



Appeal Decision

Site visit made on 17 March 2020

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th May 2020

Appeal Ref: APP/R1038/W/20/3244154

Land North of 92 Chesterfield Road, Higham, Derbyshire DE55 6BN

- 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 A Cox, Green 4 Developments Ltd, against the decision of North East Derbyshire District Council.
 - The application Ref 19/00056/OL, dated 21 January 2019, was refused by notice dated 11 July 2019.
 - The development proposed is the erection of 24 dwellings, new access and provision of open space.
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of 24 dwellings, new access and provision of open space at Land North of 92 Chesterfield Road, Higham, Derbyshire DE55 6BN in accordance with the terms of the application, Ref 19/00056/OL, dated 21 January 2019, subject to the conditions in the attached schedule.

Preliminary matters

2. The application was submitted in outline, with only access for consideration at this stage, along with the principle of the development, and all other matters reserved. The proposal and description of development changed during the application process with the submission of undated revised proposed site plan G4 0006 A-003 (revised drawing A-003), received by the Council on 3 May 2019. This reduced the number of dwellings to 24, offset from the northern boundary of the eastern field, and removed a footpath crossing the western field.
3. Although layout is a reserved matter, the appellant has confirmed that the western field would remain undeveloped, as shown on revised drawing A-003, and is willing to accept a condition restricting the built area as shown on it. Therefore, while that plan is indicative, I have had regard to it insofar as it shows how the proposed 24 dwellings could be accommodated on the site.
4. While landscaping is a reserved matter, a landscape mitigation plan was submitted during the appeal. The content of this drawing is consistent with revised drawing A-003 and I consider there would be no injustice in my having regard to it as an indicative approach to landscaping.

Main Issue

5. The main issue is the effect of the development on the character and appearance of the area and the landscape settings of Higham and Shirland.

Reasons

6. The site comprises 2 fields lying between the villages of Higham and Shirland. The eastern field adjoins housing on the northern fringe of Shirland, while the western field is on rising ground more closely associated with Higham.
7. Although the Council has a housing land supply of some 8 years, it is agreed that the settlement limits and housing targets in the development plan do not address the District's current housing needs. As such, there is no policy presumption against further expansion of settlements, subject to detailed assessment against development plan policies and material considerations.
8. Higham is laid out in a linear pattern, centred on a historic route on a landscape ridge. This topography creates a sense of separation that is apparent in views from Chesterfield Road as it descends the ridge towards Shirland. These views contribute to the significance of the Higham Conservation Area
9. Housing in the western field would intrude into these views. However, housing limited to the part of the eastern field shown on revised drawing A-003 and on the landscape mitigation plan would be further away. Subject to this restriction and careful siting and design of buildings, retention of trees and hedges and appropriate additional landscape planting, it would be sufficiently mitigated to avoid harm to the landscape setting of Higham. Accordingly, the proposed development would avoid harm to the significance of the Conservation Area, thus preserving the cultural asset's quality and setting.
10. By reason of its proximity, the proposed development would have an effect on the character, appearance and setting of Shirland. The northern limit of the village is currently characterised by a sharp transition from housing on Fern Lea and Fernwood Close to the adjacent agricultural landscape. This sharp transition is also apparent in the character of Common Lane, which ceases to have footways and becomes a country lane with verges, hedgerows and trees, and with views over the fields either side.
11. The proposed 24 houses would be visible over the hedge from Common Lane and from other lanes to the north. However, the reduced scale of the proposal and the indicative layout on revised drawing A-003, along with the appellant's commitment to retain trees and hedges, including two oaks protected by a preservation order, and to carry out woodland planting would avoid a prominent intrusion into the countryside. Furthermore, as appropriately designed new landscaping matures, the proposed development would achieve a sensitive transition to the countryside, in keeping with the character of the rural landscape and enhancing the setting of Shirland within it.
12. I have noted criticism of the design for the proposed woodland planting and the visual representations supplementing the landscape mitigation plan. However, and while details of landscaping are not for approval at this stage, the illustrative material gives sufficient confidence that, with careful attention being paid at the reserved matters stage, the proposed development can be satisfactorily assimilated into the surrounding rural landscape.

