



---

## Appeal Decision

Inquiry held on 20 October 2015

Site visit made on 21 October 2015

**by Beverley Doward BSc BTP MRTPI**

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

**Decision date: 25 January 2016**

---

**Appeal Ref: APP/G2435/W/15/3019451**

**Land off Woodcock Way, Ashby de la Zouch, Leicestershire**

- 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 Miller Homes against North West Leicestershire District Council.
  - The application Ref 14/00769/OUTM, is dated 14 August 2014.
  - The development proposed is described as "outline application for up to 70 dwellings together with public open space, National Forest planting, landscaping, drainage infrastructure and access off Woodcock Way."
- 

### Decision

1. The appeal is allowed and planning permission is granted for up to 70 dwellings together with public open space, National Forest planting, landscaping, drainage infrastructure and access off Woodcock Way at land off Woodcock Way, Ashby-de-la-Zouch, Leicestershire in accordance with the terms of the application, Ref 14/00769/OUTM, dated 14 August 2014, subject to the conditions set out in the schedule below.

### Procedural Matters

2. The description of development in the heading above is taken from the planning application. I have removed those aspects of the description which are not development from my formal decision.
  3. The planning application as originally submitted was made in outline with all matters reserved. It was subsequently amended to allow for its consideration as an application for outline planning permission with all matters other than part access reserved. In relation to access the amended application sought detailed approval only insofar as it relates to the means of vehicular access into the site from Woodcock Way. The Council undertook the necessary re-consultation following receipt of the amended application. Accordingly, I am satisfied that no interested parties will be prejudiced by my consideration of the appeal on the basis of the amended application. Therefore, I confirm that I have considered the appeal on this basis.
  4. The indicative layout plan submitted with the planning application was superseded by a concept plan within the Design and Access Statement Addendum dated January 2015. A plan indicating a Segregated Right Turn Lane Arrangement was also submitted with the amended planning application.
-

- The main parties confirmed at the Inquiry that both these plans were indicative and for information only.
5. The appeal was made on the grounds of non-determination although subsequent to this the Council resolved at the meeting of its Planning Committee on 7 July 2015 that had it been in a position to determine the application it would have refused it for two reasons. These were that the appeal site was outside the "Limits to Development" (and would therefore be contrary to Policy S3 of the adopted North West Leicestershire Local Plan (Local Plan)) and that the proposal would provide for an inappropriate form of vehicular access.
  6. At a subsequent meeting of its Planning Committee on 4 August 2015 the Council revised its formal position in respect of the appeal proposal and resolved that had it been in a position to determine the application it would have refused it only for one reason that being that the proposed development would not provide for an appropriate form of vehicular access to the site. However, prior to the Inquiry the Council indicated that it no longer wished to defend this putative reason for refusal and that it therefore wished to withdraw its proofs of evidence. The Council indicated that it did not intend to cross examine the appellant's witnesses and recommended to me that the appeal should be allowed subject to the imposition of conditions and the provision of appropriate Section 106 obligations. Notwithstanding this I must consider, and determine, the planning application in the light of all the written and verbal evidence put before me by all interested parties.
  7. A draft section 106 Agreement had been circulated to, and discussed with, the relevant parties before the Inquiry. A finalised draft was submitted at the Inquiry and the completed S106 Agreement was submitted following the close of the Inquiry in accordance with the agreed timetable. Accordingly, I have had regard to the S106 Agreement in my determination of this appeal.
  8. The S106 Agreement contains obligations relating to financial contributions in respect of funding for education (primary, high and upper school) provision, healthcare facilities, library facilities, additional police facilities, management measures necessary to mitigate the effect of the development on the River Mease Special Area of Conservation, sustainable transport measures (bus passes, bus stop improvement works, travel packs and public right of way improvements) and the provision of off-site youth/adult recreation facilities. It would also provide for 30% of the dwellings to be affordable housing, National Forest planting, a construction traffic routing traffic plan, an area of on-site public open space with children's play facilities as well as financial contributions towards on site open space maintenance and County and District Council monitoring of the S106.

### **Main Issue**

9. In the light of all that I have read, heard and seen, the main issue in this case is whether or not the appeal proposal would provide for a safe and suitable form of access to the wider highway network, having regard to highway capacity and safety.

