



Appeal Decision

Inquiry Held on 11-14 May 2021

Site visit made on 18 May 2021

by K Ford MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd June 2021

Appeal Ref: APP/B3030/W/20/2655876

Land off Eakring Road, Bilsthorpe, Newark and Sherwood, Nottingham NG22 8PZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Miss Elizabeth Woodhouse of Keepmoat Homes against the decision of Newark & Sherwood District Council.
 - The application Ref 20/00873/FULM, dated 27 May 2020, was refused by notice dated 4 November 2020.
 - The development proposed is a residential development of 103 dwellings and associated access and infrastructure.
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Decision

1. The appeal is allowed and planning permission is granted for a residential development of 103 dwellings and associated access and infrastructure at land off Eakring Road, Bilsthorpe, Newark and Sherwood, Nottingham NG22 8PZ in accordance with the terms of application reference 20/00873/FULM, dated 27 May 2020 subject to the attached conditions.

Application for Costs

2. At the Inquiry an application for costs was made by Keepmoat Homes against Newark and Sherwood District Council. This application will be the subject of a separate Decision.

Preliminary Matters

3. I have used the description of development that appears on the Council's Decision notice and the appellant's appeal form as it accurately and concisely describes the development proposed.
4. Outline planning permission was granted for 85 dwellings, up to 280sqm of retail development and associated works including details of a new access junction into the site from Eakring Road (ref: 17/01139/OUTM) with the decision issued on 1 June 2018. Whilst indicating otherwise in the appellant's Statement of Case, at the Inquiry there was agreement between the parties that the permission did not form a fallback position due to its imminent expiry. I therefore do not give this weight in reaching my conclusions on the main issues.

5. As part of the Inquiry the appellant has submitted 'Detailed Landscape Proposals c-1704-05 Revision E'. They are indicative and I have determined the appeal on this basis. I return to the matter below.
6. The Inquiry sat for 4 days starting on 11 May 2021. The appeal was closed in writing following the submission of closing remarks on 25 May 2021.

Main Issues

7. The main issues are:
 - a. The effect on the character and appearance of the area with specific reference to density, design and landscaping.
 - b. Whether the proposed housing mix will meet the housing needs in the area.
 - c. Whether satisfactory living conditions would be created with particular regard to living space.

Reasons

Character and Appearance

Density of Development

8. The site is a broadly rectangular plot of agricultural land to the east of Eakring Road within the settlement boundary of Bilsthorpe. The site is contained and visually enclosed with a disused railway line to the north, embankment and woodland to the east and existing residential development to the west. This creates an edge of settlement character, distinct from the more open countryside beyond a disused railway line.
9. The site is largely level but rises slightly in the north west corner due to the elevated position of Eakring Road where it crosses the former railway bridge. There are views down into the site from the railway bridge and along part of Eakring Road.
10. The site is allocated in Policy Bi/MU/1 of the Newark and Sherwood Allocations and Development Management DPD (ADMDDPD) for a mixed use of around 75 dwellings and retail development. Allocated to assist the regeneration of Bilsthorpe the policy requires, amongst other things, that development is of an appropriate design that addresses the site's gateway location and manages the transition from the countryside into the main built up area.
11. Core Policy 3 of the Newark and Sherwood Core Strategy (Core Strategy) requires that development densities in all housing developments should normally be no lower than an average of 30 dwellings per hectare net with densities below this needing to be justified, taking into account individual site circumstances. The policy goes on to say that densities of 30 dwellings per hectare or more will be set for allocations in the ADMDDPD.
12. The Council is of the view that it is not imperative for gateway sites to achieve a minimum density of 30 dwellings per hectare, although no specific reference to gateway sites as an exception to the requirements of the policy is identified in Core Policy 3.
13. Whilst Policy Bi/MU/1 makes reference to the delivery of around 75 dwellings, at the Inquiry the Council accepted that this was a notional figure which did not

fix the density of the site and that a development of 103 dwellings on the site could be acceptable in principle, depending on the details of the scheme. The Council indicated that the requirements of Policy Bi/MU/1 justified a lower density than 30 dwellings per hectare but there is little before me to collaborate this.

14. The density plan prepared by the appellant illustrates how density levels would increase from the north to the south east corner of the site with the lowest density being 31.3 dwellings per hectare closest to the northern boundary and 41.8 dwellings per hectare in the south east corner.
15. The Council argues that the density to the north of the site should be considerably lower. However, I do not agree given the enclosed nature of the site, the separation and buffer from the wider countryside that is provided by the disused railway line and the proximity of the site to other development. The proposed number of dwellings would not create a cramped or overdeveloped site. In density terms it would be an effective and efficient use of land that would be policy compliant and manage the transition to the main built up area.

