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## Appeal Decision

Inquiry Opened on 2 July 2019

Site visit made on 3 July 2019

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

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

**Decision date: 5<sup>th</sup> August 2019**

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**Appeal Ref: APP/A1015/W/19/3223162**

**Land to the north west of Northmoor View, Brimington, Chesterfield, Derbyshire.**

- 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 Mr Frank Sissons (FG Sissons Chesterfield Ltd) against the decision of Chesterfield Borough Council.
  - The application Ref CHE/18/00532/OUT, dated 31 July 2018, was refused by notice dated 29 January 2019.
  - The development proposed is an outline planning application with all matters reserved (except for access) for a residential development of up to 150 dwellings.
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### Decision

1. The appeal is allowed and outline planning permission is granted for a residential development of up to 150 dwellings at land to the north west of Northmoor View, Brimington, Chesterfield, Derbyshire in accordance with the terms of the application, Ref CHE/18/00532/OUT, dated 31 July 2018, subject to the conditions set out in the schedule to this decision.

### Preliminary Matters

2. The Inquiry sat for 3 days on 2, 3 and 4 July 2019. As the full extent of the appeal site can be readily viewed from the public footpaths across the site and with the agreement of the main parties, an accompanied site visit was not deemed necessary.
3. Although the application was submitted in outline with only access to be determined at this stage, it was accompanied by an illustrative masterplan<sup>1</sup> as well as a raft of supporting technical documentation in relation to highways, drainage, contaminated land, heritage and ecology. This material is broadly accepted by technical consultees and demonstrates that a number of matters are capable of being satisfactorily dealt with either by condition or planning obligation.
4. Statements of Common Ground (SOCG) relating to planning and housing land supply (HLS) were submitted prior to the Inquiry, I have had regard to these in reaching my decision.

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<sup>1</sup> Plan drawing: C596.10 B

5. A signed and dated agreement under s106 of the Town and Country Planning Act was submitted on the final day of the Inquiry<sup>2</sup>. Amongst other things this contains provisions in respect of affordable housing, health care, public art, green space and nesting bird mitigation. All the proposed contributions would need to be assessed against the statutory Community Infrastructure Levy (CIL) tests, a matter I will return to later in my report.
6. On the second day of the Inquiry, an Air Quality SOCG was submitted confirming that the Council no longer wished to defend its third reason for refusal. I have assessed the appeal accordingly.
7. The Council is currently progressing a new local plan<sup>3</sup> (the emerging LP). This was submitted to the Planning Inspectorate for Examination on 28 June 2019. As there are unresolved objections to the emerging LP including Policy LP16 (Green Infrastructure), the parties agree that only limited weight can be afforded to the document at this time.

### **Main Issues**

8. The Council's opposition to the appeal scheme is based almost entirely on two main policy objections concerning, firstly, the Brimington and Tapton Strategic Green Gap (the SG) and secondly, the principle of greenfield development. However, somewhat unusually, the reasons for refusal do not identify what actual planning harm would arise from the development. Against that background, and in view of the evidence submitted in writing and presented orally at the Inquiry, I consider the main issues can best be expressed as:
  - (i) Whether the appeal site represents an appropriate location for housing having regard to national and local planning policy, and
  - (ii) The effect on the character and appearance of the area.

### **Reasons**

9. The appeal site consists of approximately 16 hectares of arable land abutting the north-eastern built-up edge of Brimington, a settlement identified as a local service centre in the Core Strategy (the CS)<sup>4</sup>. The illustrative masterplan indicates that only the northern part of the site would be developed with the remainder being subject to an ecological management plan. Two public rights of way (Brimington 16 & 17) traverse the site.

#### *Compliance with local and national policy*

10. Section 38(6) of the Planning and Compulsory Purchase Act (the Act) 2004 requires that applications be determined in accordance with the development plan unless material considerations indicate otherwise. One such material consideration is the "*National Planning Policy Framework*" (the Framework), which can override development plan policy if it is not consistent with the Framework's provisions. I therefore summarise the national planning policy context first, before turning to look at the relevant development plan policies.
11. Paragraph 11 of the Framework explains that there is a presumption in favour of sustainable development which comprises economic, social and environmental objectives. It goes on to indicate that where the development

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<sup>2</sup> Inquiry Document ID4

<sup>3</sup> Chesterfield Borough Local Plan Submission Version 2018

<sup>4</sup> Full Title: Chesterfield Borough Council Local Plan: Core Strategy 2011-2031 Adopted July 2013.

plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole; or unless specific policies in the Framework indicate that development should be restricted.

