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## Appeal Decision

Hearing held on 8 December 2015

Site visit made on 8 December 2015

by **I Radcliffe BSc(Hons) MCIEH DMS**

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

Decision date: 25 January 2016

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**Appeal Ref: APP/F4410/W/15/3135277**

**Land off King Edward Road, Doncaster, South Yorkshire (Grid reference: 469272, 414357)**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Gleeson Homes against the decision of Doncaster Metropolitan Borough Council.
  - The application Ref 14/00933/FULM, dated 7 April 2014, was refused by notice dated 8 July 2015.
  - The development proposed is the erection of 70 no 2, 3 & 4 bed 2 storey dwellings and ancillary works.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of 70 no 2, 3 & 4 bed 2 storey dwellings and ancillary works on land off King Edward Road, Doncaster, South Yorkshire (Grid reference: 469272, 414357) in accordance with the terms of the application, Ref 14/00933/FULM, dated 7 April 2014, subject to the conditions in the schedule at the end of this decision.

### Procedural matters

2. I have had regard to the government's 'Consultation on proposed changes to national planning policy' published on 7 December 2015. Amongst other matters, it proposes that the definition of affordable homes is amended to include a wider range of low cost homes. However, as consultation has not yet ended, and the responses received have not yet been considered, it is not possible to say whether it will be adopted. As a consequence, I have accorded it little weight and it has not altered my reasoning or conclusions in relation to the appeal.
3. Following the closure of the hearing an error in suggested condition No 6 was identified. The trigger it included for the construction of public open space was the two hundredth dwelling. The comments of the parties were sought in relation to a lower trigger of forty dwellings in order that this condition would be enforceable. I have taken the responses received into account in determining the appeal.

### Application for costs

4. At the Hearing an application for costs was made by Gleeson Homes against Doncaster Metropolitan Borough Council. This application is the subject of a separate Decision.

## **Main Issue**

5. The main issue in this appeal is whether the proposal would comply with planning policy which seeks to steer development away from areas at the highest risk of flooding.

## **Planning policy**

6. The development plan consists of the Doncaster Core Strategy (May 2012) and the saved policies of the Doncaster Unitary Development Plan (UDP) (1998). The appeal site is allocated as open space in saved policy RL5 of the UDP. The National Planning Policy Framework ('the Framework') and Planning Practice Guidance (PPG) are important material considerations.

## **Reasons**

7. The appeal site is within the settlement boundary of Thorne. Although the site has been allocated as open space by the UDP this took place some 17 years ago. In this time this allocation has not been acted upon and in recent years the Council identified the land for housing in its withdrawn Sites and Policies Development Plan Document. It is therefore common ground that residential development of the site in principle is acceptable. On the basis of what I have read and seen I agree with that position.

### *Flood risk*

8. The appeal site is at risk of flooding from a number of sources including the Rivers Don and Trent, and failure of land drainage infrastructure. The appeal site lies wholly within Flood Zone 3a where without flood defences a high probability of flooding exists. The spatial strategy of the Framework in relation to flood risk is to direct development to sites at the lowest risk of flooding by use of the Sequential Test. Policy CS4 of the Doncaster Council Core Strategy, whilst supporting use of the Sequential Test, recognises many flood risk areas in the Borough benefit from flood defences and are otherwise sustainable locations for growth.
9. In accordance with policy CS4 of the Core Strategy and the Framework the Sequential Test has been carried out. On the basis that other housing sites, individually or collectively, within the settlement were not available in areas with a lower probability of flooding the Council found that the Sequential Test had been passed. I have no reason to disagree with that conclusion.

### *Exception Test*

10. As housing is proposed in Flood Zone 3a, in accordance with policy CS4 and the Framework, the Exception Test must be applied. This test consists of two parts; a site specific flood risk assessment (SSFRA) must demonstrate that the development would be safe for its lifetime; and, it must be demonstrated that the development provides wider sustainability benefits that outweigh flood risk. PPG defines flood risk as a combination of the probability and the potential consequences of flooding from all sources<sup>1</sup>. In terms of flood risk, the lifetime of a development is considered to be a minimum of 100 years<sup>2</sup>.

