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## Appeal Decision

Hearing Held on 21 November 2023

Site visit made on 21 November 2023

**by John Wilde C. Eng M.I.C.E.**

an Inspector appointed by the Secretary of State

Decision date: 18<sup>th</sup> January 2024

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**Appeal Ref: APP/K2420/W/23/3323113**

**Land east of Stoke Road and north of Normandy Way (A47), Hinckley**

- 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 Richborough Estates and Mr and Mrs Adcock against the decision of Hinckley & Bosworth Borough Council.
  - The application Ref 22/00318/OUT, dated 31 March 2022, was refused by notice dated 2 May 2023.
  - The development proposed is the erection of up to 475 dwellings, including public open space, land reserved for a primary school together with future expansion land (Use Class F1(a)), drainage, landscaping and associated infrastructure.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of up to 475 dwellings, including public open space, land reserved for a primary school together with future expansion land (Use Class F1(a)), drainage, landscaping and associated infrastructure at Land east of Stoke Road and north of Normandy Way (A47), Hinckley in accordance with the terms of the application, Ref 22/00318/OUT, dated 31 March 2022, subject to the conditions set out in the attached schedule.

### Procedural matters

2. The application was originally refused by the Local Planning Authority, Hinckley and Bosworth Borough Council (the Council) on 2 May 2023 at the behest of the Local Highway Authority. However, following the submission of further information and evidence during the appeal process the Council notified the Planning Inspectorate by email on 15 September that it would not continue to contest the application. As the Hearing had been advertised, I nonetheless opened it at the advertised date and time, in the interest of fairness to all parties, including interested persons.
3. On the 19 December the Government published a revised National Planning Policy Framework (the Framework). Since the publication of this I have received an addendum to the statement of Common Ground signed by both main parties. This confirms that the publication of the revised Framework has no material implications on the decision making context associated with this appeal. I have therefore continued on this basis.

4. By the date of the Hearing the main issues shown below had therefore been superseded. Irrespective of this I have outlined them for completeness and will briefly discuss them under my reasoning section.

### **Main Issues**

5. Whether or not:-

- 1) Safe and suitable access to the proposed development would be available for all users.
- 2) The proposed development would result in unacceptable impacts on the transport network.
- 3) Contributions to mitigate the impacts of the proposed development are a necessary and reasonable requirement, and whether such contributions have been made.

### **Reasons**

6. The appeal site lies at the northern boundary of Hinckley and comprises five interconnecting fields east of Stoke Road and north of Normandy Way, with a further field west of Stoke Road. The site slopes up to the east from Stoke Road. To the south of the site the area is built up with a superstore and a public house amongst other development. The site would gain access from a new three arm roundabout on Stoke Road which in turn would be connected to Normandy Road (A47) via an existing roundabout.

#### *Highway matters (main issues 1 and 2)*

7. At the time that the Council refused the application the Officer's report to committee noted that discussions between the appellant and the Local Highway Authority (LHA) regarding the transport strategic modelling were underway but had not been satisfactorily concluded. This formed the basis of the Council's decision to refuse planning permission on highway grounds.
8. However, during the appeal process these discussions were satisfactorily concluded with the appellants' submitting data derived using the Leicestershire County Council Pan Regional Transport Model (PRTM). This data showed that there would be no unacceptable impacts relating to either highway safety or on the network in transport terms. Consequently the Council withdrew their objection to the proposed development.
9. I note that National Highways have submitted a holding objection to a duplicate application. However, they have not done so to the application the subject of this appeal, and they did not attend the Hearing to give evidence as to why they have lodged a holding objection to the duplicate application.
10. Consequently, I have no evidence before me to counter the position of the LHA and Council and therefore conclude that the proposed development would not conflict with paragraphs 114 and 115 of the National Planning Policy Framework. These require, amongst other things, that safe and suitable access can be achieved to the site for all users, and that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

### *Contributions*

11. I have been supplied by the appellants with a signed and dated Planning Agreement pursuant to Section 106 of the Town and Country Planning Act. This agreement would result in the provision of Affordable Dwellings on the development as well as contributions towards, amongst other things, off site open space, health care, libraries, early years education, secondary and post 16 education, SEND education, and waste management.
12. Further to this I have also been provided with Community Infrastructure Levy (CIL) Compliance Statements from both the LHA and the Council. These compliance statements show the policy derivation for the requested contributions and also the breakdown of the actual amounts. To my mind they show that the Obligations 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. It follows that CIL regulation 122 is complied with and that I can take the Planning Agreement into account in arriving at my decision. This therefore means that the impacts of the proposed development would be mitigated.

