



Appeal Decision

Hearing held on 30 July 2024

Site visit made on 31 July 2024

by Diane Cragg DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 September 2024

Appeal Ref: APP/P1045/W/24/3341703

Land North of Old Hackney Lane, Hackney, Matlock, Derbyshire DE4 2QJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Bowsall Developments Limited and EMH Group against the decision of Derbyshire Dales District Council.
 - The application Ref is 23/00535/FUL.
 - The development proposed is erection of 27 affordable dwellings, open space, landscaping, highway improvements and associated works.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of 27 dwellings, open space, landscaping, highway improvements and associated works at land north of Old Hackney Lane, Hackney, Matlock, Derbyshire DE4 2QJ in accordance with the terms of the application Ref 23/00535/FUL subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Bowsall Development Limited and EMH Group against Derbyshire Dales District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. It was confirmed at the Hearing that the appeal site is within the part of Darley Dale known as Lower Hackney and that Policy NP7 of the Darley Dale Neighbourhood Plan (DDNP) is relevant to reason for refusal 2 and not Policy NP8. The Council also refers to Policy NP17 of the DDNP in its statement of case and I have had regard to this policy in my decision.
4. A Written Ministerial Statement (WMS), 'Building the homes we need,' and consultation on proposed changes to the National Planning Policy Framework (the Framework), were published on 30 July 2024. I have sought the views of the main parties on these and had regard to any comments in the determination of this appeal.

Main Issues

5. Prior to the Hearing the Council withdrew its objection to the drainage details, even so, the Council's suggested condition regarding the drainage hierarchy is not agreed. Furthermore, the appellants do not agree that the contribution

towards education facilities meets the tests in the Framework and regulation 122(2) of the Community Infrastructure Levy (CIL) Regulations.

6. Therefore, the main issues are:

- the effect of the development on the character and appearance of the area;
- whether the appeal site can be developed independently of the wider allocated housing site HC2(i) having regard to development plan policies and the proposed development's use of land and design details;
- whether a financial contribution should be provided for education facilities;
- whether the proposal provides for surface water storage in accordance with the sustainable urban drainage systems (SUDs) hierarchy.

Reasons

Character and appearance

7. The appeal site comprises about 0.89 ha of land adjacent to Old Hackney Lane. It is identified as being within the landscape character type settled valley pasture in the Landscape Character of Derbyshire publication 2013. The site is a small part of the broader character area but displays some features of the landscape type being a moderate to steeply sloping site of pastoral farmland partly defined by stone walls. However, the appeal site is at the edge of the settlement adjacent to the Darley House Estate and occupies the field next to Old Hackney Lane. Views of the land are largely local with limited visibility from the public footpath to the southeast and from Darley Road, where the topography is such that the outlook from properties on that road is dominated by the landscape on the opposite side of the valley.
8. From the other side of the Derwent Valley the appeal site would be indistinct and seen as part of the built-up settlement edge. The land has been assessed as having high landscape sensitivity, but overall, because of the proximity of the appeal site to existing development on Old Hackney Lane and its position on the lower part of the valley slope, the site's landscape sensitivity is moderate.
9. Old Hackney Lane is characterised by a wide mix of dwelling types. Properties generally face the street frontage and are constructed in a range of materials. At the entrance to the lane properties on the southwest side are close to the road frontage, mostly constructed at road level and predominantly dwellings of stone and render with elements of vernacular design. On the same side of Old Hackney Lane closer to the appeal site there are relatively modern mostly single storey properties constructed of stone or reconstituted stone and render with garages set forward on plots. The hospital car park opposite the appeal site has an urban appearance due to its formal arrangement and hard surfacing. Natural stone boundary walls to both sides of Old Hackney Lane enclose property boundaries and are a unifying, attractive feature of the lane frontage.
10. The Darley Dale Estate is adjacent to the appeal site and comprises a mix of house types. Dwellings accessed via the estate facing Old Hackney Lane sit

above road level and are generally set back from the lane frontage, broadly following the line of the angled stone two storey house at the estate entrance. The existing properties next to the boundary of the appeal site comprise detached dwellings with single storey eaves heights and pitched roofs, some with first floor living accommodation in the roof space. The level at which these dwellings are sited reflects the slope of the land along the joint boundary.

