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## Appeal Decision

Site visit made on 24 April 2019

**by K Stephens BSc (Hons), MTP, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 June 2019

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### Appeal Ref: APP/P3040/W/19/3221123

#### Land at Asher Lane, Ruddington

- 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 Space Foods Limited against the decision of Rushcliffe Local Planning Authority.
  - The application Ref 18/00300/OUT, dated 1 February 2018, was refused by notice dated 17 October 2018.
  - The development proposed is outline planning permission for proposed development of 175 dwellings including vehicular access, pedestrian links, public open space, car parking, landscaping and drainage.
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#### Decision

1. The appeal is allowed and outline planning permission is granted for proposed development of 175 dwellings including vehicular access, pedestrian links, public open space, car parking, landscaping and drainage (all matters reserved) at Land at Asher Lane, Ruddington, in accordance with the terms of the application Ref 18/00300/OUT, dated 1 February 2018, subject to the conditions set out in the attached schedule.

#### Procedural Matters and Background

2. The description of the development in the banner heading above is taken from the application form. It does not inform which matters are reserved, although the appellant has used the form type for 'Outline Planning Permission with all matters reserved'. Furthermore, it is apparent from the description used on the appeal form that all matters (namely access, appearance, landscaping, layout and scale) are reserved. Therefore, I have altered the description in this regard for the avoidance of doubt.
3. Outline planning permission<sup>1</sup> was granted on appeal<sup>2</sup> in May 2018 for 175 dwellings. There is no substantive evidence to suggest that the scheme would not be implemented should the appeal fail and there is, therefore, more than a theoretical possibility that it would be implemented. I therefore attach significant weight to the valid fall-back position and have focussed my attention on the main difference between the fall-back scheme and the appeal scheme which relates to the point of access shown on the Illustrative Masterplans for both schemes.

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<sup>1</sup> LPA ref:16/03123/OUT

<sup>2</sup> Appeal ref: APP/P3040/W/17/3185493

4. That said, I have noted the concerns raised by interested parties relating to the principle of the development. I note the proposal would be in the Green Belt. However, those matters were all dealt with in detail in the previous appeal and the site already has planning permission for a residential development of the same scale as that before me. I therefore do not need to reconsider the principle of the development or any other matters other than the main differences between the scheme before me and the fall-back scheme.
5. The appeal scheme Illustrative Masterplan shows that the access would be off Musters Road whereas the fall-back scheme Illustrative Masterplan shows the access from Asher Lane. This is the main difference between the two schemes. Whilst a final layout of the proposed 175 dwellings, including road layouts, landscaping, open spaces and a pumping station would form part of any subsequent reserved matters application should planning permission be granted, the Masterplan nonetheless provides a useful guide as to how the site could be developed. I have therefore considered the indicative access details accordingly.
6. A duly executed Section 106 Agreement has been submitted with the appeal. It provides for 30% of the homes to be affordable and contributions towards education, libraries, open spaces, sport and play facilities. They are broadly the same as those set out in the planning obligation associated with the fall-back scheme which were found to meet the Regulation 122 of the Community Infrastructure Levy Regulations (2010) tests. I find no reason to question this and I have therefore taken the planning obligation into account in my decision.
7. The revised National Planning Policy Framework (the Framework) was published in February 2019. I have had regard to it in reaching my decision and both main parties are aware of this change. In any event, insofar as is relevant to the appeal, the national policies have not significantly changed such that this has not influenced the outcome of the appeal either way.

### **Main Issue**

8. The main issue is therefore the effect the proposed development would have on the living conditions of the occupiers of No.73 Musters Road and No.1 Western Fields (No.73 & No.1) and the occupiers of properties in the wider area fronting Musters Road and Distillery Street, with particular regard to noise and disturbance from vehicle movements and traffic generation.

### **Reasons**

9. The Illustrative Masterplan shows a single access point on Musters Road. No.75 Musters Road would be demolished creating a gap some 18 metres wide through which the access would go. The Masterplan and preliminary 'Access and Offsite Works' drawing 20999\_08\_020\_11 indicate that the new road would be centrally located between the gap with footpaths either side. A priority junction with Musters Road and Western Fields would be formed. No.73 & No.1 would be located either side of the access drive, whereas they would be some distance away from the fall-back scheme accessed off Asher Lane.
10. With the current appeal proposal, the gardens of these properties, and in particular the side elevation of No.73 with its habitable room windows, would be adjacent to the proposed access that would serve all 175 proposed dwellings.

