



Appeal Decision

Hearing held on 25 March 2014

Site visit made on 25 March 2014

by Ron Boyd BSc (Hons) MICE

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

Decision date: 16 May 2014

Appeal Ref: APP/F2605/A/13/2210283

Land between London Road and New Road, London Road, Attleborough, Norfolk NR17 1YF

- 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 Mr Ian Fieldhouse against the decision of Breckland Council.
 - The application Ref 3PL/2012/1259/F, dated 21 November 2012, was refused by notice dated 18 June 2013.
 - The development proposed is described as (a) Erection of 73 dwellings; (b) creation of 0.71 hectares of on-site public space to include LAP, nature play area, kickabout area, footpaths, landscaping and dog waste bins; (c) creation of outdoor exercise trail, connecting footpaths and landscape enhancements at existing public open space on New Road Attleborough; (d) creation of LEAP, connecting footpath and landscape enhancements at existing public open space on Blackthorn Way Attleborough; and (e) installation of dog waste bins at Hillsend Lane, Attleborough.
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Decision

1. The appeal is allowed and planning permission is granted for (a) Erection of 73 dwellings; (b) creation of 0.71 hectares of on-site public space to include LAP, nature play area, kickabout area, footpaths, landscaping and dog waste bins; (c) the provision of open space enhancements at London Road/Cedar Drive to include new children's play equipment and a 'trim trail' with outdoor gym equipment together with a reconfigured football pitch; (d) creation of LEAP, connecting footpath and landscape enhancements at existing public open space on Blackthorn Way, Attleborough; and (e) installation of dog waste bins at Hillsend Lane, Attleborough at land between London Road and New Road, London Road, Attleborough, Norfolk NR17 1YF in accordance with the terms of the application, Ref 3PL/2012/1259/F, dated 21 November 2012, subject to the conditions on the attached schedule.

Application for costs

2. At the Hearing an application for costs was made by Mr Ian Fieldhouse against Breckland Council. This application is the subject of a separate Decision.

Procedural matter

3. Since the submission of the Hearing statements the Department of Communities and Local Government published its Planning Practice Guidance (PPG) on 6 March 2014. Both parties confirmed at the Hearing that publication

of the PPG has not affected their cases. I have had regard to the PPG in determining this appeal.

4. The description of the proposed development in the heading above is that on the application form. Prior to determination of the application the proposal for an outdoor exercise trail on existing open space at New Road was withdrawn following discussion between the parties. Amended proposals were submitted to enhance facilities at the existing open space at London Road/Cedar Drive to include new children's play equipment and a 'trim trail' with outdoor gym equipment together with a reconfigured football pitch. I have considered the appeal in the light of the amended proposals.
5. Following the Hearing, with my agreement, a completed Agreement under the provisions of Section 106 of the Town and Country Planning Act 1990 between the site owners, the developer, the Council and the Norfolk County Council was submitted. Under its terms should the appeal succeed the owners of the site undertake to construct and provide 29 affordable housing units and the on-site open space land and to make specified financial contributions towards the provision and maintenance of open space, education, highways and library facilities. I am satisfied that the Agreement meets the tests set out in paragraph 122 of the CIL Regulations 2010. I have taken it into account in my determination of the appeal.

Main issues

6. I consider these to be:
 - whether the proposed development would unacceptably undermine the Council's objective of providing adequate open space to meet the needs of children's play and recreational needs of Attleborough; and
 - whether any adverse effects of the proposed development would significantly and demonstrably outweigh its benefits including those related to the delivery of housing and the promotion of construction and economic growth.

Reasons

7. The appeal site, bounded by London Road to the north west and New Road to the south west, comprises a broadly square area of arable land of some 2.46 hectares within the settlement boundary for Attleborough. Narrow strips of public open space are adjacent to the site's north-eastern and south-eastern boundaries beyond which are extensive areas of residential development. An industrial estate lies to the south of New Road. To the west of London Road there are further commercial uses and land committed for residential and employment development.
8. The proposed residential development of 73 dwellings would occupy some 1.75 hectares fronting both London Road and New Road. Primary vehicular access would be from London Road with subsidiary accesses serving smaller groups of houses from both roads. The majority of the 0.71 hectares of new public open space would lie between the north-eastern limit of the housing and the north-eastern boundary of the site.
9. The site is currently designated as an area of proposed open space by virtue of Saved Policy 002(012) site OS.6 of the Breckland District Local Plan (1999). This explains that the site was identified in the 1973 Policy Map and the 1987

Local Plan for the proposed provision of open space. The Council refused the application for the reason that the loss of the site to housing would undermine unacceptably the Council's objective of providing adequate open space to meet the needs of children's play and recreational needs in Attleborough and that the adverse effects of the proposal would significantly outweigh its benefits.