12. Also, of relevance are the Framework's paragraphs 33 and 212-213. Paragraph 213 explains that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. The closer the policies in the plan are to the policies in the Framework, the greater the weight that may be given. Paragraph 33 indicates that policies in local plans and spatial development strategies should be reviewed to assess whether they need updating at least once every five years and should then be updated as necessary.
13. In view of advice in paragraph 11 d) of the Framework, it is necessary to consider how consistent the relevant policies are with the Framework, to assess what weight should be attached to them. For the purposes of this exercise, the Wavendon Properties judgement<sup>5</sup> confirms that "*an overall judgment must be formed as to whether or not taken as a whole these policies are to be regarded as out-of-date for the purpose of the decision*".
14. The main parties agree that those policies that are most important for determining the planning application are: CS1, CS2(a), CS9(a), CS10 of the CS and Policy EVR2 of the "*Replacement Chesterfield Borough Local Plan 2006*" (the LP).

#### *Policy EVR2*

15. The appeal site is not allocated for housing in the development plan. It lies outside the village envelope for Brimington but adjacent to the built-up area and is therefore in the countryside for planning purposes. In such areas LP Policy EVR2 strictly controls new development to a limited number of exceptions such as recreation, agriculture and tourism. It is not part of the appellant's case that the proposal accords with the exceptions of Policy EVR2. As a consequence, the principle of development outside the settlement boundary and in the countryside would be contrary to Policy EVR2.
16. However, in light of guidance contained in the Framework the matter clearly does not end there, especially as the LP is now time expired and of some vintage. Although policies should not be considered out of date simply because they were adopted prior to the publication of the Framework, there is no evidence before me to indicate that the settlement boundaries applicable in 2006 are still appropriate today and consistent with the Framework's objective of boosting significantly the supply of housing.
17. EVR2 in seeking to control the principle of development beyond settlement boundaries, is patently more restrictive than the balanced, cost/benefit approach set out in the Framework. The balancing of harm against benefit is a defining characteristic of the Framework's overall approach embodied in the presumption in favour of sustainable development. Because of this, where Policy EVR2 is used to restrict housing it cannot be seen to be consistent with the language of the Framework, irrespective of how the Council might be

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<sup>5</sup> Wavendon Properties v Secretary of State for Housing Communities Local Government and Milton Keynes Council [2019] EWHC 1524 (Admin).

applying it in practice. Although Policy EVR2 was saved as part of the CS adoption process in 2013, that was contingent upon the Council bringing forward a Sites and Boundaries DPD (a DPD), something that has not happened. Based on all of the foregoing, the conflict with Policy EVR2 carries limited weight.

### *Policy CS1*

18. CS Policy CS1 is an omnibus policy setting out the Council's spatial strategy for development. The overall aim is stated as "*to concentrate new development within walking and cycling distance of centres, and to focus on areas that need regenerating*". There is no dispute that the site is well located to services in Brimington and consequently the development would accord with this overarching aim. There is also no credible evidence to suggest the location of the development on the edge of a local service centre would be inconsistent with the "*Housing Growth*" section of the policy. That then leaves the matter of the Strategic Gap. The supporting text to the policy explains that Strategic Gaps assist in maintaining open space giving distinct identity to different areas and preventing coalescence between settlements. The appeal site is shown outside the SG on the accompanying Key Diagram. Moreover, the publication of a DPD is expressly referred to in the wording of the policy as being necessary to define the exact extent of the SG.
19. Whilst the general principle of strategic gaps might well be consistent with the aims of the Framework to promote local distinctiveness, there is a reasonable expectation at paragraph 23 of the Framework that designations and allocations will be identified on a policies map. Whilst the Council may have its reasons, the fact is that the DPD has not been published some 5 years after the adoption of the CS. Moreover, no review has taken place as advised in paragraph 33 of the Framework. This means the policy is both inconsistent with the Framework and manifestly out-of-date on its own terms.
20. The Council has sought to suggest that the text to Policy CS1 together with the key diagram is sufficient to imply that all the open land between Brimington and Tapton should be considered as forming the SG. I disagree. Successive reviews<sup>6</sup> have consistently concluded that it is not necessary to include all open land between Tapton and Brimington in order to fulfil the function of the SG. On that basis and bearing in mind the location of the site and its proximity and relationship to existing development in Brimington, these reports have excluded the appeal site from the SG. The Council conceded the purpose of the Arup report is to support, firstly, '*sustainable decision making*' and, secondly, the emerging LP. It is a detailed report whose methodology is compliant with current best practice and therefore remains the Council's only up-to-date evidence base for decision taking in respect of SG's.
21. The decision to depart from the Arup report in this case stems from the Council's decision to include the appeal site within the SG for the purposes of the emerging LP. However, as that plan has not been subject to examination, I have already opined that it can only be afforded limited weight at this time. Putting that matter to one side and whilst I accept that the Council is not strictly bound by its evidence base, there is an expectation that where it takes a contrary view, such as here, then such a decision should be based on