11. The appellant's Noise Assessment (NA) recognises that there would be a perceptible and large short-term impact on occupiers of No.73 & No.1. The Council's Environmental Health Officer (EHO) raised initial concerns that the proposed access could result in some loss of amenity to occupiers of these properties due to noise from road traffic using the access road. The appellant was asked to undertake a further NA to establish the change in sound levels resulting from all of the traffic from the proposed development using the Musters Road access/egress point.
12. Hence a further NA by Mewies Engineering Consultants Ltd (dated July 2018)<sup>3</sup> was submitted. Using a combination of noise survey and prediction of road traffic noise levels it concluded that there would be changes to noise levels, but with the use of appropriate mitigation measures, absolute sound levels and frequency would be no different to that arising from normal residential areas. The July 2018 NA concluded that the proposed new access/egress on Musters Road would not lead to a significant adverse impact on occupiers of No.73 & No.1.
13. The Council's EHO was satisfied with the findings of the July 2018 NA and advised the Council that a condition be imposed to ensure implementation of the recommended mitigation measures set out in that NA. These measures would include the erection of a 2 metre high acoustic fence along the side boundaries of No.73 & No.1 as well as around their rear gardens and those of the properties next to them (as shown on the plan in Appendix F of the NA July 2018). Furthermore, in its officer report to committee the Council has suggested a condition requiring acoustic glazing and passive ventilation to achieve reduced noise levels in all bedrooms throughout the proposed development. I concur with these measures.
14. The Council has not presented any substantive evidence to indicate why the recommended 2 metre high acoustic fence would not adequately mitigate against the harm for occupiers of the two properties either side of the proposed access.
15. Turning to the effect on occupiers of properties fronting Musters Road and Distillery Street, having regard to the fall-back scheme. The Transport Assessment (TA) confirmed there will be no adverse impact on the local highway network. The TA indicates there would be a better distribution of traffic flows around the surrounding roads arising from the Musters Road access, compared to the fall-back scheme using the Asher Lane access. With the Musters Road access, vehicular traffic would have more routes to take and would be split 50% at the junction, such that some traffic will travel between Musters Road/Distillery Street and some via Musters Road/Asher Lane/The Green. With the fall-back permission with access off Asher Lane, all traffic would have to pass in front of houses on Asher Lane, and progress along Asher Lane towards the junction of Distillery Street and The Green before exiting the village. The TA concludes on this point by saying that fewer vehicles per hour would pass any individual property along Musters Road/Distillery Street under the current appeal proposal than would be the case under the previous appeal using the Asher Lane access.
16. All that said, in the absence of any substantive evidence to the contrary, I am not persuaded by the Council's assertions that increased vehicle movements

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<sup>3</sup> Report ref 20999/07-18/5993

and traffic generation at the Musters Road access would result in unacceptable levels of noise and disturbance to occupiers of properties in the wider area fronting Musters Road and Distillery Street.

17. In reaching these conclusions, I note the concerns of the Ruddington Parish Council, local Councillors and the considerable number of representations from residents and other third parties, many of which raise concerns about the impact on the local highway network and that the village can't cope with more traffic.
18. However, the appellant's TA concludes that the local highway network can cope with the proposed 175 dwellings with the access off Musters Road. Furthermore, of relevance to this matter is the previous appeal decision where highway evidence was examined during a four day public inquiry. The Inspector concluded on highway impact matters that "the proposed development would not result in severe residual cumulative impacts on the local highway network...". Furthermore, various mitigation measures would be secured by condition and through a Section s106 Agreement, and these have been put forward for this appeal.
19. In addition, the Highway Authority acknowledge that in light of the previous appeal decision and fall-back position that the only change, in highway terms, would be the new position of the site access. Following some initial concerns about visibility, due to the geometry of the junction and its close proximity to Western Fields, the appellant submitted an amended plan 20999\_08\_020\_11 to show changes to the junction alignment. This addresses the Highway Authority's concerns and they have recommended a condition requiring the junction arrangement, shown on the amended plan, should be provided before any proposed dwellings are occupied. As such there are no highway safety issues relating specifically to the new access off Musters Road.
20. I also note the concerns from the Parish Council that the Musters Road access would be close to three other junctions that would result in an increase in the number of accidents. The TA found that no existing accident problems or trends would be exacerbated by the proposed development. The Council has not advanced any substantive evidence to the contrary and the Highway Authority has addressed its concerns with the amended junction layout, as discussed above.
21. In conclusion on the main issue I therefore find that, with the implementation of appropriate noise mitigation measures which can be conditioned, there would not be unacceptable harm to the living conditions of the occupiers of No.73 & No.1 or to the occupiers of properties in the wider area fronting Musters Road and Distillery Street with regard to noise and disturbance from increased vehicle movements and traffic generation.
22. Accordingly, there would be no conflict with Policy GP2 of the Rushcliffe Borough Non-Statutory Replacement Local Plan (2006) and Policy 10 of the Rushcliffe Local Plan: Part 1 Core Strategy (2014). These seek, amongst other things, to ensure that new development does not have a significant adverse effect upon the residential amenity of adjoining properties or the surrounding area, by reason of the type and levels of activity on the site, or traffic generated.