## Reasons

### *Background*

10. The appeal site comprises a field which lies adjacent to the northern edge of the built up area of Ashby de la Zouch. It is adjoined to the south and east by existing residential properties. Its northern and western boundaries are defined by hedgerows beyond which lies open countryside. A number of public rights of way pass through the landscape to the north and east, including Ivanhoe Way recreational route, which crosses the central area of the site.
11. The appeal site formed part of a larger outline application submitted in May 2013 for 605 dwellings and related development. This application proposed vehicular access off both the A511 and Woodcock Way, albeit with the latter limited to only serve 30 dwellings. The larger site is known locally as Money Hill and the application was submitted on behalf of the Money Hill Consortium (MHC). The Money Hill application was refused planning permission in May 2014 and is the subject of an appeal<sup>1</sup> that has been recovered by the Secretary of State for Communities and Local Government. Following its refusal of planning permission for the Money Hill application the Council resolved to pursue only its final reason for refusal which related to the provision of affordable housing. However, that matter was subsequently resolved and at the opening of the Inquiry into the Money Hill appeal in September 2015 the Council indicated that its position now was for the Inspector to recommend that the Secretary of State allow the appeal. In the run up to the Inquiry on the Money Hill appeal the appellants (MHC) sought to amend the proposal to exclude any works within the area of land which comprises the site the subject of this appeal. The Council maintained a neutral stance on those amendments.
12. A further outline application has been submitted to the Council by the MHC for 605 dwellings and related development on the Money Hill site. This revised application excludes the site the subject of this appeal. At the time of the Inquiry into the appeal proposal the application had not been determined by the Council.

### *Planning policy*

13. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework (the Framework) sets out the Government's planning policies and is a material consideration in determining applications.
14. The development plan for the area comprises the saved policies of the Local Plan which was adopted in 2002. Policy S3 of the Local Plan indicates that land outside the limits to development will be treated as countryside for planning policy purposes where new development will be restricted to certain types of development. The appeal site lies outside the limits to development as defined in the Local Plan and the proposed development would not be for the types of development identified in the policy as permitted within the countryside. Accordingly, the appeal proposal would be contrary to policy S3 of the Local Plan.

---

<sup>1</sup> APP/G24435/W/14/2228806

15. The limits to development identified in the Local Plan were defined having regard to housing requirements only up until the end of the Plan period which was 2006. It is common ground between the main parties that the policies for the supply of housing in the Local Plan cannot be considered to be up to date and that therefore, in so far as policy S3 is a counterpart to those policies, it too cannot be considered to be up to date. I see no reason to take an alternative view.
16. Policy T3 requires development to make adequate provision for vehicular access and servicing arrangements. It is broadly consistent with the advice in the Framework which, at paragraph 32, indicates that plans and decisions should take account of whether, amongst other things, safe and suitable access can be achieved for all people.
17. Following its withdrawal of a previously submitted Core Strategy the Council is in the process of preparing a revised local plan. Consultation started in September 2015 on the draft North West Leicestershire Local Plan (draft Local Plan) which proposes to allocate the appeal site as part of a larger area of land north of Ashby for 1750 dwellings. However, this is at a very early stage in its preparation. Therefore, in line with the advice at paragraph 216 of the Framework little weight can be attached to the policies and proposal of the draft Local Plan in the consideration of this appeal.
18. Consultation also started in October 2015 on a pre-submission consultation draft Neighbourhood Plan for Ashby de la Zouch. The draft Neighbourhood Plan does not support the draft Local Plan allocation referred to above. However, the Neighbourhood Plan is also at an early stage in its preparation. Accordingly, little weight can be attached to it in the consideration of this appeal.

#### *Highway Capacity and Safety*

19. The proposed development would be accessed by a continuation of Woodcock Way, a cul de sac on the northern side of Nottingham Road which currently provides access to 20 dwellings.
20. Woodcock Way is accessed off Nottingham Road, a main route into Ashby de la Zouch. To the east of Woodcock Way Nottingham Road forms a roundabout junction with the A511 which runs in a north westerly/south easterly direction linking ultimately at either end to the A50 and the M1. To the west of Woodcock Way it becomes Wood Street and then Market Street as it passes through Ashby de la Zouch town centre.
21. In accordance with the advice at paragraph 32 of the Framework the planning application was accompanied by a Transport Assessment (TA). Interested parties have raised concerns about the content of the TA, particularly the extent to which already committed development has been taken into account and the effect of that development on traffic levels and consequently the local highway network. However, I am mindful that both the scope and content of the TA, including the extent of already committed development to be taken into account in assessing highway capacity was agreed with Leicestershire County Council as the relevant Highway Authority (HA) and that the HA has raised no objections to the proposal. I am also mindful that, as the Council indicated at the Inquiry, its resolution not to defend its putative reason for refusal in relation to highway matters was because it could not be substantiated by

