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## Appeal Decision

Hearing Held on 14 November 2017

Unaccompanied site visit made on 13 November 2017

Accompanied site visit made on the 14 November 2017

**by Zoe Raygen Dip URP MRTPI**

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

**Decision date: 4<sup>TH</sup> December 2017**

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**Appeal Ref: APP/W4223/W/17/3175644**

**Land off Haven Lane, Moorside, Oldham, OL4 2QH**

- 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 Heyford Developments Limited against the decision of Oldham Metropolitan Borough Council.
  - The application Ref PA/338917/16, dated 27 July 2016, was refused by notice dated 18 November 2016.
  - The development proposed is residential development of up to 23 dwellings (C3 use class).
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### Decision

1. The appeal is allowed and planning permission is granted for residential development of up to 23 dwellings (C3 use class) at Land off Haven Lane, Moorside, Oldham OL4 2QH in accordance with the terms of the application, Ref PA/338917/16, dated 27 July 2016 subject to the conditions set out in the schedule to this decision notice.

### Preliminary matters

2. The application was made in outline form with all matters to be reserved for future consideration except access. I have considered the appeal on that basis. The appellant has submitted a masterplan for the site showing a layout incorporating 23 dwellings which I have treated as indicative only.
3. The Council refused the planning application PA/338917/16 for three reasons. In its submissions it advised that it had determined to withdraw reason for refusal No 1 regarding conflict with the strategy for the release of housing land within Policy 3 of the Oldham Local Development Framework, Development Plan Document – Joint Core Strategy and Development Management Policies 2011 (the DMP). It therefore offered no evidence towards the reason for refusal.
4. At the hearing, an agreed Statement of Common Ground (SOCG) was submitted dated November 2017. This document confirms that the main area of disagreement between the main parties relates to the effect of the proposal on highway safety.

5. Within the SOCG the parties agree that the Draft Manchester Spatial Framework 2016 (GMSF) sets out the spatial distribution of housing growth, and states that the housing need in Oldham is for 13,700 dwellings (or 685 per annum) from 2014 for the full plan period to 2035. On this basis, the Council confirmed at the hearing that, irrespective of whether a 5% or 20% buffer is applied, it is unable to demonstrate a five year housing land supply. As a result, there was no dispute that, in accordance with paragraph 49 of the National Planning Policy Framework (the Framework), relevant policies for the supply of housing should not be considered up to date.
6. Therefore, on the basis of the evidence before me, I am satisfied that the proposal would be in accordance with the requirements of Policy 3 of the DMP. This allows the favourable consideration of non-allocated sites, such as the appeal site, for housing where a deliverable five year supply of housing land cannot be demonstrated.
7. The Council made its decision on the planning application with respect to the proposed site access and associated traffic calming as shown on drawing 2044-001B. The SOCG refers to revised drawing 2044-001C, which has been accepted by the Council as the relevant drawing to be used within a condition listing the plans to which the permission relates should the appeal be allowed. Drawing 2044-001C makes only minor alterations to the scheme as proposed under drawing 2044-001B, the revisions relating to the paving of an existing verge. I am satisfied therefore, that interested parties would not be prejudiced were I to accept the plan and have regard to it in my determination of the appeal.
8. At the hearing a further drawing showing another revision to the originally proposed traffic calming scheme was put forward by the appellant under revision 2044-001D. The drawing was submitted in support of the appellant's case as it evolved during the hearing, that the speed cushions would not be necessary as part of the overall traffic calming scheme. The revised drawing therefore deletes the proposed speed cushions, and only includes reference to the raised table.
9. However, during the related discussion at the hearing the Council's Highway Officer (CHO) raised concerns regarding the removal of the speed cushions. They form part of a more extensive integrated traffic calming scheme on Haven Lane. Without detailed investigation and design work, any 'knock-on' effects of the proposed amendments in terms of any implications for highway safety are unknown. The limited evidence in this respect from either party, particularly in light of the comments of the CHO, means that I cannot conclude, with any degree of confidence, that the removal of the speed cushions would not have an adverse impact on highway safety. Thus with the precautionary principle in mind, I have considered the scheme on the basis of the inclusion of the speed cushions as per drawing 2044-001C. Any revised scheme without the speed cushions would need to form the subject of a revised application which would be considered by the Council in the first instance.
10. The appellant submitted a signed planning obligation under S106 of the Town and Country Planning Act 1990, as amended, in the form of a unilateral undertaking (UU). The UU contains covenants in respect of the provision and management of open space provision, and financial contributions of £139,323 towards the cost of affordable housing and £35,767 towards the cost of traffic

calming. The obligation is a material consideration and is considered in more detail later in this decision.

