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## Appeal Decision

Site visit made on 5 June 2017

by **JP Roberts BSc(Hons), LLB(Hons), MRTPI**

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

Decision date: 14<sup>th</sup> July 2017

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**Appeal Ref: APP/R3325/W/17/3167634**

**Land west of Gainsborough, Milborne Port, Somerset**

- 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 Waddeton Park Ltd against the decision of South Somerset District Council.
  - The application Ref 16/04237/OUT, dated 28 September 2016, was refused by notice dated 21 December 2016.
  - The development proposed is the development of up to 46 residential units (including 35% affordable housing), associated access, parking, landscaping and infrastructure.
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### Decision

1. The appeal is allowed and planning permission is granted for the development of up to 46 residential units (including 35% affordable housing), associated access, parking, landscaping and infrastructure on land west of Gainsborough, Milborne Port, Somerset in accordance with the terms of the application, Ref 16/04237/OUT, dated 28 September 2016, subject to the schedule of conditions attached to this decision.

### Procedural matters

2. The application is made in outline with all matters other than access reserved for subsequent approval.
3. The appellants have submitted a unilateral undertaking under Section 106 of the Town and Country Planning Act 1990 which provides arrangements for the provision of affordable housing and the provision of a travel plan and makes financial contributions towards education, leisure facilities and travel matters. I shall refer to this in more detail below.
4. Since the making of the appeal, the Supreme Court<sup>1</sup> has clarified the interpretation of paragraphs 14 and 49 of the National Planning Policy Framework (the Framework). I have not sought the parties' views on this decision, as it does not alter my conclusions.

### Main Issue

5. The main issue is the effect of the proposal on the character and appearance of the surrounding residential area, countryside and setting of the Milborne Port Conservation Area and on the setting of nearby listed buildings.

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<sup>1</sup> Suffolk Coastal District Council v Hopkins Homes Ltd. and Richborough Estates Partnership LLP v Cheshire East Borough Council [2017] UKSC 37.

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## **Background**

6. The proposal follows the refusal of an earlier application for the residential development of a wider site which included land between the current appeal site and the A30 to the south. An appeal<sup>2</sup> against that refusal was dismissed on grounds of harm to the character and appearance of the area and to the setting of a number of listed buildings. I shall refer to this decision below.
7. The Council has no objection to the principle of extending Milborne Port beyond its current limits, as it says it takes a permissive approach to residential developments adjacent to the development areas of Rural Centres such as Milborne Port. A number of local residents question the need for more housing in the village, but the Council says that the proposed level of growth is consistent with its strategy. The Council concedes that it is unable to demonstrate an adequate supply of housing land across the district and this reinforces the importance to provide housing where appropriate. Thus, the Council's reasons for refusal centre on the proposal's impact on the village and landscape character and on the conservation area and specific heritage assets.

## **Reasons**

8. The appeal site forms part of a large open field on the west side of Gainsborough. Although some local residents refer to the field as being "green belt", it has no formal planning policy protection. The field extends to the south where it is bounded by Crackmore, the A30 road and a major route into the town, and thus there would be a gap of some 100m or so between Crackmore, and the site boundary. The proposal indicates that there would be an open play area in a triangle of land extending from roughly opposite the junction with Plover Road to the southern boundary of the site. A hedgerow interspersed with trees is shown as forming the southern boundary of the site.
9. Policy EQ2 of the South Somerset Local Plan 2006-2028, adopted in March 2015 (LP), deals with general development criteria, with the underlying objective of achieving high quality development. Amongst its criteria are those dealing with landscape character, reinforcing local distinctiveness and respecting local context.
10. The Council has referred me to a Peripheral Landscape study of Milborne Port which identifies higher land to the north of the appeal site as being of high sensitivity, but the land to the north and south of New Town is only of moderate sensitivity, as these areas are said not to share the prominent visual profile as that of the hilltop to the west. It is axiomatic that the extension of built development into the undeveloped countryside will bring about a moderate or even substantial change of character, and this would occur no matter where on the edge of the village it might happen.
11. The previous Inspector found that whilst the scheme before him was unacceptable, he made it clear that his concerns did not extend to the whole of the site, saying that subject to appropriate scale, appearance and landscaping, he considered that there was a reasonable prospect that a detailed scheme could be devised that would be likely to preserve both the character and the appearance of Milborne Port Conservation Area. This finding is an important material consideration.