- evidence. Accordingly, there is no substantive technical evidence to lead me to conclude that the underlying assumptions within the TA are flawed.
22. I note the views expressed by interested parties that the cumulative impact of the proposed development together with already committed developments in the area would be likely to result in traffic levels on Nottingham Road exceeding the level which was referred to as a saturation point by the Inspector examining the Local Plan in 2002. However, there is no substantive technical evidence before me to indicate that this would be the case or indeed when that might be the case.
23. The volume of traffic on Nottingham Road was relatively light at the time of my site visits. However, I am conscious that these were undertaken during the half term school holidays and I have no reason to doubt the evidence of interested parties that, given Nottingham Road functions as a main arterial route into Ashby de la Zouch, it normally carries significantly more traffic. I appreciate that any development which would be likely to result in a further increase in traffic on the local highway network is a matter of concern to local residents.
24. The capacity assessments undertaken at six junctions and in accordance with the assumptions and scenarios agreed by the HA indicate that, whilst some of the junctions would operate above capacity for all the scenarios considered, the addition of the proposed development would not force any junction that was previously operating within capacity to operate above capacity. Accordingly, the overall impact of the proposed development on the local highway network would be limited.
25. Woodcock Way would be capable of safely accommodating the vehicular traffic associated with the proposed development, it being sufficiently wide to accommodate not only residential vehicles but also other vehicles such as refuse disposal vehicles and removals vehicles. Larger HGVs could be accommodated with care although it seems likely that access by such vehicles would be likely to be only occasional, if at all. A condition as suggested by the Council requiring the submission of a Construction Management Plan would ensure that construction traffic accessing the site did so in a satisfactory and safe manner.
26. Interested parties have indicated that at the Inquiry to consider the Money Hill development the appellants in that case (MHC) agreed to a condition which would restrict access through Woodcock Way to no more than 30 dwellings. However, there is nothing in the evidence before me to indicate that such a condition would be necessary to make the development subject to this appeal acceptable on highway grounds.
27. Interested parties have referred to the level of accidents in the area in the last five years and suggest that the accident rate is increasing. However, the evidence indicates that the vast majority of accidents that have occurred in recent years in the vicinity of the appeal site are as a result of driver error rather than highway layout. There is no discernible pattern to the accidents which have occurred in the area. Accordingly, from the evidence I am satisfied that there is no existing accident problem or identifiable accident trends which would be exacerbated by the proposed development.

28. The appellant has provided an indicative plan detailing a scheme of off-site highway works at the junction of Nottingham Road/Woodcock Way, the principles of which have been agreed with the HA. The scheme of works would include improvements to the junction of Nottingham Road/Woodcock Way to provide the required visibility splays for the speed of the road outside of any potential vegetation overhang. This would ensure that there would be no harm caused to highway safety by the visibility of vehicles exiting Woodcock Way on to Nottingham Road. The scheme of works would also include the provision of a ghost island right turn lane for vehicles entering Woodcock Way from the east off Nottingham Road which would meet the required standard. This would ensure the free flow of traffic on Nottingham Road towards Market Street and Ashby de la Zouch town centre.
29. The scheme of works would include the provision of pedestrian refuges on Nottingham Road, one as a replacement to the existing refuge to the east of Woodcock Way and another to the west of Woodcock Way as an additional pedestrian refuge. I saw from my site visit that the footway on Nottingham Road to the north east of Woodcock Way in the vicinity of the intended location for the replacement pedestrian refuge is narrow. It would not be possible to widen the footway at this point due to land constraints. However, the proposed additional pedestrian refuge to the west of Woodcock Way would facilitate access to Ashby School and it seems to me would also be the most likely to be used as a crossing point to access the town centre. Accordingly, I am satisfied that pedestrian safety would not be compromised by the width of the footway to the north east of Woodcock Way.
30. Taking all of the above into account therefore, on the basis of the evidence I am satisfied that the proposed scheme of works detailed on the indicative plan would mitigate against any issues of highway/pedestrian safety arising at the junction of Nottingham Road/Woodcock Way as a result of the proposed development. The scheme of works could be secured by a suitably worded condition as suggested by the Council.
31. I note that the Stage 1 Road Safety Audit submitted with the planning application also identified the need to provide an uncontrolled pedestrian crossing point across Woodcock Way at the junction with Nottingham Road and to address the reduced efficiency of a street lighting column on the south side of Nottingham Road (opposite Woodcock Way) due to vegetation overhang. However, these are capable of being dealt with at the detailed design stage.
32. In the vicinity of Woodcock Way, Nottingham Road is essentially residential in character with footways on both sides of the carriageway. It is served by a number of bus services with the closest bus stops being located about 360m from the centre of the appeal site. The bus stops can be accessed by the existing footways on Woodcock Way and Nottingham Road. Accordingly, there is no proposal or need for buses to access the site to ensure that the proposed dwellings would be suitably accessible by public transport. The site is well located in relation to local services and facilities being located within reasonable walking and cycling distance of the town centre and its associated facilities, the out of town retail development to the east of Woodcock Way, the local schools and health facilities. Its distance from the new health centre, at about 1.5 miles, is towards the maximum end of what could reasonably be considered an acceptable walking distance. In the light of the above therefore

the proposed development would have good access to a range of transport modes as an alternative to the car.

