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## Appeal Decision

Hearing held on 18 March 2014

Site visit made on 19 March 2014

**by Susan Heywood BSc (Hons) MCD MRTPI**

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

**Decision date: 24 April 2014**

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**Appeal Ref: APP/E2530/A/14/2212740**  
**Land off Bourne Road, Morton PE10 0RG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mrs Alison Lea, Larkfleet Homes against the decision of South Kesteven District Council.
  - The application Ref S13/1810/MJRF, dated 2 July 2013, was refused by notice dated 7 October 2013.
  - The development proposed is the construction of 14 residential dwellings.
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. Prior to the hearing, on 14 March 2014, the appellants submitted a document entitled *Housing Requirements Report* prepared by Pioneer Property Services Limited (the Pioneer report). As this document was submitted late in the appeal process it was not possible for the Council to provide a witness at the hearing to deal with the issues raised. Furthermore, the document raised a number of matters which would have required questioning and testing of the evidence through cross-examination. The appellants were advised at the hearing that, whilst the additional evidence could be submitted, it would necessitate an adjournment and resumption for the evidence to be heard at a public inquiry. The appellants requested that the evidence be withdrawn and not considered in this appeal. It was also requested that I disregard the Council's written response to that document. The Council were satisfied with this course of action. I have therefore disregarded the Pioneer report and the Council's written response in coming to my decision in this appeal.
3. An agreement under S106 of the Town and Country Planning Act 1990 was submitted after the close of the hearing. I address this further below.

### Main Issues

4. The main issues in this appeal are as follows:
  - i. whether the Council can demonstrate a 5 year supply of housing land and therefore whether the development plan policies are up-to-date for the purposes of paragraphs 49 and 14 of the National Planning Policy Framework (the Framework);

- ii. the impact of the development on the character and appearance of the area, taking into account the proximity of the site to the Morton Conservation Area.

## Reasons

### *Policy context*

5. The development plan includes the South Kesteven Core Strategy adopted in July 2010. This sets out the spatial strategy for the area in policies SP1 and SP2. SP1 indicates that new development should be focussed upon Grantham, followed by the three market towns of Stamford, Bourne and the Deepings. In the settlements identified as Local Service Centres preference will be given to brownfield sites within the built-up part of settlements and sites allocated in the Site Specific Allocations and Policies Development Plan Document (the SAP). Policy SP2 identifies Morton (in which area the appeal site lies) and Hanthorpe as a Local Service Centre. This spatial strategy is reflected in policy H1 which indicates that a modest level of development will be appropriate within the more sustainable villages identified as Local Service Centres. Core Strategy policy EN1 is also relevant in considering the second issue identified above and this will be expanded upon later.
6. The SAP has progressed to an advanced stage; the Local Plan Inspector found that document sound, subject to a number of modifications, in his report dated 27<sup>th</sup> February 2014. The modifications have subsequently been consulted upon and the Council intends to take the Plan through to adoption at its Council meeting on 17<sup>th</sup> April 2014. The parties agree<sup>1</sup> that significant weight should be given to the policies in that document. Policy SAP H1 sets out that development within the Local Service Centres should be provided on suitable brownfield redevelopment sites and small infill sites within the built-up parts of these settlements. It indicates that new greenfield sites on the edges of the towns and villages will not be considered acceptable for housing development. The appellants acknowledge that the proposal, involving development of a greenfield site on the edge of the village, would conflict with policy SAP H1.
7. At the heart of the Framework is a presumption in favour of sustainable development. Paragraph 14 states that where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless, amongst other things, any adverse impacts would significantly and demonstrably outweigh the benefits. Paragraph 49 indicates that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a 5 year supply of deliverable housing sites.

### *Whether there is a 5 year supply of deliverable housing sites*

8. Paragraph 47 of the Framework sets out the intention to boost significantly the supply of housing. One of the ways in which local authorities should do this is to identify and update annually a supply of specific deliverable sites sufficient to provide 5 years worth of housing with an additional buffer of 5% to ensure choice and competition in the market for land. Footnote 11 to paragraph 47 defines the factors to be taken into account in determining whether a site is deliverable.

