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## Appeal Decision

Hearing Held on 22 April 2021

Site visit made on 23 April 2021

**by Matthew Woodward BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 16<sup>th</sup> July 2021**

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**Appeal Ref: APP/F2415/W/20/3262726**

**Bowden Fencing, Leicester Lane, Great Bowden LE16 7HA**

- 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 Mr Ned Fox (Barwood Homes) against the decision of Harborough District Council.
  - The application Ref 19/01902/FUL, dated 4 November 2019, was refused by notice dated 19 June 2020.
  - The development proposed is erection of 33 dwellings with associated landscaping, highways and drainage infrastructure.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of 33 dwellings with associated landscaping, highways and drainage infrastructure at Bowden Fencing, Leicester Lane, Great Bowden in accordance with the terms of the application, Ref 19/01902/FUL, dated 19 June 2020, subject to the conditions in the attached Schedule.

### Procedural Matters

2. Following the adoption of the Harborough Local Plan 2011 to 2031 (the Local Plan) in April 2019, Great Bowden's Neighbourhood Plan 2016 - 2031, which was originally made in June 2018, was subsequently reviewed and modifications were made to it. These changes were accepted by the Council as 'non-material', and the original Neighbourhood Plan has been updated to reflect the modifications. I have been provided with a copy of the updated version of the Neighbourhood Plan<sup>1</sup> (NP) and it is this version of the NP that I have had regard to in reaching my decision.
3. The appellant submitted a number of documents with the appeal, including marketing reports and illustrative plans<sup>2</sup>, which were not available when the planning application was determined. During the hearing the appellant clarified that the marketing documents represented up-to-date information in relation to ongoing marketing of the appeal site, setting out any third-party interests in purchasing the site registered after the planning application was refused. The illustrative plans include aerial photographs of the site and a settlement boundary overlay but do not amend the scheme. Finally, additional

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<sup>1</sup> Entitled 'Great Bowden's Neighbourhood Plan 2016 to 2031 Review Version May 2020'

<sup>2</sup> Appended to the appellant's Statement of Case

correspondence between a local business and the appellant's surveyors were also shared during the hearing. Neither the Council nor any other interested parties raised any objection to the late submission of evidence during the hearing. Taking this into account, and given that these documents do not fundamentally alter the proposal originally consulted on, I am satisfied that interested parties have not been unduly prejudiced. Therefore, I have taken these documents into account in reaching my decision.

4. An unsigned unilateral undertaking<sup>3</sup> (UU) was submitted as part of the appeal proposing a number of planning obligations. Prior to the hearing the Council confirmed that, contrary to the case made in their appeal statement, they did not object to the contents of the UU. I allowed a short period of time for the appellant to provide a signed copy of the UU following the closing of the hearing. I shall return to this matter later in my decision.

### **Application for costs**

5. At the Hearing an application for costs was made by Barwood Homes against Harborough District Council. This application is the subject of a separate Decision.

### **Main Issues**

6. The main issues in this appeal are the suitability of the appeal site for the proposed development having regard to:
  - a) the spatial strategy for the area; and,
  - b) its existing and potential future employment use.

### **Reasons**

#### *Spatial Strategy*

7. The site comprises previously developed land, made up of an assortment of buildings and structures, along with large open areas which are partly used for the storage of materials and goods in connection with the commercial business<sup>4</sup>.
8. Policy SS1 of the Local Plan defines the spatial strategy for the area, setting out a hierarchy of settlements based on their suitability in sustainability terms to accommodate the development needs of the District through the plan period. It seeks to enable the provision of land for a minimum of 12,800 dwellings, which includes approximately 307 dwellings on non-allocated sites or sites to be allocated in neighbourhood plans for Rural Centres and Selected Rural Villages. Within this policy the settlement of Great Bowden is identified as a Selected Rural Village. According to the supporting text to Policy SS1, Selected Rural Villages are able to support development primarily in the form of small-scale infill developments or limited extensions to help address economic, social or community objectives.
9. Due to Great Bowden's definition as a Selected Rural Village which is suitable for limited sustainable growth, and because over 200 dwellings were granted planning permission in Great Bowden during and immediately preceding the

