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## Appeal Decision

Site visit made on 6 January 2016

**by Y Wright BSc (Hons) DipTP MSc DMS MRTPI**

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

**Decision date: 22 February 2016**

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**Appeal Ref: APP/F1040/W/15/3134873**

**Land at SK2816 1036 Linton Heath, Linton, Swadlincote DE12 6PE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr and Mrs N Gulliver against the decision of South Derbyshire District Council.
  - The application Ref 9/2015/0426, dated 12 May 2015, was refused by notice dated 5 August 2015.
  - The development proposed is outline application for residential development.
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### Decision

1. The appeal is allowed and outline planning permission is granted for residential development on land at SK2816 1036 Linton Heath, Linton, Swadlincote DE12 6PE in accordance with the terms of the application, Ref 9/2015/0426, dated 12 May 2015 and the plans submitted with it, subject to the conditions set out in the attached schedule.

### Procedural Matter

2. The application was submitted in outline with all matters except for access reserved for future determination. I have considered the appeal on this basis, although I note the illustrative housing layout plan provided.
3. For succinctness I have only included the first part of the development description as set out on the application form.
4. I have used the site address as set out within the appeal form, decision notice and the description of development on the application form. For reasons of clarity I have also used the postcode referred to on the application form.

### Main Issues

5. The main issues are:
    - whether the development would accord with national and local policies relating to the location of development in the District; and
    - the effect of the development on the character and appearance of the surrounding area.
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## Reasons

### *Whether the development would accord with policies relating to the location of development*

6. Planning legislation states that proposals should be determined in accordance with the development plan unless material considerations indicate otherwise. However, the weight to be attached to policies in the existing development plan must be assessed in accordance to their degree of consistency with the National Planning Policy Framework (the Framework), which sets out the Government's planning policies and is a material consideration. The Framework also seeks to boost significantly the supply of housing and requires local planning authorities to demonstrate a five year supply of housing land.
7. Whilst the *South Derbyshire Local Plan 1998* (LP) policies H5, H6, H7 and H8 are referred to in the reason for refusal, the Council contends that the proposal is '*beyond the scope*' of these policies. I concur with the Council that Policies H6, H7 and H8 are not applicable to the proposal. For reasons set out below I consider LP Policy H5 as the Council in its appeal statement contends that this should carry reduced weight. LP Policy EV1 and the Framework are also specified in the reason for refusal and I consider the appeal on this basis.
8. The site is outside but adjacent to the defined village boundary of Linton as identified in the LP. Accordingly the development would conflict with Policy H5 which restricts new housing development to within village boundaries and Policy EV1 which does not permit development outside settlements unless it is essential to a rural based activity or unavoidable in the countryside and safeguards and protects countryside and landscape character.
9. However, the Council acknowledges in its appeal statement that in the absence of a five year housing land supply (5YHLS), adopted local plan policies relevant to the supply of housing are considered to be out of date and planning decisions on housing development must therefore be made in the context of Paragraph 14 of the Framework. As such the Council considers that Policy H5 should carry reduced weight.
10. The Council also states that following recent appeal decisions, Policy EV1 has an indirect effect of restraining delivery and for the purposes of paragraph 49 of the Framework is a policy for the supply of housing. However whilst the Council accepts that the first part of Policy EV1 must be assigned reduced weight, it considers that the rest of the policy has a degree of consistency with the Framework as it safeguards character and landscape quality.
11. Whilst I recognise that Policy EV1 seeks to protect the character of local landscapes, I consider it significantly restricts development which is at odds with the Framework's more balanced approach on determining planning applications. On matters including landscape character and development in the countryside, the Framework accepts that development may be permitted unless adverse impacts would significantly and demonstrably outweigh the benefits or specific policies within the Framework indicate that development should be restricted. On this basis I consider that Policy EV1 is not consistent with the Framework and consequently I give it limited weight.
12. Furthermore, although each application must be based on its own individual merits, in considering the status of the LP policies and the amount of weight I

can give them, I have considered the findings and conclusions of other Inspector decisions which have been drawn to my attention. I particularly note that the Inspector for an appeal decision<sup>1</sup> for a larger site for residential development within Linton concluded that LP Policies H5 and EV1 failed to address the current issue of housing need within the District and therefore were considered to be policies relevant to the supply of housing and gave them little weight. I have no reasons before me to conclude otherwise and therefore concur with this view.