Landscaping

16. The site is located in the Mid-Nottinghamshire Farmlands within the sub area Policy Zone MN 24: Rufford Park Estate Farmlands with Plantations. The landscape in this zone is defined as poor and landscape sensitivity is considered to be very low. The landscape action for the policy zone is 'create'. This includes the creation of new and the restoration of existing hedgerows and enhancement of landscape planting. Within this context a gateway allocation such as the appeal site requires appropriate landscaping treatment to preserve and enhance the site's setting.
17. In the Council's reasons for refusal particular reference was made to the proposed treatment of the northern boundary of the site with concern that there would be little opportunity for landscape screening. However, the Council's planning witness acknowledged at the Inquiry that given the elevated position of Eakring Road it would not be either possible or desirable to screen the development completely. Instead, there was agreement between the parties that views of the site should be filtered.
18. The Landscape and Visual Appraisal (LVA) for the development concluded that the landscape impacts of the scheme would be minor adverse at year 15 once the green infrastructure had been able to establish. An independent review of the LVA confirmed that given the site is visually contained the landscape impacts would not extend a great distance from the site and that it would be possible to condition appropriate mitigation. The Council's Planning witness criticises the LVA and the independent assessment of it. Whilst noting the points made, there is nothing to indicate that the points raised fundamentally undermine the findings or the credibility of the studies.
19. On the evidence before me I am satisfied that it would be possible to provide tree and hedge vegetation along the northern boundary that would provide filtered views of the site and fulfil the 'create' requirements of the policy and avoid a hard edge to the northern boundary. This is even with the proposed design and orientation of the dwellings and their associated paraphernalia and acknowledging that there will be some views of the proposed turning heads visible from the disused railway. I take this view irrespective of any future

- changes to the existing vegetation outside the site boundary which is not within the appellant's control.
20. There is little before me to suggest that the landscaping on the northern boundary would be short lived, either due to a pressure to remove it by residents or damage by refuse vehicles. The plans submitted show a swept path analysis that is sufficient for refuse vehicles to manoeuvre adequately.
 21. As part of the Inquiry the appellant submitted revised landscaping proposals (c-1704-05 Revision E). This is indicative, showing what could be possible. Whilst the Council did not support the specific proposals which included the use of native hedgerows and trees in line with policy, these are matters of detail that can be addressed through the discharge of an appropriately worded planning condition on soft landscaping.
 22. Whilst the reason for refusal focuses on the northern boundary, a number of other matters were discussed during the Inquiry. Although the Council criticises the absence of screening on the southern boundary to soften views of the ambulance station, there is little in the way of screening at present and the height and scale of the building on the adjacent site is not so significant as to have a notable impact. If necessary, planting to provide more filtered views could be incorporated through the conditioned soft landscaping works referred to above.
 23. Although there would be some cut back of hedging on the western boundary to facilitate the provision and improvement of a footpath, the impact would be mitigated by the setback of dwellings from Eakring Road thus softening the transition from the pavement to the built development.
 24. Whilst no planting is proposed on the eastern boundary, from my observations on my site visit there would only be glimpsed views of the back gardens and fences of properties from the path along the embankment given the vegetation would obstruct views. The Council suggested that there would be a risk of informal fly tipping along this boundary. However, there is little before me to substantiate that claim in this instance. On my site visit I did not witness any evidence of fly tipping where other properties were located adjacent to the wooded area.

Design

25. There are differences between the parties in their assessment of the defining features of the character of the area and the consequential extent to which those considerations have factored into the design of the scheme. This includes the regard that should be had to the nearby garden suburb/ corporation suburb.
26. Although the scheme would not replicate the uniform house styles or the straighter building lines of the housing to the west, it would not create a jarring effect. Indeed, in their evidence the Council's Planning witness states that there is not any justification for the proposal to be consistent with the approach followed by the established development to the west. They noted alongside views on the perceived shortcomings of the landscaping in the development to the west that much of the area was constructed post war and subject to different considerations.