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<sup>3</sup> Section 106 of the Town and Country Planning Act 1990 (as amended)

<sup>4</sup> According to the appellant this comprises a sawmill, goods yard and associated commercial office

- period in which the NP was developed, the NP does not allocate any housing sites. This is reflected in the spatial distribution of housing sites outlined in Local Plan Policy H1.
10. Policy H1 of the NP states that additional sites for housing will be brought forward in a review of the NP, but that relates to future housing allocations. However, the policy is also supportive of new proposals for housing in Great Bowden, provided it falls within one of a number of categories outlined, including windfall. The assertion made by several local residents along with the Great Bowden Parish Council Neighbourhood Plan Monitoring & Review Committee (the NPRC) is that there is an oversupply of housing in the village. However, there is no upper limit on housing numbers contained either within the Local Plan or National Planning Policy Framework (the Framework), and taking such a hard line approach to housing numbers does not align with the Framework's aim of significantly boosting the supply of homes, even in cases such as this where the Council are able to demonstrate a five-year housing land supply. In any event, the NPRC accepted during the hearing that the NP's 'zero' housing requirement relates to allocations, and new housing *per se* is not precluded within the settlement.
  11. Further to this, housing on non-allocated sites is supported by Policy H3 of the NP, subject to criteria and provided it constitutes windfall housing on redevelopment sites within the settlement boundary. There was some debate during the hearing concerning the meaning contained within the supporting text to Policy H3, which states '*windfall sites are small infill or redevelopment sites that come forward*'. However, regardless of whether the word 'small' within the aforementioned sentence is taken to include infill only, or whether it is interpreted to include redevelopment sites *in addition* to infill, no definition of 'small' in the context of redevelopment sites is provided.
  12. Moreover, Policy H3 includes a range of criteria which development is required to meet. This includes, *inter alia*, that regard be had to the existing character and historic context of the area, highway safety and capacity, the impact on neighbouring living conditions and on green infrastructure. None of these criteria relate directly to the 'size' of the site or the proposal. Whilst the NPRC does not consider that the proposal would constitute windfall development, this is not a view shared by the Council, who raise no objection to this or the general principle of development. Furthermore, I have taken into account the Local Plan<sup>5</sup> and the Framework which defines windfall development sites as those not specifically identified in the development plan. To my mind this definition is clear and unambiguous.
  13. Therefore, as the appeal site is not allocated and the majority of it falls within the settlement boundary, and taking into account the Local Plan and Framework's clear definition of windfall, most of the scheme can be regarded as windfall development under Policy H3 of the NP. The exceptions to this are two small parcels of land within the eastern part of the appeal site which lie immediately outside of the settlement boundary. However, these parcels of land are contained by a fence within the appeal site and form part of its current commercial use. Therefore, they have more affinity with its current use than they do with the surrounding countryside. Furthermore, only a small proportion of the proposed built form would be located outside the settlement

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<sup>5</sup> Appendix M Glossary – Local Plan

boundary. The proposal would therefore align with Policy GD2 of the Local Plan which is supportive of the redevelopment of previously developed land of low environmental value both within and immediately adjoining Selected Rural Villages. There would be no harm to the countryside in accordance with Policy H2 of the NP.

14. In conclusion, the proposal would accord with the spatial strategy for the area. It would be compliant with Policies SS1 and GD2 of the Local Plan, and Policies H1, H2 and H3 of the NP which require, amongst other matters, that new housing development is limited to windfall development within the settlement boundary, and development adjoining Selected Rural Villages where it does not disproportionately exceed the settlement's minimum housing requirement and does not harm the countryside.