### *Site specific flood risk assessment*

11. On the basis of the Strategic Flood Risk Assessments (SFRAs) for the area it is estimated that the effect of the flood defences is to reduce the risk of flooding

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<sup>1</sup> Permalink ID 7-003-20140306

<sup>2</sup> Permalink ID 7-026-20140306

from overtopping to less than 0.5% annually. It is common ground therefore that if the current standard of defence and pumping regime in the Isle of Axholme Flood Risk Management Strategy (IoAFRMS) area is maintained the appeal site and surrounding area would be adequately protected from overtopping in the event of a flooding event. Based upon what I have read and heard I agree with that position.

12. The peak flood level that would occur at the site in the event of a breach in the River Don defences during a fluvial flood event having an annual probability of less than 1% has not been assessed in the SFRAs for the area. Taking into account the available data, the location of the appeal site in relation to the defences and speed of inundation the appellant recommends that site levels are raised by 300mm. In accordance with the Council's supplementary planning document 'Development and Flood Risk' (2010) (SPD), the finished floor levels of the proposed houses would be set 600mm above the new ground level and at least 300mm above the adjacent highway level. This would result in finished floor levels of between 2.3m and 2.7m AOD. This would be similar to the floor levels achieved in the housing development recently granted permission on neighbouring land at Willow Grove.
13. The appellant's recommendation of raising site levels and providing finished floor levels in accordance with the SPD is reasonable. However, in the absence of a modelled peak flood level for the site there is an element of doubt as to whether it would be sufficient to protect the dwellings from flooding. In my assessment, in the interests of minimising property damage, if permission was to be granted it would therefore be necessary to require that the dwellings are flood resilient. This is a matter that could be dealt with by condition.
14. In the event of flood defences being breached or pumps failing during more normal circumstances the appellant's view, based upon the SFRAs and information provided by the Internal Drainage Board Engineer, is that they would be repaired within such a short period of time that the finished floor levels described above would mean that the appeal scheme would be safe from flooding. On the basis of the available evidence, I agree with the appellant's assessment of flood risk in relation to breach of the defences during normal conditions.
15. However, the Framework requires that it is demonstrated that new development will be safe for its lifetime. Should the Isle of Axholme defences no longer be maintained and pumping ceases then over a number of years the site and wider area would flood with water, eventually rising to approximately 3.7m AOD. This would result in the development, as proposed, being flooded to a depth of in excess of 1m. As a result, the Environment Agency recommends finished floor levels of 4.1m AOD, or if this is not achievable, 3.5m AOD with 600mm of resistance or resilience. These levels were agreed with local internal drainage boards based upon local records. It is also based on the consideration that historically development in most settlements in the area took place on land higher than 3.5m. These standards therefore, in effect, seek to protect new development to the standard required if existing defences and pumping in the future did not exist.
16. The Council agrees with the position of the Environment Agency in relation to this matter. In such circumstances, in accordance with the SPD, the finished floor levels sought by the Environment Agency replace the normal requirements of the SPD.

17. Although there can be no certainty the existing flood defences would be maintained the IoAFRMS seeks to maintain the defences for the next 100 years. The approach of no longer maintaining flood defences and ceasing pumping an Environment Agency report<sup>3</sup> found would result in 28,000 houses, many businesses, a significant length of motorway and critical infrastructure being permanently flooded. Therefore, notwithstanding that future flood defence funding will not be given for new houses built in defended areas, the existing amount of development is such that there are very powerful economic and political reasons why flood defences and pumping will continue to be funded.
18. Climate change may require defences to be raised or additional pumping to take place. More detailed modelling, which it is anticipated will take place within the next few years, will create a more informed picture of local flood risk. However, based on the information currently available the appeal site with the mitigation measures described in paragraphs 12 and 13 would be adequately protected and would be likely to remain so.
19. It was agreed at the hearing that raising site levels would not result in a significant loss of flood plain storage. A sustainable drainage system would also moderate the flow of surface water off the site during storms to green field rates. In my view, it is not essential that such a system is powered by gravity. As a consequence, the proposed development would not materially increase flood risk elsewhere. An emergency and evacuation plan in the event of a flood could be secure by condition.
20. Taking all these matters into account, I therefore find that the proposed development would be safe for its lifetime. As a result, it would comply with paragraphs 102 and 103 of the Framework, and policy CS4 of the Core Strategy, insofar as the development would be safe in the event of flooding.