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<sup>1</sup> In the Statement of Common Ground submitted at the hearing.

9. In order to facilitate discussion at the Examination into the SAP, the Council produced an updated *Five Year Housing Land Supply Assessment* taking into account housing completions and commitments up to 30 September 2013. For the purposes of this appeal the parties have set out, in the Statement of Common Ground (SCG), where the differences lie between them in the assessment of the sites included within the *Five Year Housing Land Supply Assessment*.
10. The parties agree that the 5 year requirement, with the additional 5% buffer, amounts to 3612 dwellings. The Council say that they can demonstrate sufficient deliverable sites to provide 3707 dwellings. The appellants argue that there are only sufficient deliverable sites to provide 3457 dwellings. The dispute between the parties relates to the definition of deliverable sites in footnote 11 and its application to specific sites included within the *Five Year Housing Land Supply Assessment*.<sup>2</sup>
11. Footnote 11 states that to be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans. I will consider the application of this footnote to the specific sites in dispute in this appeal.

Mount Street, Grantham

12. Planning permission was granted for sixteen flats on the site in February 2005. A further permission was granted on appeal for twenty flats in November 2005. The only outstanding reserved matter<sup>3</sup> for the appeal development was approved in 2008 and further approval of details reserved by condition was issued in 2010. The Council say that foundations have been installed and they issued a Compliance Notice for this work in 2011. The landowner for the site was contacted as part of the production of the Strategic Housing Land Availability Assessment (SHLAA) (last updated in July 2013<sup>4</sup>). The information obtained by the Council is that this site would be developed when the market picks up.
13. The first planning permission (for 16 flats) granted by the Council was subject to a condition that the access should have a width of "4.1 metres for the first 20 metres". The appellants say that the access is currently only 3.9 metres in places and that this is constrained by buildings on either side of the access road. However, the submitted site plan indicates that, for the first 20 metres into the site, a width of 4.1 metres can easily be achieved. Furthermore, the Inspector in dealing with the appeal development stated that "there is sufficient land available within the public and private highway to enable the carriageway to be improved so that it would more than meet the minimum standards

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<sup>2</sup> At the hearing the appellants accepted the deliverability of the sites at Barnock Road and land south of Uffington Road.

<sup>3</sup> The appeal decision (APP/E2530/A/04/1163641) states at paragraph 2 that details of access, siting, design and external appearance were considered as part of the outline application. Condition 2 therefore identifies landscaping as the only reserved matter to be submitted.

<sup>4</sup> Paragraph 2.3 of the Five Year housing Land Supply Assessment

recommended in the national highway guidance to serve the potential number of future users”.

14. Both permitted applications were accompanied by acoustic reports to assess the impact of noise from the East Coast Main Line. These concluded that the buildings should be designed to ensure that non-habitable spaces face the railway and that various sound insulation measures should be incorporated. I accept that this matter would constrain the design and layout of the development of the site. However, there are numerous housing developments in similar proximity to the East Coast Main Line along its length and there is no evidence that this constraint would be likely to result in the development not being deliverable.
15. Footnote 11 states that sites with planning permission should be considered deliverable until permission expires, unless there is *clear evidence* (my emphasis) that schemes will not be implemented within five years. In this case, there is no clear evidence to lead me to the conclusion that this site will not be deliverable within the 5 year period.