13. For these reasons, the proposed development would respect the landscape character of the area, avoid the loss of distinctive features that contribute and add value to it, and would protect and conserve the quality of natural assets and their settings; objectives of saved policies GS1, GS6, NE1 and BE1 of the North East Derbyshire Local Plan (NEDLP) and Part 15 of the National Planning Policy Framework (the Framework) and accordingly it is acceptable.

Other matters

14. A completed unilateral undertaking to secure 20% of the units as affordable housing and phase their delivery in tandem with the occupation of market units has been provided. I consider this to accord with saved policy H7 of the NEDLP and to be a proportional benefit of the proposed development. The same undertaking includes provisions for financial contributions towards local education provision and off-site open space, which I consider to accord with policy GS9 of the NEDLP and to be proportionate and necessary requirements for the development to go ahead.
15. Some public representations refer to past ridge and furrow farming in the area. However, I have also noted the County Council Archaeologist's advice that such assets would not be harmed provided built development is restricted to the eastern field, as now proposed, and I have afforded weight to that advice.
16. While I have considered local concerns about flooding and drainage, I note that the Lead Local Flood Authority assessed the proposal and did not object. Similarly, I note that the Clinical Commissioning Group chose not to seek a contribution towards health provision despite local concern about capacity at the nearest GP practice. I have also considered local concerns about traffic generation and congestion and the effect of the development on wildlife but have afforded weight to the advice of the Highway Authority and the Derbyshire Wildlife Trust, neither of which raised an objection.

Conditions

17. The recommended affordable housing condition is not necessary in view of the completed unilateral undertaking. The other conditions recommended to me are agreed by the parties, except for those relating to the recruitment of employees, public art and noise attenuation.
18. I have not been provided with evidence of policy support for a recruitment scheme within the development plan, although I note that policy SS1 of the emerging North East Derbyshire Local Plan may provide justification. However, it is accepted that only limited weight can be afforded to the emerging plan at present and for this reason I shall not impose the contested condition.
19. The evidence before me does not include an explicit policy justification for public art in a development of this nature and scale. Consequently, it has not been demonstrated that this condition would satisfy the 6 tests in paragraph 55 of the Framework, so I shall not impose it.
20. The only noise source identified as being of concern is the A61, Chesterfield Road, and I agree that the noise attenuation condition will not be necessary, provided the dwellings are restricted to the eastern field.
21. I have considered the remaining conditions against the Framework and the PPG and have substituted more precise and complete reserved matters conditions

- (conditions 1 - 3) for clarity; however, the intention and scope of the conditions remain the same and I consider no injustice would be caused by this.
22. Subject to drafting changes I shall impose the balance of the recommended conditions.
 23. Although scale, layout and landscaping are reserved matters, conditions 4, 6, 8 and 32 are necessary to ensure the development accords with the revised site layout, which I have found an acceptable form of development. This will maintain adequate separation between Higham and Shirland, avoid harm to the setting of the Higham Conservation Area, respect local landscape character and achieve a satisfactory transition to the countryside. For the same reasons, condition 7, which includes removal of permitted development rights for hard surfaces and means of enclosure, is also necessary, particularly to avoid harm to the setting of the Conservation Area.
 24. Conditions 9, 10 and 14 - 18 are necessary to ensure that a sustainable form of development that mitigates climate change, minimises pollution, protects wildlife and enhances biodiversity is achieved.
 25. Notwithstanding that appearance is a reserved matter, conditions 11 - 13 and 26 are necessary to ensure the development will be of appropriate quality.
 26. Conditions 19 - 22 are necessary to ensure the development has effective foul and surface water drainage, while conditions 23, 24 and 27 are necessary to regulate the construction phase to protect the living conditions of nearby residents and maintain highway safety. Condition 25 is necessary to ensure a safe access to the highway network during construction and to serve the completed development.
 27. Conditions 28 - 30 (ground conditions and soil contamination) are necessary to afford public protection, while condition 31 is necessary to ensure that any cultural assets beneath the surface of the site are identified and recorded.
 28. Finally, condition 5 is necessary for clarity and to ensure the development is implemented in accordance with the approved access details, and following the methodology of key documents submitted in support of the application.
 29. I have reviewed the recommended pre-commencement conditions and agree that condition 11 (levels details) should be phrased in that way because works at foundation level might influence levels above ground. The matters controlled by conditions 14 (badger mitigation), 16 (invasive non-native species), 29 (land contamination investigation) and 31 (archaeology) could all be affected by development activity and therefore I agree that these conditions should require work before commencement. Conditions 22 (surface water run-off) and 32 (tree protection) are intended to apply during the construction phase and should therefore also require action prior to commencement.
 30. However, conditions 19 - 21, all relating to drainage, would be equally effective if redrafted to require relevant compliance before occupation of the dwellings (conditions 19 and 20) or before above ground development (condition 21) and I have amended those conditions accordingly.

