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## Appeal Decision

Inquiry Held on 27 and 28 February 2018

Site visit made on 28 February 2018

**by G D Jones BSc(Hons) DipTP DMS MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 23 April 2018**

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**Appeal Ref: APP/Y2430/W/17/3178569**

**Land off Oakham Road, Somerby, Leicestershire LE14 2QL**

- 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 Hazelton Homes and Mark Curtis Bennett against the decision of Melton Borough Council.
  - The application Ref 16/00100/OUT, dated 8 February 2016, was refused by notice dated 28 April 2017.
  - The development proposed is residential development for up to 32no dwellings.
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### Decision

1. The appeal is allowed and outline planning permission is granted for residential development for up to 32no dwellings at land off Oakham Road, Somerby, Leicestershire LE14 2QL in accordance with the terms of the application, Ref 16/00100/FUL, dated 8 February 2016, subject to the conditions contained within the Schedule at the end of this decision.

### Preliminary Matters

2. In the light of having reviewed the appellant's appeal evidence, the Council advised during the week before the Inquiry that it no longer intended to defend its refusal of planning permission, subject to conditions and planning obligations. This was confirmed by the Council's advocate at the start of the Inquiry. Nonetheless, a Rule 6 party, Somerby Neighbours, did call its two witnesses to give evidence in opposition to the proposed development and cross-examined the appellant's witnesses.
3. After I closed the Inquiry I received further material from another Rule 6 party, Somerby Parish Council, in respect to potential planning conditions and flooding. For the avoidance of doubt, I have taken this additional information into account in making my decision.
4. The appeal proposals are for outline planning permission with all matters reserved for future approval. Whilst not formally part of the scheme, I have treated the details relating to the reserved matters submitted with the appeal application as a guide to how the site might be developed.
5. A legal agreement dated 28 February 2018, made under S106 of the Town and Country Planning Act 1990 (the S106 Agreement), was submitted during the course of the Inquiry and I have had regard to it in my consideration and determination of the appeal.

## **Main Issue**

6. In light of the extent of common ground between the Council and appellant, the main issue is whether there are any other considerations that might indicate that the appeal should be dismissed.

## **Reasons**

7. The appeal site is located on the southern east edge of Somerby, adjacent to but beyond the 'village envelope' as defined in Melton Local Plan 1999 (the Local Plan). It currently forms part of a larger undeveloped field used for grazing, with a field gate to its Oakham Road frontage. It is bordered to the west by residential properties in Firdale and has largely open countryside to the south and east. Opposite the site, to the north of Oakham Road, there is a Doctors' surgery beyond which lies further residential development.
8. In addition to the Doctors', Somerby has a range of facilities, including a church, a primary school, a pub and a small shop / post office. The village is also served by a reasonably regular daytime, Monday to Saturday bus service to Melton Mowbray and Oakham. While not comprehensive, I see no good reason to disagree with the comment within the Council officer's report on the appeal planning application that the services and facilities available are capable of serving basic day to day needs of residents living in Somerby and in nearby settlements.
9. Notwithstanding the Council's revised position on the proposed development, concern has been expressed locally, notably by a residents group, Somerby Neighbours (SN), as well as by Somerby Parish Council (SPC), in respect to several considerations. SN's objections are firmly focused on matters relating to flooding and drainage. I shall deal with these considerations first and then turn to other concerns raised.
10. The evidence indicates that the appeal site is located within Flood Zone 1, which covers areas with the lowest probability of flood risk in contrast to Zones 2, 3a and 3b. The Council's Strategic Flood Risk Assessment (SFRA) states that the site is not a flood risk. The SFRA informs the emerging Melton Local Plan (the eMLP), which has reached examination stage. The eMLP process has undertaken its own sequential test resulting in the proposed allocation of the appeal site for housing development via its Policy SOM1. The flood risk assessments (FRAs) prepared for the appeal development also set out that the site is not considered to be at risk of flooding from any source and the evidence indicates that the Lead Local Flood Authority (LLFA) agrees.
11. There is evidence that the site has experienced ponding of water from time to time over a number of years, including recently. However, from the information before me, this does not appear to be caused by flooding as such, for instance from groundwater as suggested by SN. Rather, the evidence indicates that any standing water that has occurred on the site is very likely to be due to other factors, most notably the slow dispersal / absorption of surface water and dysfunctional drainage systems within and / or in the vicinity of the site. The evidence also indicates that these factors could be reasonably addressed as part of the proposed development and under other legislation. Moreover, it also indicates that the appeal development would secure betterment in respect to run-off.

