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## Appeal Decision

Hearing held on 4 February 2025

Site visit made on 4 February 2025

by **D M Young JP BSc (Hons) MA MRTPI MIHE**

an Inspector appointed by the Secretary of State

Decision date: 07 February 2025

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### Appeal Ref: APP/E2530/W/24/3347920

#### Land At Rectory Farm, Barrowby Road, Grantham, NG31 8NU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Vistry East Anglia against the decision of South Kesteven District Council.
  - The application Ref is S24/0140.
  - The application sought planning permission for a residential development (228 dwellings) formation of public open space provision of access and associated drainage and engineering works without complying with a condition attached to planning permission Ref S16/2816, dated 17 January 2023.
  - The condition in dispute is No 24 which states that: *"No dwellings within the development hereby approved, either alone or in combination with planning permissions (S16/2818, S16/2819 or S16/2816) shall be occupied, until either the scheme shown on drawing 103790 PEF ZZ XX DR Y SK002 (Linden/Jelson Eastern junction 'top up' scheme), the scheme shown on drawing 103790 PEF ZZ XX DR Y SK001 (GDOV Eastern junction 'top up' scheme as required under condition 28 of planning permission S17/1262) or any other alternative scheme providing the same mitigation that may be submitted to and approved in writing by the LPA has been completed."*
  - The reason given for the condition is: *"To ensure that the A1/A52 junction has adequate capacity to accommodate the additional traffic generated by the development."*
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### Decision

1. The appeal is allowed and planning permission is granted for a residential development (228 dwellings) formation of public open space provision of access and associated drainage and engineering works at land at Rectory Farm, Barrowby Road, Grantham, NG31 8NU address in accordance with the application Ref S24/0140, without compliance with condition 24 previously imposed on planning permission Ref S16/2816 dated 17 January 2023 and subject to the conditions set out in the attached schedule.

### Preliminary Matters

2. At the Hearing it became apparent that the Council accepted the central premise of the Appellant's case that it was unlikely that the Poplar Farm development (PF) would be fully built out before 150 dwellings were occupied on the Rectory Farm (Phase 1) site.
3. That being the case and in light of paragraph 116 (formerly paragraph 115) of the National Planning Policy Framework (the Framework), the Council in consultation with National Highways (NH) took the decision to withdraw its opposition to the appeal. I have dealt with the appeal on that basis noting that a number of local residents still opposed the appeal scheme.

## Main Issue

4. The main issue is whether the proposed variation of condition 24 would result in unacceptable highway impacts at the A1/A52 Barrowby junction (BJ).

## Reasons

5. The appeal site comprises Phase 1 of the Rectory Farm development situated on the north-western edge of Grantham. The site has planning permission for 448 dwellings and is being developed by the Appellant (Vistry) and Jelson Homes. The wider Rectory Farm development is allocated in the adopted Local Plan (Site Ref: GR3-H2) for approximately 1,150 dwellings. The appeal site is bounded to the north by Phase 2, by the partially implemented PF to the east and to the south by the substantially complete Countryside Properties development (also referred to as Gladmans and 'The Colleys').
6. The appeal scheme is seeking to vary Condition 24 attached to the original planning permission to allow for the occupation of up to 150 dwellings before delivery of the BJ improvement scheme<sup>1</sup>. The Appellant explained that the 150 dwellings would be apportioned 90/60 in favour of Vistry. Separate s73 applications<sup>2</sup> were approved in November 2024 which collectively allowed the occupation of 50 dwellings on Phase 1. The appeal therefore concerns the impact on BJ of a further 100 occupations on the appeal site.
7. As is explained in NH's statement, condition 24 allows for the implementation of various improvement schemes. The preferred scheme<sup>3</sup> involves the widening of the A1 southbound exit slip road approach to the A52 from one to two lanes allowing for more stacking (queuing) space for vehicles waiting to turn left or right onto the A52. Traffic signals will also be installed on the three arms of the junction which will make right turning movements safer and reduce queuing on the A1 slip road. Based on my observations, I concur with the oral evidence given by local residents that a scheme for the junction is long overdue. However, that is not justification for the dismissal of this appeal since it is a long-established legal planning principle that developers are required to mitigate the impact of their own development rather than to solve existing problems on the road network.
8. This appeal arises because it has taken longer than originally envisaged to secure approval from NH for the BJ improvement scheme. The current position is that technical approval and relevant legal agreements for the preferred scheme are still being progressed but not likely to be concluded until late 2025, with the works being implemented in early 2026. All parties agree that unless the condition is varied, the delivery of houses on the appeal site will stop in the next few months. The Council agreed this would have a detrimental impact on its housing land supply position potentially making it harder to resist speculative developments in the district.
9. The Appellant has undertaken various technical assessments of BJ in its Highway Safety and Capacity Review Technical Note. There is no dispute from NH that the methodology including trip rates, traffic assignment and distribution are acceptable. The analysis shows that the occupation of 150 dwellings on the appeal

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<sup>1</sup> The junction itself falls within the jurisdiction of NH but the A52 approaches are the responsibility of Lincolnshire County Council.

