

## Appeal Decision

Hearing held on 27 and 28 October 2015

Site visits made on 13 July and 28 October 2015

**by Tom Cannon BA DIP TP MRTPI**

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

**Decision date: 28 January 2016**

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**Appeal Ref: APP/J1860/W/15/3005382**

**Land at Post Office Lane, Kempsey, Worcestershire**

- 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 David Wilson Homes (Mercia) Ltd against the decision of Malvern Hills District Council.
  - The application Ref 14/00625/FUL, dated 9 May 2014, was refused by notice dated 16 January 2015.
  - The development proposed is a: "Residential development for 75 dwellings including 30 affordable dwellings (40% affordable housing provision), provision of SUDs and associated works."
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### Decision

1. The appeal is allowed and planning permission is granted for a residential development for 75 dwellings including 30 affordable dwellings (40% affordable housing provision), provision of SUDs and associated works on Land at Post Office Lane, Kempsey, Worcestershire in accordance with the terms of the application, 14/00625/FUL, dated 9 May 2014, subject to the conditions set out in the Schedule of Planning Conditions attached hereto and forming part of this decision.

### Procedural Matters

2. The application was amended prior to its determination by the Council. The revised plans reduced the number of dwellings to 75. The description of development set out in the formal decision reflects this modification. No party would be prejudiced by my determining the appeal on the basis of the amended plans.
  3. The appeal was originally to be determined under the written representations (WR) procedure. However, as one of the main parties made representations in respect of CCTV footage, which is not permissible in WR cases, the appeal was progressed by way of a Hearing.
  4. A copy of the *Draft Kempsey Neighbourhood Plan* (KNP) was submitted at the Hearing. The Parish Council (PC) has since confirmed that the emerging KNP no longer stands as an approved document and should be 'ignored' for the purposes of this appeal. I have determined the appeal on this basis.
  5. A completed Section 106 Legal Agreement (S106) was received following the Hearing. This included a plan identifying the extent of the appeal site signed
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by each individual owner of the land. It replaces the original S106 which was issued in counterpart.

6. A detailed discussion took place at the Hearing regarding the obligations contained in the S106. However, the Council was unable to provide detailed information in respect of whether the proposed contributions would satisfy the tests in Regulations 122 and 123 (3) of the *Community Infrastructure Regulations* (CIL). A CIL compliance statement was requested and subsequently provided by the Council following the closure of the Hearing. Comments were received from the appellant in this respect.

### **Background and Main Issue**

7. The Council accepts that it cannot demonstrate a 5-year supply of deliverable housing sites. Paragraph 49 of the *National Planning Policy Framework* (the Framework) states that in such circumstances, relevant policies for the supply of housing should not be considered up-to-date.
8. This conclusion has ramifications for the application of the presumption in favour of sustainable development, which lies at the heart of the Framework. Paragraph 14 of the Framework says that where relevant policies of the development plan are out of date, the presumption in favour of sustainable development means that unless material considerations indicate otherwise planning permission should be granted: that is 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.
9. In this regard, it is necessary to determine whether the adverse impacts of granting planning permission for the proposed development would significantly and demonstrably outweigh the benefits. As paragraph 49 of the Framework is engaged, saved policies in the *Malvern Hills District Local Plan 2006* (LP) that seek to restrict housing development outside the defined settlement limits should be considered out of date. As such, the location of the appeal site outside the Kempsey settlement boundary is not, in itself, a policy bar to its development for housing.
10. It is also common ground between the main parties that the site is situated in an accessible location and subject to appropriate conditions, the design, mix, scale and layout of the proposed development is not at issue in this appeal. Nor is it disputed by the Council that the scheme would have a detrimental visual effect on the landscape.
11. Therefore, having regard to the above background, all that I have read and discussions at the Hearing, I consider that the main issue in this case is the effect of vehicle movements associated with the proposed development on highway and pedestrian safety in Post Office Lane and its junction with the A38.

### **Reasons**

#### *Highway safety*

#### Policy context

12. Saved Policy DC3 of the LP states that, development will only be permitted where, amongst other things, both the local road and strategic trunk road

network will be capable of safely accommodating the type and scale of traffic likely to be generated without undue environmental consequences. I recognise that this policy applies a higher test of impact than paragraph 32 of the Framework, which confirms that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. Nevertheless, the aim of Saved Policy DC3 is closely aligned with the second bullet point in paragraph 32 of the Framework, that safe and suitable access to the site can be achieved for all people.

13. The emerging *South Worcestershire Development Plan* (SWDP) has been examined, and the consultation period on the proposed modifications ended on 20 November 2015. However, given the extent of unresolved objections to its relevant policies, it was agreed by the main parties at the Hearing that only limited weight should be afforded to the SWDP. This includes Policy SWDP 4, which, amongst other things seeks to manage travel demand from new development. I see no reason to disagree with this stance in respect of the main issue in this appeal.
14. Thus, I will determine the appeal against Saved Policy DC3 of the adopted development plan, the Framework, and guidance contained in *Manual for Streets* (MfS) and *Manual for Streets 2* (MfS2).

