

Appeal Decision

Inquiry opened on 25 April 2017

Site visit made on 4 May 2017

by **C J Ball** DArch DCons RIBA IHBC

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

Decision date: 05 July 2017

Appeal Ref: APP/Y2620/W/16/3150860

Land at Creake Road and Moor Lane, Sculthorpe, Fakenham NR21 9QJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full (phase 1) and outline (phase 2) planning permission.
 - The appeal is made by Amstel Group Corporation Ltd against the decision of North Norfolk District Council.
 - The application Ref PF/15/0907, dated 19 June 2015, was refused by notice dated 18 January 2016.
 - The development proposed is described as new housing, infrastructure and facilities at the centre of Sculthorpe consisting of an application for (i) full planning permission for an initial phase comprising 71 dwellings, new access road, and side roads, water attenuation ponds and drainage works, play areas, landscaping and associated works; and (ii) outline planning permission with all matters reserved for later phases comprising up to 129 dwellings, side roads, primary school, land for community resource centre, play areas, water attenuation ponds and drainage works, landscaping and associated works.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The inquiry sat for 6 days on 25-28 April and 3-4 May 2017. I made a visit to the site accompanied by the main parties on 4 May. Having heard all the evidence I adjourned the inquiry on 4 May simply to allow submission of a certified copy of the executed planning obligation, with the intention of closing the inquiry in writing on 12 May. On 10 May the Supreme Court handed down its judgment in the *Suffolk Coastal and Cheshire East* case.¹ I asked the parties to comment on how this judgment might affect their respective cases and eventually closed the inquiry in writing on 25 May.
3. The Council refused the application for 4 reasons. Reason 3 relates to the lack of information with regard to the potential archaeological interest of the site. Before the inquiry, the appellant undertook additional investigative work on site to further evaluate the potential for archaeological heritage assets. In the light of these findings the Council confirmed that any remaining archaeological matters could be addressed by planning conditions. Accordingly the Council withdrew reason for refusal 3 and I took this matter no further.

¹ [2017] UKSC 37 *Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) & Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant)*

4. The application was submitted as a hybrid full and outline application. While it is open to me to make a split decision, both parties confirmed that this would be unacceptable to them. I have therefore considered the proposal as a whole. The outline part of the application was submitted with all matters reserved so it effectively seeks a decision in principle. Nonetheless I was invited to impose a condition requiring compliance with the accompanying illustrative Masterplan to ensure a cohesive overall site layout that reflects the locational, drainage and other matters agreed at application stage.
5. In that respect, after the application was refused the appellant made a small revision to the phase 2 housing layout. This represents a minor change that makes no practical difference to the illustrative scheme. The Council agreed that the revised illustrative masterplan 5767U/OP 05A should replace the submitted plan 5767U/OP 05. I have considered the appeal on that basis.

Agreed matters

6. Before the inquiry the parties submitted a statement of common ground. This describes the appeal site and its surroundings; notes the relevant planning history; sets out the reasons for refusal; indicates the planning policy context; and details a range of agreed planning issues. It helpfully sets out the matters in dispute, related to the reasons for refusal. The statement includes a core document list and appendices detailing housing sites where 5 year housing land supply (HLS) delivery rates are agreed and not agreed. At my request these housing matters were further discussed and updated information was provided during the inquiry.

Planning obligation

7. Just before the inquiry the appellant submitted in draft form a unilateral undertaking as a s106 planning obligation. This was amended during the inquiry. In final form the undertaking is intended to commit the appellant to providing land for community purposes; providing land for a new primary school and the required pupil contribution; providing accessible agricultural land and open space; incorporating a proportion of affordable housing, starter homes and custom and self-build housing; and making required financial contributions towards cycle infrastructure and a local library. The undertaking includes a commitment by the Norwich Diocesan Board to construct a new primary school.

Main issues

8. Accordingly I consider the key issues in the appeal to be:
 1. Whether the Council can demonstrate a 5 year supply of deliverable housing land and the consequent policy implications;
 2. The effect of the proposed development on the character and significance of a range of designated heritage assets; and
 3. The impact of the proposal on local infrastructure and whether any adverse impacts could be effectively mitigated.

Policy background

9. The local development plan consists of the North Norfolk Core Strategy (CS), adopted in 2008, and the North Norfolk Site Allocations Development Plan Document (SADPD), adopted in 2011. The parties agree that the policies most relevant to this appeal are CS policies SS1, which sets out the spatial strategy for North Norfolk; SS2, which is intended to limit development in the countryside; EN2, which aims to protect and enhance landscape and settlement character; and EN8, which is intended to protect and enhance the historic environment. The Council accepts that CS policy SS3, which promotes a housing supply based on the withdrawn RSS for the East of England, is out of date and does not rely on it.
10. The SADPD identifies sites for development in accordance with the CS, concentrating housing development in principal settlements, secondary settlements and service villages. CS policy SS8 confirms that Fakenham is a principal settlement where provision will be made for a major urban expansion to the north of the town. SADPD allocates 2 sites at Fakenham: F01, a mixed use development to include 800-900 dwellings on open land north of Rudham Stile Lane; and F05, a residential development of 60-80 dwellings on brownfield land between Holt Road and Greenway Lane.
11. The Council has started work on a replacement Local Plan, consulting under Regulation 18 and calling for sites, but as yet there are no emerging policies that are relevant to the appeal.
12. Other material policy considerations include the National Planning Policy Framework (Framework), which sets out the government's core planning principles and key policy objectives to achieve sustainable development, and the National Planning Practice Guidance (Guidance), which details the matters to be taken into account. I have also had regard to a range of Historic England (HE) publications, including Good Practice Advice Notes.