### *Conditions*

13. The conditions that I have imposed were included within the Statement of Common Ground and discussed at the Hearing. In the interest of the final appearance of the development I have imposed conditions relating to proposed ground floor levels, external lighting, landscaping and trees, waste and recycling storage and collection and colour and types of materials to be used in the external finishes of the development.
14. For reasons of protecting and enhancing biodiversity I have imposed a condition prohibiting any tree or shrubs being removed during the bird nesting season as well as a condition requiring an ecological mitigation, compensation and enhancement strategy to be produced by the appellant and approved by the Council. For similar reasons a further condition requires a 25% net gain in area habitat value.
15. To prevent future risks from contaminated ground I have imposed conditions requiring a ground condition assessment and a scheme for any remediation works. In the interests of the amenity of local residents I have imposed conditions requiring a Construction Environmental Construction Plan and a Construction Traffic Management Plan.
16. To prevent flooding during and after construction I have imposed a number of conditions including requirements for a surface water drainage scheme, infiltration testing and hydraulic modelling. In the interest of highway safety I have imposed conditions requiring that access arrangements are completed prior to any occupation of dwellings and that proposed junction and off-site improvements have been implemented.
17. To ensure sustainability I have imposed a condition requiring the submission of a Travel Plan and further ones that will ensure the construction of a footway between the site access and Hinckley Road, Stoke Golding, and a scheme of bus stop infrastructure improvements. I have also imposed a condition requiring that all dwellings are full fibre broadband enabled.

18. As an Archaeological Impact Assessment has confirmed the likely presence of a medieval windmill site, I have imposed a condition requiring the submission of a written scheme of archaeological investigation.
19. To ensure that the building of dwellings is phased in line with the required infrastructure development, I have imposed a condition requiring a phasing plan. Finally, in the interest of certainty, I have imposed a condition detailing the submitted plans.

### **Conclusion**

20. In light of the above, and having taken into account all other matters raised, I conclude that the appeal should be allowed.

*John Wilde*

INSPECTOR

Richborough

### Schedule of conditions

- 1) Application for approval of the reserved matters shall be made to the local planning authority not later than 2 years from the date of this permission.
- 2) 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.
- 3) Details of the appearance; including materials and finishes, landscaping, including treatment of private and public space to enhance or protect the site's amenity through hard (boundary treatments) and soft measures and details of boundary planting to reinforce the existing landscaping at the site edges, layout; including the housing mix, the location of electric vehicle charging points, the way in which buildings, routes and open spaces are provided. This should include a design statement that sets out how consideration has been given to lower density to edges of site and higher density along main routes. and scale of each building proposed in relation to its surroundings, (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.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Site location plan P18-1531\_006 Rev A, Access drawing T19595.001 Rev G. Where these plans include proposed mitigation measures, these shall be implemented in accordance with the approved details, unless otherwise dealt with by condition to follow.
- 5) Any reserved matters application relating to scale or layout shall be accompanied by full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings in relation to existing ground levels. The details shall be provided in the form of site plans showing sections across the site at regular intervals with the finished floor levels of all proposed buildings and adjoining buildings. The development shall be carried out in accordance with the approved levels.
- 6) Any reserved matters application related to landscaping or layout shall be accompanied by a Masterplan and Design Code. The Masterplan shall be informed by a Building for a Healthy Life Assessment.
- 7) No development shall commence on site until a plan detailing the phasing of the permitted development has been submitted to and approved by the Local Planning Authority. The Phasing Plan shall include details of the maximum number of dwellings and other development to be implemented within each phase of the development and include details of relevant off site highway works, including delivery of a Toucan crossing on the A47 serving the eastern part of the development as generally shown on drawing number T19595.006. The development shall be implemented in accordance with the approved Phasing Plan.
- 8) No development shall commence until representative samples of the types and colours of materials to be used on the external elevations of the proposed dwellings and garages have been deposited with and