#### Existing situation

15. The appeal site lies on the southern side of Post Office Lane, immediately to the east of the built form of Kempsey. The lane currently serves approximately 100 houses and Kempsey Primary School, via the junction with the A38, which provides the main arterial route through the village.
16. Given the nature of existing land uses in this area, the submitted *Transport Assessment* (TA) demonstrates that the peak period for vehicle movements on Post Office Lane is between 08:00 and 09:00, where the morning rush hour coincides with the start of the school day. I was able to observe this for myself at my site inspection on the 13 July 2015, which was undertaken during the term time AM peak.
17. The PM peak hours are staggered over two periods, between 15:00 and 16:00, for movements associated with the school, and 17:00 to 18:00, the recognised afternoon peak. It was evident from my site visits and data in the TA that, outside of these peak hours, Post Office Lane is a lightly trafficked street.
18. The traffic flows recorded in the TA are agreed between the main parties. During the AM peak hour, the busiest period of vehicular traffic on Post Office Lane, the TA recorded 153 two way movements. This fell to 121 in the school PM peak and reduced further to 100 between 17:00 to 18:00. If applied equally across these periods it equates to 1 vehicle every 23 seconds between 08:00 and 09:00 or, in the PM peak, 1 vehicle every 36 seconds. The frequency of traffic flows during the school PM peak hour would fall somewhere between the two.
19. I recognise that traffic flows in Post Office Lane are not evenly spread throughout these peak periods. In fact it would appear from the evidence put before me and from discussions at the Hearing, that the two main spikes for vehicle movements are concentrated in two relatively short periods at the beginning and end of the school day. Nonetheless, from the submitted video

evidence and my observations on site, it was evident that even during the AM peak, traffic flows were not continuous and there were gaps between vehicles entering and exiting the lane. Therefore, I conclude that Post Office Lane is not currently congested or operating at full capacity even during peak periods.

20. The majority of existing pedestrian movements on Post Office Lane also appear to be associated with the school. The survey undertaken by local residents indicate that pedestrian flows are primarily focused between 08:35 to 08:50 in the AM, and 15:20 and 15:45 in the school PM peak hours. It also suggests that there are incidences on Post Office Lane and the A38 of both adults and children stepping onto or crossing the carriageway to access the school. However, despite the relatively narrow width of the pavement, particularly at the junction with the A38, it was clear during my site inspections and the submitted video evidence that pedestrian and vehicular conflict does not appear to currently be a significant problem on Post Office Lane. This is further supported by the recorded accident data, which indicates that despite anecdotal evidence to the contrary from local residents, only two slight accidents have occurred on Post Office Lane since 2005, which do not appear to have been a direct consequence of congestion or the layout of the street.
21. It must however be established if firstly, the movements associated with the appeal scheme would be significant and, secondly, could be accommodated safely within the existing road network.

Significant amounts of movements

22. It is agreed that using the *National Standard for Trip Generation Analysis* (TRICS) database, the appeal scheme would generate 42 two way vehicle movements in the AM, and 45 in the PM peak periods. Applying TRICS, traffic flows relating to the school PM peak are likely to be in the order of 32 two way movements.
23. When applying the agreed trip distribution and assignment, it is anticipated that 34 additional vehicle movements in the AM and 36 in the PM peak would use the western section of Post Office Lane, the area between the junction with the A38 and the school turning. In pure percentage terms, this would mean a 22% increase in the AM, and a 36% increase in the PM peak hours over existing levels. It is common ground that such increases in traffic flow are generally considered to be significant. However, to understand the potential impact, consideration must be given to the level, nature and spread of both existing and proposed vehicular movements on Post Office Lane.
24. Whilst existing vehicle flows are concentrated in two short periods within the AM and PM peak school hours, it is reasonable to assume that traffic movements associated with the proposed residential development would be spread over these periods, as potential future occupiers are likely to leave and return from work and undertake other journeys at different times. Therefore, only a small proportion of these movements are likely to coincide with the spike in traffic flows on Post Office Lane during part of the AM and PM peak school hours. Furthermore, from the video and other evidence put before me, traffic flows between 17:00 to 18:00, the PM peak also do not appear to be a significant issue.
25. I am also mindful that the agreed vehicle movements have assumed that all traffic connected with the development would exit the site via the junction with

the A38. Although one would imagine that the majority of traffic would utilise this route, a proportion of the proposed vehicle movements could travel east out of the access, or onto the A38 through Oakfield Drive. This would further reduce any increase in vehicle movements and congestion on Post Office Lane, particularly in the relatively short periods at the start of and end of the school day, when drivers may make a conscious decision to avoid using the lane and seek an alternative route.

