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## Appeal Decision

Site visit made on 6 July 2015

by **K R Saward Solicitor**

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

Decision date: 10 July 2015

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### Appeal Ref: APP/J0540/W/15/3014912

### Former Northam Works, Guilsborough Road, Eye Green, Peterborough

- 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 Mrs Pippa Cheetham (O&H Properties Ltd) against the decision of Peterborough City Council.
  - The application Ref 14/00857/R4OUT, dated 19 May 2014, was refused by notice dated 16 October 2014.
  - The development proposed is residential development for up to 55 dwellings, means of access, open space and associated works.
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### Decision

1. The appeal is allowed and outline planning permission is granted for residential development for up to 55 dwellings, means of access, open space and associated works at Former Northam Works, Guilsborough Road, Eye Green, Peterborough in accordance with the terms of the application, Ref 14/00857/R4OUT, dated 19 May 2014, subject to the conditions set out in the Schedule at the end of this Decision.

### Procedural Matters

2. I have utilised the address as it appears in the Appeal Form as this more fully identifies the location than the original application form.
3. The application was made in outline form with all matters reserved for future determination, except for access. The Council has raised no objection to the proposed access and I have no reason to do otherwise. A masterplan has been provided showing a possible layout and a land use plan identifies three areas of open space. These are illustrative only as are the typical section drawings provided. Whilst not formally part of the scheme, I have nonetheless treated them as a useful guide as to how the site could be developed.
4. The appeal is accompanied by a completed Unilateral Undertaking (UU) dated 18 June 2015 made under Section 106 of the Town and Country Planning Act 1990 (as amended). It makes provision for affordable housing, a car park for visitors to the adjacent local nature reserve, the transfer of land for use as a nature reserve and new off-site open mosaic habitat.

### Main Issue

5. The main issue is the effect of the proposed development on biodiversity interests in and near to the site.

## Reasons

6. The appeal site comprises 3.18 hectares of vacant land, the entirety of which was formerly a brickworks although no indication of this previous use remains above ground. It lies within the village envelope for Eye Green as defined within the Council's Core Strategy Development Plan Document and in the Peterborough Site Allocations Development Plan Document (DPD), 2012. A total of 2.44 hectares of the appeal site is allocated in the DPD, primarily for residential use, with an indicative number of 35 dwellings. Up to 55 dwellings are now proposed with access off Guilsborough Road.
7. When the site allocation was made, part of the previously developed land was excluded allowing separation with the adjoining Eye Green Local Nature Reserve (LNR). This encompasses a large lake that was the former pit for the brickworks. It is surrounded by a grassed bank of varying width and pockets of dense foliage. Parts of the north-eastern boundary and the eastern spur of the appeal site are within the LNR. Whereas the allocation adjoined only a small part of its boundary, a much larger part of the appeal site directly abuts the LNR. The LNR is a local statutory designation which was made for its waterfowl, flora and invertebrates.
8. Additionally, the eastern part of the site lies within the Eye Green Gravel Pit County Wildlife Site (CWS), which is a local non-statutory designation made for its lesser reed-mace swamp community and a nationally scarce plant. A smaller part of the CWS was included within the site allocation. Some 2.5 hectares of land would be lost which is identified as Open Mosaic Habitat of Previously Developed Land (OMH), suitable for invertebrates. This represents an additional 0.5 hectares of OMH land within the CWS area, over and above the housing site allocation. I note that the local Wildlife Trust and Buglife have objected to the proposal for this reason. The appellant queries whether the designations continue to be well founded. Nonetheless, the designations remain and I have had due regard to them accordingly.
9. Policy CS21 of the Council's Core Strategy provides that planning permission will only be granted for development which would be likely to have an adverse effect on any LNR or CWS if no alternative sites are available, and if there are demonstrable reasons for the proposed development which outweigh the need to safeguard the nature conservation value of the site. In such circumstances, mitigation and/or compensatory measures will be sought in the first instance, keeping damage to the conservation interest to a minimum and achieving, where possible, a net gain for biodiversity conservation.
10. Policy CS21 was adopted in 2011 prior to publication of the National Planning Policy Framework (the Framework). Paragraph 118 thereof is less prescriptive and states that when determining applications the aim should be to conserve and enhance biodiversity by applying certain principles. In particular, if significant harm resulting from the development cannot be avoided, adequately mitigated, or as a last resort, compensated for, then planning permission should be refused. Pursuant to Paragraph 215 of the Framework due weight should be given to relevant development plan policies in existing plans according to their degree of consistency with the Framework; the closer the policies in the plan are to the Framework, the greater weight that may be given. I have considered the proposal on this basis.

