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## Appeal Decision

Hearing held on 10 December 2014

Site visit made on 9 December 2014

**by P W Clark MA MRTPI MCMl**

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

**Decision date: 23 January 2015**

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**Appeal Ref: APP/X2410/A/14/2222358**

**Tickow Lane, Shepshed, Loughborough, Leicestershire LE12 9LY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Gladman Developments Ltd against Charnwood Borough Council.
  - The application Ref P/13/1751/2 is dated 28 August 2013.
  - The development proposed is 180 dwellings.
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### Decision

1. The appeal is allowed and planning permission is granted in outline for 180 dwellings at Tickow Lane, Shepshed, Loughborough, Leicestershire LE12 9LY in accordance with the terms of the application, Ref P/13/1751/2, dated 28 August 2013, subject to the fifteen conditions appended to this decision.

### Procedural matters

2. As originally submitted, the application was for 215 dwellings on a larger site. By e-mail dated 16 January 2014, while the Council was still considering the application, its extent was reduced and the number of dwellings proposed was reduced to the figure included in the description of development above. It is this reduced proposal which is the subject of the appeal.
3. The application is made in outline. Details of vehicular access are submitted for approval now. Details of appearance, landscaping, layout and scale are reserved for later consideration.
4. A signed and dated s106 planning agreement was submitted at the Hearing. Unsigned drafts had previously been circulated and time was allowed at the Hearing for parties to consider final adjustments to the signed document so nobody would be prejudiced by taking this document into consideration, which is what I have done. Its compliance with the CIL Regulations is considered in my reasoning, set out below.
5. It provides funding for bus passes, a bus stop improvement, a contribution towards the provision of civic amenity waste facilities, contributions towards the cost of additional primary, high and upper school provision to serve the development, a contribution towards the improvement of medical practices serving the development, contributions towards the cost of enlarging the capacity of two highway junctions and the safety of a third serving the

development, a contribution towards the provision of library services in the vicinity of the development, a contribution towards additional police facilities serving the development, a contribution for improving the public realm of Shepshed town centre and a contribution towards traffic calming. It would provide for 30% of the dwellings to be affordable housing. It would also provide for an area of public open space with children's play facilities and recreational use and for a travel pack of information to be provided to each household.

6. The definition of "Public Recreation and Open Space Scheme" in the obligation refers to details to be approved by the Borough Council pursuant to conditions 22 and 23 of the Planning Permission. This is a cross-reference to the numbering of the conditions suggested by the Council in the event of my allowing this appeal. Because I have not adopted all the conditions suggested by the Council, the numbering of the conditions in this appeal decision is different. The details which would have been required by suggested conditions 22 and 23 are to be included within the details required by condition 1.
7. The appeal was originally due to be heard at a Public Inquiry. Following agreement on one issue reached between the main parties, it was reduced to a Hearing. An unaccompanied site visit was made before the Hearing. With the agreement of all parties, no further accompanied site visit was necessary.

### **Main Issues**

8. Following the completion of a Statement of Common Ground, two main issues are outstanding. They are the effect of the proposal on; the capacity of the highway network in respect of the Ashby Road/M1 junction and; on the demand for and provision of policing in the area.

### **Reasons**

#### *Highway capacity*

9. The planning obligation makes provision for financial contributions towards increasing the capacity of two junctions on the A512 Ashby Road and towards improving the safety of a third. The need to improve these junctions arises, in part, from this development, as is evidenced by the Shepshed Cumulative Impact Assessment carried out on behalf of the County Council. Other developments in and around Shepshed also contribute towards the need to enlarge or improve these junctions. I am satisfied that the financial contribution from this development would be related in scale to its proportionate impact on the capacity and safety of the junctions concerned and so would comply with the CIL regulations.
10. But the evidence also shows that the development would contribute to the overloading of a fourth junction on the A512 Ashby Road, that with the M1 at junction 23. No provision is made within the planning obligation to deal with this impact.
11. It was explained to me that the effects of the various Shepshed developments on the M1 junction would be insignificant in comparison with the effects on it which would be caused by two other anticipated developments, known respectively as the West of Loughborough Sustainable Urban Extension and the West of Loughborough Science Park Extension. By contrast, the various Shepshed developments collectively would make a much greater proportional

impact on the other Ashby Road junctions and are at a much earlier stage of progress.

12. The County Council has therefore taken a view on the timing of the improvements needed and on the allocation of their costs in which the Ashby Road junction improvements would proceed first, funded by the Shepshed developments. It accepted that the M1 junction improvement was not necessary to allow the current appeal scheme to proceed now but would follow later, largely funded by the two other anticipated developments.
13. Although this represents somewhat rough justice, I am satisfied that it is a pragmatic solution to the circumstances. I was told, without contradiction, that the increased load on the M1 junction arising out of this development would not cause such congestion as to have significant effects on the other junctions along Ashby Road and so, it is not a bar to this development proceeding.
14. I therefore conclude that the effects of the proposal on the capacity of the highway network would be acceptable. It would comply with policy TR/6 of the Borough of Charnwood Local Plan 1991-2006, adopted in January 2004 (the Local Plan). This would deny planning permission for developments if their cumulative impact would lead to the unsafe or unsatisfactory operation of the highway network.