26. The Council estimates that the appeal scheme, in isolation, would generate around 15 pedestrian movements to the school in the AM peak, a relatively modest increase when compared to existing flows on Post Office Lane. Moreover, the majority of these movements would avoid the pinch point at the western end of Post Office Lane and therefore reduce any potential conflict between pedestrians and vehicles in this area.
27. Therefore, whilst in pure numerical terms, the proposed increase in vehicular movements may be significant, for the reasons set out above; I conclude that overall the impact of the proposed vehicle movements on Post Office Lane would not be significant even during peak periods.

#### Cumulative impact

28. The primary school on Post Office Lane is the only such facility in the village. The Council and local residents have raised concerns regarding the cumulative impact of both pedestrian and vehicle movements to and from the school in connection with the appeal scheme and other residential commitments in Kempsey.
29. I understand from correspondence by Worcestershire County Council Children's Services, that as of January 2015, the school had a roll of 260, with a capacity of 280. As part of this appeal, a financial contribution is sought towards the extension of the school to provide 1.5 form entry, potentially increasing its capacity to 295. Thus, even if this extension is completed, the school, based on the January 2015 figures could only accommodate an additional 35 children.
30. To my mind, the cumulative impact of both pedestrian and vehicular trips should therefore be based on the maximum capacity of the school. As such, the Council's analysis, which is calculated on the premise that the developments in combination would generate 74 additional children of primary school age, would not be a true reflection of the likely increase in trips associated with the school. Consequently, the appellant's assessment that 14 two way vehicular and pedestrian movements would be generated by the potential uplift in children attending the school appears to be a more accurate estimation to me. This increase in trips would be modest and not significantly add to vehicle and pedestrian movements on the lane even in peak periods.

#### Geometry of Post Office Lane

31. The carriageway along Post Office Lane varies in width, and narrows towards its junction with the A38. However, apart from a small section between the two Ellsdon turns, the carriageway is at least 4.1m wide between the appeal site and the A38. As illustrated in Figure 7.1 of MfS, this provides sufficient space for two cars to pass. Moreover, the highway is between 4.45 and 4.65m wide for a distance of about 60m back from the junction with the A38, which

- according to the dimensions in Figure 6.18 of MfS could accommodate a car and a van/mini bus travelling in opposite directions.
32. I am however aware that the carriageway adjacent to the junction with the A38 is of insufficient width to allow a car and heavy goods vehicle (HGV) to pass. Nonetheless, within the local highway network, Post Office Lane serves as a minor arm providing access to residential properties, the primary school, and as a through route to nearby hamlets. One would therefore imagine that the majority of vehicle movements associated with such uses are likely to be undertaken primarily by car or light goods vehicles (LGV).
33. This is reflected in the traffic count data recorded in the TA, with over 91% of existing vehicle movements travelling in both directions on Post Office Lane by car or LGV. It would also suggest, and is supported by the limited number of recorded accidents, that Post Office Lane can safely accommodate the majority of vehicle movements which currently utilise the road. As the type of vehicles associated with the proposed residential use is likely to be similar, the geometry of the lane and its junction with the A38 would therefore appear capable of accommodating the increased traffic flows generated by the development.
34. I am also mindful of guidance in both MfS and MfS2 that street dimensions, particularly road width and the presence of on-street parking can have an effect on vehicle speeds, with drivers proceeding more cautiously and adjusting their behaviour to take account of the carriageway width. This is displayed in the speed surveys which demonstrate that vehicle speeds at the western end of the lane, at school drop off and pick up times, were generally below 20mph. Although reference has been made by the Council to a design speed of 27mph, this relates to the eastern end of Post Office Lane, away from the junction with the A38, and the area of the carriageway most affected by movements associated with the school.
35. Given that the western end of Post Office Lane follows a linear alignment, it offers good forward visibility for drivers when both entering the junction and travelling east along the lane. This provides the opportunity to either wait on the A38 before turning, or to pull into the side roads on Post Office Lane to allow on-coming traffic, particularly larger vehicles to pass. Similarly, when travelling in the opposite direction, drivers will have advance sight of vehicles entering the lane and parked vehicles and take the necessary evasive action during busy periods.
36. I appreciate that not all motorists will act in this way. Nevertheless, given the pattern and type of vehicle movements associated with the development, and modest number of HGV's, school buses and other larger vehicles utilising the lane, such behaviour is unlikely in practice to have a significant bearing on vehicular conflict on and at the junction with the A38. Nor would the anticipated increase in traffic flows lead to a significant increase in the number of vehicles waiting on the main road impeding the safety and convenience of users of the adjacent highway network.
37. The footway between the junction with the A38 and the school varies in width between 0.95 and 1.9m. It is therefore below the 2m minimum standard set out in MfS. Nonetheless, I note from MfS, that a width of 1.2m allows for an adult and child to walk side by side, with 1.5m providing sufficient space to accommodate two adults, including one with a pushchair. Other than the pinch

point adjacent to the junction with the A38, the existing footways on either side of the street are of sufficient width to accommodate an adult and child. Moreover, despite its restricted dimensions, the footway is clearly defined, and Post Office Lane does not therefore operate as a shared surface as the Council suggests.