### **Application for Costs**

11. At the Hearing an application for costs was made by Heyford Developments against Oldham Metropolitan Borough Council. That application is the subject of a separate Decision.

### **Main Issue**

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

### **Reasons**

13. Haven Lane forms a mainly residential street accessed at its northern end from Turf Pit Lane, which has a junction with the main A672 controlled by traffic lights. At its southern end, it meets Counthill Road which also links to the A672.
14. There are examples of terraced, detached and semi-detached houses along Haven Lane, some of which have no access to off street parking. As a result, on street parking is a particular characteristic of the road, which reduces its width to single carriageway in some parts. There are a number of streets which take access onto Haven Lane along its length. I have been supplied with various estimates of the number of houses on these streets feeding onto Haven Lane ranging between 260 and 320.
15. In addition, the construction of 46 houses on a site to the south of the appeal site (the Redrow site) is nearing completion. I was also advised that a site on Counthill Road had received planning permission for houses.
16. Concern was raised by the Council, and local residents, regarding the current level of car movements and congestion on Haven Lane caused by parked cars. As a result, it was considered that it was difficult for drivers of cars to easily navigate the road. Consequently, the Council and interested parties considered that the addition of a further 23 houses, and the associated car movements would be harmful to the existing difficult highway conditions on Haven Lane. There was a particular concern, given the current high level of on street parking, that the visibility for drivers edging out of the new junction would be significantly impaired. Furthermore, the length of the distance that cars are parked on Haven Lane can make it difficult for people to get past causing tensions to rise and which could, on occasion, result in collisions.
17. The appellant submits within the Traffic Impacts Summary Note 2016 (TISN) that the existing traffic generation along Haven Lane is one vehicle every 45 seconds northbound and less than one vehicle per minute southbound in the morning peak period and not dissimilar figures in the evening peak period. I found this to be a reasonable assessment based on my observations at both of my site visits, one of which was undertaken within the evening peak period. While I acknowledge the comments of local residents regarding the existing level of traffic using Haven Lane, the only substantive evidence before me, combined with my own observations during the site visits leads me to the view that Haven Lane is not heavily trafficked.

18. Based on figures from the Trip Rate Information Computer System (TRICS), the appellant's Transport Statement 2016 (TS) states that traffic associated with the development proposed would give rise to 11 traffic movements during the morning peak hour, and 12 traffic movements during the evening peak. These figures are disputed by the Council and local residents, who consider that the number is more likely to be 46 movements at each peak period based on each house being occupied by working families with access to two cars.
19. TRICS provides a recognised means of calculating trip rates for new residential development. Furthermore, the parameters used to extract vehicle trip rates by the appellant are broadly consistent with those proposed under the appeal proposal. I accept that local knowledge is important but, in the absence of any substantiated evidence to dispute that provided by the appellant based on the use of TRICS, I am satisfied that the figures provided by the appellant are appropriate in this instance. I am also mindful that the figures are accepted by the CHO who raised no objections to the proposal in this respect, in their consultation response for the original application.
20. On this basis, the likely level of traffic generation at peak time would be equivalent to one vehicle per five minutes exiting onto Haven Lane, which would not be a significant number. As a result, I am satisfied that the proposal would not generate significant levels of traffic that would have a severe impact on existing highway conditions along Haven Lane. Even if I were to accept the Council's suggested number of traffic movements caused by the development, there would still be only one vehicle per 1.3 minutes entering Haven Lane, which would still not be a significant amount in the context of existing traffic flows.
21. The appellant's TISN also takes into account figures from the transport assessment submitted with the planning application for the Redrow development to the south of the site. Together with the figures from the TS for the appeal site, there would be an increase in flow of only one car every four minutes northbound and every seven minutes southbound in the morning peak period and similar flows in the evening peak period. Furthermore, sufficient parking provision would be provided within the site to meet the demands of the proposal. Therefore, while I saw that on street parking was prevalent on Haven Lane, the proposed parking provision should ensure that there would not be additional demand for parking on Haven Lane. This, together with such low figures of potential traffic generation, would not cause a material increase in traffic flows and congestion along Haven Lane.
22. Although reference was made at the hearing to planning permission for houses at a site on Counthill Lane, no further details were provided of the potential for traffic from this site to use Haven Lane.
23. At the hearing, the Council also referred to the potential for increased congestion at the Turf Pit Lane end of Haven Lane, resulting from cars from the appeal proposal waiting for the traffic lights to change to use the junction. However, this was not one of the reasons on which the Council refused the application, and it produced no evidence to demonstrate that congestion was already causing a problem to highway safety at the junction. Moreover, I have already found that traffic generation from the proposal is likely to be low within the context of existing traffic using Haven Lane.