13. However notwithstanding this, character and appearance and the effect of development on the countryside remain important considerations in the determination of applications and appeals, having regard to the policies in the Framework as a whole. I am mindful in this regard, of relevant Ministerial Statements and the Framework's requirement to recognise the intrinsic character and beauty of the countryside and consider this issue next.

#### *Character and appearance*

14. The appeal site is currently a vacant, overgrown area of fairly level land last used as allotment gardens around 1997. It is located within the countryside but directly adjoins the settlement boundary of Linton Heath and the surrounding area is characterised to some degree by the existing dense urban form which extends along Linton Heath. The site is surrounded on three sides by existing development, with a row of terraced houses opposite which directly adjoin the pavement, a detached property to the south west and school playing fields to the rear.
15. There is a field to the east of the site with open countryside and woodland that forms part of the National Forest beyond to the north east. To the east of the field is further residential development. The site comprises approximately 0.9 hectares of land and although the number of proposed dwellings would be determined through reserved matters, the appellant considers the site could deliver around 24 houses.
16. The site is not covered by any statutory landscape designation. In addition although the Council refers to the site as being part of a landscape that is valued by local residents, it has not been suggested that the site forms part of a valued landscape. Nevertheless I have no substantive evidence to demonstrate that it is a valued landscape for the purposes of paragraph 109 of the Framework.
17. On my site visit I saw that the established hedgerows along the site's boundaries provide significant enclosure, which physically and visually separates it from the wider countryside. There are also limited views into and out of the site. In comparison the adjacent field is open and provides views to the woodland beyond. Apart from the existing hedgerow landscape features, the site is rather unremarkable in terms of character and appearance, being predominantly covered by brambles and scrub.
18. Whilst landscaping matters would be considered further at the reserved matters stage and the layout plan is illustrative only, it does demonstrate that an acceptable detailed scheme could be advanced which would retain the majority of the prominent boundary hedgerows and there would be the

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<sup>1</sup> Appeal Ref: APP/F1040/A/14/2214428

opportunity for additional new landscaping within the site. I therefore have given the layout plan some weight.

19. Nevertheless I acknowledge that the proposal would clearly introduce urban development on to what is currently an undeveloped site which locally would inevitably cause some adverse impact to the character and appearance of the area. However taking account of such factors as the site's location adjacent to existing urban development, its enclosed nature, the proposed retention of landscape features and the provision of additional planting, I consider that the visual impact of the development would be limited when viewed in the context of the wider streetscene. I also consider that in terms of scale, the proposal would be seen as a proportionate extension to the present built up area.
20. Therefore taking the above matters in to account I conclude that the development would not be unduly intrusive within the locality and there would be limited harm to the character and appearance of the surrounding area.

#### *Other Matters*

21. The Inspector for the appeal decision<sup>2</sup> previously referred to above, concluded that as Linton has been classed as a Key Service Village within the emerging Local Plan, it is a sustainable settlement and can accommodate a certain scale of growth up to and including small strategic sites. Whilst I recognise that the emerging Local Plan at this time only has limited weight, based on the evidence before me and my observations on site I concur with the previous Inspector on this matter.
22. I also saw on my site visit that the appeal site is within walking and cycling distance of existing facilities and services within the village and bus stops are also in close proximity with one immediately in front of the site. This latter factor provides opportunities to access other settlements including the nearby town of Swadlincote, by means other than the private car. On this basis I therefore consider the site is within a sustainable location.
23. As regards the social aspects of sustainable development that are before me, I have already confirmed that the Framework aims to boost significantly the supply of housing and that there is no dispute that the Council does not have a 5YHLS. Consequently the contribution that this site would make to the supply of housing land within the District weighs substantially in support of this appeal. I also consider that the future occupiers of the development would be likely to support and help sustain the provision of existing services and facilities within the village. Overall I consider that the social benefits of the development would weigh significantly in support of the proposal.
24. Economically, both parties consider that the development would be likely to boost the local economy by providing construction jobs and supporting local building trades, albeit that this would be for a temporary period. I also acknowledge that the future occupants of the development would be likely to support businesses within the village and local area. I consider such economic benefits would weigh in support of the appeal.
25. The appellants unilateral undertaking includes a range of contributions that would be provided were the proposal to be successful. This includes contributions towards the provision of primary education, built facilities, open

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<sup>2</sup> Appeal Ref: APP/F1040/A/14/2214428

space, outdoor sports and the National Forest. It sets out the specific details of what the different contributions would provide. None of these contributions are in dispute between the main parties. It is clear from the information provided by the Council in its statement of case that these contributions are necessary to make the development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind to the development proposed, which satisfies the tests in the Framework and Regulation 122 of the Community Infrastructure Levy 2010.