<sup>2</sup> LPA Ref: S24/1442 (Vistry) & S24/1443 (Jelson)

<sup>3</sup> Drawing Ref: SK18-SB Jnc Proposed (P1)

site would generate 42 additional two-way vehicle trips in the AM peak and 34 two-way trips in the PM peak.

10. Coming into the Hearing the only dispute between the parties was what committed developments (sites with planning permission) should be included in a realistic assessment scenario for the additional 150 dwellings. Put another way, what level of traffic should be assumed from other developments at the time when 150 dwellings are likely to be occupied on the appeal site. Here the debate was focussed solely on PF. At this stage it is worth setting out the requirements of paragraph 116 of the Framework which states:

*“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network, following mitigation, would be severe, taking into account all reasonable future scenarios.”* (my emphasis)

11. Annex 2 to the Framework defines ‘reasonable future scenarios’ as realistic transport scenarios tested in agreement with the local planning authority and other relevant bodies. The above change to the Framework (which occurred after the submission of Appeal Statements) is clearly significant to the question of what may or may not happen at PF in the next 12-18 months.
12. Although abandoned at the Hearing, the Council’s reason for refusal alleged that 150 dwellings would have a severe impact on BJ. That finding was predicated on a scenario where 1,800 houses would be occupied at PF by the time the junction improvement was implemented. The Appellant position was that 750 occupations at PF is a more realistic scenario.
13. In my view the Appellant’s position is supported by the factual reality on the ground which is that only 672 dwellings have been built and occupied at PF. On that basis alone it seems highly improbable that there would be a further 1,124 occupations before the delivery of the BJ improvement scheme in approximately 12 months’ time. However, and as discussed at the Hearing, there are several other factors that make the delivery of any further dwellings at PF unlikely in the short term. Firstly, as things stand the delivery of new homes and other supporting infrastructure at PF has stalled pending the outcome of a s73 application. This seeks the removal of conditions requiring a new link bridge over the railway. Until that condition is removed or varied, PF cannot lawfully proceed beyond 750 occupations.
14. Although the s73 application for the removal of the bridge has been submitted to the Council<sup>4</sup>, I was informed that there are a number of legal complexities preventing it from being validated. The Case Officer confirmed that a decision on the application is unlikely to be before summer 2025. Even if the above issues were resolved, I was informed that there are no Reserved Matters approvals for any further houses at PF and no pending applications. It is unlikely Reserved Matters applications would be submitted before the resolution of the s73 application. I therefore consider it unlikely that any further occupations will take place at PF before late 2025. Given there is no imminent prospect of development recommencing, the best that could be hoped for would be 750 occupations by

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<sup>4</sup> LPA Ref: S08/1231/EIAOL

early 2026<sup>5</sup> which is when the Appellant hopes to be able to proceed with the BJ improvement scheme. Even then that scenario appears highly optimistic.

15. As was discussed at the Hearing, there is an additional safeguard for the Council in that the PF developer has indicated a commitment (subject to the approval of the s73 application) to contribute to the BJ improvement scheme. On the basis that the removal of the bridge link would result in a greater impact at BJ than the original scheme, it would appear possible for the Council to impose conditions restricting the number of occupations at PF until the improvements works have been implemented.
16. It was suggested that timescales for the BJ improvement scheme could slip again or that the developers could simply stop at 150 occupations. There were oral references to other sites where this had happened, but no specific examples are before me. Given the very significant financial commitment made by the Phase 1 developers to get to this stage, I find it inconceivable that they would simply abandon the site and walk away rather than implementing the full permission. The final stages of a residential development tend to be the most lucrative and therefore it would make little sense to leave 290 dwellings undeveloped. Even in the alternative, the Appellant's highway evidence (Table 3) demonstrates that the traffic arising from 150 dwellings would not have an unacceptable or severe impact on BJ. On the contrary the impact is somewhat negligible. Accordingly, no highway harm would arise if the developer took the decision to stop at 150 dwellings.
17. While I cannot discount the possibility that timescales may again slip due to delays in the approval or construction process, the fact of the matter is that Phase 1 cannot go beyond 150 dwellings until the scheme is implemented. Based on my findings above, I conclude that the variation of condition 24 to 150 dwellings would not result in any demonstrable harm to the operation of BJ. As such, the proposal complies with paragraph 116 of the Framework

### **Other Matters**

18. The Council acknowledges that the earlier provision of housing and the delivery of the BJ improvement scheme, which would provide highway betterment, are both significant public benefits. I see no reason to disagree.

### **Conditions**

19. A list of planning conditions has been agreed between the parties. In the main the conditions replicate those imposed on the original permission. In all cases I am satisfied that the conditions are reasonably necessary and meet the tests set out in paragraph 57 of the Framework.