38. I am mindful that there may be occasions where pedestrians step out into the road. However, the proximity of pedestrians affects driver behaviour. In such circumstances motorists are clearly aware of the presence of pedestrians and adjust their behaviour accordingly. This was reflected in the submitted video evidence which shows that drivers on Post Office Lane appeared to slow down, and in certain circumstances give way to pedestrians stepping onto or crossing the highway. The absence of any record of accidents involving such movements adds weight to this argument. Therefore, despite the relatively restricted width of the footway, even during periods of peak pedestrian flows, vehicular and pedestrian conflict does not appear to currently be a significant problem on Post Office Lane.
39. The additional pedestrian movements between the appeal site and the primary school would not directly impact on the western end of Post Office Lane where the footway is at its narrowest. As part of the scheme, it is proposed to provide a new section of footway directly adjacent to the site access, and widen the footpath on the eastern section of the lane, through utilising sections of grass verge. This will improve access to the school for future occupiers of the development and existing residents at the eastern end of the lane without impacting on the width of the carriageway in this area.
40. In view of my conclusions regarding the distribution of proposed pedestrian and traffic flows, the type of vehicles likely to be associated with the development and the proposed footway improvements; I conclude that the geometry of Post Office Lane would not increase the potential conflict between pedestrians and motorised vehicles. Moreover, whilst there may be a perception that an increase in vehicle movements would result in a greater potential for accidents, this view is not supported by the balance of evidence before me.
41. Local residents, the PC and District Councillors have raised a number of other concerns regarding the proposed development. Firstly, although I recognise that previous applications for residential development on the appeal site have been refused due to the geometry of Post Office Lane, based on the evidence put before me in this appeal, I have found that the additional vehicular and pedestrian movements associated with the proposed development can be safely accommodated on the lane. Nor given my conclusions regarding existing and proposed traffic flows, would the appeal scheme restrict access to emergency vehicles on Post Office Lane.
42. I am aware that vehicles, even when travelling at low speeds, as appears to generally be the case on the lane, can cause injury to pedestrians. However, no substantive evidence has been put to me in this appeal to suggest that the development would lead to a potential increase in vehicle and pedestrian conflict. I also recognise that parents utilise the car park at The Talbot Public House opposite Post Office Lane as an informal parking area when dropping off or picking up their children from the school. Nevertheless, I see no reason why the appeal development would impact on this arrangement. Nor do I have any

information before me to suggest that the car park will be withdrawn from use in the future, thereby potentially increasing traffic flows on Post Office Lane.

### **Conclusion on main issue**

43. I therefore conclude that for the reasons set out above, the traffic generated by the development would be acceptable and the development would not have a detrimental effect on highway and pedestrian safety in Post Office Lane and its junction with the A38. Thus, it accord with Saved Policy DC3 of the LP, paragraphs 32 and 35 of the Framework, and guidance contained in MfS and MfS2.

### **Other Matters**

#### Financial contributions

44. A completed S106 has been submitted specifying that 40% of the total number of dwellings will be affordable and securing financial contributions towards various highways, education, recreation, Police and the NHS Primary Care Trust infrastructure works.
45. Regulation 122 of CIL states that, for planning permission to be granted, a planning obligation can only be taken into account if it is necessary to make the development acceptable in planning terms, directly related to the development; and fairly and reasonably related in scale and kind to the development.

#### *Affordable housing*

46. Saved Policy CN2 of the LP requires that, within defined settlements an affordable component of up to 50% of all dwellings on sites of 5000sq m or 15 dwellings (whichever is the lower limit) will be sought. However, it was agreed by the main parties at the Hearing, that despite the emerging SWDP only having limited weight, Policy SWDP 15 which applies an affordable housing rate of 40% was the appropriate rate to apply, as it has been subject to viability testing and is based on more up to date evidence of housing need. I see no reason to disagree with this stance. Therefore, the appeal scheme which provides affordable housing in accordance with emerging Policy SWDP 15 satisfies the three tests in Regulation 122 of CIL.

#### *Highways*

47. The South Worcestershire Development Plan Infrastructure Delivery Plan (SWIDP) sets out the requirement for approximately £210million of transport infrastructure and services to mitigate the impacts of planned new residential and employment development in the area. The Worcester Transport Strategy (WTS) has been developed alongside this, to support economic growth through improvements to the highway network, with Worcester city providing the focal point for the Worcester Transport Network area (WTN).
48. The SWIDP identifies that development will not only have a local transport impact but will also affect the wider transport network in South Worcestershire and beyond. I understand that the nature of the transport network in this area means that development can cause a significant impact some distance from the traffic generation source, which in this case is the appeal development.
49. A developer contributions model has been developed based on a cost per trip ratio taking account of the number of trips which would be generated, the way



in which those trips would route on the network and identifying the proportion of development generated trips with origins or destinations within the WTN. The costs of mitigating infrastructure against each development are then apportioned using a costs multiplier to calculate the level of contribution for each development. This approach effectively applies a tariff, which I understand will be incorporated into a Community Infrastructure Levy (CIL). However, due to delays in the progression of the SWDP, CIL is not yet in place.