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<sup>6</sup> The Green Wedge & Strategic Gap Indicative Assessment 2011 and Arup's Chesterfield Borough Council Review of Green Wedges and Strategic Gaps within Chesterfield Final Report 2016.

substantial evidence and objective appraisal. However, as became clear during Mr Morey's evidence, the reasons for the Steering Group's decision appear to rest on nothing more than the somewhat nebulous notion of '*local knowledge*' and a desire to protect '*public access and usage*'. Not only do these comments indicate that the purposes of SGs have been conflated with those of Green Wedges, there is also no cogent evidence that the Steering Group gave proper and balanced consideration to all the purposes of SGs. These failures have persisted through to the current appeal with the Council's evidence being generally bereft of substantial evidence to show how the purposes of the SG would be offended by the appeal scheme.

22. Even if safeguarding '*public access and usage*' was a legitimate aim of the SG policy, it is not clear how the development would conflict with those aims. Beyond the public footpaths, there is no lawful public access to the land. The footpaths themselves are public highways and therefore protected under other legislation and in any event are shown as being retained along their existing alignments on the illustrative Masterplan.
23. Based on all of the above, there is simply no credible basis to support a conclusion that the appeal site is, or should be, within the SG. I therefore conclude that the development would accord with Policy CS1. Having reached that conclusion it follows that there would be no conflict with Policies CS2(a) and CS9(a) both of which refer back to compliance with Policy CS1. To that end, it is not necessary for me to consider whether or not these policies are out-of-date.

#### *Policy CS10*

24. CS Policy CS10 says planning permission for housing led greenfield development on unallocated sites should only be permitted if all allocated sites have been exhausted or if annual monitoring shows less than a 5-year HLS. The main aims of Policy CS10 are to meet the housing targets of the CS<sup>7</sup> by releasing land in such a way that prioritises the reuse of brownfield land and to ensure flexibility in the delivery of housing. To that extent at least the policy must be seen as being in general accordance with the Framework and the fact that the housing requirements for Chesterfield have gone down rather than up, does not, in itself, undermine the policy in that regard.
25. However, the policy was intended to be read and used alongside a DPD which was to allocate sites. The failure to produce the DPD is potentially significant because it means the Council cannot say that allocated sites have been exhausted or point to other greenfield sites as being more appropriate. Furthermore, it is unable to demonstrate how the Spatial Strategy set out in Policy CS1, including 11% of housing growth in local service centres, will be met. Accordingly, with cognisance of the Bloor Homes Judgement<sup>8</sup>, it could be argued that the lack of an allocations DPD is enough by itself to render the policy out-of-date.
26. Putting that matter to one side, the Council argues it can demonstrate a 5-year HLS<sup>9</sup>. If one accepts that proposition, then it must follow that there would be conflict with the wording of Policy CS10. However, in circumstances where

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<sup>7</sup> 380 dwellings per year.

<sup>8</sup> Paragraph 45 Bloor Homes East Midlands Limited v Secretary of State for Communities and Local Government and Hinckley and Bosworth Borough Council [2014] EWHC 754 (Admin).

<sup>9</sup> 6.71 years, paragraph 2.15 of Housing Land Supply SOCG.

there is a 5-year HLS the practicable effect of Policy CS10 is to operate as a cap on all greenfield development, something which is not consistent with the Framework which does not set a limit for sustainable development.