Planning history

13. The appellant proposed the addition of Sculthorpe to the list of service villages during the CS consultation period. The Examining Inspector considered that, since the village has very few facilities to qualify as a service village, and further residential development of any scale could prejudice the delivery of planned development at Fakenham, such an addition would render the plan unsound.
14. Planning permission was granted in 2014 for a playing field and parking spaces to the north of the site for the use of the village school. If this appeal succeeds and a new school is built, with its own playing field, that permission would not be implemented under the terms of the planning obligation.

Reasons

15. The small village of Sculthorpe is set in attractive, open countryside, some distance from Fakenham, the nearest large town. The village is characterised by its gradual evolution from a close-knit historic core to a rather straggling settlement defined by a triangular pattern of rural roads. The older settlement at the junction of Moor Lane and The Street has been extended by ribbons of

19th and 20th century development along Moor Lane and Creake Road, linking older outlying buildings and loosely enclosing a large, roughly triangular field in current agricultural use. This is the proposed development site and its associated area of accessible agricultural land.

16. The proposal would involve the construction of 200 dwellings, with a first phase of 71 to include 50% (35) affordable dwellings. The provision of affordable housing in the following phase(s) depends on viability testing but would be a minimum of 25%. The proposal includes a new primary school to replace the existing village school and space for an unspecified community facility. All the built development would take place on the southern half of the triangle of land, with access from The Street at its junction with the A148 Kings Lynn-Fakenham road and from Moor Lane. The northern half of the triangle would remain as agricultural land with limited public access for general recreational use.
17. Sculthorpe is not designated as a service village under CS policy SS1 and so lies in the countryside, where it is subject to CS policy SS2. This restricts development to generally small-scale development that requires a rural location, meets local housing needs and supports the rural economy. The appellant acknowledges that the proposal conflicts with these development plan policies, arguing instead that they are out of date in the terms of Framework 49 so that Framework 14, and its tilted balance in favour of granting permission, is engaged. As Footnote 9 indicates, that tilted balance does not apply if specific policies in the Framework indicate development should be restricted. In this appeal, that requires consideration of the proposal against the specific policy of conserving and enhancing the historic environment.

Whether the Council can demonstrate a 5 year supply of deliverable housing land and the consequent policy implications

18. Framework 47 makes it clear that, to boost significantly the supply of housing, local planning authorities should use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs (OAN) for market and affordable housing in the housing market area, including identifying key sites which are critical to the delivery of the housing strategy over the plan period. They should identify and update annually a supply of specific deliverable sites sufficient to provide 5 years' worth of housing against their housing requirements with an additional buffer of 5% to ensure choice and competition in the market for land, or 20% where there has been a persistent record of under-delivery.
19. The Council considers that it can readily demonstrate a 5 year supply of deliverable housing sites. The appellant challenges both the assessment of the housing requirement and the deliverability of a number of identified sites. Outside the inquiry the parties continued to discuss these matters and helpfully came to a measure of agreement that reduced the differences between them to a few key factors.

Objectively assessed needs

20. The Council's up-to-date evidence base in this case consists of the 2014-based DCLG Household Projections and associated 2014-based sub-national population projections; the 2016 Central Norfolk Strategic Housing Market Assessment

(SHMA); and the 2017 draft SHMA update. The parties agree that, as a starting point, the Household Projections result in unadjusted annual figures for North Norfolk of 449 additional dwellings from 2012 and 446 from 2014. Both parties agree that, based on current forecasts for employment, there is no need for a further adjustment for economic factors, although a 10% market signals uplift is appropriate, resulting in a working DCLG Household Projections OAN of 493 dwellings per annum (dpa).