11. The proposed estate road would be designed to adoptable standards and would have a straight alignment rising along its length to accommodate the site's topography. Its appearance should not be unexpected given the land slope and highway requirements. Views through the site from the road frontage would be towards the proposed landscape buffer and open countryside beyond. The frontage wall would be reconstructed along a new line to accommodate the widening of the footpath and would continue to enclose the plot boundary to Old Hackney Lane and contribute to the street scene.
12. Sited on a similar building line to existing properties, the proposed two storey dwellings would provide a well-defined frontage to Old Hackney Lane. Their siting would be above road level and mostly above the level of the re-positioned front boundary wall. However, constructed of stone or with stone front facades, (the design and access statement refer to the use of natural local stone), the dwelling designs reference the character of the vernacular buildings within Old Hackney Lane. While their scale would be different to those immediately adjacent, there is sufficient variety of building designs within the street scene for the proposed dwellings to assimilate into their surroundings.
13. Within the site, proposed dwellings would vary in height and design, but this would not be incongruous with the varied surrounding house types. A sense of enclosure would be maintained along the estate road frontage with landscaping and retaining walls. Dwellings would rise with the slope of the land consistent with the adjacent development. Proposed two storey dwellings close to the remainder of the allocation are largely set off the boundary, with areas of open space and gardens breaking up the built form.
14. The gable ends of plots 19 and 27 would be close to this open boundary but I see no reason why development on the adjacent allocated land could not be designed to respond to their siting and design. Even if the adjacent land were not to be developed, the new edge created by the development would be landscaped and would not be inconsistent with the edge of settlement location.
15. The existing development along Old Hackney Lane is already a component of the view on the approach to the site towards the junction. The primary characteristics and distinctive features within the landscape, including the stone walls, existing trees, and sloping nature of the site would be retained. The scheme has been thoughtfully designed to create an addition to the settlement in a way that respects the local characteristics of the lane and responds to the surrounding landscape.
16. Consequently, I conclude that the proposed development would not detract from the character and appearance of the area. It would accord with Policies S3, PD1, PD5 of the Derbyshire Dales Local Plan adopted December 2017 (DDLDP) and Policies NP1, NP7, NP11 and NP17 of the DDNP where these policies seek to ensure that development contributes to the landscape character and reflects existing development patterns.

Housing allocation

17. Policy HC2 of the DDLP identifies housing land allocations where the Council will work with developers and the local community to bring forward sustainable development in accordance with the other policies in the local plan. Under Policy HC2, the appeal site forms part of housing allocation HC2(i) which is located within the settlement boundary of Matlock. Nevertheless, the appeal site is within the parish of Darley Dale. Darley Dale is identified as a local service centre - second tier in Policy S2 of the DDLP which has the ability to support sustainable patterns of living because of the current levels of facilities, services and employment opportunities that are available.
18. The appeal site is part of a wider housing allocation with an area of land of 1.68Ha. Through the site selection process, the two sites were considered independently because they are in separate ownership. However, the site is a single allocation, and the Council says that the site selection and assessment process concluded that the sites off Old Hackney Lane should be developed on a comprehensive basis as one site. At the Hearing, the Council was unable to direct me to reasons why the two sites were a single allocation, but responses to the application indicate that at the time of the site assessments a single access was the preferred approach for development of the two sites.
19. Policy S1 of the DDLP seeks to improve the economic, environmental, and social conditions of the area wherever possible. The policy sets out that this will be achieved by meeting several criteria including making efficient use of land by optimising the use of sites whilst also reflecting the character, accessibility, and infrastructure capacity of the area and by ensuring that proposals do not prejudice the development potential of an adjacent site or larger area in a comprehensive manner.
20. As part of work on the emerging local plan the appeal site has been assessed for inclusion as an allocation in that plan. While the emerging plan carries little weight at this stage the site assessment identifies that the appeal site can accommodate 27 dwellings and access could be achieved within the site frontage. The parties agree that the density of the proposed development is appropriate. Therefore, there is no reason to conclude that the proposal would not be an efficient use of land.
21. For the reasons I have set out, the layout, design, and landscaping of the proposed development would respond to the landscape character type and the scheme would not detract from the character or appearance of the area.
22. The parties agree that the amount of the proposed open space would be at least policy compliant and that the detailed design of the local area of play (LAP) can be sought by condition. The LAP would be placed centrally within the site and would be framed by residential boundaries. Open space would also be provided adjacent to the site boundaries in locations that would sit comfortably with the surrounding countryside and/or where its location would support an appropriate layout for the dwellings. All areas of open space would be accessible to the future residents of the development.
23. The footpath adjacent to the proposed LAP should be carried through onto the remainder of the allocation, but this could be sought through proposals for development on the adjacent site. Further, the LAP area could be enlarged by a development on the adjacent land, indeed, the current layout for the adjacent