- approved in writing by the local planning authority, and the scheme shall be implemented in accordance with those approved materials.
- 9) Notwithstanding the recommendations within the Phase 1 Ground Condition Assessment no development approved by this permission shall be commenced until a scheme for the investigation of any potential land contamination on the site has been submitted to and agreed in writing by the local planning authority which shall include details of how any contamination shall be dealt with. The approved scheme shall be implemented in accordance with the agreed details and any remediation works so approved shall be carried out prior to the site first being occupied.
  - 10) If during development, contamination not previously identified is found to be present at the site, no further development shall take place until an addendum to the scheme for the investigation of all potential land contamination and implementation is submitted to and approved in writing by the Local Planning Authority which shall include details of how the unsuspected contamination shall be dealt with. Any remediation works so approved shall be carried out in accordance with the agreed implementation period.
  - 11) Development shall not commence until details of all trees, shrubs and hedges to be retained, including any trees located outside but adjacent to the site boundary, together with the means of protecting them from damage during the carrying out of the development have been submitted to and approved in writing by the local planning authority. The approved means of protection shall be installed prior to the commencement of development and shall remain in place until after the completion of the development.
  - 12) During the construction period, none of the trees or hedges indicated to be retained shall be cut down, uprooted or destroyed, nor shall be topped or lopped other than in accordance with the approved plans, without the written approval of the Local Planning Authority. If any of the trees or hedges to be retained are removed, uprooted or destroyed or dies, a replacement shall be planted at the same place and that tree or hedge shall be of such size and species, and shall be planted at such time, as may be specified in writing by the Local Planning Authority.
  - 13) No trees and shrubs shall be removed on site during the bird nesting season (1st March - 31st July inclusive).
  - 14) No development shall commence on site until a Construction Environmental Management Plan has been submitted to and approved in writing by the local planning authority and the approved details shall then remain in force throughout the construction period. The plan shall detail how, during the site preparation and construction phase of the development, the impact on existing and proposed residential premises and the environment shall be prevented or mitigated from dust, odour, noise, smoke, light and land contamination. The plan shall detail how such controls will be monitored and a procedure for the investigation of complaints. Site preparation and construction work shall be limited to between 0730 to 1800 Monday to Friday and 0800 to 1300 on Saturdays. There shall be no working on Sundays and Bank Holidays. The CEMP shall include the provision of mitigation measures for construction phase dust

emissions as set out within the Air Quality Assessment prepared by BWB Consulting.

- 15) No development shall commence on the site until such time as a construction traffic management plan, including as a minimum, details of the routing of construction traffic, wheel cleansing facilities, vehicle parking facilities and a timetable for their provision, has been submitted to and approved in writing by the local planning authority. The construction of the development shall thereafter be carried out in accordance with the approved details and timetable.
- 16) Prior to the commencement of development details of external lighting shall be submitted to and approved in writing by the Local Planning Authority. This information shall include a layout plan with beam orientation and a schedule of equipment proposed in the design (luminaire type, mounting height, aiming angles and luminaire profiles). The lighting shall be installed, maintained and operated in accordance with the approved details.
- 17) Prior to the occupation of any of the dwellings on site, full fibre broadband connectivity shall be made available and ready for use.
- 18) No development shall commence on site until a scheme that makes provision for waste and recycling storage and collection across the site has been submitted in writing to and approved in writing by the Local Planning Authority. The details should address accessibility to storage facilities and adequate collection point space at the adopted highway boundary. The approved scheme shall be implemented in accordance with the agreed details.
- 19) No development approved by this planning permission shall take place until such time as a surface water drainage scheme has been submitted to, and approved in writing by the Local Planning Authority. The development must be carried out in accordance with these approved details and completed prior to first occupation.
- 20) No development approved by this planning permission shall take place until such time as details in relation to the management of surface water on site during construction of the development has been submitted to, and approved in writing by the Local Planning Authority. The construction of the development must be carried out in accordance with these approved details.
- 21) No occupation of the development approved by this planning permission shall take place until such time as details in relation to the long-term maintenance of the surface water drainage system within the development have been submitted to and approved in writing by the Local Planning Authority. The surface water drainage system shall then be maintained in accordance with these approved details in perpetuity.
- 22) No development approved by this planning permission shall take place until such time as infiltration testing has been carried out (or suitable evidence to preclude testing) to confirm or otherwise, the suitability of the site for the use of infiltration as a drainage element, has been submitted to and approved in writing by the Local Planning Authority.
- 23) No approval of reserved matters shall take place until such time as further hydraulic modelling has been undertaken which demonstrates