### *Employment*

15. Policy BE3 of the Local Plan aims to protect employment allocations but the appeal site is not an allocated employment site in the Local Plan<sup>6</sup> or the NP. However, NP Policy EMP1 aims to protect existing employment sites from non-employment generating uses. It is a more detailed policy specific to Great Bowden and there is no apparent inconsistency between Policy EMP1 and relevant Local Plan policies.
16. Great Bowden Fencing, which occupies the appeal site, is one of a small number of businesses in the village. It was put to me during the hearing by the owner of the business that it operates at reduced capacity, employs a single person full-time, and is only open 3 days per week. In short, the business has been in decline for some time and the current employment offering at the site is limited.
17. However, Policy EMP1 recognises the future potential of such sites to provide local employment opportunities and as such, the Policy requires proposals to demonstrate *a) the site has not been in active use for at least 12 months; and b) the site has no potential for redevelopment for employment generating uses as demonstrated through a valuation report and marketing campaign lasting at least 6 months.*
18. In respect of criterion (a), as detailed in the preceding paragraph, the site continues to be in active use and has been for the previous 12 months, thus the proposal would not satisfy Policy EMP1 in this respect. However, non-compliance with this part of the Policy is not necessarily indicative of the future employment potential of the site, especially in cases such as this where the existing business has been in decline and only makes a limited employment contribution to the local area.
19. In support of criterion (b) the appellant submitted a valuation report alongside marketing reports. A guide price of £750,000 was used to market the site, a valuation endorsed by independent chartered surveyors, appointed by the appellant. This figure was lower than the surveyor's original valuation of the site for continued commercial use<sup>7</sup>, but a guide price lower than the valuation was used following concerns raised by the Council as part of the planning application.

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<sup>6</sup> Policy BE3 of the Local Plan

<sup>7</sup> Which was £1.2 million as detailed in the letter from Godfrey-Payton Chartered Surveyors to Naomi Rose in Appendix E of appellant's Statement of Case

20. The NPRC suggested several land valuations both during the hearing and as part of their written submissions, all of which were significantly less than the asking price of the land as advertised by the appellant. Their valuations appear partly predicated on the suggested turnover of the existing business and the value of the fixed assets on the site which, according to the NPRC, suggest that an inflated land valuation has been used to market the site. However, Mr Jacobs<sup>8</sup> acting on behalf of the appellant advised that the value of the land should not be geared towards the value of the business which resides on it. I also heard from a second independent surveyor, Mr Webb<sup>9</sup>, who confirmed that the land valuation carried out by Mr Jacobs was robust.
21. Furthermore, whilst the Council also question the veracity of the appellant's land valuation, they have not presented an alternative land valuation, nor well evidenced reasons as to why the land valuation used by the appellant to market the site was misguided. In light of the independent land valuation by chartered surveyors, I have not been provided with a sufficiently convincing case as to why a lower land valuation would be more appropriate. Overall, I am satisfied that the site has been valued and marketed based on its existing use value, and that this excludes hope value associated with the land being used in future for a higher value use such as residential.
22. In terms of the marketing exercise undertaken, there is no dispute between the main parties that it was carried out for a period exceeding 6 months as required by the Policy. However, the Council asserts that the exercise was undermined by an Option Agreement associated with the land and signed between the appellant and landowner. I was also made aware that this Option Agreement was clearly detailed in the sales particulars which were made available to prospective purchasers.
23. The Option Agreement would allow the site to be purchased in future by the appellant if planning permission was obtained for residential development, regardless of whether the land was sold to another party in the meantime. Be that as it may, Mr Jacobs confirmed that from the initial contacts made by those interested in purchasing the site, the Option Agreement did not appear to be a reason why their initial interest was not taken further.
24. In any event, the appellant explained that even if the Option Agreement was triggered after the site had been purchased by another party at its commercial use market value, this could potentially result in profit for the future owner, as the Option Agreement would likely command a higher land value due to the more lucrative residential use. Even if this was not the case, to my mind any party with a serious interest in purchasing a site with a relatively high cost such as this would be likely to carry out due diligence in order to understand the mechanics of the Option Agreement. This would reveal that enacting the Option Agreement would be dependent on obtaining planning permission for residential use on the appeal site; a scenario which Policy EMP1 seeks to avoid unless robust justification is provided. Therefore, I find nothing misleading about the sales particulars and the way in which the site was marketed, and no evidence that the Option Agreement deterred potential suitors.