#### Grantham Tyre & Auto

16. A renewal of planning permission was granted for the redevelopment of this site in 2012 and the Council have had discussions with the landowner to discharge conditions on that permission. The Council's discussions with the landowner indicate that he is keen to develop the site. However, the appellants provided written evidence of a conversation with the landowner which indicated that there was no intention to develop in the near future; the site is generating income as a car park and one of the landowners appears to spend time abroad.
17. I accept that this evidence does cast doubt over whether the site will be developed within the 5 year period. However, the fact remains that the planning permission was renewed in 2012 and that the applicant (who is also the landowner) has had subsequent, recent, discussions with the Council regarding the planning conditions and demolition. This does indicate some interest in taking the site forward. Thus, whilst the evidence from the appellants demonstrates that the site may not be developed in the near future, it does not demonstrate that the site will not be developed within a 5 year period.
18. Having regard to the indicators of 'clear evidence' in footnote 11 there is no evidence that the redevelopment would not be viable or that there is no longer a demand for the type of units which have planning permission. Neither is there any suggestion that the site is subject to a long term phasing plan. The footnote does not say that, in order for a site to be considered deliverable, there should be no doubt that the planning permission will be implemented; it states that there ought to be clear evidence to the contrary. Having regard to the above, I conclude that there is no such clear evidence and there remains a realistic prospect that housing will be delivered on the site within 5 years.

#### The Old Tannery, Earlsfield Lane

19. The Council indicate that there has been interest in the site from potential developers. They state that it is a small, flat, brownfield site within the town and there are no significant constraints to its development. The appellants

point out that the planning permission for this site lapsed in 2011. They consider that the site should not be regarded as being deliverable.

20. The Government's practice guidance states that local planning authorities should provide robust, up-to-date evidence to support the deliverability of sites. The Council were unable to produce their SHLAA return for this site for the 2013/14 request and their assumptions were therefore based on the previous year's return. However, the practice guidance goes on to say that if there are no significant constraints, sites not allocated within a development plan or without planning permission can be considered capable of being delivered within a 5 year timeframe. No constraints have been drawn to my attention and I do not consider that there is any evidence that this site could not be delivered within the 5 year timeframe.

Timber yard adjacent to the barracks, Grantham

21. The Council state that this is a brownfield site in the built-up area and that two landowners have confirmed that it is available. There has also been active interest by a housebuilder whom the Council understand to be in negotiation with the landowner. However, there are also two commercial uses on the site (a timber yard and a vehicle workshop) and there is no evidence to indicate the length of these tenancies or whether notice has been served on them. Evidence from the SHLAA assessment suggests that the site may be available within the 5-10 year period. I appreciate that the form does not allow the respondent to indicate a 0-5 year time frame. However, given the potential constraint of the tenancies on this site, there is insufficient evidence to demonstrate that the site is available now. I consider that this site should therefore be discounted from the 5 year supply.

Land west of Linchfield Road

22. The appellants point out that in the Deepings, in which area this site lies, the highway network is at capacity and highway improvements are likely to be needed for this site to come forward. Furthermore, they indicate that this site is in the hands of a charity that may have certain conditions which may constrain the disposal of the site.
23. The Council have had a number of discussions with the landowner who have indicated their wish to release the site. The release would allow further funding of the work of the charitable body. The Council have produced the SHLAA assessment of the site which indicates a timeframe of 5-10 years or sooner (again 0-5 years is not given as an option on the form). The site is allocated in the emerging SAP and the Council say that there are no detailed requirements for off-site highway improvements for the development of the site to go ahead. Whilst they say that the Plan does recognise the constraints of the highway network, they argue that the highway authority would not have accepted the allocation of the site if there were insurmountable problems.
24. I recognise that improvements may be needed to nearby junctions in order to accommodate the development. However, I place great weight on the fact that this allocation has been found sound by the Local Plan Inspector. Had there been insurmountable infrastructure concerns, this would not have been the case. The allocation can therefore be given significant weight in this appeal. Although, the site was shown for development in a later phase in the Plan, the Council states that this was only because of the need to spread out

development over the Plan period. The Local Plan Inspector accepted the need to phase the release of land over the Plan period but recognised that sites could come forward sooner if monitoring indicated a shortfall in the 5 year supply. This is the course of action being taken by the Council in this instance. I conclude that this site can be considered to be a deliverable site.