50. The appeal site lies outside the WTN area. In such locations '*bespoke calculations*' are used to identify the proportion of trips associated with the proposed development within the WTN, which will be used to formulate the required contribution to the WTS. The highway authority suggest that 38% of movements connected with the development will be made in the WTN zone, which when applying the set formula would attract a contribution of £159, 969.73.
51. The proposed highway works contribution would be spent on improvements between St Peters Roundabout and the A44 London Road within the WTN, over 6 kilometres from the site. Given the scale of the appeal scheme and its associated trip generation, it is highly likely that in addition to its effect on local roads, the development would also have a direct impact on the wider highway network. Whilst I recognise that the proposed improvement works do not appear to be located on the most direct route into Worcester, it appears reasonable to assume that a proportion of trips from the appeal development would utilise this route, to access the M5 motorway and services and facilities in the southern part of the city, including Worcestershire Royal Hospital. In this respect I am also mindful that the appellant concedes that '*from our perspective, we appreciate the need for the infrastructure, but the method of calculation lacks detail*'. Therefore in principle, a contribution securing highway improvement works in this area would be directly related to and necessary to make the development acceptable.
52. I accept that there are certain deficiencies in the submitted evidence, particularly concerning how the 38% figure has been calculated and the absence of a breakdown of costs for each element of the proposed works. However, on balance, given the potential magnitude of impact on the wider highway network, the proposed contribution of £159, 969.73 to secure such infrastructure works would appear to be an appropriate level of monies to mitigate the highway impacts of the development. As such, it would be fairly and reasonably related in scale and kind to the development and accord with Regulation 122 of CIL. The highway authority have also confirmed that 5 or more completed obligations have not been entered into in respect of this project and the appeal scheme also therefore satisfies the requirements of Regulation 123.
53. Separate highway infrastructure contributions are also requested towards increasing the frequency of bus services between Kempsey and Hanley Castle High School, improvements to bus shelters on the A38 and the provision of signs and road markings from the site to National Cycle Network Route 46. Given that the development would increase the population of the area and add to pressure on existing public transport services these obligations are necessary. The contribution towards footpath widening on Post Office Lane is also necessary and reasonable based on the additional use they are likely to have, particularly in relation to trips to and from the nearby primary school.

Such contributions would accord with Saved Policy DC3 of the LP, which amongst other things requires consideration to be given to reducing the need to travel and securing access to the development by public transport or other alternatives to the private car. It has also been confirmed that no more than 5 separate completed obligations have been entered into regarding any of these projects and the development would not therefore exceed the '5 obligation limit' in CIL Regulation 123 (3).

#### *Education*

54. Contributions are sought towards investment in education infrastructure in the form of the expansion of Kempsey Primary School to 1.5 form entry and the sixth form at Hanley Castle High School. Although there is some existing capacity at the primary school, I understand pupil numbers have been increasing in recent years. It is therefore anticipated that when combined with other commitments in the village, the demand for school places will exceed supply.
55. Kempsey is within the catchment of Hanley Castle High School. I understand that admission numbers at the school have also risen in recent years, with continued pressure on capacity expected in the short to medium term. The financial contribution that would be payable is based upon a standard formula depending on the size of the proposed dwellings, with a higher rate applied to larger properties which are likely to generate an increased pupil yield. Given that the dwellings would be occupied by some families this contribution would satisfy the 3 tests in Regulation 122 and accord with Saved Policy DS18 of the LP which seeks to secure necessary physical and social infrastructure related to development through planning obligations. I also understand that less than 5 obligations have been entered into regarding the projects at Kempsey Primary School and Hanley Castle High School. Thus, the proposed obligation is compliant with pooling restriction in Regulation 123.

#### *Recreation*

56. The South Worcestershire Playing Pitch Strategy 2015 (SWPPS) identifies a demand for improved football and cricket facilities at Plovers Rise, Kempsey. This specifically relates to issues with the existing playing surface and a shortage of football pitches, particularly youth football for Kempsey Colts. There is also an identified need for improved training facilities at Kempsey Cricket Club. As the development is likely to add to demand for the use of such facilities the proposed obligation is clearly necessary and directly related to the development.
57. The Council's Open Space Supplementary Planning Document 2008 (SPD) uses a set formula to establish the required contribution towards outdoor sports facilities based on a standard charge per dwelling. It identifies this figure of £4,240 per unit should provide a basis for negotiation, with the main parties agreeing that a contribution of £4,488 to account for inflation and increased costs is appropriate in this case. I see no reason to disagree. Therefore, the proposed contribution is fairly and reasonable related to the development to be permitted. Nor, from the evidence put before me have five or more completed obligations have been entered into in respect of the above projects. As such, it satisfies the requirements of both Regulations 122 and 123 of CIL.