12. In light of the appellant's submissions, the LLFA, the Environment Agency, Severn Trent Water and the Council all consider that the site could be developed for housing as a matter of principle with a scheme coming forward as part of the reserved matters to address any drainage issues. Subject to the imposition of suitable controls that could be secured via planning conditions, I see no overriding reason to disagree or to conclude that the appeal development would increase flood risk elsewhere.
13. For these reasons and subject to suitable controls, the appeal development would not increase flood risk elsewhere and is not at risk of flooding for the purposes of national planning policy in accordance with the National Planning Policy Framework. On this basis, I do not consider there to be a requirement for a sequential test or any further sequential approach to be adopted for site selection ahead of the appeal site's potential development.
14. In addition to drainage and flooding, SPC is concerned that Somerby is an unsustainable location. This contrasts with the Council's view as set out in the SoCG. From the information before me, I broadly agree with the Council officer's report on the appeal planning application in that Somerby performs *reasonably well in sustainability terms owing to its community facilities, access to services and transport links*.
15. Other concerns raised by the SPC and by the wider community include the proposed scheme's potential effect on highway safety and parking, on the character and appearance of the area, on the living conditions of neighbours, on biodiversity, on safety and crime, on views and on pollution; the adequacy of facilities / infrastructure, including children's play space / equipment, sewerage and utilities; the need for housing; the proposed housing mix; existing house values; and potential conflict with the emerging neighbourhood plan.
16. These matters are largely identified and considered within the Council officer's report on the appeal development. They were also before the Council when it prepared its appeal case. The Council did not conclude that they would amount to reasons to justify withholding planning permission. Subject to the identified obligations of the S106 Agreement and the imposition of planning conditions, I have found nothing that prompts me to disagree with the Council's conclusions in these respects.
17. It is common ground between the appellant and the Council that the Local Plan is out of date in the terms of the Framework. Notwithstanding the current position regarding housing land supply, as the Local Plan plans for the Borough's development needs for the period 1991 to 2006 only, I see no reason to disagree. However, it does not follow that its policies should necessarily attract reduced weight as a consequence.
18. It is also common ground between the appellant and the Council that the appeal development would conflict with Local Plan Policy OS2. From the wider evidence I have found no other development plan policy conflict. Other than for a closed list of exceptions, Policy OS2 prevents development outside the Borough's defined settlement envelopes. These envelopes appear to have been drawn not only to protect the character of villages and the surrounding countryside but also to accommodate the Borough's housing requirements as set out in the development plan. Policy OS2 is therefore linked to the housing policy requirement which ran to 2006 such that it is out of date. This is

reflected in the Council's proposed Policy SOM1 housing allocation for the appeal site in the eMLP. Consequently, in light of Framework para 215, Policy OS2 now carries limited weight.

19. In summary, applying the Framework para 14 balancing exercise, the appeal scheme would conflict with the development plan in respect to Local Plan Policy OS2. However, that Policy now carries limited weight such that the associated conflict and harm carries commensurately limited weight. These considerations, along with the other factors identified that have been said to weigh against the development, do not collectively significantly and demonstrably outweigh the matters identified through the evidence that are in its favour, most notably the delivery of market and affordable housing. Overall, therefore, the appeal proposals would represent sustainable development in the terms of the Framework and should be granted planning permission.

### **Other Matters**

20. In the event that planning permission were to be granted and implemented the S106 Agreement would secure contributions for primary and secondary education, and for open space maintenance; and the provision of Travel Packs, bus stop / shelter improvements, and affordable housing.
21. Leicestershire County Council produced a Proof of Evidence regarding the planning obligations that it sought, although it did not actually call its witness at the Inquiry. The Council produced a complementary document in respect to the remaining planning obligations. These documents (the S106 Agreement Justification Documents) address the application of statutory requirements to the planning obligations within the S106 Agreement and also set out the relevant planning policy support / justification.
22. I have considered the S106 Agreement in light of Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 (as amended) and government policy and guidance on the use of planning obligations. Having done so, I am satisfied that the obligations therein would be required by and accord with the Policies set out in the S106 Agreement Justification Documents. Overall, I am content that all of those obligations are directly related to the proposed development, fairly and reasonably related to it and necessary to make it acceptable in planning terms.

### **Conditions and Conclusion**

23. The Council and the appellant jointly prepared a list of draft conditions, which include the standard time limit / implementation conditions. I have considered these, alongside the comments of SN and SPC thereon, including those made after the Inquiry closed, in the light of government guidance on the use of conditions in planning permissions and made amendments accordingly.
24. In order to provide certainty and to secure a balance of dwelling types to meet identified housing needs, a condition to control the mix of types and size of homes developed at the site would be necessary. Conditions to secure the future management and maintenance of the developed site's landscaping would be necessary in the interests of protecting the character and appearance of the area as well as those of biodiversity. Conditions to control certain matters during the construction phase would be necessary to protect the living

conditions of neighbours and in the interests of highway safety. For this latter reason, conditions would be needed to ensure that car parking / turning and pedestrian facilities are provided, and the existing site access is closed.