27. Putting the issue of consistency to one side, I do not consider that conflict with the wording of CS10 is necessarily fatal to the appeal. In my view it is not sufficient simply for a development proposal to be in conflict with the wording of a development plan policy for it to be necessarily objectionable. For example, if there would be no actual manifestation of harm then there would be no sensible purpose served by rejecting a development. This approach is underlined by the Council acknowledgement that it has granted planning permission on greenfield sites elsewhere and a number of these are included in its latest housing trajectory. Put another way, the Council is able to demonstrate a 5-year HLS in spite of Policy CS10 rather than because of it.
28. There is little evidence before me to suggest that the approval of this development would frustrate the aims of Policy CS10 in any significant way or give rise to any unacceptable planning harm. The Council accepted that the level of landscape harm would be '*nowhere near significant*' and that the dismissal of the appeal would not lead to a grant of planning permission on a brownfield site elsewhere in the borough. Moreover, no evidence is before me to suggest that the Council can maintain a 5-year HLS through brownfield sites alone. Indeed, the supporting text to the policy acknowledges that greenfield sites will have to be allocated to meet future housing targets. For the reasons set out above, the conflict with the wording of Policy CS10 only carries limited weight in this instance.

#### *Conclusions on policy*

29. Overall and notwithstanding the policy conflicts I have identified, when assessed against the development plan or Framework as a whole, I consider that the appeal site represents an appropriate location for housing.

#### *Character and appearance*

30. Although the reasons for refusal do not allege any specific landscape harm, the Council took the opportunity at the Inquiry to argue that some moderate, localised harm would arise from the appeal scheme primarily through a loss of openness. It was evident that local residents hold similar concerns. However, the Council did not produce any written evidence of its own and did not seek to challenge the appellant's expert landscape witness. The appellant's position, supported by a detailed landscape and visual appraisal<sup>10</sup>, concludes that there would be no unacceptable effects on landscape character or the appearance of the area.
31. In my view, the appeal site contributes to a pleasant open, rural setting to the south-west of Brimington. The site however has few redeeming features and is not designated or part of a 'valued landscape' in the terms set out in the Framework. Based on the foregoing, I consider the description 'ordinary attractive landscape' to be apt. Only the northern portion of the site would be developed leaving a large expanse of landscaping between the dwellings and the wider area of countryside between Brimington and Tapton.

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<sup>10</sup> Proof of Evidence Mr Daniel Houghton June 2019.



32. The extent to which the proposed dwellings would be visible beyond the site would depend on details which have been reserved for future determination. Nonetheless, I accept that whatever its final form the development would result in a marked and permanent change to an open arable landscape which would have a significant visual effect within the site boundaries. However, as that would be the case with any greenfield site, it is not a reason to dismiss the scheme out of hand.
33. The houses being bounded by existing development on three sides would not be unduly prominent in the majority of public views. They would also relate well to existing development representing a logical extension of the village. Moreover, because of its distance and elevation, the development would not be readily visible in long-distance views from Tapton and elsewhere. In those views where the dwellings might be glimpsed, they are likely to be seen against the general townscape of Brimington. As there would still be a large expanse of intervening countryside between the development and Tapton<sup>11</sup>, the two settlements would remain physically separated and distinguishable from one another.
34. There would of course be a more pronounced visual effect from the rears of those properties that back onto the northern part of the appeal site as well as the footpaths. However, these would be local rather than longer distance views. Whilst I have some sympathy with those residents who currently enjoy an open aspect across the appeal site, there is no right to a view or an open outlook. Although only indicative, it cannot reasonably be claimed that the resulting outlook for these residents would be unacceptable in normal planning terms.
35. Overall, there would be some localised visual effects arising from the loss of the appeal site's open and undeveloped character. There would also be some erosion of the amenity value derived from views across the appeal site. However, in my view the harm would not be at a level to bring the development into conflict with LP Policy EVR3.

### **Other Matters**

36. Local residents have expressed a wide range of concerns including but not limited to the following: loss of wildlife habitats, inadequate drainage and the effect on highway safety and congestion. However, whilst I understand the concerns of local residents, there is no compelling evidence before me which would lead me to conclude differently to the Council on these matters.