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<sup>8</sup> A Chartered Surveyor for Godfrey-Payton Chartered Surveyors

<sup>9</sup> A Chartered Surveyor for Webb Developments speaking on behalf of the appellant

25. Turning to the outcomes of the marketing exercise<sup>10</sup>. A number of expressions of interest were made throughout the marketing period. However, the only offer received for the site was made in July 2020 comprising a quoted figure of £800,000, but no contact was made by the interested party thereafter. Given the period of time that has lapsed between the date of the offer and the appeal submission, and that no further progress has been made since the offer, I concur with the appellant that this offer should not be taken into account. Furthermore, it is unclear whether the interested party had any intention of bringing forward an employment generating use.
26. During the hearing I was also provided with evidence from the appellant of a written 'opening' offer of £500,000 from a local horticultural business<sup>11</sup>. I have no reason to dispute the assertion made by the NPRC that the horticultural business remains interested in the site. However, I have not received any correspondence from this business setting out the precise nature of their interest nor whether they have any interest in the site at its marketed price. Ultimately, there is no evidence to suggest that the asking price for the site has been met by them or any other party. Consequently, no reasonable and proceedable offer has been made to purchase the site at its asking price.
27. I am aware of the Council's concerns in relation to the content of the marketing reports, including that these reports had regard to the potential for future residential development as part of the draft NP, and included an erroneous statement that the land has been registered on the Council's brownfield register. However, regardless of the veracity of some aspects of the marketing reports, there is no evidence to suggest that these factors unduly affected the marketing guide price which was verified by a second surveyor, nor resulted in inaccurate or misleading sales particulars.
28. In conclusion, the site continues to be used for employment purposes, and has not been redundant for at least 12 months, contrary to the first criterion (a) of Policy EMP1 of the NP. However, the existing business on the site currently generates very limited employment. Furthermore, it has been demonstrated that the site has been marketed for a period exceeding 6 months at a price corresponding with its market value, and no future employment potential exists, in line with the second criterion (b) of Policy EMP1.

### **Planning Balance**

29. Whilst not allocated as a strategic employment site in the Local Plan, the NP seeks to protect non-allocated local employment sites. Despite the fact that a business still operates on the site, thus the proposal would be in conflict with criterion (a) of Policy EMP1, it is operating at a much-reduced capacity and makes a limited contribution towards local employment. Furthermore, the site has been marketed at a price corresponding with its market value for continued use for commercial purposes, and no suitable offers have been made. This demonstrates that there is no immediate future employment potential, in line with the requirements of criterion (b). Therefore, the proposal conflicts with criterion (a) but complies with criterion (b), and given the limited employment contribution the site makes to the local area at present, I attribute limited weight to the overall conflict with Policy EMP1 of the NP.

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<sup>10</sup> Initially carried out by Godfrey-Payton Chartered Surveyors and their report subsequently independently reviewed by Webb Developments

<sup>11</sup> Offer made in writing on 19<sup>th</sup> March 2021

30. The Framework seeks to significantly boost the supply of homes regardless of the fact that the Council are able to demonstrate a five-year housing land supply. The proposal comprises a windfall development which would contribute to boosting the supply of housing over and above the basic requirement, as well as making an effective use of brownfield land in line with paragraph 117 of the Framework. A small proportion of the site outside the settlement boundary would not harm the countryside. In the circumstances of this case, housing in this location would align with the spatial strategy for the area. The proposal would be in compliance with Policies SS1 and GD2 of the Local Plan and Policies H1, H2 and H3 of the NP.
31. Acknowledging the limited conflict with Policy EMP1 of the NP, when read as a whole, I find that the development plan is in support of the scheme. Reflecting section 38(6) of the Planning and Compulsory Purchase Act, 2004, the proposed development, which accords with an up-to-date Local Plan, should be approved, unless other material considerations indicate otherwise. I find no other material considerations lead me to a conclusion in this instance other than in accordance with the development plan read as a whole.