*Wider sustainability benefits*
21. The Exception Test also requires that where new development cannot be located in zones with a lower probability of flooding, it must be demonstrated that the development provides wider sustainability benefits to the community that outweighs flood risk.
22. Thorne is identified by policy CS2 of the Core Strategy as one of the principal towns of the Borough where after Doncaster new housing will be focussed. This policy seeks 646 to 923 new houses in the settlement during the plan period to 2028. Policy CS4 of the Core Strategy notes that the proposed growth will require significant development within flood risk areas. Thorne is identified for significant housing growth by the Core Strategy and there are no other reasonably available sites for housing in the town at lower flood risk. The Town Council advises that new housing and the businesses and local services that additional residents support will help the town regenerate. By contributing to the supply of housing in the town there would therefore be wider sustainability benefits to the community of Thorne.
23. Furthermore, the Framework advises that, amongst other matters, opportunities for home ownership should be widened<sup>4</sup>. In this area of Thorne only 7% of residents, against a national average of 63%, own their own home. Gleeson have provided information demonstrating that they focus on building

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<sup>3</sup> The 'Do Nothing' Option Report, Isle of Axholme Flood Risk Management Strategy

<sup>4</sup> Paragraph 50

low cost homes for people on low incomes in areas requiring regeneration. Its two bedroom starter homes typically sell for less than £100,000. Utilising the governments 'Help to Buy' scheme this would allow local people to purchase houses on the site with monthly repayments currently less than it would cost to rent a similar dwelling from a social landlord. The Council note that there are existing houses available for sale in the town at this price. However, as they are not new they would not be as eligible for the 'Help to Buy' scheme and older houses have higher maintenance and heating costs. Overall, therefore, I find that the low cost nature of some of the market housing that would be built and the range of house sizes proposed is also a benefit of the scheme to the wider community.

24. The appeal site is located within a convenient walking distance of the town centre and public transport. It is therefore in an accessible location. The proposed houses in helping address housing need would have social benefits. In terms of the economy, new development would create employment and support growth during construction. The New Homes Bonus would also contribute money that could be spent on local services and facilities, and the increase in population would boost the spending power of the local economy. Environmentally, although a green field site would be developed the proposed scheme would be well designed. As a result, it would complement the area. Subject to an enhanced landscaping scheme biodiversity on the site would be maintained.
25. The Willow Estate to the north of the appeal site is the subject of a regeneration scheme. The small area of public open space proposed as part of the scheme would link with the adjoining amenity open space to be created as part of the housing redevelopment to the north and help tidy up the site.

#### **Other matters**

26. The position in relation to housing land supply is inconclusive; the Council states it has a five year housing land supply; the appellant is of the opinion that problems with, for example, delivery means that slightly less than a five year supply exists. As a result, the issue of housing land supply has not altered my reasoning in relation to this appeal.

#### **Conclusion**

27. The site is in an accessible location and for the reasons that I have given in paragraph 24 the proposal would have social, economic and environmental benefits in common with sustainable housing developments.
28. In terms of wider sustainability benefits to the community, Thorne is identified for significant housing growth by the Core Strategy. The Town Council advises that additional housing will support businesses and local services helping the town to regenerate. The scheme would also provide a range of open market houses for sale, some of which would be low cost, in an area with low levels of home ownership. This would help widen the opportunities for home ownership and improve the housing mix in the area in accordance with the Framework. Collectively, these wider sustainability benefits are of noteworthy weight in favour of the appeal.
29. The appeal site is adequately protected from flooding by existing defences and it is highly unlikely that these defences or land drainage infrastructure would no longer be maintained. On the basis of the available evidence, in the event of a breach of the River Don flood defences during a fluvial flood event with a less

than 1% annual probability, I have found that the proposed finished floor levels and incorporation of flood resilience measures would offer adequate protection.

30. Having regard to all of the matters raised, I therefore conclude that the wider sustainability benefits are sufficient to outweigh the flood risk that exists and the development would be safe for its lifetime. For these reasons, I therefore conclude that the proposed development would pass the Exception Test. As a result, it would comply with the Framework and policy CS4 of the Core Strategy. The appeal should therefore be allowed.

