



Appeal Decision

Hearing held on 10 December 2024

Site visit made on 11 December 2024

by Diane Cragg DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd of January 2025

Appeal Ref: APP/W3005/W/24/3345033

Land north of Fackley Road, Teversal, Sutton in Ashfield NG17 3HN

- 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 Persimmon Homes Nottingham and Nouveau Homes and Land Limited and Locheil Homes & Developments Limited against the decision of Ashfield District Council.
 - The application Ref is V/2022/0295.
 - The development proposed is 124no. dwellings, access, attenuation basin and associated landscaping and infrastructure.
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Decision

1. The appeal is allowed, and planning permission is granted for 124no. dwellings, access, attenuation basin and associated landscaping and infrastructure at land north of Fackley Road, Teversal, Sutton in Ashfield NG17 3HN in accordance with the terms of the application ref V/2022/0295 subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Persimmon Homes Nottingham and Nouveau Homes and Land Limited and Locheil Homes & Developments Limited against Ashfield District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The appellants submitted an amended plan as part of the appeal. However, given my conclusions on the sequential test set out in this decision it has not been necessary to accept this amendment and I have considered the appeal based on the original application site area.
4. A completed unilateral undertaking has been provided, the draft details of which were discussed at the Hearing. There are two versions of the undertaking, one referencing the proposed amended plan and one referencing the original application site area. I have not accepted the amended plan for the reasons set out elsewhere. For the avoidance of doubt, unilateral undertaking version A is relevant to my decision. Version B has no further effect. I return to the undertaking below.
5. The issues of prematurity, highways safety and possible anti-social behaviour referred to in reason for refusal 2 are no longer in dispute between the Council

and the appellants. Where relevant to interested parties comments I have addressed these issues in the other matters section of this decision.

Main Issues

6. The main issues are the effect of the development on:

- the character and appearance of the area;
- flood risk and surface water drainage, and;
- whether a financial contribution should be provided for broadband and public realm improvements.

Reasons

Planning policy context

7. The development plan includes the saved policies of the Ashfield Local Plan review adopted in 2002 (Local Plan) and the Teversal, Stanton Hill and Skegby Neighbourhood Plan (Neighbourhood Plan) adopted 2016. The adopted Local Plan identified housing land requirements for the period up to 2011.
8. The appeal site comprises farmland on the east side of Fackley Road, Fackley. Stanton Hill is to the south of the site. For policy purposes the appeal site is within the countryside. In such locations saved Policy ST4 of the Local Plan only supports development in accordance with saved Policy EV2. The criteria in saved Policy EV2 sets out that only a limited range of developments are appropriate. None of these criteria are relevant here.
9. The appeal site is allocated for residential development to accommodate up to 124 dwellings in the emerging Ashfield Local Plan 2023 to 2040. The emerging plan is currently being examined. There is no certainty that the emerging plan in its current form would be adopted. Therefore, I can only attribute limited weight to its policies.
10. Nevertheless, the Council does not have a 5-year supply of deliverable housing sites against the local housing need and the Council does not object to the principle of the development. The Council acknowledges that paragraph 11d) of the National Planning Policy Framework (the Framework) applies by virtue of footnote 8. I return to the matter of housing land supply below.

Character and appearance

11. The appeal site is approximately 5.62 Ha of land comprising two medium scale gently sloping arable and pasture fields situated in the Meden Valley between the wooded area adjacent to the Teversal Trail and the River Meden. A short section of the appeal site has a frontage to Fackley Road where the site boundary is defined by hedging. Broadly to the west the land extends up to the boundary with existing residential properties and recreational uses with open agricultural land to the east.
12. Together Policies ST1, ST4, and EV2 of the Local Plan require that development be located and designed so as not to adversely affect the character of the countryside. Neighbourhood Plan Policy NP4 requires the protection of landscape character. Similarly, the Framework recognises the intrinsic character and beauty of the countryside and seeks to ensure that

- developments are sympathetic to local character and history including the surrounding built environment and landscape setting.
13. At the broadest scale, the appeal site lies within Natural England's National Character Area (NCA) 30. The NCA characteristics include river valleys, woodlands combining with open arable land and localised industrial influences.
 14. At a more local level the site is identified in the Greater Nottingham Landscape Strategy 2009 (Nottingham Landscape Strategy) as being within Policy Zone NC08, a shallow valley associated with the River Meden with arable, pasture farmland and pockets of woodland. The character area is mostly rural in the north but extends to urban fringes in the southern part. Characteristic features include linear woodland following watercourses and disused railway lines, and varied field sizes tending to follow the shape of the landform. The landscape condition is identified as moderate, although increasing urban influences weaken the character of the south of the area.
 15. The designated area of the Neighbourhood Plan includes the appeal site. The associated design guide does not analyse all green spaces in the plan area but identifies two gaps which are faced with development pressures. The green gap (variously referred to in the evidence as a gap or corridor) that separates Teversal village from Stanton Hill is substantial, extending from the edge of Teversal village and open land beyond Pleasley Road broadly to the north, to the treed area behind properties facing Barker Avenue to the south.
 16. Maps in the Neighbourhood Plan identify the extent of the green gap with two areas considered to be particularly sensitive to change adjacent to Pleasley Road and the valley side behind Barker Avenue. Apart from a section of the frontage to Fackley Road, the appeal site is within the Teversal/ Stanton Hill green gap but outside the sensitive areas.
 17. Most of the appeal site is farmland. It does not have any statutory landscape designation. Landscape features include field hedgerows, trees next to the River Meden and hedging and vegetation adjacent to Fackley Road. The landscape condition of the land is moderate. The eastern side of the site is more rural and tranquil because of the agricultural fields beyond the site boundary and woodland to the north. The land benefits from some scenic quality, although this is diminished by the proximity to existing development. There is no public access to the land, preventing any recreational value.
 18. Nevertheless, as an area of farmland next to the River Meden and adjacent to the Teversal Trail with its wooded edges, the appeal site is representative of some of the key characteristics of the NCA, the Nottingham Landscape Strategy, and the character identified in the Neighbourhood Plan. The appeal site has medium landscape value.
 19. The Nottingham Landscape Strategy identifies that views within the River Meden Valley are typically restricted over short distances with long views possible along the valley on higher ground. The sloping sides of the valley and enclosed nature of views are strong characterising features. Consistent with this character, views of the appeal site are at close range from residential properties, from adjacent roads and footpaths and recreation facilities. No significant views of the site occur from the Teversal Trail because of established belts of woodland and localised embankments. Similarly, there are no notable views from Teversal or its conservation area.