that the proposals including the watercourse diversions do not increase flood risk off-site and demonstrate safe access and egress during a peak design event flood condition.

- 24) No development (including vegetation clearance) shall take place until an ecological mitigation, compensation and enhancement strategy has been submitted to and approved in writing by the LPA. This should include details of how measurable Biodiversity Net Gain will be achieved. Any mitigation, compensation or enhancement measures need to be clearly shown on all relevant submitted plans/elevations, specifically a mitigation plan should be produced to indicate how specific enhancements for barn owls will be achieved. All works are to proceed strictly in accordance with the approved scheme.
- 25) No development approved by this permission shall be commenced until a scheme that demonstrates a Biodiversity Metric 3.1 calculation achieving a minimum 25% net gain in area habitat value has been submitted to and agreed in writing by the Local Planning Authority. The approved scheme shall be implemented in accordance with the agreed details.
- 26) No part of the development hereby permitted shall be occupied until such time as the access arrangements shown on drawing number T19595 001 Rev G have been implemented in full.
- 27) Notwithstanding the submitted plans, no development shall commence until a scheme has been submitted to the Local Planning Authority and approved in writing that details a new footway, 2m in width where achievable, surfaced in a bituminous material with uncontrolled crossing points as appropriate between the site access and Hinckley Road, Stoke Golding. Once approved, the approved scheme shall be implemented and available for use prior to first occupation of any dwelling on the development hereby permitted.
- 28) Notwithstanding the submitted plans, no development shall commence until a scheme of bus stop infrastructure improvements to Stoke Road and Normandy Way consisting of hardstanding, pole and flag, timetable case, shelter, raised kerb and provision of digital information has been submitted to the Local Planning Authority and approved in writing. Once approved, the scheme of improvements shall be implemented prior to the first occupation of the development hereby permitted.
- 29) No part of the development hereby permitted shall be occupied until such time as the junction, pedestrian access and infrastructure works shown on Dwg No T19595-002 Rev E Stoke Road/A47 Proposed Junction Improvements have been implemented in full.
- 30) No part of the development hereby permitted shall be occupied until such time as either the offsite works shown on Dwg No T19595-007 Rev C Ashby Rd/A47 Proposed Junction Improvements have been implemented in full, or an alternative scheme that mitigates the impacts of the development has been submitted to and approved in writing by the local planning authority and thereafter implemented in accordance with the approved scheme.
- 31) No part of the development hereby permitted shall be first occupied until an amended full Travel Plan which sets out actions and measures with quantifiable outputs and outcome targets has been submitted to and

agreed in writing by the Local Planning Authority. Thereafter the agreed Travel Plan shall be implemented in accordance with the approved details.

- 32) No development shall commence until a written scheme of archaeological investigation (WSI) has been submitted to and approved by the local planning authority. For land that is included within the WSI, no demolition/development shall take place other than in accordance with the agreed WSI, which shall include the statement of significance and research objectives, and

- The programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works
- The programme for post-investigation assessment and subsequent analysis, publication & dissemination and deposition of resulting material. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the WSI.

Richborough

## **APPEARANCES**

### **FOR THE APPELLANT:**

Ms Sarah Reid KC - Kings Chambers

Mr Andrew Gore MRTPI – partner at Marrons

Mr James Parker MCIHT MILT – Director at Hub Transport Planning

Mr Richard Lomas MRTPI – Director at Richborough Developments

Mr Oliver Martin, Solicitor – Partner at Bickley Martin

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

Mr Christopher Brown

### **DOCUMENTS HANDED IN DURING THE HEARING**

- 1 List of appellant attendees
- 2 Hinckley and Bosworth Borough Council CIL Compliance Statement