33. Taking account of all of the above therefore, I have no reason to disagree with the technical evidence which indicates that the traffic generated by the appeal proposal would not have a detrimental impact on the operation of the local highway network and that the proposed access to the site by a continuation of Woodcock Way would not cause material harm to highway safety. Accordingly, I am satisfied that the appeal proposal would provide for a safe and suitable form of access to the wider highway network, having regard to highway capacity and safety thereby complying with policy T3 of the Local Plan and the requirement of the Framework to achieve a safe and suitable access for all people to the site.
34. The Framework indicates that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. This is a high bar and on the basis of the evidence, I am not satisfied that such a case has been made.

*Other matters*

35. There is no technical evidence that there is a constraint in terms of capacity at the Packington Sewage Treatment Works.
36. There is nothing in the Framework which precludes further housing development coming forward even if a 5 year supply exists.
37. There is nothing in the evidence before me to indicate that the development of the appeal site for the development subject to this appeal would prejudice the development of the wider Money Hill site.

**Planning balance**

38. Paragraph 14 of the Framework sets out a general presumption in favour of sustainable development and says that for decision making, this means approving development proposals that accord with the development plan and where the development plan is absent, silent or relevant policies are out of date, granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
39. The proposed development would be contrary to policy S3 of the Local Plan. However, as set out above, the relevant Local Plan policies for the supply of housing are out of date and therefore, in so far as policy S3 is a counterpart to those policies, it too is out of date. Accordingly, in this case the provisions of paragraph 14 of the Framework apply.
40. The presumption in favour relates to sustainable development. Therefore, it is necessary to consider whether the proposed development would comprise sustainable development. Paragraph 7 of the Framework sets out the three dimensions of sustainable development: economic, social and environmental. These dimensions are mutually dependent and should be jointly sought.
41. The appeal proposal would perform an economic and social role by the provision of market and affordable housing. It would contribute significant

economic and social benefits through the delivery of 70 dwellings, 30% of which would be affordable housing. These benefits carry significant weight.

42. There would be some inevitable impact on the landscape by the introduction of built development on an existing field and the loss of about 1.25 hectares of the best and most versatile agricultural land. However, the proposal would perform an environmental role by providing new areas of open space on the site, the provision of new tree planting and biodiversity enhancements. The proposal would have good access to a range of transport modes as an alternative to the car. Furthermore, the submitted S106 agreement would provide a range of measures including travel plans, public transport and pedestrian improvements which would facilitate access to existing public transport services and make travelling by alternatives to the car more attractive. The proposal would provide for a safe and suitable form of access to the wider highway network, having regard to highway capacity and safety.
43. In the round the appeal proposal would comprise sustainable development when assessed against the three dimensions set out in paragraph 7 of the Framework. There are no adverse impacts which would significantly and demonstrably outweigh the benefits assessed against the policies in the Framework as a whole. Therefore, taking all of the above into account I consider that the balance is clearly in favour of the development.

### **Section 106 Agreement**

44. The parties have submitted an engrossed Section 106 Agreement. The Agreement includes a number of obligations to come into effect if planning permission is granted. I have considered these in the light of the Framework, the Planning Practice Guidance (PPG) and the CIL Regulations (CIL Regs).
45. The obligation in relation to affordable housing is supported by policy H8 of the Local Plan and the North West Leicestershire District Council Affordable Housing Supplementary Planning Document. I am satisfied that the obligation in relation to this matter meets the statutory tests and is compliant with the CIL Regs.
46. The obligations relating to on-site public open space/children's play facilities including a contribution towards open space maintenance and National Forest planting are supported by policies E7, F1, F2, F3, L21 and L22 of the Local Plan and the Council's Play Area Design Guidance Note Supplementary Planning Guidance 2001 (PADGN SPG). I am satisfied that the obligations in relation to these matters meet the statutory tests and are compliant with the CIL Regs.
47. In relation to the contribution towards the provision of off-site youth/adult recreation facilities, Policy L22 of the Local Plan indicates that major new development will only be permitted where adequate provision is made for open space for formal recreation use. The Council's PADGN SPG indicates that major development is defined as usually more than 100 dwellings. However, it also indicates that there may be occasions where developments are just below this threshold and that information/evidence demonstrates a need for formal recreation open space in the locality. In these circumstances suitable provision may be sought and if on-site provision is not feasible a commuted sum towards the upgrading of existing facilities in the locality will be sought. Although the proposed development would fall below the 100 dwelling threshold the development of the appeal site when considered cumulatively with other areas