21. The 2016 Central Norfolk SHMA concludes that, in the 24 year period 2012-2036, the OAN for the north Norfolk part of the joint Housing Market Area will be met if around 10,000 new houses are provided. To date about 2,050 have been built, producing an OAN of about 418 dpa (rounded to 420). Using the 2014 housing and population projections as a starting point, the 2017 update similarly adjusts for the locally specific migration trend for the 10 year period 2005-2015 and concludes that the OAN for North Norfolk remains at about 420 dpa. Accordingly, for this appeal, based on its up-to-date SHMA, the Council considers its demographic OAN to be 420 dpa.
22. The appellant's calculations result in an OAN of 529 dpa (rounded to 530). This wide discrepancy in estimated OANs results from a fundamental difference between the parties as to how to treat unattributable population change (UPC) and migration estimates. The appellant also considers that the clarifications and changes to Guidance and OAN methodology proposed by the Local Plans Expert Group (LPEG) are relevant to the calculations.
23. There is no dispute between the parties that there is an over-estimation of local population increase. While the Office of National Statistics (ONS) mid-year estimates indicated an estimated growth in the population of North Norfolk between 2001 and 2011 of around 6,000 persons, it actually grew by 3,200 persons. That is a significant discrepancy. This over-estimate of population change affected subsequent population projections so that the 2012 and 2014 DCLG projections perpetuate the discrepancy.
24. The appellant argues that ONS figures are statistically robust and can be relied on. However, Guidance 017 allows a more nuanced approach, encouraging plan makers to consider sensitivity testing, specific to their local circumstances, based on alternative assumptions in relation to the underlying demographic projections, including migration levels.
25. It is agreed that the likely causes of UPC are problems with the 2001 and 2011 censuses and problems with migration estimates. In responding to questions about the statistical disparities between the 2011 census and mid-year estimates, the ONS considers its North Norfolk data to be very robust and does not consider it necessary to make adjustments to its population data. The Council's interrogation of local data has not identified any evidence of a problem with either census, indicating that the over-estimation of international migration is the most likely cause of UPC in North Norfolk. Migration rates are crucial to the calculation of OAN. Framework 159 makes it clear that, in identifying the scale and mix of housing that the local population is likely to need over the plan period, the Council's SHMA should take account of migration and demographic change.

26. The migration rates used in the 2016 SHMA and the 2017 update reflect the actual migration trends in the 10 years from 2005-2015, rather than the ONS's projections which proved to be about 2,000 persons too high. I agree with the Council that this is a large discrepancy which it would be wrong not to take into account. The Council adjusted the DCLG OAN estimate downwards to reflect the identified UPC. I consider that the Council is right to take the view that DCLG projections should be reduced where justified by local evidence and local judgement. Furthermore, while the outcome of the Brexit negotiations is uncertain, it is not likely to result in an increase in migration rates. The appellant's reliance on the inaccurate population projections and over-estimated migration rates explains their higher estimate of OAN.
27. LPEG's standard methodology recommendations were not endorsed by the recent Housing White Paper and DCLG's commitment to consult on a standard methodology cannot be taken to mean the LPEG methodology. There is no certainty as to whether LPEG's recommendations will be accepted so, as things stand, they carry no real weight as a consideration in the calculation of OAN.
28. I therefore consider that the Council has taken a pragmatic, robust and convincing approach to the assessment of its OAN of 420 dpa and that in this appeal that is the appropriate figure on which to base its housing requirement.

Housing requirement

29. The parties disagree on the base date for assessment. The parties originally agreed a base date of 2012 and the appellant prepared his evidence on this basis. The Council subsequently provided evidence based on the DCLG 2014-based Household Projection 2014-2039, which indicates a higher rate of household growth than the 2012 projections. I consider that it is appropriate and necessary to take account of the most up-to-date information. While this caused the appellant to reassess his evidence, I do not consider that he was particularly prejudiced by the Council's change of base date to 2014 as rebuttal evidence was submitted and the implications were fully discussed at the inquiry. The OAN does not change and the final agreed iteration of the 5 year requirement calculation (CD35B) gives alternative calculations based on 2012 and 2014 as the base year. So, while it is fair for me to consider the 2012 assessment to discover the practical effect of the change, I shall give preference to the 2014 assessment.
30. Referring to CD35B (figures and arithmetic agreed by the parties), I start with the 2012 base date and OAN of 420; completions to March 2016 were 1,607 against a housing requirement of 1,680, leaving a shortfall of 73. The 5 year requirement (using the agreed Sedgefield approach) is $5 \times 420 + 73$, which is 2,173. The parties agree that a 20% buffer of 435 should be added to account for a persistent record of under-delivery, bringing the overall 5 year requirement to 2,608, an annual requirement of 522.
31. From the 2014 base date, there were 982 completions to March 2016, against a requirement of 840, so that there was an over-delivery of 142. Thus the 5 year requirement is $5 \times 420 - 142$, that is 1,958. Adding the 20% buffer of 392 results in an overall 5 year requirement of 2,350, an annual requirement of 470.