scheme proposes this. In any case, the Council has not drawn my attention to design standards that require open space to be configured in a certain way on this allocation.

24. Regarding drainage, the parties agree that the drainage details are acceptable. I have concluded below that the appellants have adequately considered SUDs in the submission. There is little before me to suggest that SUDs would be feasible were the site delivered as a whole.
25. In the sense that the allocation would be developed as more than one parcel, the development could be considered piecemeal. However, having regard to the relevant criteria in Policy S1 I am satisfied that the development would be an efficient use of land and the proposed scheme would not be sub-optimal in terms of layout, design, landscaping, open space, or sustainable drainage.
26. Moreover, there is a pending application that includes the rest of the allocated land, and the Council acknowledges that a separate access to that land can be accommodated. Further, I am satisfied that the appeal scheme's layout and design next to the shared boundary is acceptable and would not restrict suitable adjacent development. Therefore, the proposal would not prejudice the development potential of the adjacent remaining land and I can see no policy reason for the allocation to be considered on a comprehensive basis.
27. Overall, I conclude that the appeal site can be developed independently of the wider allocated housing site HC2(i) having regard to development plan policies and the proposed development's use of land and design details. The proposal would accord with Policy S1 of the DDLP. It would also accord with the Framework where it seeks to significantly boost the supply of homes, support the provision of affordable housing and where it seeks to promote the development of a good mix of sites by, amongst other things, working with developers to encourage the sub-division of large sites where this could help to speed up the delivery of homes.

Education contribution

28. In June 2023 Derbyshire County Council (DCC) concluded that the normal area primary school, in this case Darley Dale Primary School, would have sufficient capacity to accommodate the 2 infant and 3 junior pupils arising from the proposed development. The Darley Dale Primary School was said to have a net capacity of 210 pupils with 202 currently on roll. It was projected that the number on roll would decrease during the next 5 years to 172. However, DCC also concluded that a financial contribution of £182,656.74 towards the funding of 6 secondary school places at Highfields school would be required.
29. Subsequently, before the Hearing opened DCC clarified that no secondary school contribution would be required but there would be a requirement to provide a primary school contribution of £81,198.44 to fund 4 primary pupil places resulting from the development.
30. The DCC CIL compliance statement concluded that the 4 primary school pupils could not be accommodated at Darley Dale Primary School there being 204 pupils on the roll as at January 2024, and the latest projections show the expected number of pupils on roll to increase to 218 in 5 years' time.
31. Over the year between the two responses from DCC the requirement to provide a contribution towards school places has changed significantly. In terms of the

