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## Appeal Decision

Site visit made on 1 December 2020

**by Darren Hendley BA(Hons) MA MRTPI**

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

**Decision date: 17<sup>th</sup> December 2020**

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**Appeal Ref: APP/G2815/W/19/3232099**

**Land rear of 7-12 The Willows, Thrapston, Northamptonshire NN14 4LY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Lourett Developments Ltd against the decision of East Northamptonshire District Council.
  - The application Ref: 18/02459/OUT, dated 19 December 2018, was refused by notice dated 28 February 2019.
  - The development proposed was originally described as a 'residential development'.
  - This decision supersedes that issued on 24 January 2020. That decision on the appeal was quashed by order of the High Court."
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### Decision

1. The appeal is allowed and planning permission is granted for a residential development to erect four dwellings at land rear of 7-12 The Willows, Thrapston, Northamptonshire NN14 4LY in accordance with the terms of the application, Ref: 18/02459/OUT, dated 19 December 2018, subject to the conditions in the attached schedule.

### Applications for Costs

2. An application for costs was made by Lourett Developments Ltd against East Northamptonshire District Council. This application will be the subject of a separate Decision.
3. The Council also outlined an application for costs, albeit this was not followed up with the claim itself. Nevertheless, I have considered it as such an application and this will also be the subject of a separate Decision.

### Procedural Matters

4. The description of development set out in the banner heading above is taken from the planning application form. Both the descriptions on the Council's decision notice and the appeal form refer to a proposed residential development to erect four dwellings on redundant land. As this more accurately describes the proposal, I have considered the appeal on this basis, excluding the superfluous elements. This is reflected in my decision paragraph.
5. The application is in outline form with all matters reserved for future consideration apart from access and scale. I have dealt with the appeal on this basis and I have treated any details not to be considered at this stage as being

illustrative only. To what extent scale<sup>1</sup> is to be considered at this stage and what should be considered under reserved matters is a matter of contention between the main parties, with regard to height. The appellant has now provided the details of the height of the proposed dwellings, which the Council has had the opportunity to comment on. Scale in its entirety can now be dealt with at this outline stage.

6. The appellant originally signed Certificate A on the application form which stated that Lourett Developments Ltd were the sole owner of the appeal site. This was incorrect because there are two other freeholders. Accordingly, the appellant served notice on the freeholders and so has discharged the relevant provisions<sup>2</sup> concerning the serving of notice.
7. The appellant submitted a revised indicative site layout plan with the appeal, as well as a number of other plans which show how the proposal would relate to the existing housing on adjoining land. I have considered these plans in my decision on an indicative basis.
8. The Council has confirmed that it is no longer defending reasons for refusal 1,4 and 5 in its decision. This is due to a recent permission<sup>3</sup> for a residential development on the site for 4 dwellings, additional survey evidence related to breeding birds and great crested newts, and evidence that demonstrates that the site has not been public open space. As these issues no longer form matters of dispute between the main parties, I have considered the appeal on this basis. The main parties remain in disagreement over reasons for refusal 2 and 3 which concern, respectively, housing mix and character and appearance.

### **Main Issues**

9. Based on the above, the main issues are the effect of the proposal on (i) housing mix; and (ii) the character and appearance of the area.

### **Reasons**

#### *Housing Mix*

10. Policy 30 of the North Northamptonshire Joint Core Strategy 2011 – 2031 (2016) (JCS) states that housing development should provide a mix of dwelling sizes and tenures to cater for current and forecast accommodation needs and to assist in the creation of sustainable mixed and inclusive communities. Part a) sets out that the mix of house types within a development should accommodate smaller households with an emphasis on the provision of small and medium sized dwellings (1-3 bedrooms), amongst other considerations.
11. The approach which Policy 30 takes is based on the Council's Strategic Housing Market Assessment toolkit (2015) (SHMA), which is detailed in the supporting text to the policy. The need is said to be for smaller dwellings. Around 70% of new households are forecast to be of a size that 'need' 1 or 2 bedrooms, 30% will need 3 bedrooms and very few will need 4 or more bedrooms.
12. However, there is also flexibility as regards accommodating some of the demand for larger dwellings. This will be supported provided that

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<sup>1</sup> As defined by Article 2 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO)