24. The access for the appeal proposal for up to 23 houses would be located to the north of Havenside Close and Rushton Grove and to the south of Longden Avenue, creating a situation where there would be four junctions in close proximity to each other, within a distance of about 70 metres. In particular, the new junction would be about 29 metres from Havenside Close.
25. Although a number of interested parties made reference to a best practice guidance of a distance of 30 metres between junctions, I was not provided with any substantive evidence regarding this figure. Instead, the CHO referred to advice contained within Manual for Streets 2: Wider Application of the Principles 2010 (MfS2) regarding the spacing of junctions. This states that rather than rely on spacing based on stopping sight distances for the 85<sup>th</sup> percentile, the provision of junctions on existing routes should be assessed in the round, considering a wide range of factors, such as the need for access at particular locations, the impact on the size of development blocks, the potential for interaction between adjacent junctions and the consequent effect on user delay and road safety.
26. The staggered junction that would be created between Longden Avenue and the proposed junction would appear to be similar to that illustrated in Manual for Streets 2007 (MfS) which states that such junctions reduce vehicle conflict compared with crossroads. The Council considered, at the hearing, that Longden Avenue and Havenside Close already form a staggered junction. The introduction of the proposed access to the appeal site would create a double staggered junction leading to additional vehicle conflicts and the obstruction of visibility.
27. The CHO points specifically to the proximity of Havenside Close to the proposed access to the appeal site and the potential that would cause for an increased risk of accidents. While I note that there is no specific minimum distance for the spacing between junctions, from my observations on site, the closeness of Havenside Close and the new junction could have the potential to cause chaotic travel conditions in such a short distance.
28. However, I note that MfS supports the provision of raised tables to overcome concerns regarding vehicle conflict at staggered junctions. Furthermore, the CHO has raised no objection to the appeal proposal subject to the traffic calming scheme as a whole, and she confirmed this at the hearing. This in itself is significant, since if the CHO was of the opinion that the development was inherently unsafe or would lead to unsafe conditions on the highway, the appropriate course of action would have been for them to object to the proposal.
29. The proposal before me, as shown on plan 2044-001 C provides for a raised table at the Haven Lane junction with Longden Avenue and the proposed junction, together with three sets of speed cushions, one to the south and two to the north of the access, together with build-outs to narrow the road. It was explained at the hearing that the purpose of the speed cushions would be to reduce the speed of the traffic travelling along the highway towards the development. In addition, the raised table would highlight the presence of the junction.
30. I acknowledge that the 85<sup>th</sup> percentile traffic speeds contained within the appellants TS demonstrate that the traffic travels at 29mph northbound and 30mph southbound. These figures are not disputed by the Council and were

- borne out at my site visit, when I observed most drivers being reasonably respectful of conditions. I also saw that parked cars acted as a speed restraint in the area.
31. Nonetheless, these speed figures are only just at or under the speed limit. The proposed access would be close to Havenside Close, within a stretch of Haven Lane where there are a number of junctions. The introduction of the traffic calming measures proposed as a whole would reduce the speed of traffic further, reducing the potential for vehicular conflict.
  32. While the traffic calming measures proposed would have the effect of reducing speed levels and raising awareness of the junctions, I have seen nothing to suggest that it would materially disrupt the free flow of traffic along Haven Lane, particularly given that I have found that there is a relatively low level of traffic using Haven Lane.
  33. The appellants show on plan ref 2044-001C that a visibility splay of 2.4 x 43m could be achieved in both directions which would be in accordance with guidance within MfS for roads with traffic travelling at 30mph. Therefore, I am satisfied that the extent of the proposed visibility splays would be appropriate.
  34. However, as a result of the location of the proposed junction, its visibility splay would extend across Havenside Close. As a result, objection has been raised by the Council and interested parties regarding the potential for cars exiting Havenside Close, together with those parked on the road side, to block visibility for drivers leaving the new junction, and vice versa.
  35. From my observations on site, it is likely that at some times of the day on street parking would be present within the visibility splays. However, this together with the traffic calming scheme is likely to slow down traffic. Therefore, given low traffic speeds I consider that such parking is not likely to cause material harm to safety in this particular instance.
  36. Havenside Close contains eight houses. Therefore, given the small number of dwellings, even if I were to take the Council's view that the occupiers of each house would have access to two cars, traffic movements would still be relatively light. At the time of my accompanied site visit, as I was observing the visibility splay to the south, a car exited Havenside Close. It was stationary for a momentary time only and I saw that it did not significantly affect visibility.
  37. I appreciate that cars exiting Havenside Close may be stationary for a longer period of time when traffic flow is more frequent such as in peak periods. Even so, given the relatively low overall levels of traffic along Haven Lane and the limited number of houses in Havenside Close, the number of vehicles exiting the close and the length of time they are stationary for, are both likely to be limited. I am not persuaded therefore, that the overlap of the visibility splays, both from the proposed junction to Havenside Close and vice versa would have a materially adverse impact on highway safety. In coming to this view, I am also mindful that MfS2 states that "*parking in visibility splays in built-up areas is quite common, yet does not appear to create significant problems in practice*" it goes on to state that "*At urban junctions where visibility is limited by buildings and parked cars, drivers of vehicles on the minor arm tend to nose out carefully until they can see oncoming traffic and vice versa*".