20. Elevated open views of the appeal site do occur from the public footpath between Barker Avenue and Fackley Road. Nevertheless, such views are experienced in the context of the existing residential development and recreation uses and with the buildings and structures associated with the golf driving range in the foreground. Any long distant views of the appeal site available from properties at the edge of Stanton Hill are filtered by established woodland. Overall, the visibility of the site in its setting is compatible with the wider river valley character.
21. The Neighbourhood Plan acknowledges some sites in the open countryside that adjoin existing development boundaries will be allocated, but impact on landscape character should be minimised. The Neighbourhood Plan design guide seeks to ensure that infill development within the Teversal and Stanton Hill green gap does not damage the rural feel of the trails that pass through it or reduce the distinct separation of Teversal from the more built-up areas to the south.
22. In this context Policy NP4, in seeking to protect landscape character, requires demonstration that landscaping, and boundary treatment reflect and where possible enhance existing landscape character. It also seeks to ensure that connections with and to the surrounding countryside is maintained and public views into and out of development to identified landscape features are provided.
23. The Council accepts the site is allocated and anticipates the site being developed. Their concern as articulated in the reason for refusal is the visual impact of the development on green fields, encroachment of the development into open countryside and reducing the green gap. Within the Council's statement and as explained at the Hearing the concern is that the development does not provide sufficient buffer between the built development and the river Meden and greenery would be squeezed to a bare minimum so that it significantly reduces the gap between Fackley and Stanton Hill.
24. It is difficult to envisage a circumstance where housing development on greenfield land would not cause some landscape and visual effect. However, the extent of such effects and whether they can be successfully mitigated in the longer term would depend on the site in question and the development being proposed.
25. The existing dwellings in the immediate appeal site circumstances are predominantly 2 storeys with examples of bungalows arranged around Copsywood Close. The approach to the development with main access from Fackley Road and dwellings set on regular plots with similar building lines and materials would be compatible with the adjacent streets. The relatively narrow frontage to Fackley Road results in the appeal scheme being designed with a single dwelling and estate road adjacent to the frontage but this arrangement would allow space for planting next to the river consistent with the mature river edge character and would limit the visibility of the site when approaching from Stanton Hill.
26. The proposal would result in fields being urbanised, however, from Fackley Road the development would appear as a logical extension of the existing development. The route of the access road through the site would draw the eye towards the woodland adjacent to the Teversal Trail and these trees would

form the backdrop to the development in glimpses of it when travelling along Fackley Road.

27. From the public footpath adjacent to Crompton Street the development would be seen against the existing development and would extend to clearly defined boundaries. The proposed dwellings would mostly be of a similar scale to the surroundings. Vegetation cover and trees along and adjacent to the site would be supplemented by boundary planting and planting within the site would provide a strong landscape framework for the development. Conditions would secure the necessary planting with landscape designs based on the scheme proposals submitted as part of the application.
28. Although the erection of 124 dwellings and associated infrastructure would result in encroachment into open countryside, the visual effects of this would be localised and limited. Landscaping proposals would build on existing landscape structure and over time the development would fully assimilate into its surroundings.
29. At the Hearing, the Council raised concerns about rear elevations of dwellings and fencing facing the River Meden. However, many properties on the south side have been designed to face the river and the scheme indicates significant additional planting. In addition, much of the section of the site between the rear of properties facing Crompton Street and the river is outside the green gap and would not lead to its reduction. Within the green gap dwellings are set back significantly from the river because of the siting of the attenuation feature and the extent of planting proposed. There would be ample space retained adjacent to the river to the south side within the green gap.
30. The urban design statement clarifies that the development has been designed so that the primary tree lined street extends up to the eastern extent of the development, from which secondary and minor category streets are arranged. There is a transition to lower category street hierarchies towards the green edges of the development to manage the transition from built form to rural edge.
31. New footpaths would be accommodated on the north side along a green lane connecting the existing footpath adjacent to Crompton Street to the surrounding countryside and the Teversal Trail. The landscape details demonstrate that the development would reflect and enhance the existing landscape character and that connections with surrounding countryside would be enhanced and maintained.
32. Furthermore, the site is located within a low-lying part of the green gap that is already influenced by a range of existing developments. The scheme would be bordered by existing housing and established vegetation cover, inside and beyond the site within the wider green gap.
33. Teversal village is situated north of the site. Recreation facilities, the Teversal trail and significant tree cover visually and physically separate the village from the appeal site. The proposed development would not affect the setting of Teversal including the conservation area.
34. Although the development would be visible from the elevated footpath between Barker Avenue and Fackley Road the level of containment provided by existing features around the appeal site would limit the effects of the development in

these views. Furthermore, when viewed from the footpath, the sense of openness of the green gap would be maintained because the open fields to the east would be retained, as would the less developed recreation spaces to the north. In addition, the open space within the development would connect to the wooded area along the River Meden and the steeply rising land to the south, where a large swathe of less intensively used land would remain.