25. The appellants drew attention to the judgement in *Wainhomes (South West) Holdings Limited v SSCLG & Wiltshire Council [2013] EWHC 597 (Admin)*. This judgement indicates that the inclusion of sites within an emerging plan and in an Annual Monitoring Report is only a starting point. It was held that, in the absence of site specific evidence, it cannot be assumed that sites are deliverable when they do not have planning permission and are known to be subject to objections. However, the judgement goes on to say that the stage of progress that the draft document (in this case the SAP) has reached is a factor in determining the weight to give to the deliverability of the allocation. It also held that site specific evidence will be relevant. Paragraph 54 of the judgement indicates that if sites are included in an emerging Plan that may be taken as sufficient evidence that they are deliverable in the absence of evidence that they are not. That judgement adds further weight to my conclusions having regard to the sites allocated in the SAP bearing in mind the advanced stage which that Plan has reached.
26. From my conclusions on the disputed sites above only the site at the timber yard adjacent to the barracks should be discounted in the absence of specific information to the contrary. Thus the 72 dwellings considered by the Council to be deliverable on that site should be removed from their estimated supply of 3707 dwellings. This would leave a total of 3635 dwellings which is still sufficient to meet the 5 year requirement plus the 5% buffer, agreed to be 3612 dwellings.
27. Accordingly, the development plan policies are not out-of-date in this instance<sup>5</sup>. The development would conflict with policies SP1, SP2 and H1 of the Core Strategy and with emerging policy SAP H1. This conflict weighs heavily against the development.

#### *Character, appearance and Conservation Area*

28. Morton is a small settlement set within surrounding countryside. The appeal site is an open field located on the southern edge of the village alongside the north-south running A15. To the north of the appeal site is a recently constructed estate of affordable dwellings built by the appellants, Larkfleet Homes. That development was approved as a rural exception site in order to meet a need for affordable dwellings. To the south and west of the site lies open countryside.
29. The countryside in this location provides extensive views across a generally flat landscape interspersed by hedgerows and trees. Views are gained across the fields, including the appeal site, towards a ridge of higher land to the west. The South Kesteven Landscape Character Assessment (LCA) identifies the area as lying within the Fen Margin Character Area, a transitional area between the Kesteven Uplands to the west and the Fens to the east. This states that the

<sup>5</sup> The appellants confirmed that, other than as a result of the lack of a 5 year supply, the policies would not conflict with the Framework and I concur.

landscape sensitivity to new employment and residential proposals is likely to be low to medium.

30. I agree with the appellants that the extent of the effect of the development will be localised, in that the effects would be limited to the immediate setting of the site. The scale of the effect on the wider landscape character, identified in the LCA and the appellants Landscape and Visual Impact Assessment (LVIA), would be negligible.
31. Nevertheless, the site is currently seen as forming part of the network of open fields which form the open countryside surrounding the village. The open countryside, including the appeal site, provides an attractive rural and open approach to the settlement. Bunkers Hill Farm lies to the south beyond the appeal site and surrounding fields. I disagree with the appellants that this rural approach to the village is predominantly seen to the south of Bunkers Hill Farm, as the appeal site forms part of the countryside which wraps around that cluster of farm buildings.
32. The edge of the village has already been extended into part of the field to the north of the site by the recent construction of the affordable houses. This current proposal would lead to the further erosion of the open countryside on the edge of the village. It would result in a more built-up edge to the village and further intrusion of built development into the open fields on the settlement edge. This would erode further the attractive rural approach to the village. The development would also further curtail views across the open countryside to the higher land to the west, identified in the LCA as a characteristic feature of the area. The loss of the open field and encroachment of built development into the countryside would cause harm to the open, rural character of the surrounding area.
33. Thus, whilst the overall landscape character would not be altered by the proposed development, it would alter some of the key characteristics in a localised area. Having regard to the appellants' assessment techniques, this would result in a higher magnitude of effect than concluded by the appellants.
34. I turn now to consider the impact of the development on the character of the settlement. Properties within the village are generally concentrated alongside, and in culs-de-sac off, the roads running east-west through the village. There is development in depth along this east-west line. There is also some development along Haconby Lane to the east of the village. However, there is limited development towards the south of the village along the A15, particularly along its western boundary. Consequently, the village has a generally linear east-west alignment and this characteristic is identified in the LCA as one of the features of settlements in the area. I accept that the development would not cause a fundamental alteration to the linear character of the village. However, it would result in the further creep of built development southwards along the A15 and would therefore dilute further that established linear character.
35. I turn now to consider the visual impacts of the development and the appellants' visual assessment. Views of the development would be primarily gained from the immediate surroundings of the site. The dwellings would be seen looking northwards along the A15. I saw a number of walkers using the footpath adjacent to the A15 on my site visit and as such I do not agree that the assessment from this vantage point should only relate to motorists. Views