<sup>2</sup> Articles 13 and 14 of the DMPO

<sup>3</sup> Council ref: 19/01616/OUT

- developments provide a significant proportion (generally at least 70%) of small and medium sized properties (1-3 bedrooms), which will provide the more affordable market housing options to meet identified needs. Proposals for a higher proportion of larger (4+ bedroom) dwellings should be supported by evidence in relation to the existing housing stock and the local housing market.
13. The relevant means by which Policy 30 seeks to ensure that an appropriate housing mix would be provided in order to meet accommodation needs is through the number of bedrooms that would be provided. The Council, though, place emphasis on scale as a way of assessing housing mix. However, if Policy 30 considered that other ways were to be utilised, it would say so. It does not and so the sole relevant way of assessing housing mix under the policy is the number of bedrooms, rather than scale or other ways, such as the floor area.
  14. With the application's outline form, the details that have been provided as regards the number of bedrooms is indicative. What is shown on the submitted plans would not accord with the number of bedrooms which Policy 30 would envisage that a housing development would provide. However, this would not preclude properties with less bedrooms being provided for at the reserved matters stage in order for the proposal to comply with the policy. This would arise, simply, if 3 of the proposed 4 dwellings were 3 bedroom, when the flexibility is applied. As an outline approval forms the planning permission for a proposal, it would be reasonable and necessary to impose a condition to ensure this is addressed at the reserved matters stage.
  15. The Council also contest that the proposal would not constitute an efficient use of land because of the low density and as a greater number of smaller homes could be accommodated on the site. Having regard to the evidence before me, Policy 30 is the appropriate way of assessing whether the proposal would make such a use of land because it is based on the local market conditions, by virtue of the SHMA. As I has set out above, the proposal is not inconsistent with Policy 30.
  16. Matters in relation to whether a greater number of proposed dwellings could be accommodated with regard to access and the effect on the living conditions of the occupiers of neighbouring properties have a limited bearing because this does not constitute the proposal which is for my consideration.
  17. I conclude that the proposal would not be unacceptable with regard to housing mix, subject to the condition. Hence, it would comply with Policy 30a as regards the mix of house types that a development should reflect and, on this basis, it would assist in the creation of sustainable mixed and inclusive communities.

#### *Character and Appearance*

18. The site comprises an area of open land which lies to the rear of a modern residential development known as The Willows. The site benefits from a defined access in between 2 of the neighbouring properties. The Willows is set out in a planned layout around an access road and a number of cul-de-sacs. The dwellings comprise uniform house types. They are fairly well proportioned and of a 2 storey form. The remaining land around the site is of a more open nature and reflects that it lies on the edge of the town and close to a river and the open countryside.

19. The scale parameters are set out by virtue of the submitted floor plans for the depths and widths (lengths) of the proposed dwellings. The depths of the proposed dwellings would be similar to those found already on The Willows. The lengths would be greater, but there is already variation with the existing dwellings which are also positioned fairly close together to already give a built up character. The proposed lengths would not be a determinative factor.
20. The appellant has confirmed that the height of the proposed dwellings would be no higher than 7.2 metres from the finished floor levels. This is a precise way of ascribing height because it provides a clear measurement. It would not be achieved by utilising a vaguer description by way of the number of storeys, whether it would be 2 or 3. The appellant has also provided evidence that the height of at least one neighbouring property would be similar to the proposal. The proposed height would not be discordant.
21. As a result, when the proportions of the proposed dwellings are taken together, the scale would not appear out of keeping with the existing dwellings on The Willows.
22. The Council does not now contest the location of the proposal. I see no reason to disagree as it would effectively continue the existing pattern of residential development to the rear of where it currently ends.
23. In respect of the visual impact, the proposal would also appear as a continuation of The Willows. It would sit comfortably in its surroundings, in particular due to the location on the edge of the town. The lower density of the proposal would enable a transition between The Willows and the countryside beyond.
24. There would also be likely limited visibility from the streetscene because of the screening provided by the houses on The Willows, even with the proposed access arrangements. The visual effect would also be contained as there is already some landscaping and vegetation around the site boundaries and towards the river corridor to the west. This is also ably demonstrated by the appellant's Baseline Landscape and Visual Impact Appraisal. The layout and the landscaping, to be considered at the reserved matters stage, would also provide some control and reassurance in this regard.
25. I conclude that the proposal would not have an unacceptable effect on the character and appearance of the area. As such, it would comply with Policy 8D of the JCS which sets out that development should create a distinctive local character. This includes by way of responding to the site's immediate and wider context and local character, the overall form, and character and landscape setting of the settlement, amidst other considerations. It would also comply with the National Planning Policy Framework where it concerns achieving well-designed places.