### **Planning Balance and Conclusion**

37. I am required to determine this proposal in accordance with the development plan, unless material considerations indicate otherwise, the starting point is therefore the development plan. In this case there would be some conflict with Policies EVR2 and CS10. However, for the reasons set out above the weight which can be attributed to these conflicts has to be commensurately reduced.
38. Weighing in favour of the scheme, I have found that the development would accord with Policies CS1, CS2(a) and CS9(a) and all the criteria therein. The Council accepts that the development would comply with all other policies of the development plan and I see no reason to take a contrary view. Most

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<sup>11</sup> 884m according to Figure 2 of Mr Houghton's Proof of Evidence.

significantly the development would be consistent with the Council's overall approach to growth set out in Policy CS1 which amongst other things seeks to provide 11% of new dwellings in Local Service Centres. Other benefits include a contribution towards the Council's housing stock in terms of both affordable and market provision. Even in the event I were to accept the Council's view that it has a 5-year supply of housing, this is not a ceiling on the number of houses that can be provided. Accordingly, the delivery of housing must still be seen as a benefit.

39. The purchase of materials and services in connection with the construction of the dwellings, local employment during the construction period, an increase in local household expenditure and revenues to the Council from the New Homes Bonus are all economic benefits that weigh in favour of the scheme. The appeal site is located in an accessible and sustainable location on the edge of a Local Service Centre, with good access to local services and facilities, and with sustainable transport choices that would provide access to higher order services in Chesterfield. There would be an overall benefit to biodiversity, given the current limited ecological interest in the site, which would accord with the requirements of the development plan.
40. The Courts have previously recognised that it is not unusual for development plan policies to pull in different directions, and that there may be some points in a plan which support a proposal but there may be some considerations pointing in the opposite direction. The Courts have established that a decision-maker may need to decide which is the dominant policy, and to address matters of relevance and weight. It will be necessary to assess all relevant matters and then decide whether there is accord between the proposal and the plan as a whole. It does not follow that if there is a breach of any one policy a proposal cannot be said to accord. Given the numerous conflicting interests that development plans seek to reconcile, it would be difficult to find any project of any significance that was wholly in accord with every relevant policy<sup>12</sup>.
41. Therefore, and notwithstanding the conflict I have identified with Policies CS10 and EVR2, when read as a whole, I find the preponderance of development plan policy to be in support of the appeal scheme. It would therefore be sustainable development benefitting from the 'presumption in favour' contained in CS Policy CS3 and the Framework. I therefore conclude that the proposal should be allowed, subject to the imposition of a number of conditions, as discussed at the Inquiry and set out in the Schedule below.

### **Planning Obligations**

42. The Framework sets out policy tests for planning obligations; obligations must be necessary to make the development acceptable in planning terms; directly related to the development and fairly and reasonably related in scale and kind to the development. The same tests are enshrined in the statutory tests set out in the regulation 122 of the CIL regulations.
43. The provision of public art up to the value of 1% of the total development cost is supported by CS Policy CS18. I am satisfied on the evidence in front of me

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<sup>12</sup> See, for example, *Laura Cummins and others and the London Borough of Camden and the Secretary of State for the Environment, Transport and the Regions and Barratt Homes Limited DDSF Limited 2001 EWHC 1116 (Admin)*; and *R v Rochdale MBC ex parte Milne 2000*.



that such a contribution meets the statutory tests. Policy CS11 states that on sites of 15 dwellings or more where there is a need and subject to a viability assessment, up to 30% affordable housing should be provided. The clauses under Schedule 3 reflect these requirements. I am therefore satisfied that the obligation meets the statutory tests. The agreement makes provision for and the maintenance of on-site green space which is supported by CS Policy CS9. I am therefore satisfied that this obligation also meets the statutory tests.

44. A Ground Nesting Bird Mitigation Strategy is necessary to mitigate the impact of development on local ecology and is supported by CS Policy CS9 and paragraph 170(d) of the Framework. I am therefore satisfied that the obligation meets the statutory tests. Finally, a financial contribution to the NHS, calculated via a standard formula, is necessary to mitigate the impact of the development on local services. Policy CS14 seeks to ensure developers provide the necessary social infrastructure and specifically refers to health facilities. I am thus satisfied that this contribution meets the statutory tests.