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<sup>2</sup> Ref: APP/R3325/W/15/3133660

12. In this case, there would be a substantial gap of about 100m between the site and the approach to the village along the A30. Whilst I recognise that the southern part of the field, between the site and the A30, plays a valuable role in providing a rural setting to the historic core of the village and to notable listed buildings, I consider that further away from the A30, the value is significantly diminished. The remaining undeveloped field would be sufficient to ensure that the important views approaching the village from the west would be protected and that the rural transition would be retained.
13. The boundary along the A30 is well screened by a tall hedgerow and regularly spaced mature chestnut trees. These mark the approach to Sherborne Castle to the west, and are characteristic features of a large estate. I consider that the gap between the site and the hedge line would be substantial enough to ensure that its role and character would be undiminished. The level of the land rises from the A30, so that the houses would be seen from the junction of the A30 with Gainsborough and possibly through gaps in the trees lining the A30, both to the south of the site, and when seen further from the southwest, but they would not have a dominant impact and would not result in material harm to the landscape.
14. Gainsborough provides a strong edge to the settlement. However, it is not a historic edge, as development from the later part of the 20<sup>th</sup> century has infilled gaps on the east side of Gainsborough. The provision of an area of open space along the Gainsborough frontage would assist in protecting the older area of the town and provide a softer edge to the built development. I disagree that the proposal would appear contrived; there is already development on the west side of Gainsborough and the proposal would, subject to an appropriate layout, design, detail and landscaping, provide a satisfactory extension to the village.
15. Having regard both to the illustrative layout and to the potential for additional planting within the development, I am satisfied that the proposal would not result in material harm to the character and appearance of the village, or conflict with South Somerset Local Plan Policy EQ2.
16. Turning to the effect on heritage assets, the Milborne Port Conservation Area encompasses two separate parts of the village. The larger area is that to the south-east of the appeal site and encompasses the historic core of the town, and there are a number of listed buildings grouped around the junction of Gainsborough with the A30. These buildings comprise the Grade I listed Church of St John the Evangelist, Sherborne House, the former County Primary School and the former Pump House. The second smaller element lies to the north-west of the site, focussed around New Town, a 19th century planned estate.
17. Of these buildings, following the conclusions of the previous Inspector, the Council is most concerned about the impact on the setting of the former County Primary School and the Pump House. Both of these buildings are located at the junction of Gainsborough with the A30. The tall clock tower of the school is a significant feature which contributes to a sense of place, and is of both architectural and historical value. Notwithstanding that there is no public access to the appeal site, it nevertheless forms part of the setting of the listed buildings, being a place from where their significance can be appreciated.
18. However, the gap between the A30 and the southernmost boundary of the appeal site, together with the triangle of open space in the south-east part of

the appeal site would provide a significant buffer between built-development and these heritage assets. The clock tower would still stand out as a visual landmark on the approach to the village from the west, and the nearest houses would be sufficiently far away so as not to distract from or impinge on those views. To my mind the presence of the adjacent field is not an important part of the heritage significance of the school and its tower – rather it is the views that the field affords which is important, and in this case, those views would not be materially affected.

19. Similarly, views of the Pump House would be little changed; when seen from the east, the backdrop would be of an open field, and the houses would be far enough away so as not to impinge on those views.
20. New Town derives its significance from its historic political genesis, as well as from its layout, design and use of materials. Its isolation from the rest of Milborne Port is also important in understanding its social and political significance. However, the boundary of the site would be about 260m from the nearest part of the conservation area, which forms the rear gardens of some of the houses. These are bounded by substantial belts of planting, on the other side of which lies Milborne Port Surgery, a large modern building and car park. Other intervening development includes a playground, an allotment and a single dwelling.
21. I consider that the proposal would have an insignificant impact on the setting of New Town. The combination of distance and intervening planting and development would mean that the proposed houses would not interfere with views of New Town or materially alter the views out of it. I am satisfied that the proposal would not harm the setting of this part of the conservation area.
22. Taking all these matters into account, I find that the proposal would not harm the setting of the conservation area or that of nearby listed buildings, and their heritage significance would be preserved. Accordingly, there would be no conflict with LP Policy EQ3, which aims to conserve or enhance heritage assets.
23. I therefore conclude on the main issue that the proposal would not result in material harm to the character and appearance of the surrounding residential area and countryside and would preserve the setting of the Milborne Port Conservation Area and that of nearby listed buildings. It would not conflict with the development plan policies to which I have referred above.

### **Other matters**

24. The Council concedes that the loss of Grade 3A agricultural land is an insufficient reason to withhold permission on its own, and I agree. The Council also argues that there are more suitable sites within the area for residential development. Whether or not that is the case, I have to determine this application on its merits, and I find that it would comply with the development plan and should be permitted on its own terms.
25. The Council accepts that it cannot demonstrate a 5 year supply of housing land and an appropriate buffer. Whilst under these circumstances, the “tilted balance” under paragraph 14 of the Framework is engaged, it is unnecessary to apply it, as I find that the proposal complies with the development plan, and that there are no material considerations of sufficient force to weigh against it.