35. Acknowledging the Neighbourhood Plan's analysis that green connections are important wildlife corridors and provide space for biodiversity and ecology to thrive, the proposals would provide enhanced planting to the eastern boundary hedge and along the retained internal field hedge line. The retained boundary hedging and planting would provide a route for wildlife and biodiversity through the site, connecting to the Teversal Trail woodland and other vegetation on the site's north side.
36. Overall, the sensitive areas identified in the Neighbourhood Plan green gap would be retained. The appeal scheme has regard to the rural edges of the site and the landscape character of the area would not be detrimentally eroded. Furthermore, because of the proposed building forms, materials and styles and the associated landscaping the extension of the existing built form on to the appeal fields would not harmfully encroach into the countryside.
37. Consequently, the development would not be harmful to the character or appearance of the area. The proposals would accord with Policies ST1, ST4 and EV2 of the Local Plan and Policy NP4 of the Neighbourhood Plan as far as these policies seek to protect the character of the countryside and landscape character.

Flood risk and drainage

38. Most of the appeal site is within flood zone 1. Flood zone 2 and 3 are in the immediate vicinity of the River Meden. The Flood Risk Assessment (FRA) and appeal plans confirm that the flood zone 2 and 3 extents are small due to the topography of the site, with the majority of the development site greater than 2 metres above the channel and having no impact on the development area.
39. Although not a matter of dispute between the parties, the appellants proposed an amended plan as part of the appeal submission, removing flood zone 2 and 3 areas out of the application site red line boundary, apparently to provide certainty around the need for a sequential test.
40. The Framework explains that to avoid flood risk to people and property, a sequential, risk-based approach to the location of development should be taken to flood risk from all sources, and that this should be done by applying the sequential test. The PPG states that only if a site is in an area at a low risk of flooding from all sources should the sequential test not be undertaken¹.
41. In the recent changes to the Framework the Government has clarified (in accordance with previous Environment Agency guidance) that the sequential test should not be used in situations where a site-specific FRA demonstrates that no built development within the site boundary, including access or escape routes, land raising or other potentially vulnerable elements, would be located on an area that would be at risk of flooding from any source, now and in the future (having regard to potential changes in flood risk).

¹ Planning Practice Guide - Paragraph: 027 Reference ID: 7-027-20220825

42. The area of the site in Flood Zone 2 and 3 would not contain any significant part of the development that could be adversely affected by flood water. Therefore, the sequential test would serve no purpose. I am satisfied a sequential test would be unnecessary. For these reasons as set out in preliminary matters the scheme has been considered based on the original red line site area.
43. The appellants clarified in their flood risk and drainage hearing statement that the earlier FRA submitted as part of the application had been audited and this has resulted in some changes on matters related to flood risk and surface water drainage, but this has not changed the overall outcomes.
44. Both the original FRA and the appellants' hearing statement clarify that the site's risk of flooding is low or very low. There is no evidence that the appeal scheme would increase flood risk elsewhere and the land is already contributing to surface water flows into the river Meden so the surface water flows being generated are not new. The original drainage design proposed control and management of surface water flows to existing greenfield runoff rates, whereas the proposals in the appeal evidence would control and manage surface water flows in a way that would result in a reduced discharge rate.
45. The original FRA clarifies that the surface water mitigation would be lower than Fackley Road and flood risk would likely be reduced. The Council officer's report similarly acknowledges controls in surface water runoff would very likely improve drainage in the immediate locality and this is reiterated in the appeal evidence.
46. I appreciate that the Neighbourhood Forum identifies that flooding has been noted on Fackley Road outside the site and reference is made to flooding on Fackley Road in the strategic FRA. However, there is nothing in the Council's submissions to counter the appellants' evidence that the development would lead to betterment in terms of surface water runoff. There has been opportunity for the Lead Local Flood authority (LLFA) to be consulted or to appear at the Hearing, but it remains that the LLFA raises no objections to the scheme. At the Hearing no notable further evidence was provided by the Council regarding flooding. Furthermore, there is no evidence offered to suggest that the sustainable urban drainage scheme (SuDs) proposed would not function adequately, a matter that in any case is proposed to be controlled by condition.
47. The evidence before me demonstrates that the surface water drainage system would discharge surface water into the River Meden. However, flows would be managed, and mitigation would lead to a significant reduction in the existing runoff rates and therefore flood risk would not be increased and more than likely notably improved. The Council did not provide any evidence at the Hearing to contradict the appellants' approach. Conditions would control the detail of the drainage scheme and its subsequent management and maintenance.
48. Consequently, I conclude that the development would not increase flood risk elsewhere and the drainage proposals are acceptable. I find no conflict with Policies ST1 and HG5 as far as these seek to ensure quality, amenity, and safety within developments.

Financial contributions

49. In line with the Community Infrastructure Levy Regulations (CIL tests), the Framework explains at paragraph 58 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.