38. For the reasons above, I conclude that the proposal would not be materially harmful to highway safety. Therefore, there would be no conflict with Policies 5 and 9 of the DMP and Paragraph 32 of the Framework. These require that development does not compromise highway safety, or harm the safety of road users and should allow that safe and suitable access to the site can be achieved for all.

### **Unilateral Undertaking**

39. Policy 10 of the DMP requires that all residential developments of 15 or more dwellings provide an appropriate level of affordable housing, with a target for this provision to relate to 7.5% of the total development sales value unless it can be demonstrated that this is not viable. The Policy also makes provision for circumstances when an off-site contribution would be appropriate. The Council has not disputed the contents of the appellant's Viability Appraisal which finds that the scheme is capable of making a financial contribution of £139,233 towards the delivery of affordable housing off site without compromising its viability. The report goes on to state that if the affordable housing was to be provided on site it would have further implications for the deliverability of the scheme. I have seen nothing which would lead me to a different conclusion.
40. Policy 23 of the DMP states that all residential developments should contribute to the provision of new or enhanced open space. The total amount of open space to be provided on the site would be 1,922 sq m, which would meet the requirements of Policy 23 in respect of amenity greenspace and natural/semi-natural open space. I would concur with the Council, that given the size of the site it would be impractical for the other types of open space specified in the Policy, such as allotments, parks and gardens, play space and outdoor sports facilities to be provided within the proposal. Furthermore, the Viability Appraisal demonstrates that any contribution to such facilities would make the scheme unviable. The UU also makes provision for the agreement of a future maintenance regime for the open space.
41. The UU also requires the payment of a contribution to the cost of a traffic calming scheme on Haven Lane. I have already found that the speed cushions and the raised table are necessary to make the development acceptable in planning terms. Furthermore, the traffic calming would be directly related to the development and, given its size, fairly and reasonably related in scale and kind to the development.
42. The CHO confirmed at the hearing that the sum agreed would cover the cost of the scheme. In the absence of any evidence to suggest otherwise then it is reasonable to assume that the responsible authority has an awareness of the costs that would be involved.
43. I am therefore satisfied that the proposed contributions and requirements contained within the UU would comply with both the contents of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and paragraph 204 of the Framework.

## Other matters

44. A number of residents object to the proposal on the basis of the effect on living conditions. At my site visit I undertook accompanied visits to 162 Haven Lane and 5 Havenside Close to view the appeal site.
45. The Inspector when determining appeal refs APP/W4223/W/15/3130698 and APP/W4223/W/15/3134326 regarding earlier applications for the erection of 30 dwellings and 29 dwellings respectively on the appeal site made similar visits. At that time, he found that those schemes would have a harmful impact on the living conditions of the occupiers of No 162 and 1-5 Havenside Close.
46. From the Inspector's description of No 162 at that time, little has changed. It has a small rear garden contained by a low stone wall. Both the garden and windows in the rear elevation, serving a kitchen at ground floor and bedroom and study at first floor, have an open aspect over the appeal site. No 162 is sited close to the boundary with the appeal site.
47. Although the proposal is in outline form only, with matters including layout and appearance to be considered at a later date, I have had regard to the illustrative masterplan as one way of developing the site to provide 23 houses, in order to assess the potential effect on the living conditions of surrounding residents.
48. The scheme under APP/W4223/W/15/3130698 proposed a two storey house with a garage right up against the boundary of No 162. Furthermore, the gardens to proposed plots 1 and 2 in that scheme would have backed directly onto the garden of No 162. The scheme before me is significantly different. The nearest proposed house is shown as a dormer bungalow with dormers only on the front elevation, located about 7 metres from the boundary of No 162. In addition, no garage is shown. Moreover, the indicative bungalow would be located at an angle with No 162. As a result, the outlook from the rear windows of No 162 would be towards the gardens of the proposed properties. Any views of the new property at plot 1 would be oblique only. This, together with the reduced height of the building, and the absence of any outbuildings, would ensure that the proposal would not be materially overbearing or lead to an unacceptable loss of light to No 162.
49. The nearest two storey dwelling, according to the Council, would be about 17 metres from No 162 and at right angles to it. This figure has not been disputed. Consequently, the intervening distance and the orientation of the dwelling on plot 2 to No 162 would be sufficient to ensure it would not appear overbearing or compromise the privacy of the occupiers of No 162.
50. The illustrative masterplan also shows increased landscaping between the boundary of No 162 and the appeal site. Given the current open nature of the boundary, this would be essential to maintain privacy levels both within the garden of No 162 and to the ground floor kitchen window. Matters relating to detailed layout and landscaping would be for consideration by the Council in the first instance, were the appeal to succeed. Based on the illustrative plans before me, I have no reason to suppose that a suitable layout that protected the living conditions of the occupiers of No 162 could not be achieved.
51. The rear gardens and elevations of 1-5 Havenside Close face the appeal site. Boundary treatment is relatively open and as a consequence residents have an