Conclusion

31. For the reasons given above and taking account of all other matters raised, I conclude that the appeal should be allowed.

Mark Harbottle

INSPECTOR

Richborough Estates

Schedule of Conditions

- 1) Details of the 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 takes place 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 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The application site shall be developed with a maximum of 24 dwellings.
- 5) Unless otherwise required by any condition contained in this decision notice the development hereby permitted shall be carried out in accordance with the details shown in the following plans and documents:
 - Visibility Splays – Common Lane Access, drawing A3476 02 D.
 - Transport Assessment & Travel Plan, Revision F, dated 17 June 2019.
 - Flood Risk Assessment, Revision D, dated April 2019.
 - Tree Survey Report, Revision C, dated March 2019.
 - Breeding Bird Survey Final Report, Revision A, dated December 2018.
 - Ecological Appraisal, Revision B, dated December 2018.
- 6) The details to be submitted to and approved in writing by the local planning authority as part of the reserved matters shall include a scheme for the delivery and future maintenance of all on site public open space, including a landscape management plan and a timetable for implementation relative to the completion of dwellings hereby approved. Any approved public open space shall be implemented in full in accordance with the approved timetable and shall be maintained in accordance with the approved scheme thereafter.
- 7) The western field as shown on the indicative masterplan shall be retained in agricultural use and shall not form part of the formal or informal public open space. Notwithstanding the provisions of Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015, (or any Order revoking and re-enacting that Order with or without modification) no hard surfaces shall be formed and no means of enclosure shall be erected within this field.
- 8) The details of layout to be submitted to and approved in writing by the local planning authority shall restrict any built development within the eastern field as shown on the undated indicative masterplan drawing G4 0006 A-003 received by the local planning authority on 3 May 2019 and the landscape mitigation plan, drawing A3476 05 Rev A, dated 25 October 2019. The northernmost part of the eastern field, shown undeveloped on these drawings, shall form a landscaped open space not part of any residential plot.
- 9) The details to be submitted to and approved in writing by the local planning authority as part of the reserved matters shall include a scheme for mitigating climate change through sustainable design and construction of the dwellings. Any approved climate change mitigation scheme feature that relates to an individual dwelling shall be implemented in full before that dwelling is first occupied.

- 10) The details to be submitted to and approved in writing by the local planning authority as part of the reserved matters shall include an assessment of the reserved matters scheme against the Building for Life 12 criteria. Thereafter the details submitted as part of the assessment shall be implemented in full and retained as such thereafter.
- 11) Before development starts, details of the existing ground levels, proposed finished floor levels of the dwellings and the proposed finished ground levels of the site, relative to a datum point which is to remain undisturbed during development, shall be submitted to and approved in writing by the local planning authority. The development shall then be carried out in accordance with the approved details and the levels shall be retained as such thereafter.
- 12) Before any above ground works commence details of the proposed boundary treatments throughout the site shall be submitted to and approved in writing by the local planning authority. The submitted details shall include a timetable for implementation relative to the occupation of plot numbers and shall be implemented in full in accordance with the approved timetable and shall be retained as such thereafter.
- 13) Before any works commence above foundation level precise specifications of the roofing and walling materials shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented in full and retained as such thereafter.
- 14) No works of any kind, including preparatory site clearance, shall begin until a scheme of badger mitigation has been submitted to and approved in writing by the local planning authority. This shall include the results of a recent survey of the eastern and western fields to update the Confidential Badger Annex (Encon Associates Ltd., 2017) and a method statement for works, including best practice working measures, timings, fencing and any requirement for licensing. All works shall proceed in accordance with the approved scheme of mitigation.
- 15) No vegetation clearance shall take place between 1 March and 31 August inclusive, unless preceded by a nesting bird survey undertaken by a competent ecologist. If nesting birds are present, an appropriate exclusion zone will be implemented and monitored until the chicks have fledged. No works shall be undertaken within exclusion zones whilst nesting birds are present.
- 16) Prior to the commencement of development, an invasive non-native species protocol shall be submitted to and approved in writing by the local planning authority, detailing the containment, control and removal of Japanese Knotweed on site. The measures shall be carried out strictly in accordance with the approved scheme.
- 17) Prior to building works commencing above foundation level, a biodiversity enhancement plan shall be submitted to and approved in writing by the local planning authority to achieve a net gain in biodiversity in accordance with the National Planning Policy Framework. Such approved measures shall be implemented in full and maintained thereafter, with photographs of the measures in situ submitted to the local planning authority to fully discharge the condition. Measures shall include (but are not limited to):
 - Details of integrated bat boxes in 25% of dwellings shall be clearly shown on a plan (positions/specification/numbers);