### **Conditions**

45. The parties have suggested a number of planning conditions which I have considered against the advice in the "*Planning Practice Guidance*" (PPG). In some instances I have amended the conditions in the interests of brevity or to ensure compliance with the PPG.
46. Conditions 1, 2 and 3 are standard conditions for outline planning permissions. Materials and landscaping conditions are necessary to ensure the appearance of the development is acceptable<sup>[4 & 12]</sup>. A condition regarding the provision of satisfactory drainage systems is necessary to ensure drainage of the site in the interests of flood prevention<sup>[5]</sup>. To protect important underground services, I have imposed a condition to ensure building works do not affect the integrity of a main sewer which crosses the site<sup>[6]</sup>. A condition requiring investigation into subterranean coal mining activity is necessary to establish whether the site is suitable for the proposed use<sup>[7]</sup>. An archaeology condition is necessary to protect any archaeological assets that may be present<sup>[8]</sup>.
47. To ensure the development does not harm a protected species, I have imposed a condition requiring a pre-commencement badger survey<sup>[9]</sup>. In the interests of local ecology, a biodiversity enhancement strategy is necessary. I have amended the wording provided by the parties to ensure the strategy incorporates those precautionary measures in respect of hares and reptiles set out in the appellant's Ecology Appraisal<sup>[10]</sup>. An Employment and Training Scheme is necessary to ensure local people and businesses can benefit economically from the development<sup>[11]</sup>. Electric charging points, pedestrian links and travel packs are all necessary to assist in the move to a low carbon future and to promote sustainable forms of transport<sup>[13, 14 & 15]</sup>. Conditions regarding internal estate roads, parking and the contractor compound are necessary in the interests of highway safety<sup>[16, 17 & 18]</sup>. To protect the living conditions of local residents, a restriction upon construction hours is necessary<sup>[19]</sup>.
48. The site is an arable field with no history or evidence of land contamination. The suggested land contamination condition is therefore unnecessary. As a Ground Nesting Birds Mitigation Strategy is included in the S106 agreement, the suggested conditions in respect of birds are unnecessary. The appellant's Ecological Appraisal does not support the presence of hares or reptiles on the

developable portion of the site. To that end, I am satisfied that the precautionary measures contained in the appraisal are proportionate to mitigate any impact on hares and reptiles should they be present. Conditions regarding gradients, gates and the future maintenance of the internal estate roads are unnecessary as these matters would all be dealt with under separate legislation as part of the road adoption process. Highway drainage is covered by condition 5 and therefore a separate condition is unnecessary. I am not persuaded that details pertaining to bin storage and the height of the dwellings could not be resolved at the reserved matters stage. I have omitted the suggested conditions accordingly.

49. Conditions 5, 7, 8, 9, 10, 11, 16 and 17 are 'pre-commencement' form conditions and require certain actions before the commencement of development. In all cases the conditions were included in the SOCG and address matters that are of an importance or effect and need to be resolved before construction begins.

*D. M. Young*

Inspector

## **SCHEDULE OF CONDITIONS**

- 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 begins 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 three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) Prior to any development above slab level details of the external materials shall be submitted to and agreed in writing by the Local Planning Authority. Development shall be completed in accordance with the approved details.
- 5) No development shall take place until details of the proposed means of surface and foul water drainage, including details of any balancing and off-site works, have been submitted to and approved by the Local Planning Authority. Furthermore, no piped discharge of surface water from the application site shall take place until works to provide a satisfactory outfall, other than the existing local public sewerage, for surface water have been completed in accordance with details submitted to and approved by the Local Planning Authority.
- 6) No building or other obstruction including landscape features shall be located over or within 3 metres either side of the centre line of the public sewer i.e. a protected strip width of 6 metres, that crosses the site. If the required stand -off distance is to be achieved via diversion or closure of the sewer, the developer shall submit evidence to the Local Planning Authority that the diversion or closure has been agreed with the relevant statutory undertaker and that prior to construction in the affected area, the approved works have been undertaken.
- 7) No development shall commence until intrusive site investigations have been carried out by the developer to establish the exact situation regarding coal mining legacy issues on the site and approval for commencement of development given in writing by the Local Planning Authority. The investigation and conclusions shall include any remedial works and mitigation measures required/proposed for the remediation / stability of the site. Only those details which receive the written approval of the Local Planning Authority shall be carried out on site.
- 8) No development shall commence until a written scheme of archaeological investigation / resource management; that includes post excavation analysis and publication has been submitted to and approved in writing by the Local Planning Authority. The development hereby approved shall only be implemented in full accordance with the approved scheme.
- 9) A pre-commencement survey for badgers should be undertaken within 3 months of the proposed start of the development to ensure that any newly excavated setts can be identified and appropriate mitigation proposed and agreed in writing by the Local Planning Authority.