- open outlook over the appeal site from both their gardens and windows in the rear elevations. The gardens are short and some of the properties have rear ground floor extensions which bring them closer to the appeal site.
52. Appeal ref APP/W4223/W/15/3130698 proposed nine houses in the area to the rear of Nos 1-5. The Inspector found that the proximity of the proposed dwellings would have an oppressive impact and would lead to an unacceptable loss of privacy.
53. The proposal before me now reduces the number of house in this area to five. As a result the distance between the proposed and existing houses has significantly increased so that there would be a distance of about 33 metres between the rear elevations of the properties and about 25 metres between the rear elevations of the proposed houses and the garden boundaries of Nos 1-5. These figures are not disputed.
54. Even though the land rises to the rear of Nos 1-5, I saw that it is not by a substantial amount. As a result, I am satisfied that the intervening distance between the proposed houses and the gardens and rear elevations of Nos 1-5 would be sufficient to ensure that they would not appear oppressively overbearing or lead to an unacceptable feeling of enclosure. Furthermore, subject to some form of boundary treatment, privacy levels would be maintained. Again, detailed matters of layout and landscaping would be for consideration by the Council in the first instance, were the appeal to succeed.
55. Residents are concerned that any tree planting along the boundary would have the potential to be overbearing and block light to their properties and gardens. Such detail could be controlled through a condition to ensure that the species and height of planting would be appropriate.
56. At the site visit I was shown a potential access to the appeal site from Havenside Close which is in third party ownership. However, that is not part of the proposals before me and I have already found that the proposed access arrangements would not be materially harmful to highway safety.
57. Concerns were raised by residents and interested parties regarding the potential for noise and pollution from the installation of the traffic calming features. The CHO was unable to comment on such concerns, other than to confirm that the Council continue to support traffic calming where appropriate. In the absence of any specific evidence demonstrating a link between the traffic calming proposed and noise and pollution I attach very limited weight to such objections.
58. Residents have raised objections to the positioning of the traffic calming measures and the potential for displacement of on street parking. However, at the time of my site visits both in the evening and during the day time I was able to park along the road in the vicinity of the appeal site and noted that spaces were available. I appreciate that this was a snap shot in time but I have not been provided with any evidence in the form of a car parking survey to demonstrate the area is subject to such high levels of parking demand and whether there is a lack of available on street parking spaces at different times in the day, to the extent that any displaced parking could not be accommodated elsewhere on the road.

59. Although it has been alleged that the traffic calming has not been the subject of public consultation, this element of the scheme was within the planning application consulted upon and considered by the Council. Furthermore, I have received comment from local residents on this very issue. In any event, the CHO confirmed that it would be the subject of further public consultation under the Highways Acts should the scheme proceed.
60. I saw that the area around the appeal site is primarily formed from terraced and semi-detached properties, mainly set back from the road with some space between the buildings, giving some sense of openness to the street. The appeal site forms one of the few remaining areas of green, open space to front Haven Lane. As such, it contributes to the relatively open appearance of the road. While the appearance of the road would change due to the proposal, this does not necessarily equate to harm. I note from the illustrative layout that the proposed houses on the Haven Lane frontage could be set back and the area adjacent to Havenside Close would then form part of the open space requirement for the site. As a result, if developed in this way, the view along Haven Lane would remain open in appearance.
61. One of the reasons that the previous appeals were dismissed related to the impact of the proposals on the character and appearance of the area with particular regard to density. The number of houses in the scheme before me has been reduced by at least six dwellings. As a result, on the whole, spacing between the proposed houses is more representative of that in the surrounding area, and therefore the proposal responds positively to the character and appearance of the area.
62. The exact size of the appeal site has been queried and it is considered by an interested party that the actual size of the site at 0.96 hectares is slightly larger than the 0.91 hectares quoted by the appellant. As a result, the density of the site, as proposed, would be 24 dwellings per hectare, which they consider would be below the 30 dwellings per hectare required in outer suburban areas to be classified as suitable to achieve sustainability aims.
63. However, I have not been advised as to where the figure of 30 dwellings per hectare has originated. The Framework makes no reference to specific figures in relation to density, instead requiring good design that reflects local distinctiveness. I have already found that a scheme could be achieved that would meet these aims.
64. The issue of flooding was raised at the hearing and within a number of the representations from local residents. However, no substantive evidence was put forward to dispute the findings of the appellant's Flood Risk Assessment, that the proposal would not itself be at an unacceptable risk of flooding, and that it would not increase flood risk elsewhere. I note also that neither United Utilities nor the Lead Local Flood Authority, as the local drainage bodies, raised any objections to the proposal subject to the addition of conditions regarding the submission of a detailed drainage scheme.
65. Objections to the proposal relating to the ability of existing infrastructure to cope with the occupiers of an additional 23 dwellings, especially in relation to spaces available at local schools, have not been substantiated with any objective evidence.