Broadband

50. The Framework supports high quality communications including broadband connections. Policy NP8 of the Neighbourhood Plan seeks improvements to digital connectivity. Connectivity should be provided for residents and, if possible, contributions towards improvements in the service for existing residents and businesses. The appellants would provide broadband connections to all the dwellings within the development.
51. The Council says that digital connectivity is poor and the local community and businesses which the residents of the appeal site would rely on do not have connectivity. While existing residents attested to the inadequacy of the broadband at the Hearing, there is no evidence that improving existing resident's broadband would be necessary to make the development acceptable in planning terms. Nevertheless, the provision of broadband connection to the appeal site may well provide some improvements to existing residents connectivity through additional broadband infrastructure to service the appeal site.
52. Provision of a broadband connection for the wider business community could allow businesses to be more effective. However, as with existing residents, there is little to indicate that improvements to the connectivity of businesses in the area is necessary to make the development acceptable in planning terms.
53. In addition, as the contribution would be to support connection to the 'centre of the village' with no specific scheme identified and no evidence who would benefit from the broadband connection, there can be no clarity that the contribution is directly related to the development.
54. Further, while the Council considers that a contribution of £150,000 'would appear to be reasonable' there is no reasoned justification for this sum, and even if it could be shown that there would be some direct benefits of the connection to the village centre, I cannot be satisfied that the sum requested is reasonably related in scale and kind to the development.

Public realm

55. A contribution of £124,000 is sought for improvements to the public realm. The Council has clarified that the contribution is sought to improve the shopping area at Stanton Hill which is said to be the nearest to the site and an area where improvement schemes are being drawn up including improvements to pedestrian facilities. I acknowledge that Policy TR6 of the Local Plan requires developer contributions towards transport improvements including pedestrian facilities and that the Government has initiatives in place to tackle vacant shops. I also appreciate that having shops close by may reduce the need to travel further afield by car. Nevertheless, the Council agrees that the appeal site is in an accessible location. Pedestrian links within the appeal site and off-site highway works contribute to the site's connection to its surroundings and

no pedestrian improvements in Stanton Hill have been demonstrated to be necessary to reduce reliance on the car.

56. Furthermore, residents of the appeal site may visit Stanton Hill, however, it is not clear that improvements to the shops or pedestrian facilities are directly related to the development as there is no scheme before me to which any funding would contribute. Even though I am advised that other developments have contributed to Stanton Hill improvements there is little reasoned justification for the quantum of contribution per dwelling sought. Therefore, I cannot be satisfied that the amount of the contribution is fairly and reasonably related in scale and kind to the development.
57. Overall, it has not been demonstrated that financial contributions should be provided for broadband and public realm improvements. Accordingly, on the evidence before me the contributions sought would not meet all the relevant tests in regulation 122(2) of the CIL tests and the Framework. I conclude that the development without the contributions would not conflict with NP8 of the NP or Policy TR6 of the Local Plan.

Other Matters

58. I recognise that interested parties are concerned about the limitations of existing services and facilities to accommodate the proposed development. Nevertheless, the proposal includes, among others, contributions to improve health care, special needs education, transport, and open space facilities necessary to accommodate the housing development at the appeal site. Subject to these contributions the Council is satisfied that the development would not conflict with relevant policies in the development plan in this respect and I see no reason to disagree.
59. The main access into the appeal site is via a new estate road taken from Fackley Road which the Council anticipates would take most of the traffic into the site. Improvement works to Fackley Road would provide a right-hand ghost island as part of the scheme to provide refuge for waiting vehicles turning into the site as well as improved pedestrian crossing points.
60. The scheme also includes access via Crompton Street. Crompton Street would be extended from its existing position into the site with a turning head provided close to the existing road for vehicles to turn and return down Crompton Street in forward gear. Many properties on Crompton Street have off-road parking for one or two cars and are not completely reliant on on-street parking. Even so, I accept that on street parking is acknowledged to be high, particularly in the evenings and that traffic may be limited to one-way in places at times.
61. However, the provision of a turning area would resolve concerns about reversing down the street and there would also be the opportunity to continue through the appeal site and exit via Fackley Road. Larger vehicles can access the site via Fackley Road. The Council's highways authority has not raised any objections to the use of Crompton Street for access into the site and there is little to suggest that the increase of vehicle movements along the street would be detrimental to highway safety.
62. Interested parties raise concerns about loss of wildlife. The appeal site would change from an open field to residential development and the biodiversity of the land would be changed. The proposals would allow for the retention of the

existing hedged boundaries including the hedge between the two fields within the site area. Additional planting would take place within gardens and new buffer areas and planting to boundaries would be supplemented. The Council is satisfied that with the mitigation proposed the effect of the development on biodiversity would not be significant. I have no reason to conclude otherwise.

63. I have considered the effect of the development on the character and appearance of the area above. I have little to suggest that the change in view from adjacent dwellings would result in harm to living conditions. Therefore, the loss of private views for those existing properties that overlook the site is not a determining factor in assessing the proposals.
64. The parties agree that the Council cannot demonstrate a 5-year housing land supply. There is a difference of opinion about the actual supply figure; the range is between 3.21 and 3.67 years. While in the terms of paragraph 11d ii) of the Framework, the policies that are most important for determining the application may be considered out of date, that does not mean that no weight should be given to them. Rather the weight to be given to any conflict between the proposals and the policies of the development plan would depend on their consistency with the Framework.
65. Nevertheless, the Council does not object to the development of the appeal site in principle and in respect of the main issues in this appeal I find no conflict with the development plan. Therefore, housing land supply is not a determinative issue.