- 10) Prior to the commencement of development, a biodiversity enhancement strategy incorporating the recommendations of the Ecus Ecological Appraisal July 2018, shall be submitted to and approved in writing by the Local Planning Authority to ensure no net loss for biodiversity and aim for a net gain. Such approved measures should be implemented in full and maintained thereafter.
- 11) Prior to the commencement of development an Employment and Training Scheme shall be submitted to the Local Planning Authority for consideration and written approval. The Scheme shall include a strategy to promote local supply chain, employment and training opportunities throughout the construction of the development. Once approved, the scheme shall be implemented in full.
- 12) The site shall be landscaped strictly in accordance with the details approved pursuant to Condition 1 details in the first planting season after completion or first occupation of the development, whichever is the sooner. Any trees that are found to be dead, dying, severely damaged or diseased within five years of the completion of the building works OR five years of the carrying out of the landscaping scheme.
- 13) Prior to first occupation, the dwellings hereby approved shall be provided with an electric vehicle charging point. Once provided the charging points shall be retained thereafter.
- 14) Prior to occupation of any dwelling a pedestrian and cycle link between Chesterfield Road and North Moor View, details of which have first been submitted to and agreed in writing with the Local Planning Authority, shall be provided and thereafter retained.
- 15) The Approved Travel Plan shall be implemented in accordance with the timescales specified therein, to include those parts identified as being implemented prior to occupation and following occupation, unless alternative timescales are agreed in writing with the Local Planning Authority. The Approved Travel Plan shall be monitored and reviewed in accordance with the agreed Travel Plan targets.
- 16) Prior to the commencement of development details of the site access, estate roads, footpaths and footways, (including layout, levels, gradients, and surfacing) including a timetable for implementation, have been submitted to and approved in writing by the Local Planning Authority. The development shall be completed in accordance with the approved details and thereafter retained.
- 17) Prior to the commencement of development, space shall be provided within the site for; the storage of plant and materials, site accommodation, loading/unloading and vehicle parking for employees and visitors. The area shall be laid out and constructed in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. Once implemented the facilities shall be retained free from any impediment to their designated use throughout the construction period.
- 18) Prior to occupation of each dwelling, the approved parking facilities shall be provided. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order

revoking and/or re-enacting that Order, the parking facilities shall be maintained throughout the life of the development.

- 19) Construction work shall only be carried out on site between 8:00am and 6:00pm Monday to Friday, 9:00am to 5:00pm on a Saturday and no work on a Sunday or Public Holiday. The term "work" will also apply to the operation of plant, machinery and equipment.

## APPEARANCES

### FOR THE APPELLANT

Mr James Corbet Burcher of Counsel

He called:

Mr Daniel Houghton BA (Hons) Dip LA, CMLI

FCPR – Appellant’s Landscape Witness

Mr Roland Bolton BSc (Hons), MRTPI

Strategic Planning & Research Unit

### FOR THE LOCAL PLANNING AUTHORITY

Miss Nina Pindham of Counsel

Instructed by the Council

She called:

Mr Steven Payne MSc, BSc (Hons), PGDip, MCIEH, CHAMATA Chesterfield Borough Council

Mr Alan Morey BA (Hons), BTP, MRTPI

Chesterfield Borough Council

Mrs Sarah Kay BA (Hons), MPlan, MRTPI

Chesterfield Borough Council

### INTERESTED PERSONS

Mr Kevin Pratt

Local resident



## **DOCUMENTS SUBMITTED AT THE HEARING**

- ID1 High Court Judgement Wavendon Properties Ltd v SSCLG and Milton Keynes Council [2019] EWHC 1524 (Admin)
- ID2 Appellant Opening Statement
- ID3 CBC Opening Statement
- ID4 Signed and dated S106 Agreement
- ID5 Air Quality Statement of Common Ground
- ID6 CIL Compliance Statement
- ID7 CBC Closing Statement
- ID8 Appellant's Closing Statement