26. As with the previous appeal proposal, this appeal has attracted a considerable number of objections from local residents and others. Highway safety has featured in many of the objections and whilst I recognise that local residents have the benefit of personal knowledge of local road conditions, there is insufficient substantive evidence to refute the appellants' evidence and the views of the local highway authority, which had no objection to the proposal. In coming to this view I have taken account of the recent move of the post office to the garage on the opposite side of Crackmore. Moreover, the previous Inspector found no highway safety objection to a larger proposal for 54 dwellings and a residential care home, which would have generated considerably more movements than would be the case here, and I see no reason to take a different stance in respect of a development generating less traffic.
27. I recognise that local residents would wish to ensure that adequate parking would be provided, so as not to place pressure on nearby roads. Whilst the Design and Access Statement provides detail on parking, the precise numbers of houses, the detailed design and the number of parking spaces are not before me and thus parking provision is a matter to be addressed at reserved matters stage. There is no reason for me to think that the proposal could not accommodate sufficient parking spaces to meet the needs of the development.
28. I have also taken into account concerns expressed about flood risk, infrastructure (and I refer to primary school places below) and wildlife, but none of these is sufficient to alter my conclusion.

#### **Conditions and obligation**

29. The Council has suggested a number of conditions which I have considered in the light of national guidance. I have amended some in the interests of conciseness, precision or enforceability, and I have amended plan drawing numbers to relate to those submitted with this proposal. In addition to the standard conditions, a condition to require the submitted details to adhere to the general masterplan is needed in the interests of appearance. The submission of details of foul and surface water disposal is required to ensure that the site is adequately drained. A scheme of ecological measures is needed to promote biodiversity. A condition dealing with land contamination is needed to protect the health of future occupiers and those working on the development. Tree protection measures are required in the interests of appearance, although I find the Council's suggested condition to be unduly onerous and so I have substituted amended wording.
30. The Council seeks the provision of a footpath along the site frontage extending to the south to tie into an existing footpath. A neighbour objects to this as it would be likely to result in the loss of a strong hedgerow feature which extends from the northern part of the site to a field gate some way south of the proposed access. Neither the appellants nor the Council have responded to this concern. I consider that it is important to retain as much of the hedge as is compatible with highway safety and the need to provide important pedestrian links. I have therefore amended the suggested condition to provide scope for the extent of the footpath to be agreed. Other highway-related measures, the provision of the access and related visibility splays are required to be provided in the interests of highway safety and appearance. A

construction management plan is needed to protect residents' living conditions and to safeguard highway safety.

31. The unilateral undertaking submitted by the appellants makes arrangement for the provisions of affordable housing, which complies with the thrust of LP Policies HW3 and HW4 which deal with affordable housing. Financial contributions towards equipped play space, youth facilities, playing pitches and changing rooms are justified in the light of the unchallenged needs assessments, standards, cost schedules and methodology put forward by the Council, and are supported by LP Policies SS6 and HW1. The proposal would also result in additional pressure on a local primary school, which is predicted to reach full capacity by 2018. Funding to cater for the additional school places arising from the development is therefore justified and consistent with LP Policy SS1. Measures for the maintenance of the area of public open space are also necessary. The provision of a travel plan is justified under the provisions of LP Policy TA4.
32. On the basis of the evidence before me, I find that the provisions of the obligation are necessary and otherwise satisfy the tests of the Community Infrastructure Levy Regulations 2010.

### **Conclusions**

33. I have found that the proposal would conform with the development plan. It would provide clear social benefits in providing additional housing, including affordable housing, at a time when insufficient houses are being provided to meet the needs of the district. There would also be economic benefits arising from the construction and occupation of the dwellings. I have found that there would be no environmental harm, and thus the proposal would fulfil the three component dimensions of sustainable development.
34. Thus, for the reasons given above, I conclude that the appeal should be allowed.