Unilateral Undertaking

66. A signed and dated unilateral undertaking (for the avoidance of doubt Unilateral Undertaking A) under section 106 of the Town and Country Planning Act 1990 has been submitted which provides for various obligations. It is therefore necessary for me to consider these obligations and reach a finding on them having regard to the CIL tests.
67. The unilateral undertaking secures 10% affordable housing identified as part of the scheme. The amount of affordable housing was agreed between the parties at application stage. Policy HG4 of the Local plan seeks to negotiate a proportion of affordable dwellings. Although the Council refers to the emerging plans requirement for 25% affordable housing based on the Ashfield Housing needs assessment report October 2020, the adopted policy requires negotiation. That negotiation has taken place, and no substantive evidence has been provided that would lead me to conclude that an alternative approach should be taken at this stage. The mix and tenure of the affordable housing would be secured through the unilateral undertaking which meets the relevant tests.
68. To encourage a modal shift in travel towards public transport the obligation makes provision for a local bus service contribution to enhance the Monday to Friday service and make provision for a Saturday service. Improvements to bus stops to provide real time and disruption information is also sought. All of these are necessary to make the proposal acceptable, are set at a proportionate level, and are required as a direct result of the development.
69. The proposal would generate a requirement for healthcare provision for residents of the scheme which is directly related to the development. I am

satisfied that the calculation of the contribution towards improving or enhancing facilities in the locality is necessary to make the development acceptable and is fairly related in scale and kind.

70. The County Council requires a contribution towards special education needs in accordance with the Nottingham County Council developer contribution strategy because of a shortage of such places. The contribution would be used to expand special school provision which is directly related to the proposal and necessary to make it acceptable. It is also fairly and reasonably related in scale and kind.
71. Policy HG6 requires the provision of 10% onsite open space provision including recreational equipment. Where equipment is not to be provided on site a negotiated sum will be sought towards improvements to existing open space provision. Recreational facilities are not provided as part of the development and a contribution is required to the nearest open space at Healdswood to improve the facilities. The requirement for adequate recreation facilities is directly related to the proposal. necessary to make it acceptable and fairly and reasonably related in scale and kind.
72. To mitigate the effects of, and secure measurable net gains in, biodiversity an off-site contribution to provide 3 area units, as calculated via the biodiversity metric, is required. The contribution of £126,000 is based on a recognised per unit figure.
73. On site open space would be provided as part of the development. The obligation makes provision for a management plan to be agreed so that the Council can be assured the open space would be retained and maintained in the future.
74. Waste disposal facilities are at capacity in the district and a contribution towards upgrading existing facilities is required. The calculation is proportionate to the size of the development.
75. As per the conditions section below a travel plan condition is reasonable and necessary. A travel plan monitoring contribution would provide £7500 to monitor the implementation of the travel plan. Contributions towards the monitoring of the agreement by the County and District Council are also sought and meet the relevant tests.
76. For the reasons I have set out elsewhere in this decision, the need for the contribution towards the provision of public realm and broad band improvements have not been demonstrated. Consequently, in respect of these contributions the CIL tests are not met and (in the terms expressed within the unilateral undertaking) I attach no weight to the contributions to public realm and broadband improvements in determining the appeal.
77. The unilateral undertaking is a material consideration. I am satisfied those provisions relating to affordable housing, open space management and financial contributions other than to public realm and broadband improvements meet the three CIL tests. I have therefore taken the unilateral undertaking into account in determining the appeal.

Conditions

78. A list of draft conditions was appended to the Statement of Common Grounds and discussed at the Hearing. I have considered the proposed conditions in line with the advice contained at paragraph 57 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. After our discussions at the Hearing, I provided the parties with the opportunity to comment on the conditions and carried out minor editing and removed any duplication.
79. In addition to the standard time limit condition, I have included a plans condition for certainty. Details of surface water drainage are required to ensure that surface water is controlled to mimic natural drainage, to account for predicted impacts of climate change and to protect the Teversal Pastures Site of Special Scientific interest (SSSI) (condition 3). A construction management plan is needed to protect the living conditions of neighbours and for highway safety during the construction phase of the development (Condition 4). Condition 5 is needed to mitigate the effects of the development on the SSSI during the construction phase of the development. Conditions 6, 7, and 15 are imposed in the interests of highway safety and accessibility.
80. To ensure that the development has regard to the existing ecological value of the site and opportunities are taken to achieve a net gain in biodiversity an Ecological Management Strategy is required (Conditions 8 and 11) and condition 13 is necessary to protect nesting birds. Details of materials are necessary to ensure that the development has a satisfactory appearance (Condition 9).
81. So that the site assimilates into its surroundings, that existing trees and hedges are retained and protected, and to ensure enhanced boundary planting, conditions 10 and 14 are imposed. Condition 12 is imposed to ensure any potential land contamination is appropriately treated.
82. Conditions 3 to 8 inclusive are pre-commencement to avoid adverse impacts during the construction phase and to ensure suitable detailed design is available before construction is commenced. The appellants have agreed to the form of these conditions.

Conclusion

83. For the reasons given above, I conclude that the proposals would accord with the development plan. There are no material considerations that indicate a decision should be taken other than in accordance with the development plan therefore the appeal is allowed.