27. Like elsewhere on Eakring Road the development would include semi detached dwellings as well as design features such as gable ends and complementary materials to the existing development through the use of red brick and natural grey stone. I am consequently of the view that the proposal would not be discordant when viewed alongside the neighbouring housing.
28. There are currently a number of walking routes around the perimeter of the site and diagonally across the site. Whilst appearing well trodden at the time of my site visit, they are informal in nature and not permanent.
29. Pedestrian movements around the site would change as a result of the development. Nevertheless, there would still be opportunities to cross the site and they would be permanent in nature. The site would be accessible by walking to open space within the site and there would be links to services and facilities close to the site. In this context I disagree with the Council's Design witness that it is critical to retain the diagonal path across the site post development.
30. Whilst interested parties and the Council's Design witness have called for a zebra crossing on Eakring Road, the Pedestrian Crossing Assessment for the scheme indicates that the development is only expected to generate a limited number of pedestrian trips during peak travel times. I have no reason to disagree with the Highway Authority's view that the off site improvements proposed would be sufficient, namely the dropped kerb facility with tactile paving on Eakring Road.
31. The scheme has triple tandem parking in around 19 of the 4 bedroom homes. The Council raised issue with the impact on pedestrian safety. However, the parties agreed during the Inquiry that the scheme does not pose a highways safety concern in terms of paragraph 109 of the National Planning Policy Framework (NPPF). This is confirmed by the absence of any objection from the Highways Authority on this matter.
32. Guidance on parking provision is set out in the Nottinghamshire County Council Highway Design Guide, January 2021 (HDG) and the Council's Residential Cycle and Parking Standards and Design Guide SPD (CPSDG).
33. Tandem parking arrangements are not encouraged in the District Council's guidance and should not be the only or predominant design solution. However, it is acknowledged that it can form part of the car parking strategy. Given the proportion of dwellings affected as a percentage of the total development, it would not be either the only or predominant solution.
34. As highlighted by the appellant's Highways witness, driveway lengths would be extended to avoid vehicles overhanging the highway and obstructing footways in accordance with the HDG. Compliance with the guidance has been confirmed by the Highways Authority. In addition, there is little before me to substantiate the claim that the proposed garages will not be used for parking, particularly as the appellant's Highways witness confirmed that the dimensions of the garages incorporate an element of storage. Similarly, there is little to indicate that driveways will not be used to park vehicles, leading to an increase in street parking.
35. I accept that the HDG says that long driveways should only be treated as 2 spaces. Even if there was an element of displaced on street parking as a result

- I do not consider that the numbers involved would be excessive to the extent that it would have a harmful impact on visual amenity or pedestrian safety and therefore the efficiency of the internal road layout as claimed by the Council.
36. The Council state that there is no evidence of provision for electric charging points. However, I have not been provided with any details which suggest that this is a policy requirement. As the proposed dwellings have off street parking there is nothing to indicate that the fitting of electric charging points within the development would not be possible.
37. The NPPF advocates the use of tools and processes for assessing and improving the design of development. Building for Life is referenced as an example of an assessment framework. The scheme has been subject to an assessment by both parties using Building for a Healthy Life, which is an update of Building for Life 12.
38. There are significant differences between the parties in their assessment of the scheme. This is to some extent inevitable given the subjectiveness of some elements of design considerations. I note the experience of the Council's Design witness on the matter and whilst having regard to his assessment it does not alter my findings on the points above. Whilst a useful tool, and noting its use in other appeals as referenced by the Council, Building for a Healthy Life is not mandatory, it is guidance and there are no hard and fast rules. My assessment of the evidence has been informed by the particular circumstances of the site. It was agreed by the parties for example that it would be better for back gardens to face onto the wooded embankment than onto Eakring Road which would be more harmful from a design perspective.
39. The Council's Design witness submitted 2 alternative schemes to the Inquiry. It was explained that they were intentionally conceptual. However, the lack of detail did not make them comparable with the submitted scheme. Irrespective of whether the consideration of alternative schemes should have been included in the appellant's Design and Access Statement, the lack of detail in the alternative schemes presented by the Council means they fail to demonstrate how they would address a number of points raised in criticism of the submitted scheme, for example the treatment of the northern boundary. That along with a failure to demonstrate how the alternative schemes would meet policy requirements or would be deliverable means they are of limited assistance in my assessment of the submitted proposal. Regardless of the appellant's view on the alternative schemes with reference to caselaw, I give them little weight for the reasons outlined and because I am required to consider the proposal before me, having regard to the requirements of the development plan.

Conclusion on Character and Appearance

40. The allocation of the site for development makes it inevitable that the landscape character of the site will fundamentally change. For the reasons identified I do not consider that the details of the scheme in terms of density, landscape proposals or design would have a harmful impact on the character and appearance of the area. The development would therefore comply with Spatial Policy 7 and Core Policy 9 of the Core Strategy. Spatial Policy 7 includes support for development proposals that promote an improved and integrated transport network and an emphasis on non-car modes as a means of access to services and facilities. Core Policy 9 of the Core Strategy amongst other things expects new development to demonstrate a high standard of sustainable

design and layout, demonstrate an effective and efficient use of land and optimise site potential at a level suitable to local character.

41. The proposal would also support Policy Bi/MU/1 of the ADMDPD which allocates the site for development, subject to criteria which includes appropriate design that addresses the site's gateway location and manages the transition into the main built up area. It would also comply with the criteria outlined in Policy DM5 of the ADMDPD on matters that include access, parking, amenity, crime and disorder, local distinctiveness and character and green infrastructure.