- Details of bird boxes (including swift boxes) in 25% of dwellings shall be clearly shown on a plan (positions/specification/numbers);
 - Details of insect bricks in not less than 10% of dwellings shall be clearly shown on a plan (positions/specification/numbers);
 - Measures to maintain connectivity for hedgehogs shall be clearly shown on a plan (fencing gaps 130 mm x 130 mm and/or railings and/or hedgerows); and
 - A summary of ecologically beneficial landscaping (full details to be provided in landscape plans).
- 18) Prior to building works commencing above foundation level, a detailed lighting strategy for any public open space shall be submitted to and approved in writing by the local planning authority to safeguard bats and other nocturnal wildlife. This should provide details of the chosen luminaires and any mitigating features such as dimmers, PIR sensors and timers. A lux contour plan may be required to demonstrate acceptable levels of lightspill to any sensitive ecological zones/features and adjacent habitats. Guidelines can be found in Guidance Note 08/18 - Bats and Artificial Lighting in the UK (BCT and ILP, 2018). The approved measures shall be implemented in full and retained as such thereafter.
- 19) None of the dwellings hereby permitted shall be occupied until works for the disposal of surface water and foul sewage shall have been provided on the site to serve the development hereby permitted, in full accordance with details that have first been submitted to and approved in writing by the local planning authority. The approved details shall be retained as such thereafter.
- 20) None of the dwellings hereby permitted shall be occupied until a detailed design and associated management and maintenance plan of the surface water drainage for the site, in accordance with the principles outlined within:
- (a) Flood Risk Assessment, Proposed Residential Development, Land to the north-east of the A61 Chesterfield Road, Higham, Derbyshire DE55 6BN by Encon Associates Limited (Ref: A3476 – Revision D (8 April 2019)) including any subsequent amendments or updates to those documents as approved by the Flood Risk Management Team; and
 - (b) DEFRA's non-statutory technical standards for sustainable drainage systems (March 2015)
- have been submitted to and approved in writing by the local planning authority and implemented in accordance with the approved detailed design.
- 21) No above ground development shall take place until a detailed assessment has been provided to and approved in writing by the local planning authority, to demonstrate that the proposed destination for surface water accords with the drainage hierarchy as set out in paragraph 080 Reference ID: 7-080-20150323 of the Planning Practice Guidance.
- 22) Prior to commencement of the development, the applicant shall submit for approval to the local planning authority, details indicating how additional surface water run-off from the site will be avoided during the construction phase. The applicant may be required to provide collection, balancing and/or settlement systems for these flows. The approved system shall be fully operational before the commencement of any works which would lead to increased surface water run-off from site during the construction phase.

