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# Appeal Decision

Site visit made on 19 March 2018

by **G D Jones BSc(Hons) DipTP DMS MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2<sup>nd</sup> May 2018

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**Appeal Ref: APP/V2635/W/17/3179838**

**Land at Nightingale Lane, Downham Market, Norfolk PE38 9FD**

- 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 The Grosvenor Partnership 3 LP against the decision of King's Lynn and West Norfolk Borough Council.
  - The application Ref 16/01322/OM, dated 13 July 2016, was refused by notice dated 3 April 2017.
  - The development proposed is for up to 300 dwellings and associated infrastructure and access.
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## Decision

1. The appeal is allowed and outline planning permission is granted for up to 300 dwellings and associated infrastructure and access at land at Nightingale Lane, Downham Market, Norfolk PE38 9FD in accordance with the terms of the application, Ref 16/01322/OM, dated 13 July 2016, subject to the conditions contained within the Schedule at the end of this decision.

## Preliminary Matters

2. The proposal is for outline planning permission with all matters reserved for future approval except for access. The details submitted with the application include documents and plans which make reference to layout, appearance, landscaping and scale. Whilst not formally part of the scheme, I have nevertheless treated these details as a useful guide as to how the site might be developed.
3. I have also adjusted the description of the development proposed from as it appears on the planning application form in order to reflect the amendments made to the scheme prior to the determination of the planning application.
4. A legal agreement dated 22 March 2018, made under S106 of the Town and Country Planning Act 1990 (the S106 Agreement), was submitted toward the latter stages of the appeal process. I have had regard to it in my consideration and determination of the appeal.

## Main Issues

5. The main issues are:
  - The effect of the appeal development on the character and appearance of the area;
  - Its effect on highway safety; and
  - Whether or not any impact of the development on infrastructure would be adequately offset.

## **Reasons**

### *Character & Appearance*

6. The Council's concerns in this regard relate primarily to the potential density of development on the site. Reference is made to the 300 dwellings cited in the appeal application relative to the figures of 140 and 170 dwellings from the Site Allocations and Development Management Policies Plan 2016 (the SADMPP) and an extant planning permission respectively. Nonetheless, the development plan figure is not a cap on development; rather it is a minimum quantity of homes that are planned to be delivered at the site.
7. I note the submissions made regarding existing density of development in the area, including those made by local residents. Nonetheless, the appellant's application submissions, particularly its Density/Urban Grain & Overview March 2017 document, illustrate how development of the quantity and type proposed might be reasonably accommodated at the appeal site without appearing at odds with its context, notwithstanding the contrasting densities of homes per hectare. Subject to the careful consideration of matters of detail that would be controlled at the reserved matters stage, I see no reason why the proposed development would necessarily affect the character and appearance of the area in a significant manner beyond taking the site from being predominately farmland to a developed, residential area.
8. Therefore, the appeal development need not have a significant effect on the character and appearance of the area, including in respect to density. Consequently, in that regard, it would not conflict with Policy CS08 (Sustainable Development) of the King's Lynn & West Norfolk Borough Council - Local Development Framework - Core Strategy July 2011 (the Core Strategy) and Policy DM15 (Environment, Design and Amenity) of the SADMPP, or with the National Planning Policy Framework (the Framework) and the Planning Practice Guidance.

### *Highway Safety*

9. The Council's appeal submissions make reference to 'local knowledge' having informed the reason for refusal in respect to highway safety and that there have been six reported accidents over the last six years. However, notwithstanding any potential existing highway issues, there is no substantiated evidence before me to support the alleged harm to highway safety that is said would result from the appeal development. Indeed the wider evidence indicates otherwise and I note that the Local Highway Authority has raised no objection to the scheme. Accordingly, I see no good reason to justify resisting the appeal development on the basis of its effect on highway safety and find no conflict, in that regard, with Core Strategy Policy CS11 (Transport) or with the Framework.