Housing land supply

32. The parties agree that, for delivery assessment purposes, the 5 year period is 2016/17-2020/21. One year of this period has already elapsed. The statement of common ground indicates that the appellant agrees that the Council can deliver 846 houses on 63 sites, but challenges the delivery of 721 houses on a further 15 sites and the extent of windfall allowance. During the inquiry, further negotiations reduced the number of sites under challenge to 7, delivering 303 dwellings. The appellant argues that these sites will deliver only 75 dwellings.
33. CD35B confirms that the Council's identified sites would deliver 2,238 dwellings plus a windfall addition of 540, a total supply figure of 2,778. The appellant considers that these sites would only deliver 2,010 dwellings plus a windfall allowance of 405, a total of 2,415.
34. Guidance 031 confirms that neither planning permission nor allocation in a development plan is a pre-requisite for a site to be considered deliverable. Footnote 11 to Framework 47 explains that, to be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years and in particular that development of the site is viable. It goes on to say that sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within 5 years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.
35. With the single exception of RAF West Raynham, where there are unusual circumstances, 6 of the 7 challenged sites have planning permission, are allocated in the SADPD or both. The appellant argues that all these sites have deliverability or viability problems that will prevent them from meeting the Council's expected delivery rate.
36. *Land at Grange Cottage/Water Lane Mundesley (44 dwellings)* – the site has planning permission for a phased development. Phase 1 has started on site and is due for completion in August 2017. The appellant points to the financial triggers for phase 2 and some uncertainty in its progression. However, the developer has confirmed a 131 week build programme to complete the development so I consider that there is a clear prospect of completion of all 44 dwellings within the next 4 years.
37. *Land rear of Sutherland House, Overstrand Road, Cromer (68 dwellings)* – the site has planning permission and the Council submitted evidence of a developer intending to start work within the next 4 months. While there are landscape and bat-related issues to resolve, which may delay the start of the delivery of houses, there is no clear evidence to show that 68 dwellings will not be provided by 2021.
38. *Land at the junction of Holt Road and Kettlestone Road, Little Snoring (20 dwellings)* – this small greenfield site is allocated and has planning permission, although it has not been taken up. A recent application by the land owner incorporating a low proportion of affordable housing was refused when no evidence to substantiate that was provided. A house builder has now acquired the site and intends to negotiate a viable proportion of affordable housing in

accordance with Council policy. That would take account of any viability issues with the site so that there is a realistic prospect of the delivery of 20 dwellings over the next 4 years.

39. *Land north of Rudham Stile lane, Fakenham (Picken site) (60 dwellings)* – the site is allocated and has planning permission. While a developer has recently expressed interest in the site, it is brownfield land and there are acknowledged viability issues and difficulties in formulating a robust reserved matters application. I accept that delivery could be delayed until the final year and it seems to me more realistic to reduce the number of houses to be delivered over the next 4 years to 30.
40. *Land off Hempstead Road, Holt (60 dwellings)* – this is part of a larger allocated site, where a master plan has been agreed. A programme of relocating common lizards from this site has been ongoing over 2 years, removing a potential constraint. The site is owned by developers who have indicated that they are preparing a planning application with the aim of first occupation in 2019 and completion by 2021. The appellant provides no clear evidence otherwise and I consider that there is a realistic prospect that 60 houses will be delivered on the site within the next 4 years.
41. *Land off Laundry Loke, North Walsham (15 dwellings)* – this is a site allocated for 30 dwellings. Site investigation of potential contamination problems are ongoing, grant funded by the Council. While the outcome may have an impact on viability, there is no clear evidence to show that the site is undevelopable. The owner, a housing trust, is investigating the purchase of adjoining land which would increase the capacity to 45 dwellings. I consider that there is a reasonable prospect that 15 dwellings will be delivered over the next 4 years.
42. *RAF West Raynham (36 dwellings)* – this relates to ex-RAF married quarters which were condemned as unfit for habitation. 58 dwellings are currently undergoing a programme of refurbishment and are being made available on the open market. As Ministry of Defence property they were not part of the Council's housing stock, but they will now be available to meet the general housing needs in the district. There is every prospect that at least 36 dwellings will be delivered by 2021.
43. While there is always the possibility of the supply assessment proving to be an under- or over-estimate over time, I consider that the 7 sites in dispute should be considered deliverable in the terms of Framework 47. They are available now, offer a suitable location for development now, and are achievable with a realistic prospect that housing will be delivered on the site within the 5 year period. With the exception of the Picken site, where I have halved the Council's assessed supply figure, the appellant has not been able to show clear evidence that, on sites with planning permission, the schemes will not be implemented to the extent assessed within the remaining 4 year period. I therefore consider that the Council can demonstrate that these 7 sites will deliver 273 dwellings over the remainder of the 5 year period.
44. The parties agree that a windfall allowance should be added and that, based on historic rates and an assessment of likely future sources of supply, this should be at the rate of 135 dpa. They disagree as to whether this rate should apply

for 3 or 4 years. While windfall rates have varied, there has been a consistent annual supply over the past years and I see no reason why there would be no windfall delivery in year 2 of the assessment period. I consider there to be a reasonable prospect of 4 years of windfall housing delivery, amounting to 540 dwellings over the remaining period.

45. During the inquiry an outline planning application was submitted for a mixed use development to include 950 dwellings on allocated site F01 to the north of Fakenham. The scheme is complex and will take some time to process. It may be that some dwellings will be completed before 2021 but, given the need to approve reserved matters and to construct the necessary infrastructure, I consider that it is more realistic at the moment not to include the delivery of any dwellings from this site towards the assessment of the 5 year supply.
46. Thus, with reference to the table in CD35B, and the 5 year assessment from the 2012 base year, I consider that the Council can identify a housing supply of 2,208 specific sites, with a windfall allowance of 540, giving a total supply of 2,748. With an annual requirement of 522, this shows that the Council can demonstrate 5.26 years of housing land supply. Against the 2014 base year, with the same supply of 2,748 sites and an annual requirement of 470, the Council can demonstrate a 5.85 years supply. Even using the appellant's reduced supply figure of 2,415, there would be 5.14 years supply.
47. I therefore find that the Council can convincingly demonstrate at least a 5 year supply of deliverable housing sites.