## Conclusion

66. I have found that the proposal would not be harmful to highway safety and therefore it would be in accordance with the development plan. Material considerations raised by interested parties attract limited weight and would not be sufficient to outweigh the accordance of the proposal with the development plan.
67. For the above reasons, and with regard to all other matters raised, I conclude on balance that the appeal should be allowed.

## Conditions

68. I have had regard to the agreed list of planning conditions contained within the SOCG 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. At the hearing one addition was proposed in the form of a Grampian type condition to secure the proposed traffic calming measures, as they would not be on land in the ownership of the appellant.
69. An interested party raised a Judgement<sup>1</sup> which they considered suggested that as the traffic calming measures would need to be subject to further public consultation as a requirement of a Traffic Regulation Order, then there can be no certainty that a planning condition can be complied with.
70. The appellant responded with Case law<sup>2</sup> which they consider demonstrate that the prospects of implementation of the requirements of the condition are not relevant to the imposition of a Grampian type condition.
71. I have had regard to the submitted case law and judgements. Although the Bellway Judgement concerned the imposition of a Grampian condition in respect of traffic calming, there are specific differences between that case and the scheme before me now.
72. In the Bellway Judgement the CHO stated that the Council had decided not to impose any speed bumps as proposed on that scheme, and that there was no acceptable solution to the highway safety issues. In the case before me the traffic calming scheme has the backing of the CHO. I accept that the detailed traffic calming scheme would need further public consultation, and I am not in a position to be aware of the outcome of such an exercise. However, the Planning Policy Guidance (PPG) states that Grampian conditions should only not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission (Paragraph: 009 Reference ID: 21a-009-20140306). This is reinforced by the Case Law.

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<sup>1</sup> Bellway Homes Limited v Secretary of State for Communities and Local Government and Cheshire Council. Judgement of 11 June 2015 (the Bellway Judgement)

<sup>2</sup> *British Railways Board v Secretary of State for the Environment* (1993) WL 963747 (HL)  
*Millington v Secretary of State for the Environment* (1999) 78 P&CR 373, HHJ  
*Merrit v Secretary of State for the Environment, Transport and Regions* [2000] 3 P.L.R  
*R. (on the application of Blyth Valley Borough Council) v First Secretary of State* [2006] EWHC 3619 (Admin)  
*R. (Jonathan Mark Isherwood Carter) v City and County of Swansea* [2015] EWHC 75 (Admin) (the Case Law)

73. As the proposal has the support of the CHO and plans have been prepared of the scheme, I cannot realistically conclude that there are no prospects at all of the traffic calming being agreed and provided. Accordingly, I am satisfied that the proposed condition meets the tests set out in the Framework and the contents of the PPG.
74. There was some discussion at the hearing as to whether the traffic calming measures needed to be provided prior to any development occurring on site or the occupation of any house. However, on the basis that construction traffic for the housing would use Haven Lane, it would be more appropriate for the condition to be worded so that the traffic calming is provided prior to the occupation of the dwellings.
75. In the interests of certainty it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans. As well as the conditions I have referred to specifically in the main body of the decision regarding drainage and landscaping, conditions regarding levels and building heights are necessary to protect the living conditions of surrounding residents and the character and appearance of the area. The details of ground levels need to be submitted prior to the commencement of development to ensure accurate details of existing conditions are recorded. The details of drainage need to be submitted prior to the commencement of development to ensure that it is capable of being implemented.
76. The submission of a Construction Method Statement is required, prior to work starting on site, to protect residents living conditions at all times. A condition regarding contamination is required to prevent pollution and ensure the safety of future and surrounding residents.
77. Conditions 10, 11 and 12 are necessary to protect highways safety. A condition requiring the submission of tree protection measures before development commences is necessary to protect existing trees from harm during construction. A condition restricting the timing of the clearance of vegetation is necessary to prevent habitat disturbance for nesting birds.