25. For the reasons outlined in the Reasons section above, conditions to control the provisions for surface water drainage and management along with their maintenance would also be necessary. Such conditions would provide for ensuring that flood risk is not increased elsewhere. Conditions controlling the location of development relative to the on-site pond and the management of the area surrounding the pond, as well as to protect great crested newts would be necessary in the interest of biodiversity. For this reason and to protect the character and appearance of the area, a condition would be necessary to protect retained trees and hedgerows. Conditions would also be necessary to ensure that features of archaeological interest are properly examined/recorded.
26. I conclude, for the reasons outlined above, that the proposals would be sustainable development for which there is a presumption in favour and, therefore, that the appeal should be allowed subject to the identified conditions.

*G D Jones*

INSPECTOR

Richborough Estates

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Timothy Leader, of Counsel	Instructed by Sachdev Kaur Khosa, Solicitor, Melton Borough Council
He called <sup>1</sup>	
Alison Taylor BEng(Hons) FICE CIWEM	Associate, Pick Everard

### FOR THE APPELLANT:

Philip Robson, of Counsel	Instructed by Chris May, Howes Percival LLP
He called	
Jon Davey MEng(Hons)	Senior Engineer and Head of Highways, Drainage, Flood Risk and Infrastructure, Farrow Walsh Consulting Ltd
Matthew Collerson BA(Hons) MSc MRTPI	Director, CC Town Planning

### FOR SOMERBY NEIGHBOURS:

Carl Powell	Instructed by Somerby Neighbours
He called	
James Hamilton AABC	Consultant, DarntonB3 Architecture
DipArch DipCons ARB	
Carl Powell	Somerby Neighbours

### FOR SOMERBY PARISH COUNCIL:

Cllr Leigh Higgins <sup>2</sup>	Borough Deputy Leader & Ward Councillor
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## DOCUMENTS submitted at the Inquiry

- 1 Extracts from Somerby Neighbours' submissions in respect to the British Geological Survey reports 2016 and Leicestershire County Council Preliminary Flood Risk Assessment 2011
- 2 Mr Powell's evidence in chief written statement
- 3 Revised suggested conditions
- 4 Signed legal agreement, dated 28 February 2018, pursuant to Section 106 of the Town and Country Planning Act 1990

## DOCUMENTS submitted following the Inquiry

- 5 The Parish Council's emails of 2 March and 12 April 2018 regarding the suggested conditions and flooding respectively

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<sup>1</sup> As there were no matters of dispute between the Council and the appellant by the time the Inquiry opened, Ms Taylor was not 'called' as such but did attend the first day of the Inquiry. Mr Worley, the Council's Head of Strategic Planning and Regulatory Services, also contributed to the roundtable session on conditions and planning obligations, as did Chris May on behalf of the appellant

<sup>2</sup> Although it had Rule 6 status, the Parish Council did not submit proofs of evidence or call any witnesses as such, but it did ask Cllr Higgins to read a statement on its behalf. Cllr Higgins also spoke separately in his capacity as Ward Councillor and Deputy Leader of the Council



SCHEDULE OF CONDITIONS FOR APPEAL REF APP/Y2430/W/17/3178569:

- 1) 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 to which this permission relates shall begin not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
- 2) No development shall commence on the site until approval of the details of access, appearance, landscaping, layout and scale of the development ("the reserved matters") has been obtained from the Local Planning Authority.
- 3) The reserved matters shall provide for a mix of types and sizes of dwellings informed by the local needs identified in the Melton Borough Housing Needs Study (August 2016) in relation to Somerby Ward.
- 4) A Landscape Management Plan, including a maintenance schedule and a written undertaking, including proposals for the long term management of landscape areas (other than small, privately occupied, domestic garden areas) shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development or any phase of the development, whichever is the sooner.
- 5) The approved landscape scheme (both hard and soft) shall be carried out before the occupation of the buildings or the completion of the development, whichever is the sooner; unless otherwise approved in writing by the Local Planning Authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
- 6) No development shall commence on the site until a construction traffic / site traffic management plan, including wheel cleansing facilities and vehicle parking facilities, and a timetable for their provision, has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
- 7) Before the development commences, details of the routing of construction traffic shall be submitted to and approved in writing by the Local Planning Authority. During the period of construction, all traffic to and from the site shall use the approved route at all times.
- 8) Any car parking and turning facilities approved as part of the reserved matters shall be provided, hard surfaced and made available for use before the dwelling(s) which they would serve are occupied and shall thereafter be permanently so retained and maintained.
- 9) Before any dwelling is first occupied, a footway shall be provided from the site access along Oakham Road, with appropriate dropped crossing points on either side of Oakham Road in accordance with details that shall first have been submitted to and approved in writing by the Local Planning Authority.
- 10) Within one month of the new site access being brought into use the existing vehicular access that would become redundant as a result of the development shall be closed permanently and the existing vehicular crossings reinstated in