Effect on the provision of open space

10. Attleborough has an identified shortfall in the area of open space provision when compared against the standards of the National Playing Fields Association. The site's designation for public open space has been retained in order to help in addressing the shortfall which was last assessed, in 2010, as amounting to some 12.86 hectares.
11. The proposed development would clearly remove the opportunity for the whole of the site to be used for public open space and thus conflicts with the above Saved Policy. However, the Statement of Common Ground submitted to the Hearing and signed by both parties records that the site is in private ownership; in agricultural use; is not publicly accessible; has never been used for open space use; that the Council has not acquired the site for public open space use since its designation over 40 years ago in 1973 and has no proposals to do so; and that the provision of the land as public open space is not deliverable.
12. In a Freedom of Information Act Request the Council confirmed to the appellant in October 2013 that there were no proposals for any acquisition of the site within the next ten years, and that it could not identify any funding that had ever been available to enable procurement of the site.
13. In this light I consider that whilst the continued designation of the site for public open space provision would retain the possibility of such use being achieved at some time in the future, there is at present no reasonable prospect of such an aim being achieved. There is thus no present reasonable likelihood that implementation of the proposed development would, in practice, cause the loss of a deliverable area of public open space. This being the case, I conclude that implementation of the proposed development would not unacceptably undermine the Council's objective of providing adequate open space to meet the needs of children's play and recreational needs of Attleborough.

Adverse effects of the proposal

14. The Council acknowledges a record of persistent under delivery of housing and that, as at July 2013, in accordance with paragraph 47 of the National Planning Policy Framework (the Framework) it was only able to demonstrate a 2.8 year supply of deliverable housing land. In such circumstances, in line with the Framework's advice in paragraph 49 the Council's policies in respect of housing provision can not be considered as being up-to-date. The proposed housing development should be considered in the light of the presumption in favour of sustainable development and permission granted unless the adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.
15. The adverse effect of the proposal identified by the Council as a reason for refusal of the application is that its implementation would rule out any possibility of the whole of the 2.46 hectare site becoming public open space. As I have identified above, I consider there is no reasonable prospect of such a

goal being achieved in the foreseeable future. Thus whilst the permanent loss of the possibility is an adverse effect of the proposal it is one to which I attach limited weight.

16. In addition the Council considers the proposal would not achieve an appropriate balance between residential development and open space. The relatively small contribution in quantitative terms that the open space within the proposed development would make to the Council's shortfall in open space would be insufficient to justify the conflict with the Saved Policy 002(012).
17. The Framework exhorts the provision of safe and accessible developments containing high quality public space. I consider the proposal would represent just such a development with a useable area of public open space surrounded by the residential development it would serve. It would represent sustainable development being within easy reach of the town centre facilities as well as offering the economic benefits of new construction; the social benefits of delivering 73 new dwellings of which 29 would be affordable; the quantitative benefit of the provision of 0.71 hectares of new on-site public open space readily accessible from both the proposed new housing and the adjoining existing development; and the qualitative benefit of the improvement of existing open space facilities nearby.
18. To my mind the scheme would provide an acceptable balance between residential development and open space provision. Retaining the faint possibility of achieving an additional 1.75 hectares of public open space at some time in the future would not justify foregoing the achievable benefits outlined above that would result from implementation of the proposed development. I conclude that there are no adverse effects of the proposal that would significantly and demonstrably outweigh its benefits.

Other matters, conclusion and conditions

19. I have noted the comments in responses to the application and to the notification of the appeal, and in particular, including from the Town Council, concern about the traffic implications of the proposal. However, Norfolk County Council as Highway Authority has no objection to the proposal and I have no reason to consider that traffic from a development of this scale would have an impact sufficient to warrant dismissal of the appeal.
20. I have taken into account all the other matters raised in the evidence but have found nothing sufficient to outweigh my conclusions on the main issues which have led to my decision on this appeal. For the reasons given above I conclude that the appeal should succeed.
21. I have considered the Council's suggested conditions and their detailed wording in the light of the PPG and Annex A of Circular 11/95. I consider the conditions in the attached schedule to be reasonable and necessary. These deal with:
 - materials to be used in the external surfaces of the development, site levels and landscaping (conditions 3,4,5) in the interests of a satisfactory appearance;
 - biodiversity enhancements (condition 6) in the interests of protecting wildlife and promoting biodiversity;

- highway works and garage provision (conditions 7,8,9,10) in the interests of highway safety;
- noise protection, drainage, land contamination, construction activity, fire hydrants, open space land (conditions 11,12,13,14,16,17,18 and 19) in the interests of the living conditions of future occupants of the development; and
- renewable energy (condition 15) in the interests of sustainable development.