*Zoe Raygen*

Inspector

## APPEARANCES

### FOR THE APPELLANT:

Killian Garvey of Counsel Instructed by

Jon Kirby Director, GVA

Mark Nettleton Director, Phil Jones Associates Ltd

### FOR THE LOCAL PLANNING AUTHORITY:

Graeme Moore Planning Officer, Oldham Council

Wendy Moorhouse Highways Engineer, Oldham Council

Councillor Rod Blyth Oldham Council

### INTERESTED PARTIES

Kenneth Waddington HMA Architects

Councillor Ginny Alexander Ward Councillor

Wendy Cash Resident

Councillor Cath Ball Oldham Council

### DOCUMENTS SUBMITTED AT THE HEARING

- 1 – Agreed Statement of Common Ground November 2017.
- 2 – Signed Unilateral Undertaking submitted by the appellant
- 3 – Drawing 2044-001 C, submitted by the appellant
- 4 – Drawing 2044-001 D, submitted by the appellant
- 5 – Note relating to the use of Grampian conditions incorporating reference to *British Railways Board v Secretary of State for the Environment* (1993) WL 963747 (HL), *Millington v Secretary of State for the Environment* (1999) 78 P&CR 373, HHJ, *Merrit v Secretary of State for the Environment, Transport and Regions* [2000] 3 P.L.R, R. (on the application of Blyth Valley Borough Council) v *First Secretary of State* [2006] EWHC 3619 (Admin), R. (Jonathan Mark Isherwood Carter) v *City and County of Swansea* [2015] EWHC 75 (Admin) (the Case Law), submitted by the appellant
- 6 – Phil Jones Associates Rebuttal of comments from HNA Architects, submitted by the appellant
- 7 – Extracts from MfS and MfS2, submitted by the appellant
- 8 – Extracts from Design manual for Roads and Bridges, submitted by the appellant
- 9 – Slinn, M., Matthews, P., and Guest, P., 1998. Traffic Engineering Design Principles and Practice. Arnold, London page 75, submitted by the appellant

- 10 - Extracts from Fixing our Broken Housing Market Department for Communities and Local Government White Paper, submitted by the appellant
- 11 – Shropshire Council v Secretary of State for Communities and Local Government and BDW Trading Limited Trading as David Wilson Homes (Mercia). Judgement of 2 November 2016, submitted by the appellant
- 12- Extracts from the Planning Encyclopaedia for Regulations 122 and 123 of the CIL Regulations 2010, submitted by the appellant
- 13 – Appeal decision APP/K3415/A/2224354, submitted by the appellant
- 14- Application for costs submitted by the appellant
- 15- Costs rebuttal submitted by the Council

Richborough Estates

## SCHEDULE OF CONDITIONS

- 1) Details of the 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 not later than three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) Unless required otherwise by the conditions set out below, the development hereby permitted shall be carried out in accordance with plan Nos: PL-01A and 2044-001C but only in so far as they relate to access.
- 5) No more than 23 dwellings shall be constructed on the site.
- 6) Any application which seeks approval for the reserved matters of scale pursuant to condition 1 of this permission shall ensure that none of the dwellings exceed the maximum building heights indicated on drawing number PL-06B (titled Scale and Building Heights).
- 7) Prior to commencement of development details of finished floor levels for each dwelling, and existing and proposed ground levels for the external areas of the site shall be submitted to and approved in writing by the local planning authority. The development shall thereafter be implemented in accordance with the duly approved details.
- 8) No development shall take place until a report containing details of an investigation and assessment to determine the nature and extent of any contamination and landfill gas risk on the site (including whether it originates on the site) has been submitted to and approved in writing by the Local Planning Authority. The submitted report shall include:
  - a survey of the extent, scale and nature of contamination;
  - an assessment of the potential risks to:
    - human health;
    - property (existing or proposed) including buildings, crops, livestock, pets, woodland, and service lines and pipes;
    - adjoining land
    - groundwaters and surface waters; and
    - ecological systems;
  - an appraisal of any remedial options required and a proposal for the preferred option(s) to form a remediation strategy for the site.

The development shall thereafter be carried out in full accordance with the duly approved remediation strategy and a verification report submitted to and approved in writing by the Local Planning Authority before any of the dwellings hereby approved are first occupied.