### **Other Matters**

26. The site is located within 3 kilometres of the Upper Nene Valley Gravel Pits Special Protection Area (SPA). The qualifying features for the SPA designation are the concentrations of Great Bittern, Gadwall and European Golden Plover bird species. The recreational presence of people and dog walking is a principle threat to the birds by way of disturbance and thereby the qualifying features.

27. The proposal is located within the zone of influence around the SPA. Due to its recreational value, the future residents of the proposal would be likely to visit the SPA. This provides a pathway of effect for recreational disturbance. As a consequence, and when applying the precautionary approach, the proposal would be likely to have a significant effect on the SPA. Accordingly, I am required to undertake an Appropriate Assessment as the competent authority under the Conservation of Habitats and Species Regulations 2017.
28. The mitigation strategy for the SPA involves a financial contribution per dwelling that is used for Strategic Access Management and Monitoring. This involves measures such as fencing, screening and wardens to minimise the risk of recreational disturbance on the qualifying features. Such an approach is agreed by the Council and Natural England, as the Statutory Nature Conservation Body. This financial contribution has already been paid to the Council by the appellant and it is not in dispute that it would be used for the intended mitigation purposes. On this basis, the proposal would not adversely affect the integrity of the SPA.
29. With regard to the Council's emerging local plan, this is still at a stage relatively early on in the plan preparation process and so it attracts limited weight in my decision. Concerning the use of the site, there is not substantive evidence that public access has been anything other than informal and at the discretion of the landowner. At the time of my visit, the site had largely been fenced off. As a result, the proposal would not give rise to the loss of public open space. I have dealt with matters related to visual impact earlier in my decision.
30. Adequate visibility would be able to be achieved at the site access in accordance with Highway Authority requirements, as would levels of commensurate off-street car parking, together with refuse storage provision. Construction impacts would be likely of a fairly short duration. These matters would be adequately controlled through planning conditions. The same applies as regards land contamination relating to the historical usage of the site.
31. Reserved matters, in particular layout, would ensure that satisfactory living conditions for the occupants of the neighbouring properties is maintained. Whilst I am mindful that these residents currently benefit from an open aspect across the site, an appropriate layout would provide not unacceptable levels of privacy, light and visual impact, as well as limiting overshadowing.
32. The Flood Risk Assessment (FRA) also ably demonstrates that the proposal would be acceptable with regard to flood risk, while matters in relation to the utilities infrastructure on the site are for the appellant and the operators.
33. The main parties have made reference to the previous Inspector's decision. It is my role, though, to redetermine the case and not review this decision. Where matters are raised that are relevant to my decision, I have taken these into account.

### **Conditions**

34. I have imposed conditions by way of the reserved matters and the timescales for submission and implementation. In the interests of certainty, I have also imposed a condition concerning the approved plans as access and scale are matters before me. For the same reason, I have imposed a condition

concerning the height of the proposed dwellings, based on the details that the appellant has provided.

35. I have also imposed a condition in respect of the internal layout of the proposed dwellings. This is in order that the housing mix assists in the creation of mixed and inclusive communities. A condition is also imposed concerning the finished floor levels, in the interests of protecting the character and appearance of the area.
36. I have imposed a condition in relation to the mitigation measures set out in the FRA, in the interests of minimising flood risk. I have also imposed conditions concerning the construction period in the interests of protecting the living conditions of the nearest residents. I have also imposed conditions involving land contamination in the interests of public health and pollution control, and the vehicular access and parking in the interests of highway safety.

### **Conclusion**

37. For the reasons set out above and having regard to all matters that have been raised, the appeal should be allowed subject to the conditions.

*Darren Hendley*

INSPECTOR

### **Schedule of Conditions**

- 1) Details of the appearance, landscaping and layout, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
  - 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
  - 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
  - 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 120-TA02 Revision A, 1544-SK02 Revision A, 1544-SK03, 1544-SK04, 1544-SK05 but only in respect of those matters not reserved for later approval and excluding the internal layout of the proposed dwellings.
  - 5) The height of the proposed dwellings shall not exceed 7.2 metres from the finished floor levels.
  - 6) No development shall take place until a scheme for the internal layout of the proposed dwellings has been submitted to and approved in writing by the local planning authority as part of the reserved matters submission required by condition 1. The scheme shall include the details of the number of bedrooms in each proposed dwelling. The development shall be implemented in accordance with the approved details.
  - 7) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed dwellings, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority as part of the reserved matters submission required by condition 1. The development shall be carried out in accordance with the approved levels.
  - 8) The development shall be carried out in accordance with the submitted flood risk assessment (FRA) (Ref: 120-FRA-01-C) dated October 2018 and the following mitigation measures it details:
    - Finished floor levels shall be set no lower than 30.83 metres above Ordnance Datum (AOD).
- These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.
- 9) No demolition or construction work (including deliveries to or from the site) that causes noise to be audible outside the site boundary shall take place on the site outside the hours of 08:00 and 18:00 Mondays to Fridays and 08:00 and 13:00 on Saturdays, and at no times on Sundays or Bank or Public Holidays.
  - 10) During site clearance and construction phases the developer shall provide, maintain and use a supply of water and means of dispensing it, to dampen dust in order to minimise its emission from the development