In addition, other than as set out in this decision and conditions, it is necessary that the development shall be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of proper planning.

R.T.Boyd

Inspector

Richborough Estates

Schedule of conditions

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. Other than as may be required elsewhere in these conditions the development hereby permitted shall be carried out in accordance with the approved plans listed in the attached schedule.
3. No development shall take place until precise details (including samples where required) of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. This condition shall apply notwithstanding any indication as to these matters that have been given in the current application. The materials to be used in the development shall be in accordance with the approved details.
4. No development shall take place until precise details of the slab levels of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. Such details shall also provide comparative levels with adjoining properties and details of the levels of any boundary treatments proposed. The development shall be carried out in accordance with the details as approved.
5. The treatment of existing trees on the site and the provision of new planting for the development hereby permitted shall be carried out in strict accordance with the submitted approved Tree Report and Implications Assessment (STEP17771tr Rev A) dated 21.02.2012 and the submitted approved Landscape Design Statement (STEP17771state.doc) dated February 2012. The new planting scheme shall be implemented in full prior to the first occupation of the development or within such longer period as may be agreed in writing by the local planning authority.
6. No development shall take place until a scheme for the mitigation of the effects of the development on wildlife and biodiversity enhancement has been submitted to and approved in writing by the local planning authority. The scheme as approved shall be implemented in full prior to the first occupation of the development, or within such longer period as may be agreed in writing by the local planning authority.
7. No development shall take place until details of the proposed arrangements for future management and maintenance of the proposed roads within the development have been submitted to and approved in writing by the local planning authority. The roads shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under Section 38 of the Highways Act 1980 or a Private Management and Maintenance Company has been established.
8. No development shall take place until full details of the roads, footways, cycle-ways, and bus stop have been submitted to and approved in writing by the local planning authority. The works shall be carried out as

approved with the roads, footways and cycle-ways constructed to binder course surfacing level between the dwellings and the adjoining County road prior to first occupation of any dwelling in the development. No works shall be carried out on the roads, footways, cycle-ways, bus stop, other than in accordance with the specifications of the local planning authority.

9. No works shall commence on the site until the Traffic Regulation Order for the extension of the 30 mph local speed limit on C572 London Road has been promoted by the Highway Authority.
10. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), all garages to be provided for the dwellings hereby permitted shall have minimum internal dimensions measuring 3mx6m.
11. No development shall take place until a scheme for protecting the dwellings hereby permitted from road traffic noise and noise from operations carried out on the industrial estate off New Road has been submitted to and approved in writing by the local planning authority. The scheme shall include internal layouts, protection of amenity and garden areas and should not rely on the requirement to close windows to living rooms and bedrooms. All works which form part of the scheme shall be completed before any of the affected dwellings are occupied.
12. No development shall take place until schemes for the provision, implementation, ownership and maintenance of both foul water and surface water drainage of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The schemes shall be constructed and completed in accordance with the approved details at such time(s) as may be specified in the approved schemes.
13. No development shall take place, including any works of demolition, 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 provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v) noise control;
 - vi) wheel washing facilities;
 - vii) measures to control the emission of dust and dirt during construction; and
 - viii) a scheme for recycling/disposing of waste resulting from demolition and construction works.