### *Local Infrastructure*

10. At the time the appeal planning application was determined by the Council and when the appeal was made no mechanism appears to have been in place to secure delivery of much of the infrastructure and affordable housing requirements identified in the evidence. Nonetheless, a S106 Agreement has now been submitted. It is intended to secure or provide funding for the provision of open space / play equipment and its maintenance, 20% affordable housing, sustainable drainage (SuDS) and its maintenance, the delivery / funding of a habitats monitoring and mitigation strategy, and the creation of a new section of bridleway. The wider evidence indicates that the Council's adopted CIL charging schedule would cover other infrastructure costs, including education and libraries.

11. The affordable housing obligation appears to be in line with the Council's adopted policy, notably Core Strategy Policy CS09. The proposed open space provisions would also be necessary to ensure that residents of the proposed development would have access to well-maintained public open space and play equipment in accordance with Policy DM16 (Provision of Recreational Open Space for Residential Developments) of the SADMPP and with para 73 of the Framework. The SuDS obligations would be required to ensure that the development is adequately drained and the area protected from flooding in the long term in accordance with Policies CS01 (Spatial Strategy) and CS08 of the Core Strategy and with paras 103 and 104 of the Framework.
12. There appears to be development plan support for the proposed creation of a new section of bridleway. However, the evidence, including the Council's appeal submissions and its officer's Committee report, indicate that this matter would be addressed via the Council's CIL charging regime such that this planning obligation appears to be unnecessary.
13. I have considered the S106 Agreement in light of Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 (as amended) and government policy and guidance on the use of planning obligations. Having done so I am satisfied that, with the exception of the new section of bridleway, all of the obligations of the S106 Agreement are directly related to the proposed development, fairly and reasonably related to it and necessary to make it acceptable in planning terms.
14. Beyond the matters addressed via the Council's CIL charging schedule and the S106 Agreement or potentially by planning condition, notwithstanding the submissions made including from interested parties, there is no substantiated evidence before me that demonstrates that there would be any other significant infrastructure impacts arising from the proposed development, including in terms of the adequacy of existing facilities.
15. On this basis, I have found no good reason to believe that the proposed development's effect on infrastructure would not be adequately offset as part of the appeal scheme, such that, in this regard, it would accord with Policies DM1 (Sustainable Development) and DM16 of the SADMPP and Policies CS01, CS04 (Downham Market), CS08 and CS14 (Infrastructure Provision) of the Core Strategy, and with the Framework.

### **Other Matters**

16. In coming to my decision I have also taken into consideration the other concerns raised locally, including by Town and Parish Councils, in respect to the proposed scheme's potential effect, including its cumulative effect with other planned development, on the character and appearance of the area, on the living conditions of neighbours including in respect to privacy, noise and disruption, on biodiversity, on the historic environment and on flood risk.
17. Other concerns raised include the adequacy of facilities, infrastructure and investment in the area currently and relative to the appeal scheme and other planned development; the deliverability of some aspects of the proposals; connections between the proposed development and the existing settlement; ground conditions; whether additional development is needed and that the Council can demonstrate a five year supply of housing land; the local employment market; potential commuting-out to other areas; the proposed housing mix and house types; part of the land has been identified for cemetery use; the appellant's motives for the development; the adequacy of parking and its potential effect on

pedestrians; alternative forms of development; and alleged conflict with development plan policy.

18. These matters are largely identified and considered within the Council officer's report on the appeal development. They were also before the Council when it prepared its appeal case. Other than as set out above, the Council did not conclude that they would amount to reasons to justify withholding planning permission. Subject to the identified obligations of the S106 Agreement and the imposition of planning conditions, I have found nothing that prompts me to disagree with the Council's conclusions in these respects.
19. I also note the evidence regarding housing land supply. However, whether or not the Council can demonstrate a Framework compliant supply of housing land does not alter my overall decision, particularly bearing in mind that I have found no conflict with the development plan.