58. In addition to their comments in respect of the need for improved sports facilities, Kempsey Parish Council has requested a financial contribution towards the purchase of land and construction of a new community centre in the village. Whilst the existing facility may be small and the proposed occupiers of the development could utilise this service there is no policy basis for such provision. Nor is it explicitly clear what proportion of the £1,600,000 total cost of the project the PC is requesting. Therefore it does not accord with the statutory tests in CIL Regulation 122.

*Police*

59. The S106 includes a contribution of £11,725.51 towards new or improved Police premises. I recognise that the development could, when taken with other commitments in the village could bring additional policing requirements. This appears to have been a view accepted with other residential schemes in Kempsey. However, no details have been provided of how the above figure has been calculated. Therefore, from the evidence put before me in this appeal it would not be fairly and reasonably related in scale and kind to the development and would conflict with Regulation 122 of CIL. Moreover, West Mercia Police (WMP) appear to cast doubt on whether a contribution towards new and improved premises can be required given that potentially more than 5 completed obligations for this project have been entered into. As such, it would also fail to accord with Regulation 123 of CIL.
60. Notwithstanding the above, WMP have requested an alternative contribution of £20,401 which will mainly be utilised for new equipment connected with the Kempsey and Alfrick Safer neighbourhood Team area, including the recruitment of new officers, vehicles and automatic number plate recognition cameras. However, once again no substantive evidence has been put before me to establish how this figure has been calculated. Nor is there an adopted policy basis for the proposed contribution. Consequently, there are material differences between this and other appeal decisions referred to by WMP where contributions towards police equipment have been deemed to accord with Regulation 122. For these reasons, the above contribution would not be CIL compliant.

*NHS*

61. The S106 also makes provision for a contribution towards structural alterations at Kempsey Surgery to cater for increased demand from this and other commitments in the village following submissions made by Primary Care NHS England. I am also mindful of anecdotal evidence from local residents at the Hearing who indicated that the surgery was currently operating near capacity.
62. A contribution of £15,724 is being sought for alterations within the existing surgery to increase the available space to cater for the potential increased demand. This calculation has been based on a standardised figure of £209.65 per unit. However, the cost appears to be formed on assumptions regarding the forecasted increase in population and average number of consultations per annum and it is therefore unclear exactly how the above figure has been calculated.
63. Whilst I do not dispute that residents of the new housing would be likely to use the surgery, the above calculations do not provide a robust basis to justify a financial contribution towards such provision. Nor is there an adopted CIL

charging regime or current policy support for this contribution. As such, I conclude that a contribution towards structural renovations to the surgery would not be CIL compliant.

64. Notwithstanding my conclusions in respect of infrastructure contributions for the Police and NHS, the other contributions in the S106 can be realised because of the conditionality clause in the agreement.

Other issues

65. I am satisfied from the maps provided by the County Council that the proposed footpath link to the west of the site access could be provided without effecting land within the ownership of Hazeldene. Issues relating to the diversion of the existing public right of way will be considered under separate legislation, with flooding and drainage concerns to be addressed by way of appropriately worded conditions. It has also been confirmed by the Council that the apportionment of affordable housing accords with current housing needs in the District. Therefore, based on the information before me, none of these or any other matters raised by interested parties either individually or cumulatively would cause significant harm.

**Conditions**

66. I have considered the conditions suggested by the Council, the appellant and consultees, in light of advice in paragraphs 203 and 206 of the Framework and the PPG. In the interests of precision and enforceability, and to accord more closely with advice in the PPG, I have amended the Council's suggested wording where appropriate.
67. In addition to the standard time limit condition it is necessary, for the avoidance of doubt and in the interests of proper planning, to define the plans with which the scheme should accord. Details of facing and roofing materials, including the provision of small roof tiles are required to accord with design advice in Saved Policies DS3 and QL1 of the LP and to preserve the character and appearance of the area. For similar reasons, it is also appropriate for at least 40 of the dwellings to be constructed with roof top chimneys and the appearance of all rainwater goods to be controlled. Also in the interests of character and appearance, the submission of a landscaping scheme and schedule for its maintenance is required. Although a plan has been provided detailing tree protection measures this does not relate to hedgerow planting or bushes along the site boundaries. As such, a comprehensive plan detailing all trees, hedgerows and bushes is needed.
68. As the eaves and verge details are clearly shown on the approved plans, I do not intend to impose a further condition in this respect. Nor is it either reasonable or proportionate to specify that all garage and external doors shall be finished in a dark colour, given that they will face into the site and therefore have a limited impact on the surrounding landscape. As the percentage and mix of on-site affordable housing is clearly set out in the S106, a separate condition requiring that the development is carried out in accordance with these details is also not necessary.
69. To protect the living conditions of nearby residents and in the interests of flood protection, details of existing site and proposed finished floor levels, foul and surface water drainage and the submission of a construction management plan,

including routing of construction vehicles and restrictions on hours of demolition and construction works are required. In the interests of sustainable development and to accord with Saved Policies QL1 and DS3, it is necessary for the dwellings to incorporate sustainability measures for energy, waste, recycling, water management, and utilities connections to facilitate super-fast broadband connectivity.