### **Conclusion**

20. For the reasons given above the appeal should be allowed.

*D M Young*

INSPECTOR

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<sup>5</sup> Based on the standard build out rate of 75 dwellings per year

## **APPERANCES**

### Appellant

Zack Simons of Counsel

Chris Holloway BEng (Hons) MCIHT

Divisional Director, Pell Frischmann

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### South Kesteven District Council

Paul Weeks

Solicitor, Legal Services Lincolnshire

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National Highways

Sunil Gogna

AECOM

Daniel Law

AECOM

## **SCHEDULE OF CONDITIONS**

- 1) Unless otherwise required by another condition of this permission, the development hereby permitted shall be carried out in accordance with the following list of approved plans: Site Location Plan: 379-LP-01C, NTW 477 01, 379-SK-01F, 379-SK-02F, 379-SK-03F, 379-SK-04F, 379-SK-05F, 8247-L-01C, GRA01.PL001D, GRA01.PL004A, GRA01.PL006A, GRA01.PL008B, GRA01.PL009B, HWK.pe7, EVE.pe, WAY.pe, MOU.pe, MYL.pe, PEM.pe, Rip.pe, KNI.pe, ASL.pe, COT.CH.pe, SG.pe and DTG.pe
- 2) All construction works on site shall be carried out in accordance the Construction Management Plan and Method Statement (Dated February 2023) approved under application reference: S23/0300, unless otherwise agreed in writing by the Local Planning Authority.
- 3) The development shall be carried out in accordance with the ecological mitigation measures specified in the Environmental Statement (Dated May 2018).
- 4) Before any dwelling is occupied, all of that part of the estate road and associated footway that forms the junction with the main road and which will be constructed within the limits of the existing highway, shall be laid out and constructed to finished surface levels in accordance with details to be submitted to, and approved in writing by, the Local Planning Authority.
- 5) Before any part of the development hereby permitted is occupied / brought into use, all hard landscaping works shall have been carried out in accordance with the details approved under application ref: S23/0300 except where amended by application ref: S24/0525, unless otherwise agreed in writing by the Local Planning Authority.
- 6) Before the end of the first planting / seeding season following the occupation/first use of any part of the development hereby permitted, all soft landscaping works shall have been carried out in accordance with the soft landscaping details approved under application ref: S23/0300, unless otherwise agreed in writing by the Local Planning Authority.
- 7) Before any part of the development hereby permitted is occupied / brought into use, the external surfaces shall have been completed in accordance with the details approved under application ref: S23/0300, unless otherwise agreed in writing by the Local Planning Authority.
- 8) Before any part of the development hereby permitted is occupied / brought into use, the works to provide the boundary treatments shall have been completed in accordance with the details approved under application ref: S23/0300, unless otherwise agreed in writing by the Local Planning Authority.
- 9) Before any part of the development hereby permitted is occupied / brought into use, the works to provide the surface and foul water drainage shall have been completed in accordance with the details approved under application ref: S23/0300, unless otherwise agreed in writing by the Local Planning Authority.
- 10) Prior to first occupation of each dwelling hereby permitted, the approved sustainable building measures shall be completed in accordance with the



details approved under application ref: S23/0500, unless otherwise agreed in writing by the Local Planning Authority.

- 11) No more than 150 dwellings within the development hereby approved either alone or in combination with planning permissions ((S16/2816, S23/0592, S24/0140, S24/1442, S24/1443) (or any subsequent variations to these planning permissions) shall be occupied, until either the scheme shown on drawing 103790 PEF ZZ XX DR Y SK002 (Linden/Jelson Eastern junction 'top up' scheme), the scheme shown on drawing 103790 PEF ZZ XX DR Y SK001 (GDOV Eastern junction 'top up' scheme as required under condition 28 of planning permission S17/1262), the scheme shown on Proposed General Arrangement Plan (Ref: SK 18/SB JCN/Rev P1) or any other alternative scheme providing the same mitigation that may be submitted to and approved in writing by the LPA has been completed.
- 12) 12)No more than 448 dwellings within the development hereby approved, either alone or in combination with planning permission S16/2819 or S23/0592 shall be occupied, until the scheme shown on drawing no. 106648-SK006 Rev A (the Western junction GDOV scheme) has been completed.
- 13) Within a period of five years from the first occupation of the final dwelling / unit of the development hereby permitted, any trees or plants provided as part of the approved soft landscaping scheme, that die or become, in the opinion of the Local Planning Authority, seriously damaged or defective, shall be replaced in the first planting season following any such loss with a specimen of the same size and species as identified in the approved soft landscaping scheme, unless otherwise agreed by the Local Planning Authority.
- 14) Following the first occupation of the final dwelling / unit hereby permitted, the approved Landscape and Biodiversity Management Plan approved under application ref: S23/0300 shall be adhered to in full, unless otherwise agreed in writing by the Local Planning Authority.
- 15) The approved surface water drainage scheme shall be retained and maintained in full, in accordance with the approved details.