#### *Conditions*

31. For the avoidance of doubt and in the interests of proper planning, otherwise than as set out in this decision and conditions, the development needs to be carried out in accordance with the approved plans. In order to ensure that the development complements its surroundings further details of external materials, boundary treatments and landscaping are required. To ensure that any new planting becomes well established it needs to be well maintained. In order that the proposed public open space is delivered as part of the scheme further details are required.
32. Given that the Council's records show that the appeal site is located near a landfill there is a realistic possibility that the site could be affected by contamination. The appellant has carried out investigations. However, there is nothing before me to show that the methodology used, the results produced and remediation recommended has been approved in writing by the Council. This needs to be addressed. Should unexpected contamination be encountered it is necessary that work stops until it has been assessed and a method for dealing with it identified and agreed with the local planning authority. As the level of the site is to be raised it is important that the soil imported on to the site is free of contamination.
33. In the interests of highway safety, conditions in relation to road safety audits, visibility splays and crossing of the site access, surfacing and drainage of the internal access road, parking and turning areas and wheel washing are necessary.
34. To reduce the effect of flooding, the development needs to be carried out in accordance with the flood risk assessment, flood resilience measures incorporated into the construction of the dwellings and an emergency and evacuation plan prepared. To safeguard the adjacent land and highway from flooding the drainage ditch needs to be piped beneath the proposed site access. To control the site's surface water run off rates the proposed sustainable drainage scheme needs to be implemented.
35. I have required all these matters by condition, revising the conditions suggested by the Council where necessary to reflect the advice contained within Planning Practice Guidance.

*Ian Radcliffe*

Inspector

#### **Schedule**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.

- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site location plan 1:1250, 2629-1-001-N, 2629-1-002 Rev B, 201/1E, 202/1E, 301/1F, 303/1D, 304/1D, 309/1C, 310/1C, 311/1A, 400/1C, 401/1F, 2629-1-003-B, 0282 SD103 Rev B, 0282 SD-100 Rev C, 0282 SD703 Rev B, 0282 SD700 Rev A, 0282 SD701 Rev A, Topographical survey Part 1 (Nov 13), Topographical survey Part 2 (Nov 13)
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping. This scheme shall indicate all existing trees and hedgerows on the site, showing their respective size, species and condition. It shall distinguish between those which are to be retained, those proposed for removal and those requiring surgery. The scheme should also indicate, where appropriate, full details of new or replacement planting. All planting material included in the scheme shall comply with the local planning authority's 'Landscape Specifications in Relation to Development Sites'. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 5) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected on site, including any gates. The boundary treatment shall be completed in accordance with a timetable agreed in writing with the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) Notwithstanding the submitted details, within 6 months of the decision, details of the layout, design and maintenance regime for the proposed Public Open Space area shall be submitted to and approved in writing by the local planning authority. Unless otherwise agreed in writing by the local planning authority, the Public Open Space area shall be laid out and constructed in accordance with the approved details before commencement of the 40th dwelling on site.
- 7) No development shall commence until a contaminated land assessment and, if appropriate a remediation strategy with a timetable for its implementation, has been submitted to and approved in writing by the local planning authority.
  - a) The Phase 1 desktop study, site walk over and initial assessment must be submitted to the local planning authority for approval in writing. Potential risks to human health, property (existing or proposed)

including buildings, livestock, pets, crops, woodland, service lines and pipes, adjoining ground, groundwater, surface water, ecological systems, archaeological sites and ancient monuments must be considered. The Phase 1 study shall include a full site history, details of a site walkover and initial risk assessment. The Phase 1 shall propose further Phase 2 site investigation and risk assessment works, if appropriate, based on the relevant information discovered during the initial Phase 1 assessment.

- b) The Phase 2 site investigation and risk assessment, if appropriate, must be approved in writing by the local planning authority before investigations commence on site. The Phase 2 investigation shall include relevant soil, soil gas, surface and groundwater sampling and shall be carried out by a suitably qualified and accredited consultant / contractor in accordance with a quality assured sampling and analysis methodology and current best practice. All the investigative works and sampling on site, together with the results of the analysis and risk assessment to any receptors shall be submitted to the local planning authority for approval.
  - c) If, as a consequence of the Phase 2 site investigation, a Phase 3 remediation report is required, then this shall be approved in writing by the local planning authority prior to any remediation commencing on site. The works shall be of such a nature as to render harmless the identified contamination in relation to the proposed end use of the site and surrounding environment including any controlled waters. The site must 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.
  - d) The approved Phase 3 remediation works shall be carried out in full on site under a quality assurance scheme to demonstrate compliance with the proposed methodology and best practice guidance. The local planning authority must be given 2 weeks written notification of commencement of the remediation works. If during the works contamination is encountered which has not previously been identified, then all associated works shall cease until the additional contamination is fully assessed and an appropriate remediation scheme approved in writing by the local planning authority.
  - e) Upon completion of the Phase 3 works, a Phase 4 verification report shall be submitted to and approved in writing by the local planning authority. The verification report shall include details of the remediation works and quality assurance certificates to show that the works have been carried out in full accordance with the approved methodology. Details of any post remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included in the verification report, together with the necessary documentation detailing what waste materials have been removed from the site. The site shall not be brought into use for housing until such time as all verification data has been approved by the local planning authority.
- 8) Should any unexpected significant contamination be encountered during development, all associated works shall cease and the local planning