## Conditions

23. The Council has suggested conditions which are those imposed on the fall-back scheme, but updated to reflect the revised Framework and the specifics of the proposed scheme resulting from the access off Musters Road, instead of Asher Lane. Hence conditions 9 and 14 have been amended, which relate to a different access and additional noise mitigation measures respectively.
24. The conditions would have been subject to scrutiny and agreement between the parties at the Inquiry, including pre-commencement conditions. Any conditions would also have to meet the statutory tests and be necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other respects as required by the Framework and the Planning Practice Guidance.
25. I have not been presented with any evidence or material considerations to indicate that matters are substantially changed now. Therefore, I agree those conditions are all necessary and meet the relevant test and I have imposed them accordingly.
26. Severn Trent Water Ltd have requested that sewer modelling be undertaken as a pumping station would be proposed. However, a pumping station was indicated on the Masterplan that accompanied the fall-back scheme and I have not been presented with any substantive evidence to suggest there has been a material change in circumstances since then to warrant the imposition of a condition now. Therefore, I find a condition would not be necessary and would therefore not meet the statutory tests.

## Conclusion

27. For the reasons given above and when compared with the effect of the fall-back scheme, with appropriate mitigation in place, I have found the appeal proposal would not generate harm. I therefore conclude that the appeal should be allowed.

*K Stephens*

INSPECTOR

## **Schedule of Conditions**

1. Details of the access, 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 begins and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.
3. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
4. Application for approval of reserved matters shall be in accordance with the parameters set on the Illustrative Master Plan (drawing no. AND0176-IM-002 Revision C) dated February 2018 and the Design and Access Statement dated January 2018.
5. The development hereby permitted shall only be carried out in accordance with detailed plans and particulars relating to the following items, and the development shall not be commenced until these details have been submitted to and approved in writing by the Local Planning Authority:
  - a) A detailed layout plan of the whole site.
  - b) The siting, design and external appearance of the proposed buildings.
  - c) The means of access.
  - d) The finishes for the hard surfaced areas of the site.
  - e) Sections and cross sections of the site showing the relationship of the proposed development to adjoining land and premises.
  - f) The finished ground levels for the site and floor levels of the dwellings relative to existing levels and adjoining land.
  - g) The means of enclosure to be erected on the site.
  - h) Cycle and bin storage facilities.
  - i) The layout and marking of car parking, servicing and manoeuvring areas.
  - j) Plans, sections and cross sections of any roads or access/service roads or pedestrian routes within the site, and this shall include details of drainage, sewerage and lighting, and
  - k) The detailed design of all junctions, which shall include details of visibility splays.
6. No operations shall commence on site until the existing trees and/or hedges which are to be retained have been protected in accordance with details to be approved in writing by the Local Planning Authority and that protection shall be retained for the duration of the construction period. No materials, machinery or vehicles are to be stored or temporary buildings erected within the perimeter of any fence erected to protect the retained trees and/or hedges, nor is any excavation work to be undertaken within the confines of the fence, without the written approval of the Local Planning Authority. No changes of ground level shall be made within the protected area without the written approval of the Local Planning Authority.



7. With the exception of the sections to be removed to enable the provision of the vehicular and pedestrian access points, the hedgerows located along the southern, western and northern boundaries of the site shall be retained and any part of the hedgerows removed, dying, being severely damaged or becoming seriously diseased shall be replaced with hedge plants of such size and species, details of which shall be submitted to and approved in writing by the Local Planning Authority, within one year of the date of any such loss being brought to the attention of the Local Planning Authority.
  
8. No development, including any site preparation works, shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall include:
  - a) The measures for ensuring the means of access/exit for construction traffic;
  - b) Parking provision for site operatives and visitors.
  - c) The siting and means of loading and unloading and the storage of plant and materials used in constructing the development.
  - d) The erection and maintenance of security hoarding, including decorative displays and facilities for public viewing, where appropriate.
  - e) Wheel washing facilities (including full details of its specification and siting).
  - f) Measures to control the emission of dust and dirt during construction.
  - g) A scheme for recycling/disposing of waste resulting from construction works.
  - h) The siting and appearance of the contractors compounds and cabins, including heights of stored materials, boundaries and lighting, together with measures for the restoration of the disturbed land and noise mitigation.
  - i) The days and times of construction activity and of materials delivery and disposal activity.
  - j) A scheme for traffic management measures including temporary signage, outing and access arrangements, and
  - k) A scheme to treat and remove suspended solids from surface water run-off construction works.
  