### **Conditions and Conclusion**

20. The Council has prepared a list of suggested conditions, which include the standard time limit / implementation conditions. I have considered these in the light of government guidance on the use of conditions in planning permissions and made amendments accordingly, including combining conditions.
21. In order to provide certainty, conditions specifying the approved drawings, the maximum number of dwellings permitted and some of the details required to be submitted as part of any pursuant reserved matters applications would be necessary. A condition to secure the future management and maintenance of the streets within the development would be necessary to protect the character and appearance of the area and in the interests of highway safety. For this latter reason and to protect the living conditions of neighbours, conditions would be necessary to control matters during the construction period.
22. In the interests of highway safety, to ensure that the development is served by adequate transport links and to prevent light pollution, conditions would be necessary to secure the timely implementation of the proposed access and highway works. The approval and implementation of a scheme for the provision of fire hydrants would also be necessary in the interests of occupants' safety. Conditions to control surface and foul water management / drainage would be necessary to safeguard against flood risk, in the interests of highway safety and to protect the environment. A condition would be necessary to ensure that features of archaeological interest are properly examined / recorded.
23. A condition would be necessary to protect and retain trees in the interests of the character and appearance of the area and of biodiversity. For this latter reason, conditions to protect great crested newts and other identified habitat / species would also be necessary. A condition to secure allotments at the appeal site would be necessary in accordance with the requirements of development plan policy.
24. I conclude, for the reasons outlined above, that the appeal should be allowed subject to the identified conditions.

*G D Jones*

INSPECTOR

SCHEDULE OF CONDITIONS FOR APPEAL REF APP/V2635/W/17/3179838:

- 1) Details of the appearance, landscaping, layout, and scale, (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 the approval of reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
- 3) The development hereby permitted shall be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the latest such matter to be approved.
- 4) The development shall comprise of no more than 300 residential units.
- 5) The development hereby permitted shall be carried out in accordance with the following approved plans: Dwg. YOR.2742\_003A & Dwg. 70005080/SK/001 A.
- 6) The details submitted in accordance with Condition 1 shall include full details (in the form of scaled plans and / or written specifications) to illustrate the following:
  - i) Roads, footways, cycleways;
  - ii) Visibility splays;
  - iii) Access arrangements;
  - iv) Parking provision;
  - v) Turning areas;
  - vi) Driveway length; and
  - vii) Garage size.
- 7) No dwelling shall be occupied until details of the proposed arrangements for future management and maintenance of the proposed highways within the development have been submitted to and approved in writing by the Local Planning Authority. Those highways shall thereafter be maintained in accordance with the approved management and maintenance details.
- 8) Development shall not commence until a scheme detailing provision for on-site parking for construction workers for the duration of the construction period has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented throughout the construction period.
- 9) Prior to the commencement of any works a Construction Traffic Management Plan (the CTMP) and Access Route (the CTAR), which shall incorporate adequate provision for addressing wear and tear to the highway, shall be submitted to and approved in writing by the Local Planning Authority (LPA) together with proposals to control and manage construction traffic using the CTAR. For the duration of the construction period all traffic associated with the construction of the development shall comply with the CTMP and use only the CTAR and no other local roads unless approved in writing by the LPA.
- 10) No works shall commence on site until the details of Wheel Cleaning facilities for construction vehicles have been submitted to and approved in writing by the Local Planning Authority. For the duration of the construction period all traffic associated with the construction of the development permitted shall use the approved wheel cleaning facilities immediately before leaving the site.
- 11) Notwithstanding the details indicated on the submitted/approved drawings no works shall commence on site until a detailed scheme for off-site highway