#### *Policing*

15. The planning obligation makes provision for a financial contribution to policing costs in the form of whichever of three alternatives (if any) is determined to meet the tests for planning obligations set out in regulation 122 of the CIL Regulations. A further provision of the obligation allows for the exclusion of any component of the obligation if this Decision concludes that it does not meet those same tests.
16. From the many other planning appeals which were presented to me, I draw the following precepts. Policing is a statutory service which is funded at public expense but so too are many other services which are the subject of planning obligations to offset the impact of a development upon those services; that consideration alone does not cause a planning obligation to fail the CIL tests.
17. It is commonly accepted that the day to day running costs of a servicing a development would be covered by revenues to the service provider, such as Council Tax. On the other hand, capital expenditure arising directly from the needs of a development might not be provided in time or at all within the priorities of a public service provider and, if not provided, the development would have an unacceptable impact. If the investment would be necessary to make the development acceptable in planning terms, then it would satisfy one of the CIL tests. In this case, the evidence which the police provided concerning their capital financing made clear the difficulties they would face in funding capital expenditure and the consequential unacceptable impact in the form of a dilution of their services over a more extensive area .
18. Applying this precept to the itemised entries in option (c) of the "Police Contribution" as defined in the obligation, I do not find anything other than the references to training in item (i) which would not fall within a reasonable definition of capital expenditure. Training however, is not a necessary adjunct to the creation of new posts; they could (and some would say should) be filled

with already qualified and trained personnel. Moreover, whereas the other items would be retained by the police force in the event of a recruit leaving the service, any training would not. I doubt that even the most creative accountant could convincingly define that as capital expenditure.

19. Although it is correct to say that the spatial impact of a development upon policing cannot be precisely quantified because nothing can be known for certain in advance about the crime rates likely to occur, the same is true of impacts on other services; impacts on traffic generation can only be estimates based on measurements of similar development elsewhere; likewise, impacts on the provision of schools can only be based on estimates of the child population likely to arise derived from analyses of similar developments elsewhere. Yet such estimates are commonly accepted and, in the current case, those put forward by the police were not discredited. Nor were alternative ways of apportionment suggested. For these reasons I have no difficulty with the basis on which the police have estimated the impact on their services likely to arise from this proposed development. I am satisfied that the outcome is fairly and reasonably related in scale to the development.
20. It is fair to say that the police have gone into far greater detail in analysing the impact of the development on their capital expenditure than is normal amongst service providers. In consequence, the closer scrutiny which that invites may make it appear that it should not be "necessary" for such petty amounts to be recouped from a developer through a planning obligation and that the small adverse impacts upon police capital expenditure should be tolerated in light of the wider benefits of the development as a whole.
21. But each is a building block to a larger sum and there are parallels with the way some other services calculate the impacts of developments on their services, as set out in the Council's S106 Developer Contributions Supplementary Planning Document. In addition, I recall paragraph 61 of Mr Foskett's judgement which was brought to my attention; although the sums at stake for the police contributions will be small in comparison to the huge sums that will be required to complete the development, the sums are large from the point of view of the police. Therefore, I do not doubt their necessity.
22. I conclude that the provisions made in option (c) of the "Police Contribution" entry of the obligation, adjusted to remove the second sentence of paragraph (i) would comply with the CIL regulations. With that obligation in place, the development would have an acceptable effect on policing, in compliance with section (xviii) of Local Plan policy ST/1 which requires developments to provide for public services and with policy ST/3 which requires development to provide for infrastructure if lacking.

#### *Other matters*

23. Third parties had much more wide-ranging and fundamental objections to the development, including its intrusion into open countryside and use of agricultural land, its susceptibility to flooding and its effects on highways infrastructure and road safety; on schools provision and on the ecology of the locality. These matters have been comprehensively considered by the Council, both in dealing with this application and with a similar "second go" application. Many of the provisions of the planning obligation are designed to address these objections. Others would be resolved through the use of conditions. There is no information which would cause me to disagree with the reasoning and the

conclusions reached by the Council on these other matters, set out in its various Committee reports. Together with the reasons set out in this decision relating to disputed matters, they convince me that the appeal should be allowed.