*JP Roberts*

INSPECTOR

## ANNEX

- 1) Details of the appearance, landscaping and scale (herein after called the "reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission and the development shall begin not later than 3 years from the date of this permission or not later than 2 years from the approval of the last "reserved matters" to be approved.
- 3) The development hereby permitted shall be carried out generally in accordance with the Illustrative Masterplan shown on drawing number 160606 L 02 01.
- 4) No development hereby approved shall commence until a detailed surface water drainage scheme for the site, including measures for future responsibility and maintenance, has been submitted to and approved in writing by the local planning authority. The submitted scheme shall include measures to prevent the run-off of surface water from private plots onto the highways. The scheme shall subsequently be implemented in accordance with the approved details before the development is occupied, and thereafter shall be maintained in accordance with the approved scheme.
- 5) The development shall not be commenced until a foul water drainage strategy is submitted and approved in writing by the local planning authority. The submitted scheme shall include arrangements for the agreed points of connection and provision for capacity improvements as required to serve the development and a timetable for implementation. The scheme shall be completed in accordance with the approved details and timetable.
- 6) The development hereby permitted shall not be commenced until such time as a Landscape and Ecology Management Plan (LEMP), together with a timetable for implementation, has been submitted to and approved in writing by the local planning authority. The LEMP shall set out measures for the enhancement of biodiversity and include the provision of bat, swallow and swift boxes. The biodiversity enhancement measures shall subsequently be implemented in accordance with the approved details and timetable.
- 7) The development hereby permitted shall not begin until a scheme to deal with contamination of land, controlled waters and/or ground gas has been submitted to and approved in writing by the local planning authority. The scheme shall include all of the following measures, unless the local planning authority dispenses with any such requirement specifically in writing:
  - a) A Phase I site investigation report carried out by a competent person to include a desk study, site walkover, the production of a site conceptual model and a human health and environmental risk assessment, undertaken in accordance with BS 10175:2011 Investigation of Potentially Contaminated Sites – Code of Practice.

- b) A Phase II intrusive investigation report detailing all investigative works and sampling on site, together with the results of the analysis, undertaken in accordance with BS 10175:2011 Investigation of Potentially Contaminated Sites – Code of Practice. The report should include a detailed quantitative human health and environmental risk assessment.
  - c) A remediation scheme detailing how the remediation will be undertaken, what methods will be used and what is to be achieved. A clear end point of the remediation should be stated, such as site contaminant levels or a risk management action, and how this will be validated. Any on-going monitoring should also be outlined.
  - d) If, during the works, contamination is encountered which has not previously been identified, then the additional contamination shall be fully assessed and an appropriate remediation scheme submitted to and approved in writing by the local planning authority.
  - e) A validation report detailing the proposed remediation works and quality assurance certificates to show that the works have been carried out in full accordance with the approved methodology. Details of any post-remedial sampling and analysis to show that the site has reached the required clean-up criteria shall be included, together with the necessary documentation detailing what waste materials have been removed from the site.
- 8) No development hereby approved shall take place until the applicants, or their agents or successors in title, have secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved by the local planning authority.
- 9) The landscaping details required to be submitted and approved pursuant to condition 2 shall include details of all the trees and hedges to be retained, and/or any trees whose canopies overhang the site, together with details of measures for their protection during the course of construction by strong fencing. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, nor shall any fires be lit and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.
- 10) No part of the development hereby permitted shall be occupied or brought into use until a footway and dropped kerbs along the Gainsborough frontage have been carried out in accordance with a design and specification to be approved in writing by the local planning authority. The approved measures shall be fully implemented in accordance with the approved details prior to the first occupation of the dwellings hereby approved.



- 11) The proposed estate roads, footways, footpaths, tactile paving, cycle ways, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and street furniture shall be constructed and laid out in accordance with details and a timetable for implementation to be approved by the local planning authority in writing before their construction begins. For this purpose, plans and sections, indicating as appropriate, the design, layout, levels, gradients, materials and method of construction shall be submitted to the local planning authority.
- 12) The access hereby approved shall be constructed in accordance with details shown on the submitted plan, drawing number 161597/T05 and shall be fully provided prior to the first occupation of any part of the development. Once constructed the access shall be maintained thereafter in that condition at all times.
- 13) At the approved access there shall be no obstruction to visibility greater than 600 millimetres above the adjoining road level within the visibility splays shown on the submitted plan. (Drawing No 161597/T05). The visibility splays shall be formed prior to the commencement of the development hereby permitted and shall thereafter be maintained at all times.
- 14) The proposed roads, including footpaths and turning spaces where applicable, shall be constructed in such a manner as to ensure that each dwelling before it is occupied shall be served by a properly consolidated and surfaced footpath and carriageway to at least base course level between the dwelling and existing highway.
- 15) The development hereby permitted shall not commence unless a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The plan shall include construction operation hours, construction vehicular routes to and from site, construction delivery hours, car parking for contractors and specific measures to be adopted to mitigate construction impacts in pursuance of the Environmental Code of Construction Practice. The development shall be carried out in accordance with the approved Construction Management Plan.