- primary school requirement now sought the projected number on role in 5 years' time at Darley Dale Primary School has changed from 172 to 218 and the number of pupils arising from the proposed development from 2 infant and 3 junior places to 4 primary school places. The Council, in the absence of a representative from DCC, was unable to clarify the reasons for the change in the figures between the two dates. Further, there was no clarification at the Hearing as to why the appellants' view that there are substantial surplus places at the nearby primary schools is not a reasonable assessment.
32. I accept that the proposed houses would likely bring about greater demand for school places. Access to sufficient choice of school places is also encouraged in local and national policy. However, there is insufficient clarity in the evidence before me about the extent of the local deficiencies in primary education places in the area or the influence the appeal proposal might have on overall capacity.
33. Accordingly, on the evidence before me it has not been demonstrated that the contribution sought would meet all the relevant tests in regulation 122(2) of the CIL regulations (CIL tests) and the Framework. In particular, I cannot be satisfied that the contribution is necessary to make the development acceptable in planning terms and fairly and reasonably related in scale and kind to the development.
34. Furthermore, the appellants' BVA viability report concludes that the effect of requiring an education contribution on a scheme for affordable housing would be to drive the level of subsidy required to deliver the scheme to a point which renders it uncompetitive. Although the report states that it is impossible to identify definitively at what point the scheme would become unfundable, it is the appellants' view that the affordable housing would be at risk of failing to proceed if the education contribution was sought.
35. In its response DCC indicates that if the BVA report's conclusions regarding viability are accepted, DCC would not seek a contribution to education facilities. No further clarification on the Council's stance regarding the BVA report was provided at the Hearing. I see no reason to disagree with the BVA report's conclusions.
36. Overall, therefore, the need for a financial contribution towards education facilities has not been demonstrated. I conclude that the development would not conflict with Policies S7 and S10 of the DDLP where these policies require that infrastructure be in place to meet the needs of the district. Further, there would be no conflict with the Framework where it seeks to ensure that sufficient choice of school places is available to meet the needs of existing and new communities.

Drainage

37. The Council has confirmed that it no longer wishes to defend its reason for refusal related to drainage as the Lead Local Flood Authority has no objections to the drainage details subject to conditions. I acknowledge the third-party concerns about surface water drainage. Even so, I see no reason to disagree with the Council that the site can be suitably drained subject to conditions covering the detailed design of a drainage scheme.
38. However, one of the suggested conditions would require demonstration that the proposed destination for surface water accords with the drainage hierarchy

in the Planning Practice Guidance (PPG). The appellants consider that such a condition would not be reasonable or necessary considering the agreed drainage strategy.

39. The appellants have clarified through a percolation test that infiltration of surface water is not possible. It was also confirmed at the Hearing that there are no surface water bodies suitable for the site to drain into. In correspondence the appellants have explained that SUDs are generally not suitable given the slope of the site and the results of the percolation test, although driveways and other hard areas have some degree of permeability. In view of the evidence before me, I am satisfied that the appellants have explored options for surface water drainage with regard to the hierarchy within the PPG and that the drainage strategy for water storage has been informed by this.
40. Therefore, I conclude that the proposal provides for surface water storage in accordance with the hierarchy in the PPG. The proposals would comply with Policy PD8 of the DDLP which requires incorporation of appropriate SUDs informed by ground characteristics.

Section 106 agreement

41. A signed and dated agreement under section 106 of the Town and Country Planning Act 1990 has been submitted which provides for various obligations. In line with CIL tests the Framework explains in paragraph 57 that planning obligations must only be sought where they are: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. It is therefore necessary for me to consider these obligations in detail and reach a finding on them having regard to the above tests.
42. The first schedule sets out the owners' covenants to the District Council and County Council. Regarding affordable housing, there is no dispute that the amount of the affordable housing would exceed policy requirements and that there is a significant need for such housing in the district. The proposed housing mix meets the requirements of Policy HC11 of the DDLP. The Council considers the quality of the homes proposed to be high and the type of housing and tenure split between shared ownership and affordable rent to be appropriate and in accordance with Policy HC4. The mix and tenure of the affordable housing would be secured through the section 106 agreement which meets the relevant tests.
43. The amount of open space accords with policy requirements. The provisions within the agreement for the maintenance and management of open space is set out in the Derbyshire Dales Developer Contributions Supplementary Planning Document 2020. Therefore, this obligation meets the relevant tests.
44. For the reasons I have set out elsewhere in this decision the need for the contribution towards the provision of education facilities at Darley Dale Primary School has not been demonstrated. Consequently, the CIL tests are not met and (in the terms expressed within the agreement), I attach no weight to the specific education obligation in determining the appeal. As the need for the education contribution has not been demonstrated and there are no other provisions within the agreement relevant to the County Council, I also give no weight to the need for the County Council monitoring fee.