Policy implications

48. This means that, in the terms of Framework 49, relevant policies for the supply of housing are considered to be up to date so that the 4th bullet point of Framework 14 is not engaged. In these circumstances the *Suffolk Coastal and Cheshire East* judgement effectively endorses the plan-led system, confirming the primacy of the development plan and the policies through which local people can shape and protect their environment while accommodating necessary development. In accordance with Framework 11 and 12, the appeal must be determined in accordance with the up-to-date development plan unless material considerations indicate otherwise.
49. The CS and SADPD were both adopted before the Framework was published in March 2012. Framework 215 advises that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. CS spatial strategy policy SS1 and the SADPD allocation policies are all policies for the supply of housing which accord with the Framework's core principle of genuinely plan-led development. In my view they carry significant weight.
50. CS policy SS2 is not a housing supply policy and is intended to protect the countryside, consistent with the Framework core principle of taking account of the role and character of different areas and recognising the intrinsic character and beauty of the countryside. CS policies EN2 and EN8, while not requiring the balancing exercise set out in the Framework, are generally consistent with its policy of conserving and enhancing the historic environment. I consider that all these policies carry significant weight.

51. As the appellant acknowledges, in proposing development in this countryside location, the proposal conflicts with development plan policies SS1 and SS2. That is a particularly weighty consideration against the proposal and I go on to consider other matters.

The effect of the proposed development on the character and significance of a range of designated heritage assets

52. The parties agree that the heritage assets to be considered are the Sculthorpe Conservation Area (CA) at the hub of the village; the grade II listed cottage No.4 Moor Lane, which lies within the CA and adjoins the western edge of the site; the grade II* listed church of St Mary and All Saints, which is located at the northern apex of the village's triangle of roads; and the grade II listed Grove Farmhouse off Creake Road which, with its complex of converted barns, adjoins the eastern edge of the site.
53. The parties also agree that it is the impact on the setting of all these assets that is in question. While s66.1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCA) requires me to have special regard to the setting of the listed buildings, there is no such legal requirement for the setting of the CA. Nonetheless Framework 132 confirms that the significance of any heritage asset can be harmed by development within its setting and CS policy EN2 requires that development proposals should demonstrate that their location, scale, design and materials will protect, conserve and, where possible, enhance among other things the special qualities and local distinctiveness of the area and the setting of, and views from, conservation areas.

Sculthorpe Conservation Area

54. The character of the Sculthorpe CA is defined by its rural location. It encompasses the historic nucleus of the village, typically characterised by modest vernacular buildings around a small green, reflecting the dependence of the original settlement on the agricultural economy. The gradual expansion of the village around the triangle of rural lanes, incorporating other small hamlets and farms, surrounded the fields which now form the proposed development site, currently a single large field. This agricultural land at its centre contributes strongly to the distinctive character and appearance of the village, giving it a unique sense of place.
55. For this reason the extended village, encircling the open field, provides a coherent setting for the CA. It shows clearly how the village developed from its original core, in a form influenced by agricultural considerations, and makes legible the historic relationship of the CA with the agricultural landscape. This makes a substantial contribution to the significance of the CA. Development within this setting, particularly of a design that relies on a 'pattern book' Norfolk vernacular rather than responding to the distinctive local identity of its surroundings, would undermine the significance of the CA. The loss of a major part of this open land, and the failure to demonstrate that the location and design of the development would protect and conserve the special qualities and local distinctiveness of the area and the setting of the CA, would conflict with CS policy EN2.

No.4 Moor Lane

56. This 17th century cottage lies at the head of the former village green at the junction of Chapel Lane, Moor Lane and another lane (Bird's Road, no longer in existence) which led to Grove Farm and beyond. This is a location of some importance. It is a relatively modest building but there are indications, such as its location and the wide mullioned window with drip moulding in the eastern gable wall, that it was of a higher status than a labourer's cottage. A tower windmill once stood adjacent, and the associated mill buildings, now converted to dwellings, lie to the south of the cottage. It is quite possible that the cottage was either a farmhouse or miller's house. The significance of the cottage lies primarily in its survival from the 17th century, its location, form and materials and its association with pre-enclosure farming around Sculthorpe.
57. In that respect the farmland to the east, once known as Mill Field and now part of the appeal site, is overlooked by the gable window and gives the building a strong agricultural context within the village. This land forms a significant part of the setting of the cottage, making clear its agricultural character and contributing to its significance, while reinforcing the contribution it makes to the distinctive character and significance of the CA. The proposed development, while set back immediately in front of the cottage, would subsume it into a wider built-up area, so that its agricultural associations would be largely lost. That would cause harm to its significance as an early farming-related dwelling.