site. The developer shall not permit the processing or sweeping of any dust or dusty material without effectively treating it with water or other substance in order to minimise dust emission from the development site. The developer shall provide and use suitably covered skips in order to minimise dust emission to the atmosphere when materials and waste are removed from the development site.

11) Prior to the commencement of piling operations, a scheme for the control and mitigation of noise, including vibration, affecting surrounding premises shall be submitted to, and approved in writing, by the local planning authority. Such measures shall operate throughout the piling operations in accordance with the approved details or amendments which have been submitted to and approved in writing by the local planning authority.

12) The development hereby permitted shall not be commenced until details of a comprehensive contaminated land investigation has been submitted to and approved by the local planning authority and until the scope of works approved therein have been implemented where possible. The assessment shall include all of the following measures unless the local planning authority dispenses with any such requirements in writing:

a) A Phase I desk study carried out by a competent person to identify and evaluate all potential sources of contamination and the impacts on land and/or controlled waters, relevant to the site. The desk study shall establish a 'conceptual model' of the site and identify all plausible pollutant linkages. Furthermore, the assessment shall set objectives for intrusive site investigation works/ Quantitative Risk Assessment (or state if none required). Two full copies of the desk study and a non-technical summary shall be submitted to the local planning authority without delay upon completion.

b) A site investigation shall be carried out to fully and effectively characterise the nature and extent of any land contamination and/or pollution of controlled waters. It shall specifically include a risk assessment that adopts the Source-Pathway-Receptor principle and takes into account the sites existing status and proposed new use. Two full copies of the site investigation and findings shall be forwarded to the local planning authority.

This must be conducted in accordance with the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR11'.

13) Where the risk assessment identifies any unacceptable risk or risks, an appraisal of remedial options and proposal of the preferred option to deal with land contamination and/or pollution of controlled waters affecting the site shall be submitted to and approved by the local planning authority. No works, other than investigative works, shall be carried out on the site prior to receipt and written approval of the preferred remedial option by the local planning authority.

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model procedures for the Management of Land Contamination, CLR11'.

14) Remediation of the site shall be carried out in accordance with the approved remedial option.



- 15) On completion of remediation, two copies of a closure report shall be submitted to the local planning authority. The report shall provide verification that the required works regarding contamination have been carried out in accordance with the approved Method Statement(s). Post remediation sampling and monitoring results shall be included in the closure report.
- 16) If, during development, contamination not previously considered is identified, then the local planning authority shall be notified immediately, and no further work shall be carried out until a method statement detailing a scheme for dealing with the suspect contamination has been submitted to and agreed in writing with the local planning authority .
- 17)
  - a. Prior to first use or occupation of the development hereby permitted, the means of access shall be paved with a hard-bound surface for at least the first 10m from the highway boundary. Such surfacing shall thereafter be retained and maintained in perpetuity. The maximum gradient over a 5m distance (from the highway boundary) shall not exceed 1 in 15.
  - b. Prior to first use or occupation of the development hereby permitted, pedestrian visibility splays of at least 2m x 2m shall be provided on each side of the vehicular access. These measurements shall be taken from and along the highway boundary. The splays shall thereafter be permanently retained and kept free of all obstacles to visibility over 0.6 metres in height above access/footway level.
  - c. Prior to first use or occupation, the proposed vehicular access and parking facilities shall be provided in accordance with the approved plans and shall thereafter be set aside and retained for those purposes.
  - d. Prior to first use or occupation, suitable drainage shall be provided at the end of the driveway to ensure that surface water from the vehicular access does not discharge onto the highway or adjacent land.
  - e. No gate(s), barriers or means of enclosure shall be erected within 8m of the highway boundary. Any such feature erected beyond that distance should be hung to open inwards only. The gates shall be retained as such thereafter.