45. To summarise, in respect of affordable housing and open space I am satisfied that the proposals comply with the CIL tests. Regarding education the CIL tests are not met, and no weight is given to this obligation.

Other Matters

46. I recognise that local residents have concerns about the suitability of the road to accommodate additional traffic, about the width of footpaths and accessibility of the site to services and facilities due to pedestrian safety concerns. However, the Council does not raise any objections to the proposed access arrangements. It also supports the highway improvements along Old Hackney Lane, subject to these being secured by condition. I see no reason to come to a different conclusion to the Council on the highway matters.
47. In addition to misgivings raised in respect of the main issues and highway matters, local residents have expressed concerns about several issues including that the proposal is the development of farm land between Hackney and Darley Dale, that too many houses have been allocated, that development of brown field land should be prioritised, concerns about loss of green space and loss of privacy for houses adjacent to the site, lack of infrastructure capacity, light pollution, and the effects on residents during the development period. However, I note that these matters were considered where relevant by the Council at the application stage and did not form part of the reasons for refusal, which I have dealt with in the assessment above. There is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.
48. Having regard to the recent WMS, the lack of a 5-year housing land supply (HLS) is an important matter. It was agreed as part of the Statement of Common Grounds (SoCG) that the Council does not have a 5-year HLS. The figure set out in the SoCG is 3.49 years. Shortly before the opening of the Hearing the Council submitted a report which was considered at a recent inquiry that indicates that the Council may have a 4.01-year supply. However, because of my conclusions on the main issues HLS is not a determinative matter in this case.

Conditions

49. A list of draft conditions was provided as an addendum to the SoCG and discussed at the Hearing. I have considered these in line with the advice contained at paragraph 56 of the Framework i.e. that conditions are kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects. I have carried out minor editing and removed any duplication.
50. In addition to the standard time limit condition, I have included a plans condition for certainty (2). To ensure suitable drainage during construction and for the development, drainage conditions are imposed (3 and 4). Condition 5, 10, and 13 are necessary to protect and enhance habitats and species and to provide a net gain in biodiversity. Condition 9 is necessary to provide open space facilities and accessibility for future occupiers of the development and existing occupiers within the area.
51. In the interests of highway safety and accessibility, I have included condition 6, 11 and 12. Because of the results of the geophysical survey a written scheme

of investigation for archaeology is required by condition 7. Condition 8 is necessary to protect the living conditions of occupiers of neighbouring properties. Conditions 14 and 16 are necessary to ensure that the development has a satisfactory appearance and to mitigate the effects of, and adapt to, climate change condition 15 is imposed.

52. The PPG advises that area-wide or blanket removal of freedoms to carry out small scale domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity. A condition to remove permitted development rights targeted at certain plots adjacent to the joint boundary with properties on the Darley House Estate is suggested but the proposed dwellings are sited and designed taking account of the layout of existing properties. The removal of permitted development rights is not reasonable or necessary to protect the living conditions of existing residents.
53. As discussed above, the drainage condition related to the SUDs hierarchy is not necessary or reasonable.

Conclusion

54. For the reasons I have set out, the proposals would accord with the development plan taken as a whole. Material considerations do not indicate that the development should be determined other than in accordance with the development plan. Consequently, the appeal is allowed subject to conditions.

Diane Cragg

INSPECTOR

Appearances:

Appellants:

Mr John Barrett Kings Chambers. Barrister.

Mrs Beverley Moss Hourigan Planning.

Mr Paul Gray PGLA Landscape Architects.

Ms Kerrie Norman Flinders Chase.