Church of St Mary and All Saints

58. The Parish Church lies on high ground to the north of the village, at the apex of the triangle of roads, and historically served as a focal point for the local community. From the church the distinctive form of the village is clearly discernible, with roadside buildings encircling the open field at its centre. A sense of how the village developed with the church at a key focal point is readily apparent. The church tower is a landmark visible from various places around the village, emphasising its significance as an important local building which contributes strongly to the particular character of the village.
59. The significance of the church as a key historic focal point is reinforced by its location at the apex point of the village layout, so that the village itself, built up around the central open field, provides the setting for the church. That village setting for its most important building contributes greatly to the significance of the church as the focus for the local community, and all the listed buildings are visible within this context. The proposed development would take place on the southern half of the field, allowing aligned views of the church tower from within the development across the remaining open part of the field to the north. This would mitigate the impact of the development in some respects but, to the extent that the open setting would be partly lost, I consider that there would be some limited harm to the significance of the church as a key community building.

Grove Farmhouse

60. The farmhouse dates from the 17th century but was enlarged in the 18th century to form a more prestigious dwelling. To its west lies a range of farm buildings, now converted to dwellings. The significance of the farmhouse lies largely in its

role at the centre of a large farmstead which historically farmed the open land at the centre of the village. The extensive range of farm buildings associated with the house contributes much to its character and significance as a wealthy farmer's dwelling. While the house is now set in its own grounds, screened by trees, the farm buildings are adjacent to the open field and are prominent in local views. A key consideration is therefore whether the farm buildings are structures protected by the listing of the farmhouse.

61. The house was listed in 1951. S1.5 of the PLBCA, which came into effect in 1969, describes a listed building as a building included in the list and any structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1 July 1948. In this respect I have had regard to the *Taunton Deane* judgment² which, in concluding that the barn in question there was not curtilage listed, identified 3 factors as being of particular relevance: the physical layout of the listed building and the structures, their ownership past and present, and their use or function past and present.
62. In the *Taunton Deane* case, a critical factor was the distinct separation of the house and the barn by a wall and some considerable distance between the buildings. In this case, the farmhouse is no more than 5 metres from the nearest barn and, while I saw a wall between the house and the barn complex, that is clearly recent, serving to separate the converted barns. At the time of listing, the farmhouse, its outbuildings and the barns were grouped around open yards, were closely related and operated together as a typical farmstead.
63. The Council's evidence, unlike the *Taunton Deane* case, shows that the farm and barns were in the same ownership at the time of listing and when the PLBCA came into effect. The barns were sold off in the late 1980s and are now in separate residential uses.
64. The Council also shows that, at the relevant dates, the farm owner lived in the house and used the barns and outbuildings for operational farming purposes. All the buildings formed one close-knit agricultural unit, used for a shared common purpose. The uses of the barns and outbuildings were thus subordinate to, and dependent on, the purposes of the farmhouse. There is clearly not the same distinction between the house and the farm buildings as found in the *Taunton Deane* case. I consider, in this particular case, that the use of the farm buildings was ancillary to the use of the farmhouse so that the farm buildings are structures protected by the listing of the farmhouse.
65. The site occupies land that was farmed by Grove Farm and the farmstead group is a prominent feature on its eastern edge. The open farmland provides a clear agricultural setting for the farm group and makes a distinctive contribution to the significance of the house and barns as a traditional farmstead. Development of the farmland in close proximity to the farm group would destroy its agricultural setting and effectively make the farm buildings part of a larger urbanised area. The distinctive agricultural character of the building group would be largely lost, causing harm to its significance as a large local farmstead.

² [2008] EWHC 2752 (Admin) *R oao Egerton v Taunton Deane Borough Council and Mears*

Overall assessment

66. I have found that the proposal would cause harm to the setting of the CA and to the settings of 3 listed buildings, undermining their significance as designated heritage assets. That would conflict with CS policy EN8. Since there would be no harm to the CA or the buildings themselves, I consider that, cumulatively, the harm would be less than substantial.

The impact of the proposal on local infrastructure and whether any adverse impacts could be effectively mitigated

67. The construction of 200 dwellings in this location would have a significant impact on local infrastructure including access and highway safety, schools, and library provision. There is also a policy requirement to provide a proportion of affordable dwellings as part of any housing development.
68. Offsite highway improvements to mitigate the effects of the development would take place under other powers outside the planning system. However, the works should be tied to the planning permission, and the parties have agreed Grampian-type conditions requiring implementation of the highways works before work starts on site and completion before any dwelling is occupied.
69. The Council identified a need for more primary school places and for library improvements to serve the increase in population. The development would generate a considerable number of children of school age. No contribution is sought towards high school and 6th form places as there is sufficient capacity at Fakenham Academy. However, local primary school places are at or near capacity. Contributions would be required to increase capacity at Sculthorpe Primary School and Fakenham Infants School to accommodate the 50 children of primary school age generated by the development. Similarly, the development would place increased pressure on the local library, so that a contribution is required to increase the capacity to meet the demand.
70. The appellant addresses these matters by a Unilateral Undertaking, which includes provisions for affordable housing in a range of tenures, with a proportion of 50% in phase 1 and up to 25% in phase 2, with starter homes and sites for custom and self-build housing. There would be an appropriate contribution of £12,000 towards library improvements, in accordance with Local Plan policy. There would also be a small contribution towards upgrading the Sustrans cycle route between the village and Fakenham. These are necessary to make the proposal acceptable in planning terms and carry full weight in my considerations.
71. The Norwich Diocesan Board of Finance Ltd is a party to the undertaking, although their interest in the land (in the legal sense) is not disclosed as required by s.106(9). That may invalidate the deed³. While the Diocese may become a successor in title following a land transfer, a party with no interest in the land cannot lawfully enter into an obligation. The Diocesan commitment could therefore be at risk, although I accept that the risk is low.

