in accordance with the requirements of:

- i) CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004; and
- ii) BS 8485:2015 Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings

The Verification Plan shall be prepared in accordance with the requirements of:



- i) Evidence Report on the Verification of Remediation of Land Contamination Report: SC030114/R1, published by the Environment Agency 2010;
- ii) CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004.

If, during the course of development, previously unidentified contamination is discovered, development must cease on that part of the site and it must be reported in writing to the Local Planning Authority within 10 working days. Prior to the recommencement of development on that part of the site, a Risk Based Land Contamination Assessment for the discovered contamination (to include any required amendments to the Remedial Scheme and Verification Plan) must be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be implemented in accordance with the approved details and retained as such in perpetuity, unless otherwise agreed in writing by the Local Planning Authority.

- 6) Prior to occupation of any part of the completed development, either

If no remediation was required by Condition 5 a statement from the developer or an approved agent confirming that no previously identified contamination was discovered during the course of development is submitted to and approved in writing by the Planning Authority, or

A Verification Investigation shall be undertaken in line with the agreed Verification Plan for any works outlined in the Remedial Scheme and a report showing the findings of the Verification Investigation relevant to either the whole development or that part of the development shall be submitted to and approved in writing by the Local Planning Authority. The Verification Investigation Report shall:

- i. Contain a full description of the works undertaken in accordance with the agreed Remedial Scheme and Verification Plan;
- ii. Contain results of any additional monitoring or testing carried out between the submission of the Remedial Scheme and the completion of remediation works;
- iii. Contain Movement Permits for all materials taken to and from the site and/or a copy of the completed site waste management plan if one was required;
- iv. Contain Test Certificates of imported material to show that it is suitable for its proposed use;
- v. Demonstrate the effectiveness of the approved Remedial Scheme; and
- vi. Include a statement signed by the developer, or the approved agent, confirming that all the works specified in the Remedial Scheme have been completed.

- 7) Unless first agreed in writing by the Local Planning Authority, no site clearance operations that involve the destruction or removal of vegetation on the site shall be undertaken during the months of March to August (inclusive).
- 8) Other than site clearance and preparation works no works shall commence on the construction of the hereby permitted dwellings until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall include the utilisation of holding sustainable drainage techniques with the incorporation of two treatment trains to improve water quality; the limitation of surface water run-off to equivalent greenfield rates; the ability to accommodate surface water run-off on site up to the critical 1 in 100 year event plus an appropriate allowance for climate change, based upon the submission of drainage calculations; and the responsibility for the future maintenance of drainage features. The scheme shall be fully implemented and subsequently maintained, in accordance with the timing and phasing arrangements embodied within the approved scheme.
- 9) Other than site clearance and preparation works no works shall commence on the construction of the hereby permitted dwellings until a scheme for foul drainage has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented prior to the occupation of the first house in accordance with the approved details.
- 10) Before first use of the development hereby permitted, visibility splays of 2.4 metres by 54 metres to the right and 2.4 metres x 43 metres to the left shall be provided at the junction of the access with The Green. These shall be in accordance with the standards contained in the current County Council design guide and shall thereafter be permanently so maintained. Nothing shall be allowed to grow above a height of 0.6 metres above ground level within the visibility splays.
- 11) The proposed access shall be provided with a width of a minimum of 5.5 metres for a distance of at least 10 metres behind the highway boundary on The Green.
- 12) Before first use of the development hereby permitted, the vehicular access to the site shall be provided with 6 metre radii on both sides of the access.
- 13) No development shall commence on site until such time as details of a footway from existing footways on The Green to the point of the new access to the development shall be submitted to and agreed in writing with the Local Planning Authority. The footway shall be implemented in full prior to any dwelling being occupied.
- 14) No development shall commence on the site until such time as a construction traffic/site traffic management plan, including wheel cleansing facilities and vehicle parking facilities, and a timetable for their provision, has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and timetable.

- 15) The gradient of the access into the site shall not exceed 1:12 for the first 10 metres behind the highway boundary.
- 16) No development shall commence on the site until such time as a programme of archaeological mitigation work, informed by an initial phase of trial trenching and detailed within a Written Scheme(s) of Investigation has first been submitted to and agreed in writing by the Local Planning Authority. The scheme shall include an assessment of significance and research questions, and:
  - i. The programme and methodology of site investigation and recording (including the initial trial trenching, assessment of results and preparation of an appropriate mitigation scheme);
  - ii. The programme for post-investigation assessment;
  - iii. Provision to be made for analysis of the site investigation and recording;
  - iv. Provision to be made for publication and dissemination of the analysis and records of the site investigation;
  - v. Provision to be made for archive deposition of the analysis and records of the site investigation; and
  - vi. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation

No development shall take place at any time other than in accordance with the agreed Written Scheme of Investigation. None of the dwellings shall be occupied until such time as the site investigation and post investigation assessment has been completed in accordance with the programme set out in the agreed Written Scheme of Investigation and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

- 17) No site works of any description shall take place on the site until such time as the existing trees to be retained have been securely fenced off in accordance with a scheme that has first been submitted to and agreed in writing with the Local Planning Authority. Within the fenced off areas there shall be no alteration to ground levels, no compaction of the soil, no stacking or storing of any materials and any service trenches shall be dug and back-filled by hand.
- 18) The first reserved matters application shall be accompanied by a further Building for Life 12 assessment.