of the wider Money Hill site would generate a requirement for formal recreational open space to serve the new residents. The contribution towards the provision of off-site youth/adult recreation facilities would be a proportionate contribution towards the mitigation necessary to accommodate the wider Money Hill scheme. It would be necessary, directly related to the proposed development and appropriate in scale and would be compliant with the CIL Regs.

48. The site lies within the catchment area of the River Mease Special Area of Conservation (SAC). The River Mease SAC Water Quality Management Plan (WQMP) has identified poor water quality, mainly due to high levels of phosphorous, as representing a threat to the ability of the river to support its internationally important features in a sustainable way. There is therefore a need to reduce phosphate levels in the catchment in order to avoid an adverse effect on protected species and their habitats within the SAC. The River Mease SAC Water Quality Management Plan Developer Contribution Scheme (DCS) indicates that all new development which contributes to additional wastewater in the SAC catchment area will be subject to a developer contribution which provides for management measures to mitigate the effect of the development on the SAC. From the evidence I am satisfied that the obligation in relation to this matter meets the statutory tests and is compliant with the CIL Regs.
49. The social role of sustainable development as set out in the Framework includes supporting strong, vibrant and healthy communities by providing the supply of housing required to meet the needs of present and future generations with accessible local services that reflect the community's needs and support, amongst other things its health. The contribution towards healthcare facilities has been requested by NHS England (Leicestershire and Lincolnshire Area) and is supported by information setting out the anticipated impacts of the proposed development on the capacity of existing healthcare facilities. From the evidence I am satisfied that the obligation in relation to the financial contribution towards healthcare facilities is necessary, directly related to the development and appropriate in scale and is compliant with the CIL Regs.
50. The contribution towards policing requested by Leicestershire Police is supported by evidence including detailed information on the existing demand on policing in the area, the impact of the proposed development on police services, the extent to which existing facilities and infrastructure are unable to meet the demands arising from the development, the methodology of how the contribution was calculated, what the contribution would fund and reference to a number of other appeal decisions where such contributions have been supported by Inspectors and the Secretary of State. On the basis of the evidence the obligation in relation to the contribution sought by the police satisfies the statutory tests and is compliant with the CIL Regs.
51. The obligation in relation to the submission of a Construction Traffic Routing Plan meets the statutory tests in the CIL Regs.
52. The Leicestershire Planning Obligations Policy was adopted by Leicestershire County Council in December 2014 and provides guidance on the likely levels and types of contributions which would be required to support sustainable development and provide site specific measures where necessary. The evidence supports the contributions sought by the County Council towards education (primary, high and upper school) provision, library facilities and

sustainable transport measures (bus passes, bus stop improvement works, travel packs and public right of way improvements) and I am satisfied that the obligations in relation to these matters meet the statutory tests and are CIL compliant.

53. The S106 Agreement provides for contributions to be made to the Council and the County Council towards monitoring compliance with the relevant obligations contained therein. The appellant contends that such contributions are not CIL compliant and refers to a recent High Court judgment<sup>2</sup> in support of this contention. I have had regard to the judgment and to the evidence provided at the Inquiry in relation to this matter. There is no direct reference to contributions towards monitoring and/or seeking compliance with an obligation in the Framework or the PPG. Any requirement for funding towards monitoring compliance with the relevant obligations needs to satisfy the three tests. I appreciate that the costs of monitoring compliance may have been accepted in other cases. However, it seems to me that in this case neither the size of the development or the complexity of the obligations are such as to mean that the monitoring requirement and any associated costs fall outside the everyday statutory functions of the Council or the County Council. I am not satisfied that in this case the obligations in relation to District Council Monitoring and County Council Monitoring are justified or satisfy the tests in the CIL Regs. Therefore, I am unable to take them into account in determining the appeal. I give weight to the other obligations in the S106 Agreement as detailed above.