70. To ensure that the development provides the opportunity for the protection and enhancement of natural habitats and to accord with the recommendations of the phase one ecological survey, a condition requiring the submission of a habitat management plan prior to commencement is needed. To promote sustainable travel and accord with Saved Policy DS3 of the LP and paragraph 35 of the Framework, it is also appropriate for details of secure cycle parking and outdoor sockets for use as an electric vehicle charging point.
71. In the interests of highway safety, it is necessary for conditions to be imposed in respect of the proposed visibility splays at the site access, provision of a footway link between the site and the existing footpath on the northern side of Post Office Lane and the parking and turning areas within the development to be laid out in accordance with the submitted details. I also consider that details of the surfacing and drainage of all proposed roads and the footpath/cycleway link to Napleton Lane need to be provided prior to work starting on site, and the approval of a welcome pack by the Council to promote sustainable travel by future occupiers of the development.
72. Given the representations made from local people at the Hearing regarding the former use of the site and potential for waste materials being deposited on the land, it is also necessary to undertake a preliminary risk assessment to ascertain if there is any contamination on site before development commences.

### **Overall Conclusion**

73. I therefore conclude that safe and suitable access to the site can be achieved for all people and the development through the proposed improvements to Post Office Lane and financial contributions towards public transport provision in Kempsey would increase sustainable transport choices for potential future occupiers of the scheme. Consequently, the residual cumulative impacts of the development would not be server.
74. For the reasons set out above, and having regard to all other matters raised I conclude that the appeal should succeed.

*T Cannon*

INSPECTOR

### **Schedule of Conditions**

- 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: 13-065/02 Rev F, 13-065/03 Rev A, 13-065/04 Rev A, 13-065/05, 13-065/06, 13-065/07, 13-065/08, 13-065/09, 13-065/10, 13-065/11, 13-065/12, 13-065/13, 13-065/14, 13-065/15, 13-065/16, 13-065/17 Rev A, 13-065/18, 13-065/19, 13-065/20, 13-065/21, 13-065/22, 13-065/23, 13-065/24 Rev A, 13-065/25 Rev A, 13-065-26 Rev A and A;13-204/09.
- 3) No development shall commence until samples of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. The roofing materials shall be small plain tiles or a tile that achieves the same visual appearance in terms of size once lain, camber and thin leading edge. Development shall be carried out in accordance with the approved samples.
- 4) All rainwater goods shall be round/half round section and finished in black with gutters mounted on metal rise and fall brackets.
- 5) At least 40 dwellings shall be constructed with roof top chimneys, which shall be distributed equally across the development.
- 6) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include a plan indicating the position of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development together with details of the disposition of proposed planting, cross referenced to a schedule listing the species, size and number of plants proposed. Development shall be carried out in accordance with the approved details.
- 7) 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.
- 8) Before the development is first occupied a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas other than domestic gardens, shall be submitted to and approved in writing by the local planning authority. The landscape management plan shall be implemented as approved.
- 9) No development shall take place until detailed plans showing existing site levels and proposed finished floor levels of the dwellings have been submitted to and approved in writing by the local planning authority. The proposed minimum ground floor levels shall be set a minimum of 0.3m above the general ground level of the relevant plots in the lowest part of

the site. Development shall be carried out in accordance with the approved details.

- 10) The development hereby permitted shall not be commenced until a scheme for all drainage works (foul and surface), based on sustainable drainage principles has been submitted to and approved in writing by the local planning authority. The approved drainage works which shall include no increase in surface water run-off from the site when compared to the existing pre-application run-off rate up to a 1 in 100 year storm event plus an appropriate allowance for climate change shall be carried out prior to first occupation of the dwellings.
- 11) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
  - the parking of vehicles of site operatives and visitors;
  - loading and unloading of plant and materials;
  - storage of plant and materials used in constructing the development;
  - wheel washing facilities; and
  - a construction traffic management plan detailing the routing and timing of construction and delivery traffic to avoid the Primary School drop off and pick up times.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 12) Demolition or construction works shall take place only between 07:00 – 18:00 hours Monday to Friday, 08:00 – 13:00 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 13) No development shall take place until details of sustainability measures including, energy, waste, recycling, water management, utilities connections to facilitate super-fast broadband connectivity and outside electric sockets for use as electric vehicle charging points, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 14) No development shall take place until a habitat management plan that shall include proposals for the creation of new habitats, the replacement of habitats that will be lost and the protection and enhancement of habitats to be retained, including details for their future management and maintenance have been submitted to and approved in writing by the local planning authority. The development shall be carried out prior to the first occupation of the dwellings and maintained in accordance with the approved details.
- 15) No development shall take place until details of the proposed vehicular access to Post Office Lane have been submitted to and approved in writing by the local planning authority. The details shall include visibility splays measured 2.4m back from the nearside carriageway edge, (measured perpendicularly), for a distance of 90m in each direction

alongside the nearside edge of the adjoining carriageway. The development shall not be occupied until that junction has been constructed in accordance with the approved details. The junction shall thereafter be retained.