- authority shall be notified in writing immediately. A Phase 3 remediation and Phase 4 verification report shall be submitted to the local planning authority for approval. The associated works shall not re-commence until the reports have been approved in writing by the local planning authority.
- 9) Any soil or soil forming materials brought to site for use in garden areas, soft landscaping, filling and level raising shall be tested for contamination and suitability for use on site. Proposals for contamination testing including testing schedules, sampling frequencies and allowable contaminant concentrations (as determined by appropriate risk assessment) and source material information shall be submitted to and approved in writing by the local planning authority prior to any soil or soil forming materials being brought onto site. The approved contamination testing shall then be carried out and verification evidence submitted to and approved in writing by the local planning authority prior to any soil forming material being brought onto site.
  - 10) The proposed development shall be subject to road safety audits in accordance with DMRB Volume 5, Section 2, Road Safety Audit (HD 19/03)
  - 11) Before the development is brought into use the visibility splays as shown on the approved plan shall be rendered effective by removing or reducing the height of anything existing within the splay which obstructs visibility at any height greater than 900mm above the level of the nearside channel of the public highway, and shall be retained as such thereafter.
  - 12) Before the development hereby approved is brought into use, details of the surfacing and drainage of the site access and internal access road and footways, together with the phasing of these works shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  - 13) Prior to first occupation of each dwelling hereby permitted, the parking and turning areas shown on the approved plans serving the dwelling shall have been provided and these areas shall not thereafter be used for any purpose other than the parking and turning of vehicles.
  - 14) Details of wheel washing facilities for construction traffic connected with the development hereby permitted shall be submitted to and approved in writing by the local planning authority and the facilities shall be in use throughout the period of development and construction.
  - 15) The development hereby approved shall not be brought into use until a crossing over the footpath / verge at the site entrance has been constructed in accordance with details that have been submitted to and approved in writing by the local planning authority.
  - 16) The development hereby approved shall be carried out in accordance with the details and provisions included within the approved Flood Risk Assessment report no 13/028.01 rev 02, dated 17 August 2014.
  - 17) Notwithstanding condition 16, the development shall not commence until such time as a scheme incorporating flood resilience measures has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

- 18) Prior to the occupation of the approved dwellings, a detailed emergency and evacuation plan shall be submitted to and approved in writing by the local planning authority. The plan shall identify safe routes and procedures, roles and responsibilities, and a mechanism for future review.
- 19) Prior to the commencement of development, details of piping the existing ditch at the point of access shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 20) The development shall not commence until full details of the proposed surface water drainage scheme have been submitted to and approved in writing by the local planning authority. The drainage scheme shall comply with the recommendations made in the Flood Risk Assessment report no 13/028.01 rev 02, dated 17 August 2014. Provision shall be made to prevent all surface water run-off from the development having an adverse impact upon neighbouring property of land and vice versa. The drainage scheme works shall be carried out in accordance with the approved details concurrently with the development and shall be operational before the development is first occupied.

Richborough Estates

**APPEARANCES**

FOR THE APPELLANT:

Mr England	Peacock and Smith Limited
Mr O'Connor	JOC Consultants Limited
Mr Jackson	Gleeson Homes
Mr Smith	Gleeson Homes

FOR THE LOCAL PLANNING AUTHORITY:

Mr Sewell	Doncaster Metropolitan Borough Council
Mr Woolley	Environment Agency
Ms Jones	Environment Agency

**DOCUMENTS SUBMITTED AT THE HEARING**

- 1 Doncaster Flood Risk Assessment, Level 1 (March 2009)
- 2 Isle of Axholme Flood Risk Management Strategy 'The Do Nothing Report' (November 2009)

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