### **Other Matters**

32. The layout of the development would ensure sufficient space for cars to be parked off the street, but a number of plots would include tandem parking which would be contrary to Policy T1 of the NP. However, the subtext to this Policy highlights particular parking concerns in the village centre, and in this case the appeal site lies away from the village centre and the main road (Leicester Lane). In any event, I visited the recently constructed housing estate adjacent to the site and saw several examples of tandem parking, thus the proposal would not be out of character in this respect. It is noteworthy that the Highway Authority raise no objections to the proposal in this regard and neither do the Council. Therefore, limited weight is attributed to the conflict with Policy T1 of the NP, insufficient to result in conflict with the development plan taken as a whole.
33. In addition, I have no detailed evidence to suggest that the proposal, in combination with other recent developments, would lead to unacceptable highway safety impacts nor that residual cumulative impacts on the road network would be severe.
34. Even though part of the access lies within the Great Bowden Conservation Area (CA), it makes a limited contribution to the significance of the CA. The proposal, to create a new access road in a similar location, would not harm the significance of the CA. Given the well screened nature of the site and the surrounding context, the proposed housing would not affect important views into, or the wider setting of, the CA, to the extent that it would cause harm. In reaching my conclusion and because part of the appeal site lies within the CA, I have paid special attention to the requirements of S72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
35. I also find nothing objectionable about the impact the proposal would have on the countryside. The proposal would lie adjacent to modern housing with a similar design and appearance so it would not appear out of character with the area. When viewed from footpaths close to the site in open countryside to the north and east, the presence of existing hedgerows and additional tree planting (details of which could be secured by condition) would soften the impact of the

development. Given that the existing site and associated buildings are partially visible from these footpaths, the proposal would not be detrimental to the character and appearance of the area over and above the existing situation.

36. Whilst the proposal would generate additional demand on local schools, a detailed breakdown of local school capacity has been provided by the County Council which forecasts that local schools could accommodate the demand generated by the development.
37. Several other concerns have been raised by local residents, including potential contaminated land and flood risk issues, and the potential for construction effects of the development to adversely affect living conditions of nearby residents. However, adverse effects on the environment and human health could be mitigated by the imposition of planning conditions, as set out in the relevant section of this report. Moreover, the effects of construction traffic, noise and dust could also be appropriately controlled through the imposition of a planning condition.
38. I have been referred to a proposal for housing which was refused planning permission by the Council and subsequently dismissed on appeal<sup>12</sup>. However, whilst the case has some similarities with the one before me, unlike the proposal, it involved development on a greenfield site in the countryside. Therefore, the policy context was markedly different. Consequently, I am not satisfied that the circumstances of this case are sufficiently similar to the appeal scheme such that it would warrant me reaching a different conclusion on the main issues.
39. I conclude that none of the matters discussed in this section of my decision adds significantly to the case for or against the appeal.

### **Planning Obligation and Conditions**

40. A signed S106 UU has been provided and includes obligations relating to the provision of public open space, 11 affordable housing units, sustainable travel options for future residents and monetary contributions to local waste management and community facilities.
41. The Council have evidenced policy and/or local requirements in terms of each of the provisions. They have also submitted a statement confirming that they are satisfied with the appellant's UU, and that each of the provisions would mitigate the impact of the development on the different forms of local infrastructure. No substantive evidence has been provided questioning the necessity or viability of these obligations.
42. The obligations are directly related to the development proposed, are fairly and reasonably related in scale and kind, and are necessary to make the development acceptable. The proposal would therefore comply with the requirements of Regulation 122 of the CIL Regulations<sup>13</sup> and the tests set out in paragraph 56 of the Framework.
43. The Council have suggested a number of planning conditions which I have considered against the relevant guidance contained within the Planning Practice

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<sup>12</sup> Appeal reference - APP/F2415/W/19/3233195

<sup>13</sup> Community Infrastructure Levy Regulations 2010 (as amended)

Guidance (the PPG). I have amended some of them for clarity and in order to meet the PPG, and to avoid repetition.