Diane Cragg

INSPECTOR

APPEARANCES:

FOR THE APPELLANTS:

Christopher Young KC – No. 5 Chambers Counsel for the appellants

Andrew Gore –Marrons

Alasdair Avila-Thorne – Marrons

Tim Jackson – FPCR

Mike Carr BA(Hons) – Pegasus

Robert Rodger – Tetra Tech

Alexander Bennett – M-EC

FOR THE COUNCIL:

Mick Morley - Development Team Manager

Cllr Helen-Ann Smith – Local Ward member

INTERESTED PARTIES:

Paul Parks

Jenny Parks

Schedule of conditions

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site Location Plan TGOP/FRT/LP1
 - Site Layout P23-1008-DE-06-B-01
 - Crompton Street Tie-in TV-CST1-001 28.9.23.
 - Proposed Access Junction B0302211-TTE-OO-XX-DR.0-0001 Rev.P06
 - Materials Plan P23-1008-DE-06-A-07
 - Character Pan P23-1008-DE-06-A-05
 - Place Making P23-1008-DE-06-A-02
 - Movement P23-1008-DE-06--03
 - Swept Path Analysis Public Transport Vehicle FRTEV/VT/01.
 - Swept Path Analysis Refuse Vehicle FRTEV/VT/01
 - Surrounding Area Plan TE-SAP-01 22.8.2023
 - Horizontal General Arrangement FRTEV/HGA/01
 - Hollicombe Detached elevations HoC-MA-Det-R21G-904 Rev.A03.
 - Hollicombe Detached floor plans HoC-MA-Det-R21G-901Rev.03. -
 - Kielder Detached floor plans Ki-MA-Det-R21G-901.-
 - Kielder Detached elevations Ki-MA-Det-R21G-903 Rev.A.
 - Lambridge Detached floor plans LB-MA-R21G-901 Rev.A.
 - Lambridge Detached elevations LB-MA-R21G-903.
 - Marston Detached floor plans Ma-MA-R21G -901 Rev.A
 - Marston Detached elevations Ma-MA-R21G-903 Rev.A.
 - Barnwood DT floor plans Bw-MA-DT-Det-R21G-901 Rev.c
 - Barnwood DT elevations Bw-MA-DT-Det-R21G-903 Rev.A.
 - Kennet Semi Detached floor plans Ke-MA-End-R21G 901 Rev.A.
 - Kennet Semi Detached elevations Ke-MA-End-R21G 903.
 - Burnham Detached floor plans Bu-MA-Det-R21G 901 Rev.A.
 - Burnham Detached elevations Bu-MA-Det-R21G 903 Rev.A.
 - Braunton End floor plans Br-MA-End-R21G 901 Rev.C.
 - Braunton End elevations Br-MA-End-R21G 903.
 - Dallington Mid floor plans Dg-MA-Mid-R21G 901 Rev.A
 - Dallington Mid elevations Dg-MA-Mid-R21G 903 Rev.A.
 - Dallington End floor plans Dg-MA-End-R21G 901 Rev.A.
 - Dallington End elevations Dg-MA-End-R21G 903 RevA.
 - Barnwood Detached floor plans Bw-MA-Det-R21G-901 RevD.
 - Barnwood Detached elevations Bw-MA-Det-R21G-903 Rev.B.
 - Sherwood Detached floor plans Sh-MA-Det-R21G-901Rev.B.
 - Sherwood Detached elevations Sh-MA-Det-R21G-903 Rev.B.
 - Deepdale Semi Detached floor plans Dp-MA-End-R21G-901 Rev.A.
 - Deepdale Semi Detached elevations Dp-MA-End-R21G-903 Rev.A.
 - Danbury Mid floor plans Da-MA-Mid-R21G-901.
 - Danbury Mid elevations Da-MA-Mid-R21G-903 Rev.A.
 - Danbury Semi Detached floor plans Da-MA-End-R21G-901
 - Danbury Semi Detached elevations Da-MA-End-R21G-903 Rev.A.
 - Alnmouth Mid floor plans Al-MA-Mid-R21G-901.
 - Alnmouth Mid elevations Al-MA-Mid-R21G-903.
 - Alnmouth Semi Detached floor plans Al-MA-End-R21G-901.

- Alnmouth Semi Detached elevations Al-MA-End-R21G-903.
- Double Garage floor plan and elevations Ga.2.1. 901.
- Single Garage floor plan and elevations Ga.1.1. 902.
- Single Garage floor plan and elevations Plot 1 Ga.1.1. 902.

3. Prior to the commencement of the development, details shall have been submitted to and agreed in writing by the Local Planning Authority (LPA) of a Sustainable Drainage System. Such drainage system shall be in accordance with report ref: Report Ref: 28507-INQ-0101 dated July 2024 and CIRIA C753 and shall include the following information:

- An assessment of the nature of SuDS to be used.
- Details of a proven outfall from the site in accordance with the following drainage hierarchy, in order of preference; infiltration, discharge to watercourse, discharge to surface water sewer or discharge to a combined sewer.
- Justification for use or not of infiltration, including results of soakaway testing in accordance with BRE 365.
- Evidence that the maximum discharge is set to the Qbar Greenfield run-off rate for the positively drained area of development.
- Demonstrate the site drainage system will cater for all rainfall events up to and including the 1 in a 100-year event including a 40% allowance for climate change.
- Provide details of exceedance flows; surface water should be contained within the site boundary without flooding any properties in a 1 in 100 year +climate change storm.
- Details of approval from any water authority that may be required to accept surface water discharge.
- Show that SuDS systems will be incorporated into the surface water management scheme for the site, preference should be given to above ground water SuDS which provide multi-functional benefits.
- Details of who will manage and maintain all drainage features for the lifetime of the development.

The approved scheme shall thereafter be retained and maintained.