11. Natural England has not raised any specific objection, but has commented on the considerations to be taken into account. An Ecological Appraisal accompanied the application. It identified a medium population of great crested newts with a peak count of 27 adults plus newt eggs in the LNR to the north of the lake with habitat within the appeal site that could be used by this species. Great crested newts are a European protected species for the purposes of the Conservation of Habitats and Species Regulations 2010 (as amended). A European Protected Species Licence from Natural England would first be required if any development may impact on the water bodies in the LNR or surrounding habitats. To secure a licence the tests in Regulation 53 of the 2010 Regulations would need to be met. In the Ecological Appraisal there is a summary of the steps envisaged to maintain the conservation status of newts. The Council's Wildlife Officer is satisfied that sufficient information has been provided to be confident that a Licence could be issued, but recommends that a mitigation strategy be secured at reserved matters stage. From the evidence before me I have no reason to conclude that the proposed development would be unlikely to be licensed.
12. The Ecological Appraisal also reports that water voles were found within the drain at the eastern spur of the site. Grass snakes may use the site occasionally and habitats were also found to be suitable to support nesting birds and some species of principal importance<sup>1</sup>. A number of measures are recommended including a thorough survey of ditches for water voles and restrictions on external lighting that could have a negative impact on any bats foraging on the site or lake.
13. It also recommends retention of an area to the east of the appeal site as grassland and vegetation to provide terrestrial foraging/sheltering habitat for reptiles. The illustrative masterplan identifies how this could be achieved. A further area along the northern boundary is recommended for retention for the benefit of reptiles. Land in this location, including a small pond that is currently only partially within the LNR, would be offered for transfer to the Council for use as a nature reserve, as secured by the UU. It seems to me that this measure would not only help to conserve biodiversity, but would also be taking the opportunities to incorporate biodiversity in and around the development as advocated in Paragraph 118 of the Framework.
14. The OMH is a habitat of principal importance for the conservation of biodiversity<sup>2</sup>. The OMH is a patchwork spread across the site rather than being in a single identified location. Given its status, the loss of more OMH would result in harm. However, it is acknowledged in the Council's committee report that this is a habitat that can be easily recreated elsewhere. In light of this, the Council's Wildlife Officer's initial objection to loss of the extra OMH was withdrawn upon negotiation of a mitigation package providing for replacement OMH land. In furtherance of this, the UU prohibits the commencement of development until a strategy for the provision of new OMH, not exceeding 0.5 hectares, has been agreed with the LPA. The UU provides for its subsequent delivery. I understand that a site within the appellant's ownership has been identified. From my consideration of the UU, I am satisfied that it would

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<sup>1</sup> As identified in the list published pursuant to Section 41 of the Natural Environment and Rural Communities Act 2006.