### **Conditions**

54. A list of planning conditions suggested by the Council was discussed at the Inquiry. I have considered the suggested conditions in the light of national policy and guidance<sup>3</sup>.
55. The proposal seeks outline planning permission with all matters other than part access reserved. Conditions relating to the submission of reserved matters are therefore necessary. In the interests of good planning and for the avoidance of doubt, a condition detailing the approved plans is necessary as is a condition to define the scope of the planning permission. A condition is necessary to ensure that the development of the site takes place in a consistent and comprehensive manner having regard to the possibility of the development being taken forward in phases.
56. Conditions are necessary to ensure the site is properly drained, to reduce the risk of flooding and to prevent pollution of the water environment and to ensure that the development will not impact upon the features of special interest for which the River Mease SAC/SSSI is notified. Conditions are also necessary to ensure that the land is fit for purpose in respect of pollution.
57. In the interests of nature conservation conditions are necessary to ensure the implementation of the mitigation and/or management measures set out in the Ecological Appraisal within the proposed layout and landscaping scheme and the protection of nesting birds and badgers. A condition is also necessary to control any external lighting to be installed on the site in the interests of nature

---

<sup>2</sup> Oxfordshire County Council v SSCLG [2015] EWHC 186 (Admin)

<sup>3</sup> National Planning Policy Framework (2012) paragraphs 203 and 206, and National Planning Practice Guidance (2014): Use of Planning Conditions.

conservation, the character and appearance of the area and living conditions of neighbours.

58. A Construction Management Plan is necessary to prevent encroachment onto the highway and in the interests of safeguarding the living conditions of neighbours during the construction period. It was agreed at the Hearing that the Construction Management Plan would not need to include vehicle routing details as this would be provided for by the obligation in the S106 Agreement relating to the submission of a Construction Traffic Routing Plan. Although not included in the list of conditions suggested by the Council it was agreed at the Inquiry that the condition, suggested by the County Archaeologist, requiring a staged programme of archaeological work is necessary to ensure proper investigation and recording. A condition is necessary to ensure that provision is made for modal choice to/from the site and in the interests of highway safety a condition is necessary for the provision of off-site highway works at the Woodcock Way/Nottingham Road junction.

### **Conclusion**

59. For the reasons given above and having regard to all other matters raised, in line with the presumption in favour of sustainable development, I conclude that the appeal should be allowed.

*Beverley Doward*

INSPECTOR

Richborough Estates

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Timothy Leader, of Counsel James Knightley BSc (Hons), DipTP, MRTPI	Principal Planning Officer, North West Leicestershire District Council
---	---

### FOR THE APPELLANT:

Peter Goatley, of Counsel He called Neil Benison BSc (Hons) IEng MICE Gary Lees BA (Hons) BTP MRTPI	Associate Director for Transportation, Mewies Engineering Consultants Limited (M-EC) Director, Pegasus Planning Group
--	---

### FOR LEICESTERSHIRE POLICE:

Nina Pindham, of Counsel Michael Lambert	Growth and Design Officer, Leicestershire Police
---	--

### FOR LEICESTERSHIRE COUNTY COUNCIL:

Andrew Tyrer BA (Hons) MRTPI	Developer Contributions Officer, Leicestershire County Council.
------------------------------	--

### INTERESTED PERSONS:

Lorna Titley Chris Tandy Michael Ball	Local Resident Vice Chairman Ashby de la Zouch Civic Society Member of Ashby Town Council
---	---

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

1. List of appearances on behalf of the appellants
2. Outline opening submissions on behalf of the appellants
3. Copy of email from David Hunt, Transport Planner at Leicestershire County Council to Neil Benison, M-EC dated 7 October 2015
4. Agreed list of submitted plans and status
5. Submission by Lorna Titley
6. Submission by Chris Tandy, Vice Chairman of Ashby Civic Society
7. Submission by Michael Ball, Ashby Town Council
8. Planning Obligations – Summary of Relevant Policy Requirements, North West Leicestershire District Council
9. River Mease Special Area of Conservation Water Quality Management Plan, Developer Contribution Scheme
10. Play Area Design Guidance Note Supplementary Planning Guidance July 2001, North West Leicestershire District Council
11. Developer Contributions: Submissions of Leicestershire Police
12. Draft S106 agreement Versions 1 and 2