Housing Mix

42. Core Policy 3 of the Core Strategy seeks to secure new housing development that adequately addresses the housing need of the district. It goes on to say that the Council will seek to secure an appropriate mix of housing types to reflect local housing need. Such a mix will be dependent on the local circumstances of the site, the viability of the development and any localised housing need information.
43. The Council's Housing Needs, Market and Affordability Study 2014 which forms the basis of some of the requirements of Core Policy 3 of the Core Strategy has been superseded more recently with the Newark and Sherwood Housing Needs Assessment (HNA), published in 2020. Within this study Bilsthorpe falls within the Sherwood Sub Area. It was accepted by all the parties that the HNA is more up to date than the 2014 study although it is yet to be tested via a Local Plan examination.
44. The Council accepts that the scheme aligns with a need for 4 bedroom dwellings in the area. From the evidence it is also apparent that the scheme makes provision for the identified need for 3 bedroom dwellings.
45. The study also identifies a need for 2 and 3 bedroom bungalows to meet the needs of older people and those with disabilities. To a lesser extent there is also a need for one and 2 bedroom flats. There are no bungalows or flats proposed as part of the scheme. Nevertheless, the Council's Housing Need witness identified that the district is well served by bungalows and I am cognisant of the fact that bungalows do not represent the only means of providing for an ageing population and bungalows are not the only means of ensuring a dwelling is adaptable for disabled needs. The Council's Planning witness confirmed that there is no policy requiring bungalows to be occupied by older people and I was not directed to a policy requiring a specific percentage of new homes to be built to accessibility standards, irrespective of the recommendation for such a policy inclusion in the HNA.
46. At the Inquiry the Council acknowledged that every site cannot meet every need. I am satisfied that the housing mix proposed would make a positive contribution in meeting a housing need for which there is significant demand in the area and therefore would fulfil expectations made in allocating the site.
47. The appellant says the proposed housing mix is in part informed by site viability due do the range of abnormal costs and the limited development value of the site.
48. The Council's Viability witness confirmed that they do not contend the overall viability position of the scheme, resulting from the total number and

composition of the proposal being 3 and 4 bedroom market dwellings and 2 bedroom affordable homes.

49. Whilst it was suggested that this did not necessarily mean that this was the only option, there is little before me to demonstrate that the suggested provision of fewer, more expensive dwellings as an alternative option suggested by the Council is either a specific identified need or that it would be viable.
50. The Council criticised the assessment assumptions of the appellant's Viability witness and suggested that their evidence demonstrated no sound basis for assuming other forms of development could not emerge now or in the future. Whilst the appellant's witness accepted in cross examination that the market situation is fluid and improving, the evidence of pre-sales at a 7 dwelling development supplied by the Council's Viability witness was nevertheless not comparable to the scheme before me, by their own admission. This limits the weight I attach to it.
51. There may well be a hypothetical opportunity for an alternative scheme to be deliverable at some point in the future. However, there is little before me to indicate when and if that is likely to occur. I am also required to consider the scheme before me.
52. I acknowledge that other development has been granted in Bilsthorpe and that there is currently a 6.34 year housing land supply. Nevertheless, a 5 year housing land supply is a minima under paragraph 73 of the NPPF and therefore does not preclude further development on an allocated site.
53. I am satisfied that the development would meet the housing needs of the area and therefore would comply with the identified requirements of Core Policy 3 of the Core Strategy.

Living Conditions

54. Whilst some of the proposed dwellings would exceed the nationally described space standards, around 65% would fall short ranging from 0.4 - 18.5m². However, the Council has no adopted policy requiring compliance with the standards and there is no evidence to demonstrate that there is a local need for compliance with the standards or an assessment on the impact on viability, as is identified in the NPPF. Given that they are optional, lack of compliance does not contravene any policy.
55. The NPPF advises that planning decisions should create places with a high standard of amenity for existing and future users and the internal living space is an important factor in whether the development would achieve this. The space within some of the dwellings would be compact but there is nothing before me to demonstrate that the internal configuration and layout of the properties concerned would create a cramped or oppressive living environment that would be of poor quality. They would be adequate to meet the normal day to day requirements in the short term and the longer term if the needs of the occupants change over time.
56. Although not a reason for refusal, at the Inquiry the Council's Planning witness raised issue with the size of some of the gardens, specifically plots 25, 28 and 37. I am not aware of any Council policy setting out minimum space standards for outdoor space. Acknowledging that they are family homes, there is little to

suggest that either the location, shape or quality of provision at these plots would render them unusable or that they would not meet day to day needs, including outdoor storage. I also note the close proximity of the dwellings to open space provision within the development. The size of the gardens does not lead me to think that refuse bins would be left at the front of dwellings with consequential impacts on character and appearance, as suggested by the Council.