9. No dwellings shall be occupied until the following off-site highway improvement works have been completed;
  - a) Access arrangement off Musters Road (as indicated on drawing 20999\_08\_020\_11) unless otherwise submitted to and approved in writing by the Local Planning Authority.
  - b) Junction Improvements to the High Street / Kirk Lane / Charles Street junction and the A60 / Kirk Lane / Flawforth Lane junction, in accordance with details which shall first be submitted to and approved in writing by the Local Planning Authority.
  - c) Mitigation of on-street car parking on Asher Lane, between Musters Road and Distillery Street.
  
10. No development hereby permitted shall take place until an appropriate agreement under Section 278 of the Highways Act 1980 has been entered into with Highways England to facilitate improvements to A52 junctions in accordance with the provisions of the A52/A606 Improvement Package Developer Contributions Strategy Memorandum of Understanding September 2015.

11. The dwellings hereby approved shall not be occupied until a Travel Plan has been submitted to and approved in writing by the Local Planning Authority. The requirements as set out in the approved Travel Plan shall be implemented from occupation of the first dwelling and operated thereafter.
12. Prior to the commencement of development details of the design, layout and specifications for the surface water drainage system shall be submitted to and approved in writing by the Local Planning Authority. The submitted details shall include detailed evidence in the form of fully referenced plans and calculations to demonstrate the following;
  - a) All surface water outflows from the site to be restricted to the greenfield discharge rates for the mean annual flood flow from a rural catchment in m<sup>3</sup>/s with the excess flows attenuated on the sites in suitable holding ponds, tanks or similar. The drainage design standard is 100years + 30% allowance in peak flow rates to allow for climate change effects.
  - b) The developer is to assess the performance of the drainage system using intense storm events ranging in length from 15 minutes to 24 hours for the 100year +30% event. This will identify where the plot drainage and highway drainage may flood in extreme events. Once identified in calculations and on a plan, the developer is to identify how these flows are to be directed overland towards the surface water attenuation system. The site layout, levels, highway and drainage design should enable pluvial overland flows to be intercepted and directed away from dwellings, sensitive infrastructure and 3rd parties. The flows should be directed passively towards the surface water attenuation system and should not flow across the site boundary.
  - c) The developer should demonstrate that they have intercepted pluvial flows that could enter the site from 3rd party land and directed these away from properties.
  - d) Cross sectional bank profiles of any open water areas, mean residence time of attenuated water and mean water levels.

No part of the development shall be occupied until facilities for the disposal of surface water drainage have been provided, in accordance with the approved details and the development shall be constructed in accordance with the approved drainage details, levels and layout.

13. The development shall not be brought into use until facilities for the disposal of foul water drainage, including details of the location and design of any pumping station, have been provided, in accordance with details previously submitted to and approved in writing by the Local Planning Authority.
14. Prior to the commencement of the construction of the dwellings hereby approved, a scheme detailing the following shall be submitted to and approved in writing by the Local Planning Authority;
  - a) acoustic glazing and passive ventilation to achieve a 33dB sound reduction in internal night time noise levels predicted in all bedrooms throughout the development.
  - b) 2m high close boarded acoustic boundary fence specifications and a plan identifying the plots and boundaries upon which the fencing will be installed,



as detailed in the M-EC Noise Assessment Reports dated October 2017 and July 2018.

The dwellings hereby approved shall be constructed in accordance with the glazing and ventilation specifications so approved. The said glazing and ventilation shall thereafter be retained and maintained to the approved specifications. Each dwelling, to which the acoustic boundary fencing is to be installed, shall not be occupied until the approved acoustic boundary fencing for that dwelling has been installed. The acoustic fencing shall thereafter be retained and maintained to the approved specifications.

15. The dwellings hereby approved shall not be occupied until bird boxes and bat boxes and/or access points to bat roosts have been installed in accordance with details previously submitted to and approved in writing by the Local Planning Authority. Thereafter the bird and bat boxes and/or access points shall be permanently retained and maintained.
16. No development, including site clearance, shall take place until a Bird Management Plan (BMP), which encompasses both construction and operational phases, has been submitted to the Local Planning Authority for approval. The development shall thereafter be carried out in accordance with the approved BMP.
17. No development, including groundworks, shall take place until a geophysical survey of the site has been undertaken. This survey shall inform the proposals for a scheme of targeted archaeological evaluation trenching, including phasing, for which a written scheme of investigation shall be submitted to and approved in writing by the Local Planning Authority prior to development commencing, including ground works. The approved evaluation shall then be undertaken prior to any ground works within each phase of development on the site, and the findings thereof submitted to the Local Planning Authority. The extent of trial trenching shall initially be informed by the results of the geophysical surveys for the first phases, with an option to revisit scale of excavation in later phases should excavation on the earliest phases return little or no archaeological information.