- 9) Prior to commencement of development details of a scheme for the disposal of foul and surface water from the site shall be submitted to and approved in writing by the local planning authority. The scheme shall demonstrate compliance with the principles in the Flood Risk Assessment by Westwood dated July 2016 (report reference 2770/FRA v1.3) and shall include:
- Separate systems for the disposal of foul and surface water;
  - Details of the rate of surface water discharge from the site to any soakaway, watercourse or sewer, including any necessary flow attenuation measures and the use of SuDS (where appropriate) to ensure that the post development discharge rate does not exceed the pre development (greenfield) rate, including an appropriate allowance for climate change;
  - Details of how the system will be maintained and managed after completion.

The duly approved scheme shall be implemented before any of the dwellings are first occupied and shall be maintained/managed as such thereafter.

- 10) No above ground works shall take place until a scheme for the design, construction and drainage of the site access (the position and layout of which is shown on drawing no 2044-001 Rev C) has been submitted to and approved in writing by the Local Planning Authority. The site access shall be constructed in accordance with the duly approved scheme and made available for use before any of the dwellings hereby approved are first occupied. Thereafter, the visibility splay at the junction with Haven Lane shall thereafter be kept free of any obstructions (including buildings, walls, fences, hedges, trees, shrubs or any other obstruction) over one metre in height.
- 11) No above ground works shall take place until a scheme for the design, construction and drainage of the estate road and associated footways has been submitted to and approved in writing by the Local Planning Authority. The estate road and associated footways shall be provided in accordance with the duly approved scheme before any of the dwellings are first occupied.
- 12) Any application which seeks approval for the reserved matter of layout pursuant to condition 1 of this permission shall include details of:
- The means of access for the dwellings, including driveway gradients and sight lines at their junctions with the estate road;
  - The means of servicing the dwellings;
    - Parking and/or garaging provision for each dwelling which allows vehicles to be parked clear of the highway.

The development shall thereafter be implemented in accordance with the duly approved details before any of the dwellings are first occupied



- 13) The landscaping scheme to be submitted pursuant to the requirement of condition 1 of this permission shall include details of:
- (i) any trees, hedgerows and any other vegetation on/overhanging the site to be retained;
  - (ii) the introduction of landscaping buffers along all boundaries of the site which shall demonstrate compliance with the landscaping principles shown on drawing no. PL-07 Rev B;
  - (iii) the introduction of additional planting within the site which forms part of the internal development layout and does not fall within (i) or (ii); and
  - (iv) the type, size, species, siting, planting distances and the programme of planting of hedges, trees and shrubs.

The duly approved landscaping scheme shall be carried out during the first planting season after the development is substantially completed and the areas which are landscaped shall be retained as landscaped areas thereafter. Any trees or shrubs removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced by trees or shrubs of similar size and species to those originally required to be planted.

- 14) No development shall take place until a scheme for tree protection measures (both above and below ground) to be implemented during the construction period has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:
- (i) Details of a construction exclusion zone (including protective fencing of a height and design which accords with the requirements BS 5837: 2012) to be formed around the root protection areas of those trees to be retained (both within and outside the site).
  - (ii) Details of any excavation to take place within the root protection areas of those trees to be retained.
  - (iii) Details of the foundations of any building, hardstandings and/or boundary treatments to be constructed within the root protection areas of those trees to be retained.

The development shall thereafter be carried out in strict accordance with the protection measures contained within the duly approved scheme throughout the entirety of the construction period.

- 15) No clearance of any vegetation in preparation for or during the course of development shall take place during the bird nesting season (March to August inclusive) unless an ecological survey has been first submitted to and approved in writing by the Local Planning Authority which demonstrates that the vegetation to be cleared is not utilised for bird nesting. Should the survey reveal the presence of a nesting species, then no clearance of any vegetation shall take place during the bird nesting season until a methodology for protecting nesting sites during the course of the development has been submitted to and approved in writing by the

Local Planning Authority. Nest site protection shall thereafter be provided in accordance with the duly approved methodology.

- 16) No Development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the Local Planning Authority. The CMS shall include:
- (i) hours of work for site preparation, delivery of materials and construction;
  - (ii) arrangements for the parking of vehicles for site operatives and visitors;
  - (iii) details of areas of designated for the loading, unloading and storage of plant and materials;
  - (iv) details of the siting, height and maintenance of security hoarding;
  - (v) arrangements for the provision of wheel washing facilities for vehicles accessing the site;
  - (vi) measures to control the emission of dust and dirt during construction;
  - (vii) a scheme for recycling/disposing of waste resulting from construction works; and
  - (viii) a strategy to inform neighbouring occupiers (which as a minimum, shall include those adjoining the site boundaries) of the timing and duration of any piling operations, and contact details for the site operator during this period
- 17) Prior to the first occupation of any dwelling, the access and traffic calming arrangements shown on drawing 2044-001C shall be implemented in full.

-----END OF CONDITIONS SCHEDULE-----