can also be gained from the houses opposite the site and from the footpath to the south of Morton.

36. The appellants state that from the A15 the dwellings would be seen in the context of existing housing to the north and the rear of properties along Hanthorpe Road. However, the proximity of the development to the A15 would lead the new dwellings to be viewed as the most prominent features and the dwellings along Hanthorpe Road would be barely visible in that context. The proposed dwellings would combine with the existing affordable dwellings to the north to create a large estate of properties which would appear to project a finger of development into the countryside on the edge of the village. From all of the vantage points identified above, the loss of the open field and the intrusion of built development into the open countryside would have an adverse visual impact.
37. Whilst there are dwellings opposite the appeal site these are detached properties set well back from the road with large front gardens and space between them. This low density of development provides a transition between the open countryside and the village on the eastern side of the approach from the south. The layout of the proposed dwellings around a cul-de-sac, and comprising closely spaced dwellings and garages, would create a densely built-up edge to the village, and an abrupt junction with the countryside. This would be at odds with the generally spacious nature of those dwellings opposite the site and the transition which they provide between the countryside and the village.
38. The Council argue that the development, due to its estate layout, would not display any features of local distinctiveness contrary to Core Strategy policy EN1. In response, the appellants point to a number of 20<sup>th</sup> and 21<sup>st</sup> Century cul-de-sac developments within the village and argue that the development would be in keeping with these. However, the appellants accept that these existing developments have a generic form. Consequently, they do not contribute to any sense of local distinctiveness and repeating that generic style of development would not enable the development to contribute to a sense of place. The centre of the village is a Conservation Area and it is here that locally distinctive design, form and materials become apparent. The use of limestone building materials and red brick, elongated floor plans with narrow gables, properties with gables onto the pavement, small cottages with low eaves and dormer windows, chimneys, and so on, are all characteristic features which contribute to a sense of being in this Lincolnshire village. The use of red and buff brick and red roofing tiles for the proposed dwellings would not be sufficient to create a locally distinctive development.
39. In summary, the loss of the open field and the intrusion of built development into the countryside, the creation of a dense, urban building form, the generic estate layout and lack of locally distinctive design would result in a visually obtrusive form of development which would cause significant harm to the appearance of the surroundings. I therefore disagree with the scale and magnitude of effect identified by the appellants in the assessment of the visual impact of the proposal.
40. The LCA identifies opportunities for limited new development to be accommodated on the edges of existing settlements in certain locations. However, it states that large-scale new developments are unlikely to be



successfully assimilated. Although the appeal proposal cannot be described as large-scale in itself, it would form a continuation of the recently constructed affordable housing estate to the north. Taken together, the two developments would be seen as one large-scale development. For the above reasons, I agree that the proposed development would not be successfully assimilated into the surroundings on the edge of the village.