³ I refer to Southampton City Council v Hallyard Ltd [2008] EWHC 916 (Ch).

72. The appellant undertakes to transfer a school site to the Diocese, which undertakes thereupon to construct a new 0.5 Form Entry primary school. The appellant confirms the availability of funding. The required education contribution of £372,608 would be paid to the Council for release to the Diocese towards the cost of constructing the school. If the school is not built within 3 years, there is a provision for using the contribution to increase the capacity of local schools.
73. The new school is intended to accommodate not just the children from the new development but also those currently attending the existing village primary school, so that it would replace the existing school. While it has some restrictions, the existing school is not failing (it is currently labelled 'Good' by Ofsted), and that particular provision goes beyond what is necessary. Thus the provision of a new school would not be directly related to the development and would not be fairly and reasonably related to it in scale and kind. Since the capacity of local schools can be increased to accommodate the requirement for additional school places, the construction of a new school is not necessary to make the development acceptable in planning terms.
74. The appellant also offers to transfer a small area of Community Land and a larger area of Accessible Agricultural Land to the Council or Alternative Body. The unilateral undertaking does not bind any party to accepting the transfer. The parish Council confirms that no need or specific use for the community land has been identified and the undertaking contains a provision for reversion to the appellant if the offer is not accepted. The 10 Ha of accessible agricultural land to the north of the development site would remain in agricultural use but would have limited public access on pathways across it. The required public open space and play area provision would be incorporated into the residential layout so there is no identified need for more open space or access to the agricultural land. Neither provision is directly related to the development or is necessary to make the development acceptable in planning terms.
75. While a new school, an area of land for community use and access to open fields for dog-walking and the like might be desirable, it has not been demonstrated that they are necessary in planning terms. They have evidently been offered as an inducement to make the scheme more attractive but they do not meet the tests of CIL Regulation 122 or comply with Framework 204. I have not therefore taken them into account.
76. While I have doubts about the validity of the deed of undertaking, the 'front-loaded' provision of affordable housing would be a clear benefit of the scheme. The contribution towards library improvement and, perhaps by a circuitous route, an eventual contribution to additional school places could both effectively mitigate adverse effects of the development but, since they would simply fulfil policy expectations in preventing harm, they attract no extra positive weight in support of the scheme.

Conclusions

77. I have found that the development of the site would lead cumulatively to less than substantial harm to the significance of the Sculthorpe Conservation Area and 3 listed buildings as designated heritage assets. As Framework 134 makes

clear, where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. 'Less than substantial' does not necessarily mean insignificant and each incidence of harm, as a matter of law, must be given considerable importance and weight. Together, the 4 incidences of harm carry significant weight in the overall planning balance.

78. The development would bring clear public benefits, including construction jobs, a wider choice of market housing and an early, and 'above policy', provision of affordable housing to meet a pressing need. However, that need is being addressed through the Local Plan process and the affordable houses would not be in the more populous settlement locations where they are most needed. On balance, giving significant weight to the identified harm to heritage assets, I consider that the public benefits do not outweigh that harm. I find no clear and convincing justification for the harm that would be caused to the significance of the designated heritage assets.
79. One of the core principles of the Framework is that planning for future development should be genuinely plan-led, providing a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency. Local Plans are the key to sustainable development and should set out the opportunities for development and clear policies on what will or will not be permitted and where. The clear aim of the plan-led system is to direct development to where it is needed.
80. CS policy SS1 sets out the Council's spatial strategy for the area, directing most new development to 4 principal settlements, with lesser growth in secondary settlements and a small number of defined service villages. Sculthorpe lies in the countryside, where it is subject to CS policy SS2. This restricts development to generally small-scale development that requires a rural location, meets local housing needs and supports the rural economy. The proposal clearly conflicts with CS policies SS1 and SS2.
81. The village has very few facilities so that almost every journey for work, school, shopping, leisure and recreation would involve travelling elsewhere. There is an hourly bus service to the nearest towns and it would be possible to walk or cycle the 7-10 km round trip to a range of facilities in Fakenham. However, the route is unattractive and, despite improvements, potentially dangerous since it involves crossing 2 major highways. In my view it is inevitable that the vast majority of journeys would be made by private car. That is not a sustainable approach to development and I consider that the site is not an appropriate location for what would be the 3rd largest housing site in the entire North Norfolk district.
82. Furthermore I consider that, even if I were to conclude that there is a shortfall in 5 year housing land supply so that Framework 14 4th bullet point is engaged, because of their consistency with the Framework the relevant policies would still carry considerable weight. There is a clear prospect of development soon coming forward to make up the shortfall and the harm I have identified to designated heritage assets is so extensive that, even on that tilted balance of considerations, the adverse impacts of granting permission would still significantly and demonstrably outweigh the benefits.