57. Reference was made to Covid 19 and the implications on space to meet people's needs. It is too early to know what the long term implications may be in terms of the way people use their homes. Nevertheless, the scheme would be acceptable given that it makes provision for 3 and 4 bedroom homes with outdoor space.
58. Overall, there is little to demonstrate that the proposal would not accord with the aims of the NPPF. I therefore conclude that the scheme would create satisfactory living conditions.

Other Matters

59. Interested parties raised concern about the safety of children waiting for the school bus close to the site entrance and more generally the increased traffic that would be generated by the development. Modelling undertaken for the Transport Assessment of the development indicates that the scheme would not generate a severe impact on the operation of the surrounding highway network. I have no reason to disagree with these findings. Junction improvements at A614/ Mickledale Lane/ Inkersall Lane are already planned and the Highways Authority has confirmed that no delivery mechanism is required from the scheme.
60. It has been identified that the site is currently used as the landing site for the air ambulance. The site has been allocated for some time and so it is inevitable that the site would not be able to perform this function in the long term. I note that there are other potential alternative locations close by which could provide a potential landing site which could be investigated if required.
61. Concern has been raised that the development would be noise generating. It would be possible to manage the generation of noise during construction through an appropriately worded planning condition requiring submission of a Construction Methodology and Management Plan which would include details of proposed days and hours of operation. There is nothing to indicate that the development in occupation would generate noise in excess of what would be expected from a residential area.
62. Although concern has been raised regarding the flood risk to plots 90-95 the Lead Local Flood Authority is satisfied that subject to an appropriately worded planning condition the development would not generate an increased flood risk. I have no reason to take a different view.
63. Whilst concern has been raised regarding the inability of services and facilities such as the doctors surgery and primary school to accommodate the development there is little before me to substantiate this. Although the site does not provide on site outdoor sports facilities, open space is proposed, along with a financial contribution towards play facilities, in line with Spatial Policy 6 of the Core Strategy. The retail element of the site allocation is being brought

forward via a separate planning application, located outside of the red line for the scheme before me.

64. Reference has been made to 2 interlinked gateway sites dismissed at appeal, in support of the case. Whilst the findings of the Inspector regarding the gateway location and mix of housing proposed are noted, the site is in a different location and the circumstances of the proposal are unlikely to be identical to the proposed scheme. Each case is determined on its own merits and my assessment has been based on the information before me.

Planning Obligations

65. The S106 agreement covers a number of planning obligations that are required by Spatial Policy 6 of the Core Strategy to ensure the facilities and services that are essential for development to take place or to mitigate the impact of development.
66. The S106 would secure 10% affordable housing on site. This is below the requirement of 30% set out in Core Policy 1 of the Core Strategy. However, this has been justified in the viability assessment provided by the appellant and accepted by the Council.
67. The financial contribution towards bus stop infrastructure would facilitate improvements to bus stop NS0908 on Eakring Road. The financial contribution for community facilities would contribute to improvements to the village hall complex in Bilsthorpe. Onsite open space would be secured as part of the development and there would also be a financial contribution towards play facilities in the vicinity of the site.
68. Given the policy requirements and infrastructure needs arising from the development I am satisfied that all of the above obligations are necessary to make the development acceptable in planning terms, are directly related to the development and fairly and reasonably related in scale and kind to the development. They would accord with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended). Consequently, I can take all of the 106 obligations into account as part of my decision.

Conclusion and Conditions

69. For the reasons identified and having regard to all other matters, the appeal is allowed subject to necessary planning conditions.
70. In attaching conditions I am mindful of paragraph 55 of the NPPF which states that they should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
71. In addition to the standard time limitations for commencement, I have imposed a condition specifying the relevant drawings as this provides certainty. Conditions requiring submission of soft landscaping works and planting and their retention are necessary to protect biodiversity and the character and appearance of the area. With the agreement of the parties I have made the condition requiring the submission of a landscaping scheme a pre-commencement condition to address the concerns raised during the Inquiry and to ensure the details are agreed before works begin on site.

72. A condition requiring an arboricultural method statement is required to ensure retention of existing trees and hedgerows and to protect the character and appearance of the area. A surface water drainage scheme condition is necessary to manage the risk of flooding.
73. A Construction Methodology and Management Plan is necessary to protect the living conditions of the residents of nearby properties. A condition requiring identified highways improvements along with a condition requiring the provision of visibility splays is necessary for highway and pedestrian safety.
74. A contamination condition is necessary to minimise the risk to future users of the land and the environment. A sound insulation condition is necessary to protect the living conditions of the occupiers of the dwellings.
75. Conditions associated with ecological mitigation measures are necessary to preserve the ecological value of the site. A condition specifying driveway/ parking materials is necessary in the interests of highway safety and to manage surface water. A condition requiring a Travel Plan is necessary to promote modes of travel other than the car. A condition requiring the implementation of the boundary treatments is necessary to protect the character and appearance of the area.