- accordance with a scheme that shall first have been submitted to and approved in writing by the Local Planning Authority.
- 11) No development shall take place until such time as a surface water drainage scheme has been submitted to and approved in writing by the Local Planning Authority (LPA). The scheme shall include the utilisation of holding sustainable drainage techniques with the incorporation of sufficient treatment trains to maintain or improve the existing water quality; the limitation of surface water run-off to equivalent greenfield rates or less; the ability to accommodate on-site up to the critical 1 in 100 year event plus an appropriate allowance for climate change, based upon the submission of drainage calculations; and the responsibility for the future maintenance of drainage features. The scheme shall be fully implemented and subsequently maintained in accordance with the details, timing and phasing arrangements embodied within the scheme or within any other period as may subsequently be approved in writing by the LPA. Full details for the drainage proposals should be supplied, including but not limited to, headwall details, pipe protection details (e.g. trash screens), long sections and full model scenarios for the 1 in 1, 1 in 30 and 1 in 100 year + climate change.
  - 12) No development shall take place until such time as details in relation to the management of surface water on site during construction of the development have been submitted to and approved in writing by the Local Planning Authority. The details shall demonstrate how surface water will be managed on-site to prevent an increase in flood risk during the various construction stages of development from initial site works through to completion. This shall include temporary attenuation, additional treatment, controls, maintenance and protection. Details regarding the protection of any proposed infiltration areas shall also be provided. The development shall be implemented in accordance with the approved details.
  - 13) No development shall take place until such time as details in relation to the long term maintenance of the sustainable surface water drainage system have been submitted to and approved in writing by the Local Planning Authority. Details of the SuDS Maintenance Plan shall include provision for routine maintenance, remedial actions and monitoring of the separate elements of the system and procedures that shall be implemented in the event of pollution incidents within the development site. The development shall be implemented in accordance with the approved details.
  - 14) Information clarifying the size, location and condition of the Severn Trent Water surface water sewer outfall and any associated downstream system within the site, along with details of any remediation measures or alterations required shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The development shall be implemented in accordance with the approved details.
  - 15) The final layout submitted under Condition 2 above shall provide for the retention of the buffer surrounding the pond and the wildlife corridor to the east of the site of at least 4 metres in width.
  - 16) Prior to the commencement of the development a management plan for the area surrounding the pond and for the wildlife corridor shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.



- 17) Works associated with the development shall be in accordance with the mitigation plan for great crested newts (GCN) contained in the GCN survey by Wildlife Services, May 2016. Further detail of the mitigation, including an identified receptor site for any trapped GCN shall be identified in support of the reserved matters application(s). The development shall be implemented in accordance with the approved details.
- 18) No development shall commence on-site until all existing trees and hedgerows that are to be retained (including those identified for retention in the Design and Access Statement Rev D dated 23 September 2016) have been securely fenced off by the erection of post and rail fencing to coincide with the canopy of the tree(s), or other fencing as may be approved in writing by the Local Planning Authority, to comply with BS5837. Within the fenced-off areas there shall be no alteration to ground levels, no compaction of the soil, no stacking or storing of any materials and any service trenches shall be dug and backfilled by hand. Any tree roots with a diameter of 5cms or more shall be left unsevered.
- 19) Prior to the submission of reserved matters details a programme of archaeological work (commencing with initial trial trench investigation and including any appropriate subsequent mitigation) to be detailed within a Written Scheme(s) of Investigation (WSI) shall be submitted to and approved in writing by the Local Planning Authority. The WSI(s) shall include a statement of significance and research objectives, and:
- The programme and methodology of site investigation and recording, with consideration of appropriate analytical methods to be utilised;
  - A detailed environmental sampling strategy, linked to the site research objectives and where appropriate informed by previous work (i.e. any previous archaeological evaluation or investigation of this site or in the vicinity);
  - The programme for public outreach and dissemination;
  - The programme for post-investigation assessment and subsequent analysis;
  - Provision for publication, dissemination and deposition of resulting material in an appropriate archive repository; and
  - Nomination of competent person(s) or organisation(s) to undertake the approved work.
- For land and / or structures included within the WSI(s), no demolition, development or related ground disturbance shall take place other than in accordance with the approved WSI(s).
- 20) The programme of archaeological site investigation, subsequent analysis, publication, dissemination and deposition of resulting material in an appropriate archive repository shall be completed within 12 months of the start of development works, or in full accordance with the methodology and timetable detailed within the approved Written Scheme(s) of Investigation.