4. Prior to the commencement of development, a construction management plan shall be submitted to and agreed in writing by the LPA, and this shall include:

- how construction traffic will access the site.
- proposed hours and days of working.
- the parking of vehicles of site personnel, operatives, and visitors.
- location of site storage areas and compounds.
- wheel washing facilities.
- a strategy for the minimisation of noise, vibration, and dust.
- site contact detail in case of complaints.

The agreed construction management plan shall be adhered to throughout the construction period.

5. 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.

6. No development shall commence until, drawings of the highway improvements/traffic management scheme offsite works and site access comprising:
 - details of footway, refuge crossing facilities and access arrangements including associated signing and lighting on Fackley Road as indicated on drawing ref. B030221 TTE 00 XX DRO 0001 P06 and
 - details of footway tie-ins for Crompton Street as indicated on drawing ref. TVCSTI-001shall have been 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. Prior to the commencement of development, details of the internal street layout, including longitudinal (maximum 1 in 15) and cross sectional gradients, footpath/road key dimensions, parking and turning facilities (private and public), surfacing, street lighting, highway structures, junction/pedestrian/forward visibility splays, cycleway/pedestrian facilities, VPA/tracking, drainage/outfall proposals, on street visitor parking, construction specification and provision of and/or division of utility services shall have been submitted to and agreed in writing by the LPA. The approved details shall be implemented to the satisfaction of the LPA before any dwelling is first occupied and retained thereafter.
8. Prior to the commencement of development, details of an Ecological Management Strategy shall have been submitted to and agreed in writing by the LPA. The Strategy shall include details of:
 - objectives to achieve ecological enhancement of the site;
 - any required updated protected species surveys;
 - measures for encouraging biodiversity including facilities around and within the drainage attenuation basin;
 - review of site potential and constraints;
 - works to achieve objectives;
 - the body or organisation responsible for implementation;
 - the timetable for implementation;
 - aftercare and long term maintenance;
 - monitoring and remedial measures;
 - a legal and funding mechanism by which the implementation of the Strategy will be secured.The Strategy shall be carried out as approved and in accordance with the implementation programme and thereafter maintained in perpetuity. Any elements of the Ecological Management Strategy that within a period of five years after planting or completion, are removed, die, or become damaged or defective, shall be replaced in the next planting season with others of species, size and number as originally approved.
9. The construction of the dwellings shall not proceed above slab level until details / samples of the materials to be used in the construction of the external surfaces of the extension hereby permitted have been submitted to and approved in writing by the LPA. Development shall be carried out in accordance with the approved details / samples.

10. The construction of the dwellings shall not proceed above slab level until details of both hard and soft landscape works, together with a programme for the implementation of the landscape works, have been submitted to and approved in writing by the LPA. The landscape works shall be carried out in accordance with the approved details and in accordance with the agreed implementation programme. The completed scheme shall be managed and maintained in accordance with an approved scheme of management and maintenance.
All planting, seeding, or turfing indicated on the approved landscaping scheme shall be carried out in accordance with the implementation programme which within a period of five years from completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size or species.
11. The construction of the dwellings shall not proceed above slab level until details of bird, bat and bee boxes and hedgehog corridors, including gaps in boundary treatment, incorporated into the construction of dwellings and gardens shall have been submitted to and agreed in writing by the LPA. Such boxes and corridors shall be implemented prior to the occupation of each dwelling and thereafter retained.
12. a) If during the construction works, any potential land contamination or unusual odour is encountered, all construction works shall cease immediately and not resume until either i) the potential contamination has been assessed and a remediation scheme has been submitted to and approved in writing by the LPA, or, ii) the timescales for submission of a remediation scheme and details of works which may be carried out in the interim have been agreed in writing by the LPA.
b) If potential contamination is identified pursuant to part a) of this condition, the development shall not be occupied until land contamination is fully remediated in accordance with a remediation scheme submitted to and approved in writing by the LPA and a post completion verification report, including results of sampling and monitoring carried out, has been submitted to and approved in writing by the LPA demonstrating that the site remediation criteria have been met.
13. 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.
14. The development hereby approved shall be undertaken in accordance with the arboricultural impact assessment, including the Tree Protection Plans in annex 2, contained in the submitted Arboricultural Impact Assessment Survey and report rev 3 dated November 2022.
15. No dwelling shall be first occupied unless and until a site-specific Residential Travel Plan has been submitted to and agreed in writing by the LPA. The Travel Plan shall set out proposals (including targets, a timetable and

enforcement mechanism) to promote travel by sustainable modes and shall include arrangements for monitoring the progress of the proposals. The approved Travel Plan shall be implemented upon first occupation of the development and subject to review as per details to be set out within the approved Travel Plan.

Richborough



Costs Decision

Hearing held on 10 December 2024

Site visit made on 11 December 2024

by Diane Cragg DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd of January 2025

Costs application in relation to Appeal Ref: APP/W3005/W/24/3345033

- 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 Persimmon Homes Nottingham and Nouveau Homes and Land Limited and Locheil Homes & Developments Limited for a full award of costs against Ashfield District Council.
 - The appeal was against the refusal of planning permission for 124no. dwellings, access, attenuation basin and associated landscaping and infrastructure at **Land north of Fackley Road, Teversal, Sutton in Ashfield NG17 3HN**
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Decision

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

Procedural Matter

2. The applicants made an application for costs at the Hearing. It was agreed that the costs submission and responses could be in writing. A short time scale was agreed for the applicants' submission. Although the applicants were a day late with the submission, I am satisfied that the delay was reasonable in the circumstances set out. The Council was given additional time to respond. No party was prejudiced by this approach and the costs application was properly made.