- 16) No structure shall be erected or shrubs, trees or other vegetation shall be allowed to grow above 0.6 metres in height within the sight lines referred to in condition 15.
- 17) No development shall take place until engineering details of a footway link running west from the site access on the south side of Post Office Lane, as indicated in the JMP drawing in Appendix E of the Transport Assessment and to include a pedestrian dropped crossing, shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details prior to the first occupation of the development.
- 18) No development shall take place until details of the specification, drainage and surfacing of all areas to be used by vehicles (whether for access, turning or parking) have been submitted to and approved in writing by the local planning authority. The vehicular access routes, vehicle turning and parking facilities shall be provided in accordance with the approved plans and details before the development hereby permitted is brought into use.
- 19) The development shall not be occupied until the car parking spaces shown on the approved plan have been constructed, surfaced and permanently marked out. Such spaces shall thereafter be kept available at all times for the parking of vehicles.
- 20) No dwelling shall be occupied until space has been laid out within the site for bicycles to be parked and that space shall thereafter be kept available for the parking of bicycles.
- 21) No development shall take place until engineering details and specification of the proposed footpath/cycleway link to Napleton Lane have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details prior to the first occupation of the development.
- 22) None of the development hereby permitted shall be occupied until a 'welcome pack' to promote sustainable travel by future occupiers of the development has been submitted to and approved in writing by the local planning authority. No individual dwelling shall be brought into use until its occupiers have been provided with a welcome pack as so approved.
- 23) No development shall commence other than that required to be undertaken as part of an approved scheme of remediation shall take place until site investigations have been carried out, in accordance with a methodology based on a Phase 1 assessment and conceptual site model, detailing the nature and extent of contamination of the site. The results of the site investigations shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigations, a report carried out in accordance with the Environment Agency's model procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model



Procedures if replaced) specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins. If, during the course of development, any contamination is found which has not been identified in the site investigations, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

Richborough Estates

## **APPEARANCES**

### **FOR THE APPELLANT:**

Sian Griffiths  
Sarah Loynes  
Alan Crawford  
Celina Colquhoun

RCA Regeneration Ltd  
RCA Regeneration Ltd  
JMP  
Barrister, No 5 Chambers

### **FOR THE LOCAL PLANNING AUTHORITY:**

Simon Jones  
  
Simon Tucker

Senior Planning Officer  
Malvern Hills District Council  
David Tucker Associates

### **INTERESTED PARTIES**

Dan Stiff

BB Architecture & Planning on Behalf  
of the East Kempsey Action Group  
(EKAG)

Dr & Mr Bennett  
John Reader  
Ann Patrick

EKAG and local residents  
EKAG and local resident  
Kempsey Parish Council and local  
resident

Trevor Geens

Chairman Kempsey Parish Council  
and local resident

Mike Brindle

Chairman of Neighbourhood Working  
Party and local resident

Councillor D Harrison

District Councillor for Kempsey and  
local resident

Councillor J Michael

District and Parish Councillor for  
Kempsey and local resident

Hilary Wallace  
Sue Rees

Local resident  
Local resident

### **DOCUMENTS SUBMITTED AT THE HEARING**

1. Technical Information – Safety data, speed survey and school admissions (RCA Regeneration)
2. Worcestershire County Council Transport Planning Unit comments 4 July and 24 October 2014
3. Email and plans 10 December 2014 indicating ownership of land on Post Office Lane
4. Kempsey Draft Neighbourhood Plan October 2015
5. Crane v Secretary of State for Communities and Local Government & Anor EWHC 425 (Admin)
6. Malvern Hills District Council Education Contributions Supplementary Planning Document

7. Malvern Hills District Council Developer Contributions and Planning Obligations Supplementary Planning Document 2006

8. Draft South Worcestershire Playing Pitch Strategy 2015

9. Statement from Michael Biddle, local resident.

**DOCUMENTS SUBMITTED AFTER THE HEARING**

1. Letter from Kempsey Parish Council regarding the Status of the Draft Kempsey Neighbourhood Plan
2. CIL Compliance Statement and appellant's response
3. Completed S106 Legal Agreement
4. Plan identifying extent of proposed footway widening on Post Office Lane

Richborough Estates