## CONDITIONS

- 1) Save for the details of vehicular access into the site from Woodcock Way, details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission. 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.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: Site location plan (EMS.2533\_002) and Woodcock Way site access (20954\_08\_020\_02 Rev B).
- 4) A total of no more than 70 dwellings shall be erected.
- 5) Notwithstanding Conditions 1 and 2 above, unless the first reserved matters application in respect of layout relates to a development of 70 dwellings, that application shall include a masterplan for the whole of the site setting out indicative details of access, site layout, areas of open space/childrens play, landscaping, density parameters and scale, as well as details of any proposed phasing of development. All subsequent reserved matters applications shall be in accordance with the approved masterplan unless any alteration to the masterplan is agreed in writing by the local planning authority. All development shall thereafter be undertaken in accordance with the agreed phasing and timetable details or any alternatives subsequently agreed in writing by the local planning authority.
- 6) The development hereby permitted shall be carried out in full accordance with the Flood Risk Assessment (FRA) dated August 2014, ref 20954/08-14/3616 undertaken by M-EC Ltd and the following measures detailed within the FRA:
  - (i) At the detailed design stage suitable hydraulic calculations are undertaken to confirm actual flood plain outlines at the site, including but not exclusive of channel capacity, 20 year, 100 year, 100 year plus 20% (for climate change) and 1000 year (5%, 1%, 1% plus 20% increase in flow, and 0.1%) flood event levels (Sections 4.7-4.13 and 7.12);
  - (ii) No new buildings (including sheds, cycle storage or garages), structures (including gates, walls and fences) or raised ground levels within 5 metres of the top of any bank of any river/watercourse inside or along the boundary of the site, unless otherwise agreed in writing (Sections 7.11 and 7.13; and
  - (iii) Finished floor levels are set a minimum of 600mm above the 100 year plus 20% (for climate change) (1% plus 20% increase in flow) flood event levels to be established by point (i) above.

- The mitigation measures shall be fully implemented before the first occupation of any dwelling on the site.
- 7) The first reserved matters application shall include details of the 100 year (1%) flood plain extent of the Money hill and Falstaff Brooks. There shall be no raising of ground levels, or storage of materials (including soil) within the 100 year (1%) flood plain extent of the Money Hill and Falstaff Brooks, unless undertaken in accordance with a compensation scheme first submitted to and agreed in writing by the local planning authority.
  - 8) No development shall commence on the site until such time as a surface and foul water drainage scheme for the site (or, in the case of phased development, for the relevant phase of the site), based on sustainable drainage principles and an assessment of the hydrological context of the development together with a timetable for its implementation has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details and timetable. The scheme shall demonstrate that the surface water run-off generated up to and including the 100 year plus 30% (for climate change) critical rain storm will not exceed the run-off from the undeveloped site following the corresponding event and shall include:
    - (i) Surface water drainage system(s) to be designed in accordance with either the National SUDs Standards or CIRIA C697 and C687, whichever are in force when the detailed design of the surface water drainage system is undertaken;
    - (ii) Limiting the surface water run-off generated by the all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm, so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site;
    - (iii) Provision of surface water attenuation storage on the site to accommodate the difference between the allowable discharge rate and all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm;
    - (iv) Detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details of any attenuation system and the outfall arrangements; and
    - (v) Details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development to ensure long term operation to design parameters.
  - 9) No development shall commence on the site until such time as a scheme of measures to prevent pollution of nearby watercourses (including during construction works), together with a timetable for its implementation, has been submitted to and agreed in writing by the local planning authority. No works shall take place, nor shall any dwelling be occupied at any time, unless all of the measures as required at the appropriate time under the agreed timetable are provided in full.
  - 10) No development shall commence on the site until such time as a further Risk Based Land Contamination Assessment report as recommended within the M-EC Phase 1 Environmental Risk Assessment dated August 2014 ref 20945/08-14/3584 has been submitted to and agreed in writing

by the local planning authority. The assessment shall be carried out in accordance with:

- BS 10175:2011+A1:2013 Investigation of Potentially Contaminated Sites Code of Practice;
- BS 8576:2013 Guidance on Investigations for Ground Gas – Permanent Gases and Volatile Organic Compounds;
- BS8485:2007 Code of Practice for the Characterisation and Remediation from Ground Gas in Affected developments; and
- CLR 11 Model Procedures for the Management of Land Contamination (Environment Agency 2004)

Should any unacceptable risks be identified in the Risk Based Land Contamination Assessment a Remedial Scheme and a Verification Plan shall be prepared and submitted and agreed in writing by the local planning authority. The Remedial Scheme shall be prepared in accordance with the requirements of CLR 11 Model Procedures for the Management of Land Contamination (Environment Agency 2004). The Verification Plan shall be prepared in accordance with the requirements of:

- Evidence Report on the Verification of Remediation of Land Contamination Report:SC030114/R1 (Environment Agency 2010); and
- CLR 11 Model Procedures for the Management of Land Contamination (Environment Agency 2004)

If during the course of development, previously unidentified contamination is discovered development shall cease on that part of the site and it shall be reported in writing to the local planning authority within 10 working days. No work shall recommence on that part of the site until such time as a Risk Based Land Contamination Assessment for the discovered contamination (to include any required amendments to the Remedial Scheme and Verification Plan) has been submitted to and agreed in writing by the local planning authority. Thereafter, the development shall be implemented in accordance with the approved details and retained as such in perpetuity unless otherwise agreed in writing by the local planning authority.