Andy Dyson Dart Engineering Ltd

Glen Rowson Bowsall Developments Ltd

Council:

Sarah Arbon Derbyshire Dales District Council

Myles Joyce Derbyshire Dales District Council

Schedule of Conditions

1. The development hereby permitted must be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans and details: Plan no's 2202-P-01D, 02N, 03F, 04B, 05, 06A, 07A, 27 and 28 House type plan no's 2202-P-10B, 11A, 12A, 13A, 14A, 15A, 16A, 17A, 18A, 19A, 20A, 21A, 22A, 23A, 24B, 25A and 26A Plan No's 23012-DR-C-0100 P3, 0600 P5 and 0601 P5 Tree Constraints Plan 01 Access Plan no's P23010-001 and 002 Landscape plan no's PP01.00 P1, 01 P1 and 02 P1, Arboricultural Method Statement reference 23/AMS/DDDC/04 dated March 2023 and Tree Protection Plan 23/A/DDDC/04 03AA.
3. Prior to the commencement of the development, a detailed design and associated management and maintenance plan of the surface water drainage for the site shall be submitted to and approved in writing by the Local Planning Authority (LPA) in accordance with the principles outlined within a. Dart Engineers LTD, (March 2023), Flood Risk Assessment, ref: 23012-FP-001, Rev-B:
 - a) Dart Engineers LTD, (March 2023), Flood Risk Assessment, ref: 23012-DR-C-0100 Rev-P3 and
 - b) DEFRA's Non-statutory technical standards for sustainable drainage systems (March 2015).The surface water drainage shall be implemented in accordance with the approved detailed design and in accordance with a timescale agreed as part of the design details. Thereafter the surface water drainage shall be managed and maintained in accordance with the approved management and maintenance plan.
4. Prior to commencement of the development, the applicant shall submit for approval to the LPA details indicating how additional surface water run-off from the site will be avoided during the construction phase of the development. The approved system shall be operating to the satisfaction of the LPA, before the commencement of any works, which would lead to increased surface water run-off from site during the construction phase and shall be maintained throughout the construction phase of the development.
5. Prior to the commencement of the development, a Landscape and Biodiversity Enhancement and Management Plan (LBEMP) shall be submitted to, and be approved in writing by, the LPA. The aim of the LBEMP is to provide details for the creation, enhancement and management of habitats and species on the site post development, in accordance with the proposals set out in the submitted Biodiversity Metric (V2) and to achieve no less than a +8.2 % net gain. The LBEMP shall combine both the ecology and landscape disciplines and shall be suitable to provide to the management body responsible for the site. It shall include the following:

- Description and location of features to be retained, created, enhanced, and managed, as per the approved biodiversity metric.
- Aims and objectives of management, in line with desired habitat conditions detailed in the metric.
- Appropriate management methods and practices to achieve aims and objectives.
- Prescriptions for management actions.
- Preparation of a work schedule (including a 30-year work plan capable of being rolled forward in perpetuity).
- Details of the body or organisation responsible for implementation of the plan.
- A monitoring schedule to assess the success of the habitat creation and enhancement measures at intervals of 1, 2, 3, 5, 10, 15, 20 and 30 years.
- Monitoring reports to be sent to the Council at each of the intervals above.
- A set of remedial measures to be applied if conservation aims and objectives of the plan are not being met.
- Detailed habitat enhancements for wildlife, in line with British Standard BS42021:2022.
- Requirement for a statement of compliance upon completion of planting and enhancement works.

The LBEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The LBEMP shall be implemented in accordance with the approved details and agreed timescales.

6. Prior to the commencement of the development, drawings of the highway improvements/traffic management scheme offsite works and site access comprising:
 - The construction of a bell mouth junction to Old Hackney Lane, with new uncontrolled pedestrian crossing points/tactile paving (all to DCC standard highway details).
 - New footway provision on Old Hackney Lane fronting the application site of a minimum width of 2metres in accordance with drawing ref: P23010-001.
 - Speed limit (yellow backing) signage, high friction surface treatment (in buff) with speed limit roundel road markings (all to DCC standard highway details) locations to be agreed.
 - Reinstatement of 'Give Way' markings at the junction of Old Hackney Lane/Bakewell Road.

shall be submitted to and approved in writing by the LPA; and the dwellings hereby approved shall not be occupied until those works have been constructed in accordance with the approved details.