44. I have applied the standard '3 year' time limit condition, and the 'approved plans' and 'materials' condition, in the interests of certainty and to preserve the character and appearance of heritage assets.
45. The Council suggests conditions to ensure that visibility splays from the proposed site access can be retained in perpetuity. Based on the submitted drawings and my site visit, acceptable and unobstructed visibility splays in either direction along Leicester Lane appear achievable. However, there are insufficient details relating to the ownership of the land required to achieve the visibility splays<sup>14</sup>. As a result, I am not satisfied that a condition could be imposed to control future encroachment into the visibility splays. At the same time, most of the land within the visibility splays appears to comprise grass verge and tarmac which significantly diminishes the prospect of visibility for car drivers and pedestrians being unacceptably obscured in future, regardless of land ownership. Therefore, for these reasons, I find that such conditions are not necessary.
46. Even though the site constitutes brownfield land, the works to construct the development could disturb ground where archaeological remains lie. A condition is required in order to ensure any remains of archaeological importance are recorded in the interests of the historic environment. Conditions are also required in order to deal with potentially contaminated land, in the interests of the environment. A Construction Management Plan is also necessary so that highway safety and the living conditions of nearby occupiers are not unacceptably compromised, but I have amended the specific requirements of this condition from those suggested by the Council in order to ensure it meets the 6 'tests' contained in the Framework<sup>15</sup>. All of these conditions are 'pre-commencement', required so that measures can be put in place before any development starts on site as any construction works, without satisfying the requirements of these conditions, could result in unacceptable effects.
47. A pre-commencement condition is also required in relation to surface water drainage. This is required up front because it would establish the surface water drainage strategy which is likely to require works below ground. If such details were required after the development and building works had taken place, it may affect the feasibility of installing an appropriate surface water drainage system. Therefore, the condition is in the interests of adequate environment management and flood protection.
48. As one of the proposed plots includes a habitable room window close to the rear garden of a neighbouring plot, it is necessary to impose a condition requiring obscure glazing in order to prevent unacceptable overlooking of the neighbour.
49. Conditions relating to landscaping and landscape management are required in the interests of the character and appearance of the area in the long term. The submission of a biodiversity management plan is required in order to detail mitigation measures included in the submitted ecological appraisal, particularly

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<sup>14</sup> Shown on plan ref - 541.0005.002 Rev A

<sup>15</sup> Paragraph 55

in relation to bats and birds. As a bat roost has been identified in one of the existing buildings, details of mitigation are required before development commences so as to ensure they are sufficient to compensate for any disturbance to bat habitat. There is also opportunity to provide biodiversity enhancement, in line with the Framework.

50. A condition is recommended by the Council in order to provide a pedestrian link to a public right of way which lies outside the site boundary to the east. However, such a connection would involve crossing third party land and neither the appellant nor the Council were able to assure me that such a link would be deliverable. As a result, the condition would not be reasonable or enforceable and I have not imposed it.
51. Approved plans include details of the materials to be used in the construction of the internal roads and private driveways. Therefore, additional conditions in this respect are not necessary. However, it is necessary to impose a condition to ensure that all parking spaces are implemented prior to occupation of each respective dwelling, in the interests of highway safety.
52. I have also imposed a condition requiring the submission of foul water drainage details as the development involve the provision of a pumping station, along with infrastructure, the routing and specification of which is unclear. This condition is required in the interests of health, living conditions of neighbours and the natural environment, in accordance with paragraph 180 of the Framework.
53. Finally, no details of boundary treatments have been provided. In order to ensure the privacy of future occupants is not compromised, and in the interests of the character and appearance of the area, a condition requiring the submission of such details is necessary.