K Ford

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall not begin later than 3 years from the date of this permission.
- 2) The development hereby permitted shall not be carried out except in complete accordance with the following approved plans reference:
Planning Layout – P-01 Rev. P;
Tenure Plan – A 871 Drg No. 004 Rev. C;
Enclosures Plan – A 871 Drg No. 005 Rev. C;
Site Location Plan – A 871 Drg No. 08;
External Finishes Plan – A 871 Drg No. 009 Rev. C;
Material Plan – A 871 Drg No. 010 Rev. C; and
House Type Booklet received 28th May 2020;
Occupancy Plan, A 871 Drg No. 003, Rev C
Parking Plan, A 871 Drg No. 006, Rev C
- 3) Notwithstanding the submitted plans, full details of soft landscape works shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development and these works shall be carried out as approved. These details shall include full details of every tree, shrub, hedge to be planted (including its proposed location, species, size and approximate date of planting) and details of tree planting pits including associated irrigation measures, tree staking and guards, and structural cells. The scheme shall be designed so as to enhance the nature conservation value of the site, including the use of locally native plant species.
- 4) No works or development shall take place, other than site clearance until an arboricultural method statement and scheme for protection of the retained trees/hedgerows has been agreed in writing with the Local Planning Authority. This scheme shall include:
 - A plan showing details and positions of the ground protection areas;
 - Details and position of protection barriers;
 - Details and position of underground service/drainage runs/soakaways and working methods employed should these runs be within the designated root protection area of any retained tree/hedgerow on or adjacent to the application site;
 - Details of any special engineering required to accommodate the protection of retained trees/hedgerows (e.g. in connection with foundations, bridging, water features, hard surfacing);
 - Details of construction and working methods to be employed for the installation of drives and paths within the root protection areas of any retained tree/hedgerow on or adjacent to the application site;
 - Details of timing for the various phases of works or development in the context of the tree/hedgerow protection measures; and
 - All works/development shall be carried out in full accordance with the approved arboricultural method statement and tree/hedgerow protection scheme.
- 5) No part of the development, other than site clearance hereby approved shall commence until a detailed surface water drainage scheme based on the principles set forward by the approved Travis Baker Flood Risk Assessment

(FRA) and Drainage Strategy Addendum Report has been submitted to and approved in writing by the Local Planning Authority in consultation with the Lead Local Flood Authority. The scheme shall be implemented in accordance with the approved details prior to completion of the development. The scheme to be submitted shall:

- Demonstrate that the development will use SuDS throughout the site as a primary means of surface water management and that design is in accordance with CIRIA C753;
- Limit the discharge rate generated by all rainfall events up to the 100 year plus 40% (for climate change) critical rain storm 5 l/s rates for the developable area;
- Provision of surface water run-off attenuation storage in accordance with 'Science Report SCO30219 Rainfall Management for Developments' and the approved FRA;
- Provide detailed design (plans, network details and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements. Calculations should demonstrate the performance of the designed system for a range of return periods and storm durations inclusive of the 1 in 1 year, 1 in 2 year, 1 in 30 year, 1 in 100 year and 1 in 100 year plus climate change return periods;
- For all exceedance to be contained within the site boundary without flooding new properties in a 100year+40% storm;
- Details of STW approval for connections to existing network and any adoption of site drainage infrastructure; and
- Evidence of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development to ensure long term sustainable drainage provisions

6) No development shall take place, other than site clearance until a Construction Methodology and Management Plan (CMMP) has been submitted to and approved in writing by, the Local Planning Authority. The approved CMMP shall be adhered to throughout the construction period. The CMMP shall comprise the following:

- the details of temporary fencing to be erected and retained during the construction period;
- the parking of vehicles of site operatives and visitors;
- loading and unloading of plant and materials;
- storage of plant and materials used in constructing the development;
- any measures to control the emission of noise, dust and dirt during construction; and
- hours/days of proposed construction.
- Details of measures for the protection of the retained trees/hedgerows on and adjacent to the site

7) No above ground development works shall commence until the highway improvements as specified in the list below have either:

a) Been carried out: or

- b) Details have been submitted to and approved in writing by the Local Planning Authority of arrangements which have been entered into which will secure that such improvement works will be carried out.

Highway Improvements:

Provision of a public footpath running alongside the eastern carriageway of Eakring Road from Mickledale Lane junction up to the Route 645 cycleway as shown on Planning layout P,01 Rev P))

- 8) Development other than that required for site clearance and / or to be carried out as part of an approved scheme of remediation must not commence until Parts A to D of this condition have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until Part D has been complied with in relation to that contamination.