7. A) No development shall take place until a Written Scheme of Investigation for archaeological work has been submitted to and approved by the LPA in writing, and until any pre-start element of the approved scheme has been completed to the written satisfaction of the LPA. The scheme shall include an assessment of significance and research questions; and
- The programme and methodology of site investigation and recording.
 - The programme for post investigation assessment.
 - Provision to be made for analysis of the site investigation and recording.
 - Provision to be made for publication and dissemination of the analysis and records of the site investigation.
 - Provision to be made for archive deposition of the analysis and records of the site investigation.
 - Nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.
- B) No development shall take place other than in accordance with the archaeological Written Scheme of Investigation approved under part (a) of this condition.
- C) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the archaeological Written Scheme of Investigation approved under part (a) of this condition and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.
8. Prior to the commencement of the development, a Construction Management Plan shall be submitted to and approved in writing by the LPA. The plan shall include details of:
- a) Dust mitigation measures.
 - b) The location and operation of plant and wheel washing facilities.
 - c) Details of best practical measures to be employed to mitigate noise and vibration arising out of the construction process; and
 - d) Security Management (to minimise risks to unauthorised personnel entering the site).
- The agreed scheme shall be adhered to throughout the construction phase of the development.
9. Prior to the commencement of the development a written scheme and plan (open space specification) shall be submitted to and approved in writing by the LPA. The scheme shall include details of the play equipment for the Local Area of Play (LAP), details of the footpath through the public open space which links to the adjacent land (as shown on drawing no PP01.02 rev P1) and details of any additional planting associated with the laying out of the areas of public open space shown on the approved drawings. The approved scheme shall be implemented in accordance with a timetable to be agreed as part of the written scheme and thereafter shall be retained and used for no other purpose.

- 10.No vegetation clearance shall take place between 1st March and 31st August inclusive, unless preceded by a nesting bird survey undertaken by a competent ecologist no more than 48 hours prior to clearance. 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.
- 11.The development hereby approved shall not be occupied until the means of access for vehicles, pedestrians and cyclists have been constructed and completed as shown on drawing P23010-001.
- 12.The development hereby approved shall not be occupied until visibility splays are provided in accordance with drawing ref: P23010-001. These splays shall thereafter be permanently kept free of all obstructions to visibility over 0.6m in height above carriageway level.
- 13.All planting, seeding, or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the completion of the development, in accordance with Drawing Numbers PP01.00 P1 (Planting plan – planting schedule and notes) PP01.01 Rev P1 (Planting Plan Sheet 1) and PP01.02 Rev P1 (Planting Plan Sheet 2). Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.
- 14.Samples of all materials to be used in the construction of the external surfaces of the proposed development shall be submitted to and approved in writing by the LPA before any work to any external surface is carried out. The materials shall be broadly in accordance with those shown on the approved plans and described within the design and access statement dated 29.03.23. The development shall thereafter be constructed in accordance with the approved details.
- 15.No development shall take place above slab level until a detailed scheme of measures to mitigate the effects of and adapt to climate change at the site along with a timetable for implementation has been submitted to and approved in writing by the LPA. The development shall be carried out in accordance with the approved details and the approved measures shall be maintained throughout the lifetime of the development hereby approved.
- 16.Prior to erection, details of the design, external appearance and decorative finish of all railings, fences, gates, walls, bollards, and other means of enclosure shall be submitted to and approved in writing by the LPA. The means of enclosure shall be carried out in accordance with the approved

details prior to the plot to which it relates being occupied or alternatively in accordance with a timescale to be agreed as part of the detailed approval.

Richborough



Costs Decision

Hearing held on 30 July 2024

Site visit made on 31 July 2024

by **Diane Cragg DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 09 September 2024

Costs application in relation to Appeal Ref: APP/P1045/W/24/3341703 Land North of Old Hackney Lane, Hackney, Matlock, Derbyshire, DE4 2QJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Bowsall Developments Limited and EMH Group for a full award of costs against Derbyshire Dales District Council.
 - The appeal was against the refusal of planning permission for erection of 27 affordable dwellings, open space, landscaping, highway improvements and associated works.
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Decision