41. I acknowledge that the affordable housing currently presents a harsh edge to the countryside, formed by the gable walls of the properties and a long wooden fence. The proposed development indicates that a hedge and trees would be planted along its southern boundary adjacent to the countryside. The LCA notes that there are opportunities for additional development to provide a softer, less stark edge to the countryside than existing development. I note too that the existing mature trees along the boundary with the A15 would be retained. However, the benefits of softening the existing boundary with the countryside would be negated by the harmful impacts of the development as identified above.
42. As stated above, Morton is designated as a Conservation Area. I have had regard to the duty to pay special attention to the desirability of preserving or enhancing the character or appearance of that Conservation Area. However, I consider that the proposal would be set a sufficient distance from the Conservation Area so as not to harm its setting or its significance.
43. The appellants state that only magnitudes of effect classed as major-moderate or major (as identified in the LVIA) should influence the decision. I do not agree. As part of a balanced approach to decision making the harm caused by any particular factor, whatever weight is given to that harm, must be weighed in the balance with all other matters. Only then can a judgement be taken regarding the overall weight to be given to the harm in reaching a decision.
44. For the above reasons, I conclude that the proposal would cause some localised harm to the character of the area and significant localised harm to the appearance of the area and in these respects it would be contrary to Core Strategy policy EN1. This matter therefore weighs against the proposed development.

## **Conclusion**

45. I am satisfied that the Council can currently demonstrate a 5 year supply of housing land plus a buffer of 5%. Whilst the figures demonstrate that the Council are only just able to demonstrate this, the requirements of the Framework are, nevertheless, fulfilled. Accordingly, relevant development plan policies for the supply of housing are up-to-date. The proposal would conflict with Core Strategy policies SP1, SP2 and H1. It is also agreed that significant weight should be given to policy SAP H1 of the emerging Plan, which has recently been found sound, and that the development would conflict with it. Furthermore, the development would cause harm to the character and appearance of the surrounding area contrary to Core Strategy policy EN1 and to one of the core planning principles set out in the Framework. The proposal would not therefore constitute sustainable development.

*S106 Agreement*

46. A S106 Agreement was submitted to secure the provision of affordable housing, open space and infrastructure contributions. The Agreement would not overcome the reasons for dismissing the appeal. Accordingly, it is not necessary for me to consider it further.
47. I have had regard to all other matters raised, however none adds significantly to, or alters, the matters referred to above.
48. For the reasons given above, the conflict with development plan and emerging development plan policy and the other harm caused lead me to conclude that the appeal should be dismissed.

*Susan Heywood*

INSPECTOR

Richborough Estates

## APPEARANCES

### FOR THE APPELLANT:

David Bainbridge  
Antony Aspbury  
Charles Crawford  
Tim Slater

Bidwells  
Antony Aspbury Associates  
LDA Design  
Larkfleet Homes

### FOR THE LOCAL PLANNING AUTHORITY:

Justin Johnson  
Rachel Armstrong  
Karen Sinclair

Principal Planning Officer  
Policy Officer  
Planning Policy Manager

## DOCUMENTS

- 1 Council's letter of notification of hearing and circulation list
- 2 Agreed Statement of Common Ground including amended and agreed table of 5 year supply
- 3 5 year housing land supply table – Comparative assessment between Council and Appellant: Agreed Position
- 4 Judgement: *Wainhomes (South West) Holdings Limited v SSCLG & Wiltshire Council [2013] EWHC 597 (Admin)*
- 5 Site specific evidence relating to Mount Street, submitted by Council
- 6 Site specific evidence relating to Linchfield Road, submitted by Council
- 7 Site specific evidence relating to land south of Uffington Road, submitted by Council
- 8 Site specific evidence relating to timber yard adjacent to barracks, submitted by Council
- 9 Site specific evidence relating to Grantham Tyre & Auto, submitted by appellant
- 10 Site specific evidence relating to Barnock Road, submitted by Council
- 11 Core Strategy policies H1, H3, EN3 & EN4
- 12 Site Allocations policies LSC1 & SAP H1
- 13 Signed S106 Agreement