- 11) None of the dwellings shall be occupied until such time as a verification investigation has been undertaken in line with the agreed Verification Plan for any works outlined in the Remedial scheme relevant to either the whole development or that part of the development, and the report showing the findings of the verification investigation has been submitted to and agreed in writing by the local planning authority. The verification investigation report shall:

- Contain a full description of the works undertaken in accordance with the agreed Remedial Scheme and Verification Plan;
- Contain results of any additional monitoring or testing carried out between the submission of the Remedial Scheme and the completion of remediation works;

- Contain Movement permits of all material taken to and from the site and/or a copy of the completed site waste management plan if one was required;
  - Contain test certificates of imported materials to show that it is suitable for its proposed use;
  - Demonstrate the effectiveness of the approved Remedial Scheme; and
  - Include a statement signed by the developer or the approved agent confirming that all the works specified in the Remediation Scheme have been completed.
- 12) The first reserved matters application shall include a statement detailing how the proposed mitigation and/or management measures as set out in Section 4.0 of the Ecological Appraisal dated July 2013 and prepared by FPCR have been incorporated within the proposed layout and landscaping scheme, together with a timetable for their implementation as applicable. Unless any alternative measures are first agreed in writing by the local planning authority no development shall be undertaken at any time other than in strict accordance with the agreed measures and timetable.
- 13) No hedgerows, trees or shrubs shall be removed during the months of March to August inclusive unless first agreed in writing by the local planning authority. Should nesting birds be found during construction work, all work within 5 metres of the nest shall cease immediately and shall not resume until such time as the young have left the nest.
- 14) Notwithstanding the submitted details, no development shall commence on the site (or in the case of phased development, in respect of the relevant phase) until such time as a timetable for the undertaking of an updated survey(s) in respect of badgers in relation to commencement of site works on the relevant phase (and including the specification of maximum periods between undertaking of surveys and commencement of work on the relevant phase) has been submitted to and agreed in writing by the local planning authority. No development shall thereafter be undertaken at any time unless the relevant survey(s) has been undertaken and the results (including mitigation measures and a timetable for such mitigation where appropriate) have been submitted in writing to and agreed in writing by the local planning authority and the development shall thereafter be undertaken strictly in accordance with the agreed mitigation measures and timetable.
- 15) No external lighting shall be installed on site (including during the construction phase) unless in accordance with details first submitted to and agreed in writing by the local planning authority.
- 16) No development shall take place, including any works of demolition, until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved Plan shall be adhered to throughout the construction period. The Plan 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 construction works
  - viii) the hours of construction works.
- 17) No development shall take place until a programme of archaeological work, if shown necessary by an initial phase of trial trenching, has been detailed within a Written Scheme of Investigation which has been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions; and
- The programme and methodology of site investigation and recording (including the initial trial trenching, assessment of results and preparation of an appropriate mitigation scheme;
  - The programme for post investigation assessment;
  - Provision to be made for analysis of the site investigation and recording;
  - Provision to be made for publication and dissemination of the analysis and records of the site investigation;
  - Provision to be made for archive deposition of the analysis and records of the site investigation;
  - Nomination of a competent person(s)/organisation to undertake the works set out within the Written Scheme of Investigation.
- No development shall take place other than in accordance with the approved Written Scheme of Investigation and the development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.
- 18) Notwithstanding the submitted details, no development shall commence on the site until such time as precise details of all proposed measures as set out in Sections 7.0, 8.0, 9.0 and 10.0 of the submitted Travel Plan (prepared by M-EC, ref 20954/08-14/3583 Rev A) and including a timetable for their implementation have been submitted to and agreed in writing by the local planning authority. Unless any alternative measures are first agreed in writing by the local planning authority the development shall thereafter be occupied in accordance with the agreed scheme and timetable.
- 19) None of the dwellings hereby permitted shall be occupied until such time as a scheme for the provision of works at the Woodcock Way/Nottingham Road junction (to comply generally with the scheme shown indicatively on Drawing No 20954\_08\_020\_01 rev A) has been provided in full in

accordance with precise details first submitted to and agreed in writing by the local planning authority, and is available for use.

Richborough Estates