Reasons

3. 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.
4. The PPG goes on to explain that a local planning authority is at risk of a substantive award of costs if it prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; fails to produce evidence to substantiate each reason for refusal; makes vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by objective analysis; and/or refuses planning permission on a planning ground capable of being dealt with by conditions.
5. The Council's planning committee refused the proposal against the advice of Officers. It was entitled to do so as it is not bound to follow the recommendation of its Officers. Such an approach would render the committee superfluous.

- Nevertheless, the committee must be able to clearly articulate and substantiate its decision, especially when departing from professional advice.
6. The reasons for refusal are multifaceted and could have been clearer. The first concern relates to the effect of the development on the character and appearance of the surrounding area. Reason for refusal 1 sets out that the development would result in significant harm to the character and appearance of the area through the visual impact of the built form on green fields, encroachment into open countryside and reducing the green corridor. The Council does not object to the principle of the development so it must be accepted that some visual impact of the built form would occur but there is no clear explanation as to why the particular appeal scheme is considered harmful in the refusal reason or the minutes of the planning committee.
 7. The Council's appeal statement briefly sets out the main points of concern, however, it does not respond, in any detail, to the applicants' significant evidence regarding the landscape character of the area. At the Hearing, the Council referred to the detrimental effects that would be caused because of the siting of dwellings with their backs to the River Meden and the position of fencing. However, these points were not referenced in their evidence.
 8. As can be seen from my decision, I do not share the views of the Council in this case. Having regard to the committee decision and the subsequent evidence provided by the Council as a whole, I conclude that the Council failed to produce sufficient objective analysis to substantiate its reason for refusal in respect of the effects of the development on the character and appearance of the area, and this was unreasonable.
 9. At the time of writing its appeal statement, the Council withdrew concerns about prematurity, highway safety, and anti-social behaviour referred to in reasons for refusal 2. In terms of prematurity the Council stated that having regard to paragraph 49 (of the Framework Dec 2023) the Council no longer wishes to pursue prematurity. Furthermore, in respect of highway safety and anti-social behaviour the Council's statement says it would be difficult to evidence the potential impacts and provide sufficient level of proof to justify refusal. It is therefore unclear why these matters formed part of the reason for refusal. The advice from technical consultees did not support this stance. It was unreasonable of the Council to refuse planning permission on matters it could not justify.
 10. In response to the Council's concerns about prematurity, highway safety and antisocial behaviour, the applicants submitted highways and urban design statements and evidence in their planning statement. While these matters were not discussed at the Hearing in any detail, the inclusion of them in reason for refusal 2 required the applicants to consider these matters and produce statements that it had no need to.
 11. The technical evidence submitted with the application confirmed that surface water runoff rates would not be increased because of the development and the Council officer's report to committee judged that based on surface water mitigation proposed, the development would likely reduce flood risk. The Local Lead Flood Team (LLFT) did not object to the proposals. While noting the concerns raised by interested parties about flooding along Fackley Road it is not clear from the Council's decision notice or the minutes of the committee meeting what led the Council to conclude that there was a lack of evidence regarding flooding.

12. At the appeal stage the applicants submitted an updated drainage strategy. This was based on the original Flood Risk Assessment. The updated scheme demonstrated that the drainage strategy would result in a reduced surface water runoff discharge rate compared to the original strategy. Nevertheless, the overall conclusion was the same that flood risk was low or very low and surface water runoff would be attenuated. The applicants' technical evidence was part of its appeal statement. In its statement the Council did not analyse the technical evidence or seek the views of the LLFT. Nor was any substantive evidence provided at the Hearing that the proposals would lead to flooding in the area. This was unreasonable.
13. In relation to sustainable urban drainage the Council offered little either in their statement or at the Hearing to demonstrate that sustainable urban drainage systems (SuDs) would not function adequately. As set out in my decision SuDs can be addressed by condition.
14. The applicants did not object to the contributions to public realm and broadband improvements at application stage. This was not a matter on which the application was refused. As set out in my decision I agree with the applicants that these contributions do not meet all the relevant tests in regulation 122(2) of the Community Infrastructure Levy Regulations (CIL tests). The onus is on the decision maker to be satisfied that any contributions meet the relevant tests, and the Council unreasonably sort these without properly evidencing the need for them.
15. At the time of the application the Council did not address the need or otherwise for a sequential test. This was raised at the Hearing because of the proposed amendment to the site boundary. The Council expressed the view that a sequential test would be required. However, in my decision I have concluded that a sequential test would not be necessary. The consideration of this issue arises from the submission of the amended plan. The need or otherwise for the sequential test was not part of the Council's reasons for refusing the development and not a matter on which this cost decision turns.
16. Nevertheless, I conclude that the Council has failed to substantiate its concerns regarding character and appearance, flood risk and drainage. It also caused the applicants to submit evidence regarding prematurity, highway safety and anti-social behaviour, matters which the Council could not justify and later withdrew. The onus was on the Council to justify the appropriateness of contributions having regard to the CIL tests. For the reasons set out in my decision, the reasons for refusal do not stand up to scrutiny on their planning merits, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has occurred in relation to the whole of the appeal. A full award of costs is therefore justified.

Costs Order

17. 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 Ashfield District Council shall pay to Persimmon Homes Nottingham and Nouveau Homes and Land Limited and Locheil Homes & Amp Developments Limited, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicants are now invited to submit to Ashfield District Council, to whose agent 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

Richborough