26. Concerns have been raised about the effect of the development on existing car parking problems within the area and traffic levels. The Highway Authority has not raised any of these concerns or objected to the proposal. Furthermore I note that the development would be adjacent to local facilities and bus stops which would promote sustainable travel and the provision of adequate car parking and visibility splays to appropriate standards could be secured through conditions. As such I see no reason to conclude contrary to the Highway Authority on these matters.
27. I also note that the statutory agencies and the Council have not objected to the proposal on drainage grounds. I have no reason to suggest that adequate drainage could not be provided by a suitably imposed condition as suggested by Severn Trent Water.
28. In relation to concerns raised about wildlife, living conditions for existing residents and the capacity of local infrastructure such as schools and health facilities, the Council does not object on these grounds and I have no substantive evidence to indicate that the proposal would cause significant harm in these respects.

### **Planning balance**

29. Whilst I have found that the development would be contrary to LP policies H5 and EV1, for the reasons set out above, these policies have limited weight. I acknowledge that there would be some adverse impact to the character and appearance of the surrounding area, but overall have concluded that this would be minimal and the weight applied to this is therefore limited. I have found that the development would be within a sustainable location and other environmental matters raised would not weigh against the proposal.
30. The Council accepts that it is unable to demonstrate a 5YHLS and as relevant policies for the supply of housing are out of date the presumption in favour of sustainable development applies. The development would contribute around 24 dwellings to the shortfall in housing land supply and significantly boost the supply of housing, including affordable homes, within the locality. This weighs heavily in support of the proposal. Other social and economic benefits also carry weight in the appeal's favour. In addition the appellants' unilateral undertaking would provide a range of contributions which would benefit the local community.
31. Consequently given all these factors and my conclusions on the main issues, in accordance with paragraph 14 of the Framework I conclude that the adverse impact would not significantly or demonstrably outweigh the benefits of the development.

### **Conditions**

32. I have considered the conditions suggested by the Council in the light of the advice given in the Planning Practice Guidance (PPG). As such I do not impose all of them, combine some and amend the wording of others, in the interests of precision and enforceability. I am satisfied that the conditions set out in my decision meet the tests within the PPG.
33. Conditions on setting reasonable time limits and the provision of details on reserved matters are necessary as the application made is for outline permission.
34. Whilst layout is a reserved matter, in the interests of highway safety I impose conditions on internal layout design including the estate road and footways, gates, vehicle car parking spaces, bin storage and emergency service vehicle access. Conditions requiring the construction of a suitable vehicular site access, the provision of facilities to prevent mud and debris on the highway are also imposed to ensure there is safe access to and from the site and highway safety is maintained. A condition requiring the submission and implementation of a Travel Pan is also necessary in the interests of highway safety.
35. In the interests of flood protection and pollution control I impose conditions on foul and surface water drainage and a sustainable drainage system. However I do not find it necessary to include a separate condition on the disposal of surface water to the highway drainage ditch to the front of the site as this can be included in the drainage scheme for the site and I therefore do not impose this.
36. In order to protect the living conditions of neighbouring residents and the character of the area I attach a slab levels condition. I also include a standard precautionary contamination condition in the interests of public health and the environment. To ensure the delivery of affordable housing within the site I impose a relevant condition.
37. As appearance and landscaping are reserved matters I do not find it necessary to include conditions on landscaping or requiring the submission of samples of external materials and as such I do not attach them. However I do attach a condition requiring that the development is carried out in accordance with the ecological appraisals and surveys submitted as part of the application, in the interests of protecting wildlife.

### **Conclusion**

38. For the reasons given above, and having considered all other matters raised, I conclude that the appeal should be allowed.