- improvement works (access roundabout to A1122) as indicated on Dwg. 70005080/SK/001 A, along with a detailed timetable for their implementation, have been submitted to and approved in writing by the Local Planning Authority. Those approved access details shall be fully completed in accordance with the approved timetable.
- 12) Notwithstanding the details indicated on the submitted drawings, no works above floor slab level shall commence on site until a detailed scheme for the off-site highway improvement works as listed below:
    - i) Improvements to footway in London Road (Dwg. 5080-SK-004 Rev D);
    - ii) Pedestrian Infrastructure Improvements (Dwg. 5080-SK-005 Rev C); and
    - iii) Shared Use Strategy (Dwg. 5080-SK-006 Rev E),along with a detailed timetable for their implementation, have been submitted to and approved in writing by the Local Planning Authority. Those approved off-site highway improvement works shall be fully completed in accordance with the approved timetable.
  - 13) The development shall not be brought into use until a scheme for the provision of six fire hydrants (on a minimum 90mm main) has been implemented in accordance with a scheme that has previously been submitted to and approved in writing by the Local Planning Authority.
  - 14) No development shall commence until full details of the foul and surface water drainage arrangements for the site have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented before any part of the development is brought into use.
  - 15) Prior to the commencement of development, a detailed construction management plan shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include timescales and hours of construction and shall also specify the sound levels of equipment, their location and proposed mitigation methods to protect residents from noise and dust. The scheme shall be implemented in accordance / compliance with the approved details.
  - 16) Prior to the commencement of any development, a scheme for the provision and implementation of pollution control for the water environment, during both the construction phase and the post-construction phase, which shall include foul/trade effluent and surface water drainage and a timetable for its implementation, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented in accordance with the approved timetable and shall be retained thereafter.
  - 17) Prior to the first occupation of the development hereby approved, details of the method of lighting and extent of illumination to the access roads, footpaths, parking, and circulation areas shall be submitted to and approved in writing by the Local Planning Authority. The lighting scheme shall be implemented as approved prior to the occupation of the development or any phase of the development to which it relates and thereafter maintained and retained as approved.
  - 18) No development shall take place until a Written Scheme of Investigation (WSI) for a programme of archaeological works has been submitted to and approved by the Local Planning Authority in writing. The scheme shall include:
    - i) An assessment of the significance of heritage assets present;
    - ii) The programme and methodology of site investigation and recording;
    - iii) The programme for post investigation assessment of recovered material;
    - iv) Provision to be made for analysis of the site investigation and recording;

- v) Provision to be made for publication and dissemination of the analysis and records of the site investigation;
- vi) Provision to be made for archive deposition of the analysis and records of the site investigation; and
- vii) Nomination of a competent person or persons / organization to undertake the works set out within the WSI.

No demolition / development shall take place other than in accordance with the approved WSI. The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the approved WSI and provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

- 19) Notwithstanding the details submitted with the application, the details submitted in accordance with Condition 1 shall include an updated tree survey and Arboricultural Implications Assessment and Method Statement showing:
  - i) A plan indicating the location of and allocating a reference number to each existing tree on the adjacent site (to the west) which has a stem with a diameter, measured over the bark at a point 1.5 metres above ground level, exceeding 75mm; and
  - ii) Details of the species, diameter, approximate height and condition of each tree on the adjacent site in accordance with the current version of BS:5837, where the crown spread of that tree falls over the application site and where any tree is located within 15m in distance from the application site.
- 20) The development shall be implemented in strict accordance with the recommendations of the Cotswold Wildlife Surveys Extended Phase 1 Habitat Survey of Land off Nightingale Lane, Downham Market Ref 1306-CWS-05 dated 13 May 2013 and 7 May 2014.
- 21) Notwithstanding details submitted as part of the 2016 Great Crested Newt Report for land of Nightingale Lane, Downham Market (Ref 1306-CWS-08), prior to commencement of any development (including site clearance), full details of the proposed mitigation and enhancement measures (including a permanent 50m buffer between the development site and Pond 7) shall be submitted to and approved in writing by the Local Planning Authority. The details shall include mitigation / enhancement measures to minimise the impact of the development on the Great Crested Newt population both during construction and upon completion and a timetable for the implementation / completion / maintenance of the mitigation / enhancement works. The mitigation/enhancement works shall be completed and maintained in accordance with the approved details and timetable, other than with the prior written approval of the Local Planning Authority.
- 22) The details required in accordance with Condition 1 shall include the provision of three allotments on site.
- 23) Prior to commencement of development, in accordance with the submitted Flood Risk Assessment & Surface Water Drainage Strategy (RSK, June 2016, Rev. 890126-R1(01)-FRA) and the amended drawing as submitted via email drawing (RSK, 22 March 2017, 'Land at Nightingale Lane - Revised SuDS Basins Mark Up 300 units), detailed designs of a surface water drainage scheme incorporating the following measures shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to the first occupation of the development. The scheme shall address the following matters:
  - i) All attenuation features shall be located outside of areas of medium to high flood risk (as indicated on the Environment Agency's Risk of Flooding from Surface Water maps). Alternatively, if it can be demonstrated through a site