Part A: Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- i. a survey of the extent, scale and nature of contamination;
- ii. an assessment of the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;
 - ecological systems;
 - archaeological sites and ancient monuments;
- iii. an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

Part B: Submission of Remediation Scheme

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Part C: Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

Part D: Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of Part A, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of Part B, which is subject to the approval in writing of the Local Planning Authority.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with Part C

- 9) The development hereby permitted shall be carried out in accordance with the required façade sound insulation details at Table 11 (Section 10.1.2.) of the document Environmental Noise Assessment by noise.co.uk ltd prepared 25th August 2020 – 21122-1.
- 10) The development hereby approved shall be carried out in accordance with the ecological mitigation measures detailed within the document Ecological Appraisal by fpcr dated May 2020, specifically:
Recommendations made by the ecologist in paragraph 4.26-4.30 (page 18), in particular the good practice measures with regards to lighting.
Hedgehog holes (13cm by 13cm) should be made in garden fences to allow for hedgehog passage shown on Figure 5;
Any areas seen as suitable for breeding birds such as scrub, hedgerows, mature trees, and ground vegetation should be removed outside of the bird breeding season (March to August inclusive);
The installation of bat and bird boxes at the locations shown on Figure 5.
Where the measures relate to physical interventions such as the hedgehog holes and the bat and bird boxes, these shall be in place prior to the occupation of each of the dwellings the measures relate to.
- 11) No dwelling shall be occupied until the visibility splays are provided in accordance with drawing SK01-B. The area within the visibility splays referred to in this condition shall thereafter be kept free of obstruction, structures or erections exceeding 0.6m in height.
- 12) No dwelling forming part of the development hereby permitted shall be occupied until its associated drive/parking area is surfaced in a hard-bound material (not loose gravel) for a minimum of 5 metres behind the Highway

boundary. The surfaced drive/parking area shall then be maintained in such hard-bound material for the life of the development.

- 13) No dwelling forming part of the development hereby permitted shall be occupied until its associated access/driveway/parking area is constructed with provision to prevent the unregulated discharge of surface water from the access/driveway/parking area to the public highway. The provision to prevent the unregulated discharge of surface water to the public highway shall then be retained for the life of the development.
- 14) No dwelling shall be occupied, until an updated Travel Plan has been submitted to and approved in writing by the Local Planning Authority. 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 of progress of the proposals. The Travel Plan shall be implemented in accordance with the timetable set out in that plan.
- 15) Prior to any occupation of the dwellings hereby approved, the boundary treatments applicable to each of those dwelling's plots shown on the approved plan: Enclosures Plan – A 871 Drg No. 005 Rev. C shall be implemented on site. The boundary treatments within plots shall be retained for a minimum period of five years.
- 16) The approved soft landscaping shall be completed during the first planting season following the first occupation of the development, or such longer period as may be agreed in writing by the Local Planning Authority. Any trees/shrubs which, within a period of five years of being planted die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless otherwise agreed in writing by the Local Planning Authority. All tree, shrub and hedge planting shall be carried out in accordance with BS 3936 -1992 Part 1- Nursery Stock-Specifications for Trees and Shrubs and Part 4 1984- Specifications for Forestry Trees ; BS4043-1989 Transplanting Root-balled Trees; BS4428-1989 Code of Practice for General Landscape Operations.

Appearances

For the Appellant

Mr Zack Simons of Counsel, instructed by Jim Lomas of DLP

He called:

Ms Anna Meer BA (Hons) CMILT, RoSPA, Associate Director at DLP

Mr Timothy Jackson BA (Hons), Dip LA, CMLI Director at FPCR Environment and Design Ltd

Mr Michael Carr BA (Hons), Dip LA, MA/PG, Dip UD, Director at Pegasus Group

Mr Alex Roberts BSc (Joints Hons), Assoc RTPI, Director in the Strategic Planning Research Unit, DLP Planning Ltd

Dr Andrew Golland BSc (Hons) PhD, MRICS

Mr Jim Lomas BA (Hons) MRTPI, Director at DLP

For the Council

Mr Wayne Beglan of Counsel, instructed by Newark and Sherwood District Council

He called:

Ms Alison Hutchinson MRTPI, Hutchinsons Planning

Dr Stefan Kruczkowski PhD, Diploma in Town Planning, BA (Hons), Urban Design Doctor Ltd

Dr Michael Bullock BSc (Hons), PhD, Member of Market Research Society and Member of Chartered Institute of Housing, Arc4 Ltd

Mr Christopher Paul White, BSc, Diploma in Town Planning, MRTPI, Diploma in Surveying, Royal Institute of Chartered Surveyors, White Land Strategies Ltd