<sup>2</sup> As above

- achieve its intended purpose. Harm arising from the loss of additional OMH is thus capable of being satisfactorily compensated for by its replacement off-site.
15. Whilst the development would be closer towards the LNR than the site allocation, the sloping topography restricts development along the strip immediately adjacent to it. Therefore, a narrow buffer could be achieved, albeit reduced from that allocated. The details of the layout would be addressed at reserved matters stage. A wider area of CWS would be lost than contemplated by the allocation, but that additional part of the CWS is predominantly grass and scrubland that has limited value to the public enjoyment of nature conservation.
  16. Moreover, by allowing development beyond the allocated boundary, other environmental and public benefits would accrue that would not otherwise be forthcoming. In particular, the further land that would be included in the nature reserve. Additionally, the UU provides for a car park area on the appeal site for visitors to the LNR. I note that the local Wildlife Trust opposes this, preferring visitors to be encouraged to walk or cycle. Ideally, visitors would do so, but the reality is that some people do use their cars. Providing parking on site would facilitate more people having the opportunity to visit and enjoy this attractive natural environment. This is a factor that weighs in favour of the scheme albeit one to which I attach limited weight only.
  17. I conclude that biodiversity interests in and near to the appeal site can be adequately conserved, mitigated or compensated for, subject to the imposition of conditions and planning obligations, to accord with the main thrust of Core Strategy Policy CS21 and the aims of Paragraph 118 of the Framework. Having had due regard to the conservation of biodiversity as required by Section 40 of the 2006 Act and all other relevant circumstances including the public benefits described, I am satisfied that the proposal should be permitted. In reaching this conclusion I do not consider that the aspiration of the city of Peterborough to become Environment Capital of the UK would be compromised contrary to Core Strategy Policy CS10 given the protection, mitigation, compensatory and enhancement measures that would be put in place.

## **Other Matters**

### *Section 106 Unilateral Undertaking*

18. The completed UU provides for 30% of the total number of dwellings to be affordable housing units delivered before no more than 80% of the market units have been occupied. Of those units 70% would be social rented housing and 30%, intermediate housing. These percentages accord with Policy CS8 of the Core Strategy in order to meet the Council's identified housing needs.
19. As already discussed, the UU provides for the provision of replacement OMH and a land transfer to the Council of an area for the purposes of nature reserve land. These measures would conserve biodiversity in consequence of the proposed development. There is also provision for delivery of a car park for use by visitors of the LNR with the land being transferred to either the Council, the Wildlife Trust for the area or the Parish Council. This is a public benefit that would facilitate the enjoyment and appreciation of nature conservation interests and forms part of a wider mitigation package against the loss of designated habitat. On that basis, I consider the offer of the car park to be a necessary component of the proposed mitigation.

20. On the evidence supplied, these obligations would be necessary, directly related to the development and fairly and reasonably related to it in scale and kind. As such, they would accord with Regulation 122 of the Community Infrastructure Levy Regulations 2010 and Paragraph 204 of the Framework.
21. Objections have been raised by the local Member of Parliament, Parish Council and local residents, concerned at the increase in housing numbers. Although a smaller area had been allocated for around 35 houses in the adopted Local Plan, the Inspector's Report<sup>3</sup> simply noted that the site was adequately separated from the nature reserve to the north without commenting further. Neither the Report nor allocation eliminated any prospect of a wider area being developed, which would always be subject to assessment against the policies of the wider development plan and taking account of all other material considerations.
22. A Transport Assessment was undertaken at the behest of the Highways Agency which is satisfied that a detrimental effect on the A47 would be unlikely and recommends conditions. Likewise, the local highway authority has no objection, subject to conditions. There is no evidence before me that any existing parking pressures would be exacerbated. On site parking provision would be addressed in the layout at reserved matters stage.
23. Increased pressure placed upon local schools and healthcare would be mitigated by a financial contribution towards the provision of those facilities. This would be through a planning obligation secured at reserved matters stage when the precise number and type of dwellings is known. Open space comprising an area totalling 0.64 hectares is included within the application. This corresponds with the requirements of DPD Policy PP14. Noise and disruption during construction works can be controlled through a condition requiring a Construction Management Plan.