- specific flood risk assessment that there would be no additional flood risk to the attenuation areas, a revised layout would be required reflecting the assessment of flood free areas;
- ii) Longer term groundwater monitoring shall be undertaken, unless otherwise approved in writing by the Local Planning Authority, to capture seasonal variations in levels associated with the site in relation to the location of surface water management features and structures;
  - iii) Detailed infiltration testing in accordance with BRE Digest 365 at the exact depth and location of the proposed attenuation basin along with any requisite mitigation to limit the discharge of surface water to the adjacent watercourse to a Greenfield runoff rate for the 1 in 1 year event of 29.3 l/s in line with the Flood Risk Assessment & Surface Water Drainage Strategy (RSK, June 2016, Rev. 890126-R1(01)-FRA);
  - iv) Provision of surface water attenuation storage, sized and designed to accommodate the volume of water generated in all rainfall events up to and including the critical storm duration for the 1 in 100 year return period, including allowances for climate change, flood event. A minimum storage volume of 12,000m<sup>3</sup> shall be provided in line with section 9.4.3 of the submitted FRA and in line with the submitted calculations '890126 - Downham Market QSE screenshots' (Matt Cheeseman, 23 February 2017, RE: KLWNBC Ref 16/01322/OM NCC Ref: FWP/16/2/3050 : Land At Nightingale Lane, Downham Market, Norfolk PE38 9FD);
  - v) Detailed designs, modelling calculations and plans of the drainage conveyance network in the:
    - 1 in 30 year critical rainfall event to show no above ground flooding on any part of the site; and
    - 1 in 100 year critical rainfall plus climate change event to show, if any, the depth, volume and storage location of any above ground flooding from the drainage network ensuring that flooding does not occur in any part of a building or any utility plant susceptible to water (e.g. pumping station or electricity substation) within the development;
  - vi) The design of the attenuation basin shall incorporate an emergency spillway and any drainage structures shall include appropriate freeboard allowances. Plans to be submitted showing the routes for the management of exceedance surface water flow routes that minimise the risk to people and property during rainfall events in excess of 1 in 100 year return period;
  - vii) Finished ground floor levels of properties shall be a minimum of 300mm above expected flood levels of all sources of flooding from the proposed drainage scheme;
  - viii) Details of how all surface water management features shall be designed in accordance with The SuDS Manual (CIRIA C697, 2007), or the updated The SuDS Manual (CIRIA C753, 2015), including appropriate treatment stages for water quality prior to discharge;
  - ix) A maintenance and management plan detailing the activities required and details of who shall adopt and maintain all of the surface water drainage features for the lifetime of the development, including the ordinary watercourse and any structures such as culverts within the development boundary; and
  - x) A plan to show how, in the future, for different phases of development, the sustainable drainage relates to the surface water drainage strategy for the whole site. In particular, highlighting where different phases rely on each another for the disposal of surface water, how this shall be implemented during construction and operation of the development.