Ms Laura Gardner MSc, MRTPI Senior Planner Newark and Sherwood District Council

Ms Pardip Sharma BA (Hons) Locum Planning Solicitor for Newark and Sherwood District Council

Interested persons who spoke at the Inquiry:

Cllr Roger Blaney in his capacity as Chair of the Council's Local Development Task Group

Inquiry Documents

INQ1 Opening by Appellant

INQ2 Opening by Council

INQ3 Cllr Roger Blaney Statement to Inquiry

INQ4 Appeal Decision APP/W2340/A/13/2195745

INQ5 Email from Tree Officer at North Kesteven District Council dated 15 February 2021

INQ6 Revised Conditions Schedule

INQ7 S106 Agreement

INQ8 Correspondence between NSDC and Arc4 on expert witness support



Costs Decision

Inquiry Held on 11-14 May 2021

Site visit made on 18 May 2021

by K Ford MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd June 2021

Costs application in relation to Appeal Ref: APP/B3030/W/20/2655876 Land off Eakring Road, Bilsthorpe, Newark and Sherwood, Nottingham NG22 8PZ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Miss Elizabeth Woodhouse of Keepmoat Homes for a full award of costs against Newark & Sherwood District Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for 103 dwellings and associated access and infrastructure.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the other party applying for costs to incur unnecessary or wasted expense in the appeal process. Awards against local planning authorities may be either procedural relating to the appeal process or substantive, relating to the planning merits of the appeal. The applicant is seeking a full award of costs on procedural and substantive grounds.
3. The case is predicated on the basis that the number of dwellings proposed and their subsequent density, as a result of the proposed dwelling types, is inappropriate for the site. An acceptance by the Council that a development of 103 dwellings may be acceptable in principle did not mean that the Council's objection to the specifics of the proposed scheme of 103 dwellings was unreasonable.
4. The applicant is of the view that planning permission should not have been refused on landscape grounds as the matter was capable of being dealt with by means of a planning condition. Paragraph 54 of the National Planning Policy Framework requires Councils to consider whether otherwise unacceptable development could be made acceptable through the use of conditions. However, the Council was of the view that the perceived shortcomings of the scheme could not be dealt with by condition. Whilst I disagree, the Council was entitled to take this view and therefore did not act unreasonably in this matter.

5. The Council's reason for refusal states that there are significant design compromises in the scheme. In the first instance reference is made to a 'skew towards larger units' failing to represent the preferences of the latest District wide housing needs evidence. In the evidence before me this was not the case.
6. The Council's housing need witness confirmed that there is a strong and very significant demand for 3-4 bedroom homes and 2 bedroom affordable housing and that every site is not expected to accommodate every type of housing. The Council therefore failed to produce evidence to substantiate this part of the reason for refusal. There was therefore a cost to the applicant in preparing a response to this point and related matters on housing mix and viability.
7. The reason for refusal went on to refer to the number of triple tandem parking spaces proposed as a consequence of the number of 4 bedroom homes in the scheme and the impact of this on the effectiveness of the internal highway network.
8. The applicant claims there was no need for a Highways roundtable after the Council clarified that it was not raising issue on highway safety grounds despite making reference to pedestrian safety in their Planning witness proof. However, I am of the view that a Highways roundtable would still have been necessary to address the design related points of the proposed parking scheme.
9. The applicant says the Council should not have made reference to national space standards. This was done to support the Council's case in the reason for refusal that the floorspace was too small. The Council accepted that the standards were unadopted but nevertheless provided guidance. It was not unacceptable for them to do this in that context.
10. During the course of the Inquiry the applicant claims that the Council introduced a number of points that were not referred to in the reason for refusal. It is acceptable for the Council to expand upon the points raised in the reason for refusal to expand and qualify the reason. Whilst I do not agree that all of the points listed by the applicant cannot be linked to the reason for refusal, there are a number that do not. They include:
 - a) The failure to take cues from garden city/ corporation suburb ideals
 - b) Walking routes across the site
 - c) Elements of the Building for a Healthy Life assessment
 - d) The introduction of 2 alternative concept plans

There was a subsequent cost to the applicant in responding to these points as a consequence of the Council's unreasonable behaviour.

Conclusion

11. For the reasons given above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in part. Therefore, the application for an award of costs is partially allowed.

Costs Order

12. In the 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 Newark and Sherwood District Council shall pay to Miss Elizabeth Woodhouse of Keepmoat Homes the costs of the appeal proceedings limited to those costs incurred in respect of (i) preparing for and responding to matters related to housing need (ii) preparing for and responding to matters related to 4 points listed in paragraph 10 of the Decision above. The applicant is now invited to submit to Newark and Sherwood District Council, to whom a copy of this Decision has been sent, details of the costs with a view to reaching agreement as to the amount.

K Ford

INSPECTOR