*Y. Wright*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

- 1) 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.
- 2) 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) Approval of the details of the layout, scale, appearance and landscaping, to include the replacement and enhanced hedgerow details, shall be obtained from the Local Planning Authority in writing before any development is commenced.
- 4) No development shall take place until details of a scheme for the disposal of surface and foul water, together with a drainage strategy for the site, has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.
- 5) Before any development commences details of the finished floor levels of the buildings hereby approved and of the ground levels of the site relative to adjoining land levels, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be constructed in accordance with the agreed levels.
- 6) If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then the applicant shall submit a written scheme to identify and control that contamination. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA, and appropriate remediation proposals, and shall be submitted to the LPA without delay. The approved remediation scheme shall be implemented in accord with the approved methodology.
- 7) No development shall take place until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the Local Planning Authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2: Glossary of the National Planning Policy framework or any future guidance that replaces it. The scheme shall include:
  - i. no less than 30% of housing shall be Affordable Housing;
  - ii. the type, tenure and location of the Affordable Housing;
  - iii. no more than 80% of Market Housing units shall be occupied before completion and transfer of the Affordable Housing Units to an Affordable Housing Provider;
  - iv. the arrangements for the transfer of the Affordable Housing Units to an Affordable Housing Provider;
  - v. the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing to those households on the District Housing Waiting List; and

- vi. the occupancy criteria to be used for determining the identity of occupiers of the affordable housing by means of the District Choice Based Lettings allocation scheme or in such other form as may be proposed by the Local Authority and agreed with the Affordable Housing Provider.

The affordable housing shall be retained in accordance with the approved scheme.

- 8) Before any other operations are commenced on site, a temporary access shall be formed into the site for construction purposes, and space shall be provided within the site curtilage for site accommodation, storage of plant and materials, parking and manoeuvring for site operatives' and visitors' vehicles, loading and unloading of goods vehicles, all in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority.
- 9) Before any operations commence involving the movement of materials in bulk to or from the site, facilities shall be provided that have previously been approved in writing by the Local Planning Authority, to prevent the deposition of mud or extraneous material on the access roads to the site.
- 10) Before any development comprising the construction of a dwelling commences the new vehicular access shall be constructed in accordance with the application drawing F14004/01 Rev A, drained, lit, and constructed in accordance with Derbyshire County Council's specification for new estate streets, having a 5.5m carriageway, 2 x 2m footways, 6m radii and visibility sightlines of 2.4m x 43m in each direction, the area forward of which shall be level, constructed as footway and not form any plot or other sub-division of the site.
- 11) Before any development comprising the construction of a dwelling commences a 2m wide footway shall be provided along the entire site frontage, laid out and constructed, drained and lit in accordance with Derbyshire County Council's specification for new housing development roads.
- 12) The internal layout of the site shall be in accordance with the 6C's Design Guide and Manual for Streets.
- 13) No dwelling shall be occupied until a sustainable drainage scheme for the site, including a management and maintenance plan, has been completed in accordance with details first submitted to and approved in writing by the Local Planning Authority. The sustainable drainage scheme shall be managed and maintained thereafter in accordance with the agreed management and maintenance plan.
- 14) A swept path diagram shall be submitted at reserved matters stage to demonstrate that emergency and service vehicles can adequately enter and manoeuvre within the site and leave in a forward gear.
- 15) No dwelling shall be occupied until the proposed new estate street between each respective plot and the existing public highway has been laid out in accordance with the approved application drawings to conform to the County Council's design guide, constructed to base level, drained and lit in accordance with the County Council's specification for new housing development roads.



- 16) Provision shall be made within the site for the parking of two vehicles per dwelling and maintained throughout the life of the development free from any impediment to their designated use.
- 17) No gates or other barriers shall be erected within 5m of the nearside highway boundary and any gates elsewhere shall open inwards only.
- 18) Bin stores shall be provided within private land at the entrance to shared private accesses, in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of construction on any of the dwellings, to prevent refuse bins and collection vehicles standing on the new estate street for longer than necessary, causing an obstruction or inconvenience for other road users. The facilities shall be provided prior to the first occupation of the dwellings to which they relate and shall be retained thereafter free from any impediment to their designated use.
- 19) No building on the site shall be occupied until a Travel Plan comprising immediate, continuing and long-term measures to promote and encourage alternatives to single-occupancy car use has been prepared, submitted to and approved in writing by the Local Planning Authority. The approved Travel Plan shall then be implemented, monitored and reviewed in accordance with the agreed Travel Plan Targets.
- 20) The development hereby approved shall be carried out in accordance with the recommendations made within the Preliminary Ecological Appraisal, the Reptile Survey and the Mustelids Activity Survey submitted as part of the application, unless otherwise agreed in writing by the Local Planning Authority.

Richborough Estates