### **Conditions**

24. I have considered the conditions suggested by the Council in the event of this appeal being allowed in accordance with the provisions of Paragraph 206 of the Framework and the national Planning Practice Guidance. Where appropriate, I have made amendments for greater clarity and precision and abbreviations where draft conditions contained unnecessary detail. I have omitted any wording enabling the Council to agree alternatives as this would introduce uncertainty.
25. Apart from the standard time limit and reserved matters conditions, a condition is needed for compliance with the approved plans for the details included within the application. This is in the interests of proper planning and for the avoidance of doubt. Access is included and so submission of reserved matters for this is not needed.
26. Monitoring and recording of all groundworks is recommended by the Council's Archaeologist instead of trenching to preserve any archaeological value of the site. I have no reason to dispute the necessity of such a condition.
27. A condition for an ecological mitigation strategy will ensure that measures identified in the Ecological Appraisal for the protection of biodiversity are brought forward and implemented in an acceptable manner. I have clarified

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<sup>3</sup> Peterborough City Council Site Allocations DPD, Inspector's Report February 2012 , paragraph 76

the wording of this condition to ensure it meets the intended purpose. Other measures to promote and enhance biodiversity will also be required to be brought forward with the details, such as bird and bat boxes.

28. In the interests of the living conditions of future residents I have imposed conditions that will ensure a suitable sewerage system and a detailed noise assessment. I have also imposed a condition requiring details of a surface water drainage system to be supplied and implemented. To protect the living conditions of nearby residents I have imposed a condition requiring a Construction Management Plan. For safety, fire safety hydrants are necessary.
29. For highway safety, a condition is needed to ensure satisfactory linkage between the existing highway and proposed access. To promote sustainable transport modes, a condition is appropriate to provide pedestrian and cycle route links to the development. A condition is required to ensure that the requisite number of dwellings meet Lifetime Homes standards and are wheelchair homes in fulfilment of Policy CS8 of the Core Strategy. Policy CS10 seeks housing that achieves a greater reduction in carbon dioxide emissions than that required by national building regulations. A condition is imposed to secure this in the interests of environment protection.
30. As this is previously developed land, contamination risks need to be investigated and remedied in the interests of pollution control and public health. Conditions are imposed to address this.
31. Details of cycle parking spaces and road/footpath links within the site to the existing highway all pertain to the layout of the scheme which is a reserved matter and do need to be addressed at this stage.

### **Conclusion**

32. For the reasons given and, having had regard to all other matters raised, I conclude that the appeal should be allowed.

*KR Saward*

INSPECTOR

### **Schedule of 20 Conditions**

- 1) Details of 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) The development hereby permitted shall be carried out in accordance with the following approved plan Nos: OHP003-101 A (*location plan*); 27273/002 C (*site access layout*); OHP003-102 B (*red line site plan*); ASC.13.078 (*topographical survey*) and OHP003-103 A (*existing site plan*).
- 5) No development shall take place until a watching brief programme of archaeological work including a written scheme of investigation has been submitted to and approved in writing by the Local Planning Authority. No development shall take place unless in complete accordance with the approved scheme. Should any archaeology of importance be found further on site archaeological investigation works may be required. The approved scheme shall be implemented in full including any post development requirements.
- 6) Prior to the commencement of development, a scheme for the provision of fire hydrants to serve the development shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in accordance with the approved details.
- 7) Prior to the commencement of development other than ground/enabling works, a scheme (including phasing) for the provision of mains foul water drainage including on and off site connections shall be submitted to and approved in writing by the Local Planning Authority. No dwellings shall be occupied until the works have been carried out in accordance with the approved scheme.
- 8) Prior to the commencement of development other than ground/enabling works, details of the tie between the existing carriageway and the new site access shall be submitted to and approved in writing by the Local Planning Authority. The access shall be implemented in accordance with the approved plans prior to the occupation of any dwelling.
- 9) Prior to the commencement of development other than ground/enabling works, details of a pedestrian/cycle route to link the development with the existing Green Wheel Cycleway shall be submitted to and approved in writing by the Local Planning Authority. The route shall be implemented in accordance with the approved plans prior to the occupation of any dwelling.
- 10) Prior to the commencement of development, a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Construction Management plan shall include, but not exclusively, the following:-
  - Haul routes to and from the site
  - A scheme for controlling dust arising from building and site works
  - Wheel cleansing facilities capable of cleaning the underside of the chassis and wheels of all vehicles entering and leaving the site during the period of construction
  - Hours of working