*Conditions*

24. In the event of the appeal being allowed, the Council suggested twenty-four conditions be applied. These have been considered in the light of the advice contained in the National Planning Practice Guidance (the Guidance), preferring where appropriate the words of the model conditions set out in the annex to the otherwise cancelled circular 11/95, *the Use of Conditions in Planning Permissions*.
25. Some suggested conditions duplicate the requirements for the submission of reserved matters or amount to informatives setting out the nature of the details which the Council would like to see submitted. These have not been included as the developer has the information so they are not necessary. They include the suggested conditions numbered 22 and 23 which are referred to in the planning obligation and so that must be read as referring to condition 1 of this decision. However, conditions requiring further details over and above those submitted or set out in the list of reserved matters are necessary as follows.
26. The appellant's consultant has identified a need for an intrusive ground investigation to identify contamination. A phasing scheme is necessary to ensure that completion of dwellings is coordinated with the provision of facilities on site to serve them. Details of both foul and surface water drainage schemes are necessary to satisfy the concerns of both the Environment Agency and the water undertaking. A biodiversity management plan is needed to safeguard the ecological interest of both the Black Brook watercourse and a badger sett identified on site. A scheme of public art is necessary to comply with Local Plan policy EV/43.
27. Although the layout of two vehicular accesses was submitted and is approved, other pedestrian and cycle accesses are indicated on the illustrative master plan. Details of their design are necessary. Evidence of the need for a Residential Travel Plan, traffic calming measures, a footway on and a pedestrian crossing of Tickow Lane is contained within the Council's committee reports and so conditions are imposed to require these and the closure of existing accesses which would become redundant as a result of the development.
28. The Council sought an abbreviated time limit for the submission of details and for the commencement of construction in order to have the most immediate effect on its housing land supply position. The developer gave assurances that this would cause no difficulties in compliance. The suggestion is fully compliant with the government's intention, set out in paragraph 47 of the Framework, to boost significantly the supply of housing and so I have adopted it.

*P. W. Clark*

Inspector

## CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved. This condition includes the requirements referred to as conditions 22 and 23 within the planning obligation.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than two years from the date of this permission.
- 3) The development hereby permitted shall begin not later than one year from the date of approval of the last of the reserved matters to be approved.
- 4) No development shall take place until a Phase II ground investigation has been undertaken to establish the full nature and extent of any contamination of the site and the results of the investigation together with details of any remediation strategy necessary to render the site safe have been submitted to and approved by the local planning authority. The development shall be carried out in accordance with the approved details. No dwelling shall be occupied until remediation relating to or affecting the site of the dwelling has been completed.
- 5) No development shall take place until details of a phasing scheme have been submitted to and agreed in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 6) 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) wheel washing facilities
  - vi) measures to control the emission of dust and dirt during construction
  - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works.
- 7) No development shall take place until details of both foul and surface water drainage have been submitted to and approved in writing by the local planning authority. The development shall be carried out and retained thereafter in accordance with the details as approved. No dwelling shall be occupied until both foul and surface water drainage

schemes have been completed to the extent necessary to serve the dwelling.

- 8) No development shall take place until a Green Infrastructure Biodiversity Management Plan setting out ecological measures including long term design objectives, management responsibilities and maintenance schedules for all landscaped areas other than domestic gardens has been submitted to and approved in writing by the local planning authority. Development shall be carried out and subsequently retained in accordance with the approved details.
- 9) No development shall take place until a scheme of public art within the built fabric of the development has been submitted to and approved by the local planning authority. The development shall be carried out in accordance with the approved details.
- 10) No development shall take place until details of the closure of redundant accesses and the provision of a 2m wide footway along the frontage of the site to Tickow Lane between its south-western end and the junction with Hallamford Road have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details. No dwelling shall be occupied until the footway has been completed.
- 11) No development shall take place until details of a scheme to reduce traffic speeds along the part of Tickow Lane fronting the site has been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the approved scheme has been implemented.
- 12) No development shall take place until details of a scheme to provide a zebra crossing of Tickow Lane convenient for pedestrian access into the site has been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the approved scheme has been implemented.
- 13) The vehicular access to the development hereby permitted shall be carried out in accordance with the following approved plan: 4746/09/01.
- 14) No dwelling shall be occupied until the highway works to the junction of Hallamford Road, Tickow Lane, Belton Street and Oakely Road shown on dlp transportation drawing Figure 7B and drawing number LE181T-007-01 have been completed.
- 15) No dwelling shall be occupied until a Residential Travel Plan has been brought into effect in accordance with details to be submitted to and agreed in writing by the local planning authority. The Residential Travel Plan shall thereafter be retained in use.

### **Conditions 22 and 23**

Referred to within the Planning obligation dated 10 December 2014 related to this permission are subsumed within condition 1 of this decision.

## **APPEARANCES**

### FOR THE APPELLANT:

Kevin Waters MSc BSc(Hons) MRICS MRTPI	Planning and Development Manger, Gladman Developments Limited
Nigel Weeks BSc CEng MICE	Stirling Maynard Transportation

### FOR THE LOCAL PLANNING AUTHORITY:

Michael Morley BSc(Hons) DipTP MRTPI	Team Leader Local Development, Charnwood Borough Council
Younus Seedat	Leicestershire County Council
Andrew Tyrer BA(Hons) MRTPI	Developer Contributions Officer, Leicestershire County Council

### INTERESTED PERSONS:

Thea Osmund-Smith	Of Counsel, instructed by Michael Lambert
Michael Lambert Dip T MRTPI	Growth and Design Officer, Leicestershire Police
Joan Tassell	Chair, Shepshed Town Council
Jane Lennie	Ward Councillor, Charnwood Borough Council

## **DOCUMENTS**

- 1 Bundle of appeal notification letters
- 2 Revised Statement by Andrew Tyrer
- 3 Shepshed Cumulative Impact Assessment Report number RT88427-01
- 4 Signed and dated s106 agreement
- 5 Planning obligations and Police Contributions – Advice of Ian Dove QC