1. The application for an award of costs is partially allowed in the terms set out below.

The submissions for Bowsall Developments Limited and EMH Group

2. The costs application was submitted in writing. The applicants seek a full award of costs. This is based on the contention of substantive unreasonable behaviour on the part of the Council. Broadly the applicants assert that the site is allocated for residential development, has been assessed as deliverable and developable, the layout and design of the scheme would be consistent with development on Old Hackney Lane and addresses the concerns of a previous proposal in relation to the estate road. The appeal site's development as a discrete proposal would be entirely satisfactory and would not inhibit the development of the remainder of the allocation. The methodology and rationale for the sum claimed in relation to the education contribution is inconsistent with the legal and policy requirements of the Community Infrastructure Levy Regulations 2010 (as amended) and has not been substantiated.
3. In addition, the applicants contend that they were only informed that the drainage issue was not being pursued when the Council statement of case was received. The entirety of the appeal was not necessary, and the costs incurred therein.
4. The following additional points were made orally. The hierarchy in relation to the drainage submission was not challenged. The Council's changed position in relation to the education contribution underpins the applicants' case in relation to the contribution. Unreasonableness has been made out.

The response by Derbyshire Dales District Council

5. The response was made in writing at the Hearing. The Council says that it was common ground that reason for refusal 3 in relation to drainage had been overcome and recommended conditions were included in the Council's

statement of case. In all other respects the Council maintains that it was not unreasonable of it to refuse permission in respect of the main issues. The County Council provided justification for its changed position on education, the justification is sound, and no additional expenditure has been unreasonably incurred.

Reasons

6. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
7. The withdrawal of any reason for refusal is the type of behaviour which may give rise to a procedural award against a local planning authority as set out in the PPG. In this case, despite the withdrawal of the drainage reason for refusal a disagreement remained regarding the proposed conditions. The substance of the Council's argument regarding the application of the drainage hierarchy was credible and there was no unreasonable behaviour in this respect.
8. Policy HC2 allocates land for housing subject to compliance with other policies in the local plan. The site was allocated as a single allocation despite the site selection and assessment of the appeal site and the remainder of the allocation being undertaken separately. While the Council was unable to confirm the reasons for the single allocation at the Hearing, the appeal site and the adjacent land were allocated as one site and the Council's evidence and reasons for refusal did specify conflict with Policy S1 where it seeks development in a comprehensive manner and the efficient use of land.
9. Further, the Council's statement of case sets out why it considers the development should not be approved with reference to the surrounding context and Development Plan policies. The Council produced sufficient evidence to substantiate its case and I am satisfied that the appeal could not have been avoided.
10. Regarding the education contribution, at the time the application was considered at committee the applicants set out their concerns regarding the education contribution. The applicants' position was subsequently clarified in their appeal statement of case, including by providing a separate report in respect of the education contribution and a viability assessment. The Council's statement did not address the applicants' case that an education contribution was not required, nor did they review the applicants' viability statement or indicate that there was a changed position on the amount and type of the contribution. That was unreasonable.
11. The applicants were only made aware of the Council's revised contribution requirements through discussions on the details of the section 106 agreement. The Council's late evidence in respect of the contribution was a significant material change that required the applicants to review their case in a limited time. Further, the applicants had to provide education expertise at the Hearing in response to the Council's case. There is no apparent reason for the Council to have responded at such a late stage and their late submission of evidence regarding education was unreasonable.
12. The Council failed to provide anyone at the Hearing able to respond to questions regarding the revised education contribution and their case for the

contribution has not been substantiated. The Council's behaviour was unreasonable in relation to the education contribution and that unreasonableness resulted in the applicants incurring unnecessary and wasted expense.

Conclusion

13. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has occurred in respect of the preparation of reports, evidence, and correspondence in relation to the education contribution including the viability report and for attendance at the Hearing by the relevant witness with respect to the education contribution. A partial award of costs is therefore warranted to cover the education and viability consultancy work undertaken in respect of the appeal.

Costs Order

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Derbyshire Dales District Council shall pay to Bowsall Developments Limited and EMH Group, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the education contribution and viability assessment; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicants are now invited to submit to Derbyshire Dales District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Diane Cragg

INSPECTOR