- Parking, turning and loading/unloading areas for all construction/contractors vehicles
  - Site compounds/storage areas
  - Scheme for all access and deliveries including hours
  - Temporary construction access(es)
- 11) Prior to the commencement of development, an ecological mitigation strategy shall be submitted to and approved in writing by the Local Planning Authority which shall incorporate the recommended measures identified in the submitted Ecological Appraisal including, but not limited to:-
- A Great Crested Newt Strategy
  - A ditch survey and Water Vole Mitigation Strategy
  - Details of external lighting to prevent light pollution for bats
  - Details of dealing with hedgehogs, invertebrates etc. found on site
  - Details of protective and boundary fencing
  - Details for preventing pollution from the site being transferred to the adjacent habitats and lake
  - A timetable for the implementation of the strategy and measures therein

The strategy shall be implemented as approved in accordance with the agreed timetable.

- 12) 20% of all dwellings shall be constructed as life time homes and 2% as wheel chair housing. As part of the reserved matters application a plan identifying where the life time homes and wheel chair houses will be located shall be submitted. The plans and particulars submitted detailing the lifetime homes/wheel chair housing shall also confirm how this standard will be complied with.
- 13) The plans and particulars submitted under Condition 1) shall include a detailed noise assessment and associated mitigation measures. The development shall thereafter be carried out in accordance with the approved details before the dwelling to which they relate is first occupied.
- 14) The plans and particulars submitted under Condition 1) shall include measures to promote and enhance biodiversity including the provision of bird and bat boxes. The development shall thereafter be implemented in accordance with the approved details before the area, building or dwelling to which they relate is first brought into use.
- 15) Prior to the commencement of development a scheme of surface water drainage for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, shall be submitted to and approved in writing by the Local Planning Authority. Full details and the confirmation that the scheme is as described shall be provided at detailed design stage. This shall include, but is not limited to:-



- Details of the ownership and responsibilities of maintenance of all drainage elements for the lifetime of the development, plus maintenance programme
- Actual storage calculations
- Full details of the proposed pond
- Confirmation that the discharge is still to be to the ditch
- Further details of how the flow will ensure the development will not pose a flood risk elsewhere

The scheme shall thereafter be implemented in accordance with the approved details before the development is completed.

- 16) The development shall be constructed so that it achieves a target emission rate of at least 10% better than building regulations at the time of building regulation approval being sought.
- 17) No development shall take place until an assessment of the nature and extent of contamination as been submitted to and approved in writing by the Local Planning Authority. This assessment must be undertaken by a competent person and shall assess any contamination on the site, whether or not it originates on the site. It must also 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
    - groundwaters and surface waters
    - ecological systems
    - archaeological sites and ancient monuments.
- 18) No development shall take place until 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 has been submitted to and approved in writing by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, an appraisal of remediation options, and proposal of the preferred option(s), and a timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environment Protection Act 1990 in relation to the intended use of the land after remediation.
- 19) The remediation works shall be implemented in accordance with the approved timetable of works. Within 2 months of the completion of measures identified in the approved remediation scheme, a validation report (that demonstrates the effectiveness of the remediation carried out) must be submitted to the Local Planning Authority for approval.
- 20) If during development, contamination not previously considered is identified, then the Local Planning Authority shall be notified immediately

and no further work shall be carried out until a method statement detailing a scheme for dealing with the suspected contamination has been submitted to and agree in writing with the Local Planning Authority. The development shall thereafter not be carried out except in complete accordance with the approved scheme.

Richborough Estates