### **Conclusion**

54. For the reasons given above, the appeal is allowed subject to the following conditions.

*Matthew Woodward*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 3367-01, 3367-02 Rev U, 3367-03 Rev H, 3367-04 Rev E, 3367-05 Rev F, 3367-06 Rev E, 3367-7 Rev A, 3367-08 Rev A, 3367-29 Rev A, 3367-33, 3131-32 Rev A, 3131-31, 3367-23 Rev C, 3367-17 Rev C, 3367-16 Rev B, 3367-26, 3367-12 Rev C, 3367-14 Rev C, 3367-25 Rev A, 3367-21 Rev C, 3367-35, 3367-34, 3367-27 Rev A, 3367-10 Rev C, 3367-28, 3367-24 Rev A, 541.0005.001 Rev A, 541.0005-0002 Rev A, 541.0005.003, 8368-T-01, EWE.2300.01 Rev D, Update Ecological Appraisal – November 2019.
- 3) No development shall take place above slab level until details of all external facing materials to be used in the construction of the buildings have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) No development shall take place until a Written Scheme of Investigation (Archaeology), has been submitted to and approved in writing by the Local Planning Authority. The Written Scheme of Investigation shall include:
  - the programme and methodology of site investigation and recording;
  - the programme for post investigation assessment;
  - the provision to be made for analysis of the site investigation and recording;
  - the provision to be made for publication and dissemination of the analysis and records of the site investigation;
  - the provision to be made for archive deposition of the analysis and records of the site investigation;
  - the nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.The development shall be carried out in accordance with the approved Written Scheme of Investigation.
- 5) No development (except demolition) shall commence until a Risk Based Land Contamination Assessment has been submitted to and approved in writing by the Local Planning Authority, in order to ensure that the land is fit for use as the development proposes. The Risk Based Land Contamination Assessment shall be carried out in accordance with:
  - BS10175:2011+A2:2017 Investigation Of Potentially Contaminated Sites Code of Practice;
  - BS8576:2013 Guidance on Investigations for Ground Gas – Permanent Gases and Volatile Organic Compounds (VOCs) and
  - CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004.
  - Any documents which supersede the above.

Should any unacceptable risks be identified in the Risk Based Land Contamination Assessment, a Remedial Scheme and a Verification Plan shall be submitted to and approved in writing by the Local Planning Authority. The Remedial Scheme shall be prepared in accordance with the requirements of:

- CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004.
- BS 8485:2015+A1: Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings.
- Any documents which supersede the above.

The Verification Plan shall be prepared in accordance with the requirements of:

- Evidence Report on the Verification of Remediation of Land Contamination Report: SC030114/R1, published by the Environment Agency 2010.
- CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004.
- BS 8485:2015+A1: Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings.
- CIRIA C735, "Good practice on the testing and verification of protection systems for buildings against hazardous ground gases" CIRIA, 2014.
- Any documents which supersede the above.

The development shall be carried out in accordance with the approved details.

- 6) If, during the course of development, previously unidentified contamination is discovered, development must cease on that part of the site and it shall be reported in writing to the Local Planning Authority within 10 working days. Prior to the recommencement of development on that part of the site, a Risk Based Land Contamination Assessment for the discovered contamination (to include any required amendments to the Remedial Scheme and Verification Plan) shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be implemented in accordance with the approved details and retained as such in perpetuity.
- 7) Prior to occupation of the completed development, or part thereof, either
  - a) If no remediation was required by Condition No.5 a statement from the developer or an approved agent confirming that no previously identified contamination was discovered during the course of development, or part thereof, is received and approved in writing by the Planning Authority, or b) A Verification Investigation shall be undertaken in line with the agreed Verification Plan for any works outlined in the Remedial Scheme and a report showing the findings of the Verification

Investigation relevant to the whole development, or part thereof, shall be submitted to and approved in writing by the Local Planning Authority. The Verification Investigation Report shall:

- Contain a full description of the works undertaken in accordance with the agreed Remedial Scheme and Verification Plan;
  - Contain results of any additional monitoring or testing carried out between the submission of the Remedial Scheme and the completion of remediation works;
  - Contain Movement Permits for all materials taken to and from the site and/or a copy of the completed site waste management plan if one was required;
  - Contain Test Certificates of imported material to show that it is suitable for its proposed use;
  - Demonstrate the effectiveness of the approved Remedial Scheme; and
  - Include a statement signed by the developer, or the approved agent, confirming that all the works specified in the Remedial Scheme have been completed.
- 8) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for:
- i) The parking of vehicles of site operatives and visitors;
  - ii) Loading and unloading of plant and materials;
  - iii) Storage of plant and materials used in constructing the development;
  - iv) Measures to control the emission of dust and dirt during construction;
  - v) A scheme for recycling/disposing of waste resulting from demolition and construction works;
  - vi) Hours of construction work and site opening times.
  - vii) Measures to manage surface water run-off.
- The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 9) No development shall take place until surface water drainage details, based on the drainage strategy set out in the Flood Risk Assessment (ref – Final Report Rev B February 2020), and a programme of works for implementation and maintenance, have been submitted to and approved in writing by the local planning authority. The approved details shall be implemented in full prior to the occupation of any dwelling.
- 10) The first-floor side lounge window to Proposed unit 12 shall be glazed with obscure glass (at a minimum of Level 3) only and the window shall be permanently maintained with obscure glazing at all times thereafter.
- 11) Prior to the first occupation of any of the dwellings hereby approved, a Landscape Scheme shall be submitted to and approved in writing by the Local Planning Authority. The Landscape Scheme shall include the following details:

- a statement setting out the design objectives and how these will be delivered;
- planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment);
- schedules of plants noting species, plant sizes, types, forms and proposed numbers/densities where appropriate;
- earthworks showing existing and proposed finished levels or contours and finished floor levels;
- an Implementation and Management Programme, including phasing of work where relevant.

Thereafter, the landscape scheme shall be implemented in accordance with the approved details.

- 12) All planting, seeding and turfing comprised in the approved Landscape Scheme shall be completed in the first planting and seeding season prior to, or immediately following, the first occupation of the building to which it relates. All planting, seeding and turfing for the areas not within individual plots as comprised in the approved Landscape Scheme shall be completed in the first planting and seeding season prior to, or immediately following, first occupation of the last dwelling to be completed, or completion of the development, whichever is sooner. Any trees, shrubs, hedges or plants which, within a period of five years from their date of planting, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 13) Prior to the first occupation of any of the dwellings hereby approved a Landscape Management Plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas (other than privately owned domestic gardens or areas to be adopted by the Local Highway Authority), shall be submitted to and approved in writing by the Local Planning Authority. The Landscape Management Plan shall include:
  - (a) All areas of formal and informal open space within the development;
  - (b) Green Infrastructure linkages, including pedestrian and cycle links.The landscaped areas, once implemented, shall be maintained in accordance with the approved Landscape Management Plan.
- 14) No development shall take place until a Biodiversity Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall be based on the conclusions of the 'Ecological Appraisal' dated November 2019, and shall include proposed timings for the works. The development shall be carried out in accordance with the approved details.
- 15) No part of the development shall be occupied until the car parking spaces shown on drawing No. 3367-02 Rev U have been provided in full and are available for use for the plot numbers specified. The car parking areas shall thereafter be kept available for the parking of cars at all times.
- 16) Details of boundary treatments for each plot shall be submitted to and approved in writing prior to the occupation of each respective dwelling.

The boundary treatment shall be implemented in full for each plot prior to the occupation of each respective dwelling.

- 17) Prior to the occupation of any dwelling, a scheme for the provision and implementation of foul drainage shall be submitted for the approval of the Local Planning Authority. No dwelling shall be occupied until the approved scheme has been implemented.

*End of Schedule*

Richborough Estates

## **APPEARANCES**

### **FOR THE APPELLANT:**

|                   |                        |
|-------------------|------------------------|
| Satnam Choongh    | Barrister              |
| Sarah Butterfield | Agent                  |
| Adrian Moore      | Agent                  |
| Ned Fox           | Barwood Homes          |
| Jamie Gibbins     | Barwood Land           |
| Andy Morehen      | Barwood Homes          |
| Richard Bufton    | Bowden Fencing         |
| Lizzie Marjoram   | Bird, Wilford and Sale |
| Jim Jacobs        | Godfrey Payton         |
| Robert Webb       | Webb Developments      |

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

|               |                   |
|---------------|-------------------|
| Naomi Rose    | Planning Officer  |
| Lance Wiggins | Landmark Planning |

### **INTERESTED PARTIES:**

|                            |                                                                             |
|----------------------------|-----------------------------------------------------------------------------|
| Ms Carolyn Ford            | On behalf of Leicester Lane Residents Group                                 |
| Mr Peter Mitchell          | Chair of Great Bowden Neighbourhood Plan<br>Monitoring and Review Committee |
| Mr Nick Shaw               | Observer                                                                    |
| Mr Councillor Phil Knowles | Local Councillor                                                            |