83. The development would bring benefits to the area, including a wider choice of market housing and a significant number of affordable houses to help meet a clear need. An argument can be made that the development would fulfil the economic and social roles of sustainable development. However, because of its rural location, the failure to protect the countryside and the harm caused to a number of heritage assets, the proposal would not meet the environmental role. Since the 3 roles are mutually dependent, the proposal as a whole would not be sustainable development.
84. Overall I find that the proposal would conflict with development plan policies intended to direct development to where it is needed, to protect the countryside and to safeguard the historic environment. The benefits of the proposal do not outweigh the harm it would cause and there are no other material considerations sufficient to indicate otherwise. For the reasons given above I conclude that the appeal should be dismissed.

Colin Ball

Inspector

Richborough Estates

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Estelle Dehon of Counsel	Instructed by Noel Doran, Solicitor, Eastlaw.
She called:	
Charmain Hawkins BA(Hons) MTP DipBldgCons(RICS) Dip Surv MRTPI IHBC	Associate, Beacon Planning Ltd.
Mark Ashwell MRTPI	Planning Policy Manager, North Norfolk District Council.

FOR THE APPELLANT:

Thomas Hill, Queen's Counsel	Instructed by Indigo Planning Ltd.
He called:	
Stephen Nicol BA MA	Senior Associate, Regeneris Consulting.
Ben Frodsham MTCP MRTPI	Associate, Indigo Planning Ltd.
Maggie Gatland MRICS MRTPI	Consultant to Indigo Planning Ltd.
Simon Neate BA(Hons) MRTPI FRGS	Executive Chair, Indigo Planning Ltd.

INTERESTED PERSONS:

Tony Walters	Chairman, Sculthorpe Parish Council.
Brian Watkin	Local resident.
Thomas Fitzpatrick	District and County Councillor.
Roy Reynolds	District Councillor.
Sarah Wilson BSc(Hons)	Sculthorpe Village Action Group.
Nigel Middleton	Conservation Officer, Hawk and Owl Trust; Manager of the Sculthorpe Moor Community Nature Reserve.
Stephen Faulkner BA(Hons) MSc DipTP MRTPI CiLCA	Principal Planner, Norfolk County Council (s106 session only).

ADDITIONAL DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Mr Hill's opening statement on behalf of the appellant.
- 2 Ms Dehon's opening statement on behalf of the Council.
- 3 Copy Illustrative Masterplan 5767U/OP 05A
- 4 Clear versions of Mrs Hawkins' map reversions, proof appendix A.
- 5 HE publication 'Seeing the History in the View'.
- 6 Extract from the Journal of the Norfolk Historic Buildings Group, relating to the vernacular houses of Binham.
- 7 Appeal decision APP/Y2620/W/14/3000517 ('*Holt*') CD34.
- 8 Extract from PPG 'Local Plans' CD11.
- 9 Extract from PPG 'Housing and economic land availability assessment'.
- 10 DCLG housing Statistical Release July 2016 '2014-based Household Projections: England 2014-2039 CD61.
- 11 Detailed recommendations: Local Plans Expert Group March 2016.
- 12 Appeal Decision APP/X1545/W/15/3139154 ('*Mayland*') CD62.
- 13 Court of Appeal judgment [2016] EWCA Civ 1146 ('*Daventry*').
- 14 High Court judgment [2016] EWHC 2979 (Admin) ('*Hinckley and Bosworth*').
- 15 Copy of EIA Screening Opinion and associated documents relating to the proposed development of land north of Rudham Stile Lane, Fakenham.
- 16 North Norfolk Ward parishes map.
- 17 Copy of outline planning application ref PO/17/0680, dated 28 April 2017, for up to 950 dwellings, employment development, primary school and children's nursery, hotel, local retail, and associated public open space and infrastructure on land north of Rudham Stile Lane and east of Water Moor Lane, Fakenham.
- 18 Council's note of affordable housing standard fallback arrangement.
- 19 Bundle of correspondence relating to the appellant's letter of 11 April concerning determination of HLS.
- 20 Revised statement of common ground in relation to OAN and HLS CD35A.
- 21 Bundle of correspondence relating to a Freedom of Information request concerning land allocated for development north of Rudham Stile Lane, Fakenham CD57A, B & C.
- 22 Plan showing LVIA viewpoints.
- 23 Artist's impressions of the proposal - Mrs Gatland's proof appendix 11.
- 24 Mrs Gatland's note on the Grove Farm Barns planning history.
- 25 Final version of agreed OAN/HLS position statement CD35B.
- 26 Draft suggested conditions.
- 27 Final draft of the appellant's unilateral undertaking.
- 28 Mr Faulkner's note on the policy basis for required contributions.
- 28 Cllr Walters' statement.
- 30 Mr Watkin's statement.
- 31 Mrs Wilson's statement.
- 32 Mr Middleton's statement and Sculthorpe Moor/Fen Management Plan 2012-17.
- 33 Site visit itinerary.
- 34 Ms Dehon's closing submissions.
- 35 Mr Hill's closing submissions.
- 36 Certified copy of executed unilateral undertaking.
- 37 Ms Dehon's comments on the *Suffolk Coastal and Cheshire East* judgment.
- 38 Mr Hill's comments on the *Suffolk Coastal and Cheshire East* judgment.