14. No construction works shall take place outside the hours of 07.30 to 18.00 hrs Monday to Fridays and 08.00 to 13.00 hrs on Saturdays. No works are permitted on a Sunday or a Bank or Public Holiday.
15. No development shall take place until detailed proposals for the reduction of energy use and/or provision of on-site renewable energy generation have been submitted to and approved in writing by the local planning authority. Unless otherwise agreed in writing by the local planning authority, these measures should secure at least 10% of the energy requirement of the development from renewable sources. The approved proposals shall be implemented before the first occupation of any of the dwellings hereby permitted or such longer period as may be approved in writing by the local planning authority.
16. Unless otherwise agreed in writing by the local planning authority, the following details shall be submitted to and approved in writing by the local planning authority prior to the commencement of the development hereby approved.
 - a. Site Investigation - A site investigation and risk assessment to determine the nature and extent of any contamination on the site, whether or not it originates on the site. The investigation and risk assessment shall be undertaken as approved by competent persons and a written report of the findings produced. The report of the findings shall include: (i) a survey of the extent, scale and nature of contamination; (ii) 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, ground waters and surface waters, ecological systems, archaeological sites and ancient monuments; and (iii) an appraisal of remedial options, and proposal of the preferred option(s).
 - b. Remediation Scheme - A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
 - c. Implementation of Approved Remediation Scheme - The approved remediation scheme shall be carried out in accordance with its terms prior to the commencement of development, unless otherwise agreed in writing by the local planning authority. The local planning authority shall be given two weeks written notification of commencement of the remediation scheme works.
 - d. No development shall take place until, following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out has been submitted to and approved in writing by the local planning authority.

The above shall be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

17. In the event that contamination that was not previously identified is found at any time when carrying out the development hereby permitted it shall be reported in writing immediately to the local planning authority. An investigation and risk assessment shall be undertaken in accordance with details to be agreed in writing with the local planning authority. Where remediation is necessary, a remediation scheme shall be submitted to and approved in writing by the local planning authority.
 18. No development shall take place until a scheme for the provision of two fire hydrants (served by mains water supply) serving the development has been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the hydrants have been provided in accordance with the scheme as approved.
 19. No development shall take place until a scheme for the provision of open space (identifying the size/extent, location and specification of the space and works including the dog waste bins and the informal pedestrian connection with London Road) has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved prior to first occupation of any of the dwellings hereby permitted.
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Richborough Estates

Schedule of approved plans

Plan title	Reference
Proposed Site Layout	6479 SLO2 Rev B
House Type A	6479 PLO1 Rev A
House Type B	6479 PLO2
House Type C	6479 PLO3
House Type D	6479 PLO4
House Type E	6479 PLO5
House Type F	6479 PLO6
House Type F	6479 PLO7
House Type F	6479 PLO8
House Type G	6479 PLO9
House Type F	6479 PL10
House Type J	6479 PL11 Rev A
House Type K	6479 PL12 Rev A
House Types J, L and M	6479 PL13 Rev B2
House Type E	6479 PL14
House Types L and M	6479 PL15 Rev A
House Types L and M	6479 PL16 Rev A
House Types L, N and P	6479 PL17 Rev A
House Types L, N and P	6479 PL18 Rev B
House Types J and L	6479 PL19 Rev A
House Types K and L	6479 PL20
House Types K and L	6479 PL21 Rev A
House Types K, L and M	6479 PL22 Rev A
House Types K, L and M	6479 PL23 Rev A
House Type A	6479 PL24
House Type C	6479 PL25 Rev A4
House Type C	6479 PL265
House Type A	6479 PL27
House Type E	6479 PL287
Garage Type	6479 G01
Garage Types	6479 G02
Proposed Street Elevations	6479 SE01
Landscape Masterplan	STEP17771-10 Rev D
Open Space proposals	STEP17771-08 Rev F
Off-Site Play Area (London Road)	STEP17771-09 Rev E
Blackthorn Road, Play Area	STEP17771-24 Rev B

APPEARANCES

FOR THE APPELLANT:

Gary Stephens	Associate Director Marrons Planning
John Edmonds	Solicitor - Marrons Shakespeares Solicitors
Ian Fieldhouse	Appellant – Stepford Homes Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Jane Owen	Senior Planning Officer
Cllr Keith Martin	Ward Councillor
Sarah Robertson	Capita
Jamie Smith	Capita
Stephen Faulkner	Principal Planner Norfolk County Council

INTERESTED PERSONS:

Dr Mary Wallace	Representative - Local residents' group
Elizabeth Spin	
Mary Goldsmith	
Richard Foulger	
Trevor Faulkner	

DOCUMENTS

- 1 Letter dated 24 February - Notification of Hearing
- 2 Summary of S 106 Agreement obligations
- 3 E-mail re land ownership
- 4 Evidence in support of infrastructure requirements – Norfolk County Council
- 5 E-mail – suggested condition
- 6 Suggested condition
- 7 Statement of Common Ground and letter to third parties re amendments to plans
- 8 Costs application
- 9 Council response to costs application
- 10 Section 106 Agreement- submitted 3 April.