- 23) Construction works on site and deliveries to the site shall be undertaken only between the hours of 0730 and 1800 Monday to Friday and 0730 and 1200 on Saturdays. There shall be no work undertaken on site or deliveries to the site undertaken on Sundays or public holidays.
- 24) Before development starts (excluding site clearance), a scheme shall be submitted to and approved in writing by the local planning authority with details of the site compound. The scheme shall include details of construction workers' accommodation; storage of plant and materials; parking and manoeuvring areas for site operatives' and visitors' vehicles; and loading/unloading and manoeuvring areas for goods vehicles. Thereafter, before any operations are commenced the scheme shall be implemented in accordance with the approved details and retained as such for the duration of the works.
- 25) Before any other operations are commenced (excluding those required by condition 24 above) a new estate street junction shall be formed to Common Lane and provided with visibility sightlines extending from a point 2.4 metres from the carriageway edge, measured along the centreline of the access, for a distance of 203 metres to the north west and 127 metres to the south east, generally in accordance with the application drawings but more specifically in accordance with a scheme to be first submitted to and approved in writing by the local planning authority. The area in advance of the visibility sightlines shall be retained throughout the life of the development free of any object greater than 1m in height (0.6m in the case of vegetation) relative to adjoining nearside carriageway channel level.
- 26) Prior to first occupation of any dwelling, details of the arrangements for storage of bins and collection of waste shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and the facilities retained for the designated purposes at all times thereafter.
- 27) Throughout the period of construction, wheel washing facilities shall be provided within the site and used to prevent the deposition of mud and other extraneous materials on the public highway.
- 28) Prior to or concurrent with the submission of reserved matters a scheme for intrusive site investigations into ground conditions and coal mining legacy shall be submitted to and approved in writing by the local planning authority. The scheme shall include the submission of a report of findings arising from the intrusive site investigations and the submission of proposed remedial works and a timescale for those works. The approved scheme and any remedial works shall be implemented in full and retained as such thereafter.
- 29) Before the commencement of the development hereby approved the further works as identified in the Phase 1 report (Encon Associates Ltd Phase 1 Site Investigation Proposed Residential Development Land on North East of the A61 Chesterfield Road, Higham, Derbyshire (Report Ref A3476 Revision A, dated 17 December 2018)) submitted with the application shall be undertaken to investigate the preliminary conceptual site model and assess the nature and extent of any contamination on the site, whether or not it originates on the site. The investigation and subsequent risk assessment must be undertaken by competent persons and a written report of the findings shall be submitted to and approved in writing by the local planning authority.

Where the site investigation identifies unacceptable levels of contamination, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be submitted to and approved in writing by the local planning authority. The submitted scheme shall have regard to CLR 11 and other relevant current guidance. The approved scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria and site management procedures. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

The developer shall give at least 14 days' notice to the local planning authority prior to commencing works in connection with the remediation scheme.

- 30) The dwellings hereby approved shall not be occupied until the approved remediation works required by condition 29 above have been carried out in full in compliance with the approved methodology and best practice.

If any suspected areas of contamination are discovered during construction, the local planning authority shall be notified as soon as is reasonably practicable and all works shall be suspended until the nature and extent of the contamination has been assessed and a report submitted to and approved in writing by the local planning authority. The suspect material shall be re-evaluated through the process described in the Phase I report submitted with the application and through the process described in condition 29 above.

Upon completion of the remediation works required by condition 29 above a validation report prepared by a competent person shall be submitted to and approved in writing by the local planning authority. The validation report shall include details of the remediation works and quality assurance/quality control results to show that the works have been carried out in full and in accordance with the approved methodology. Details of any validation sampling and analysis to show the site has achieved the approved remediation standard, together with the necessary waste management documentation, shall be included.

- 31) No development shall take place until a written scheme of investigation for archaeological work has been submitted to and approved in writing by the local planning authority, and until any pre-start element of the approved scheme has been completed to the written satisfaction of the local planning authority. The scheme shall include an assessment of significance and research questions and:
1. The programme and methodology of site investigation and recording;
 2. The programme for post investigation assessment;
 3. Provision to be made for analysis of the site investigation and recording;
 4. Provision to be made for publication and dissemination of the analysis and records of the site investigation;
 5. Provision to be made for archive deposition of the analysis and records of the site investigation; and
 6. Nomination of a competent person or persons/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 archaeological written scheme of investigation.

No dwelling shall be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the approved archaeological written scheme of investigation and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

- 32) Notwithstanding the submitted details, before development starts, a detailed tree protection plan showing the positions, species and crown spread of trees to be retained within the application site, together with details of measures for their protection for the duration of the works, shall be submitted to and approved in writing by the local planning authority. The means of protection shall be installed in accordance with the approved scheme before any other works commence on site and retained in position until all the building works hereby approved have been completed. The area within the fenced/protected area shall not be used for storage or the parking of machinery or vehicles and the ground levels shall not be altered.