



## Appeal Decision

Inquiry Held on 31 October, 1 November & 4 December 2017

Site visit made on 1 November 2017

**by Simon Hand MA**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 22 December 2017**

---

**Appeal Ref: APP/L2820/W/16/3162430**

**Land to the South of Desborough (between Rothwell Road and Sycamore Drive), Desborough, Northamptonshire**

- 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 Central England Co-Operative Ltd against the decision of Kettering Borough Council.
  - The application Ref KET/2016/0044, dated 18 January 2016, was refused by notice dated 26 May 2016.
  - The development proposed is residential development with associated access, infrastructure, public open space, nature areas and surface water management membrane.
- 

### Decision

1. The appeal is allowed and planning permission is granted for residential development with associated access, infrastructure, public open space, nature areas and surface water management membrane at land to the south of Desborough (between Rothwell Road and Sycamore Drive), Desborough, Northamptonshire in accordance with the terms of the application, Ref KET/2016/0044, dated 18 January 2016 subject to the conditions contained in Schedule 1 below.

### Background to the Appeal

2. An outline application was made to develop the site for up to 304 dwellings with associated public open space in January 2016. Officer's recommended it for approval but it was refused by the planning committee in May 2016. Two reasons for refusal were given but one, concerning biodiversity, was withdrawn, leaving only one reason for refusal; that the development would fail to preserve the natural beauty of the area and the character of the landscape. This then is the main issue.

### The Site and the Proposal

3. The southern part of Desborough lies above the valley of the River Ise. Over the years the town has developed southwards towards the Ise. By the 1970s this included filling in the ancient field pattern on the land above the river with houses. This development was rounded off with more modern housing so that today the edge of the built up area is demarcated by the ends of modern housing estate roads. There is a gap between the houses and the river which

can be described as being of two fields in depth on a gently sloping valley side. Open countryside stretches across the southern valley slopes up to the village of Rothwell.

4. The proposal is brought forward by the Central England Co-op who own much of the site, but parts are also owned by the Council and another party. At the western edge of the site a tongue of land extends into the town up to the Parish Church, this land is known as The Damms and there is an important view to and from the Church towards the river valley along The Damms. The proposal reserves this land, which is currently rough grazing, as open space, although housing will intrude into the lower area by the river. This tongue of land reaches down to the river and then the main site opens out to the east. A wide field next to the existing houses will be developed and the adjacent field next to the river will be left as farmland.
5. The site narrows in the centre and here more open space and a playground is proposed. The land to the south, next to the river, is privately owned and outside of the appeal site. It contains a sewage pumping station, access to which is provided through the proposed development. As the site moves east it broadens out and the field next to the existing houses is for more houses with a narrow strip of open space at its southern edge where it runs along the privately owned field. At its eastern end the site is called the Hawthorns and is the location of the former leisure centre, now demolished, and this is proposed to be mostly houses. The field to the south that borders the river is the Tailby Meadows Local Nature Reserve which is not part of the site and is owned by the Council. In essence therefore the proposal is to fill in the fields next to the existing houses with more houses but leave the open land next to the river. Areas of open space, a NEAP and a MUGA are dotted through the site.

### **Policy Matters**

6. The Joint Core Strategy (JCS) was adopted in July 2016, after the committee decided the planning application, and supersedes the then extant North Northamptonshire Core Spatial Strategy. There was no dispute that the relevant policies for this appeal are Policy 3 and 19 of the JCS and the saved Policy 35 from the Local Plan for Kettering Borough (1995).
7. Policy 3 requires that development should be sensitive to its landscape setting and retain and enhance features of landscape importance whilst protecting important views. Policy 19 deals with Green Infrastructure (GI) and in particular (b)(i) which suggests development will not be permitted where it compromises the integrity of the GI corridor and therefore of the overall GI network.
8. Policy 35 states that residential development will normally be permitted within the town boundaries where such development would be compatible with other "*policies and proposals in this Plan*". The town boundary for Desborough at this point runs along the northern bank of the River Ise so the whole site lies within the town.

### *Policy 3*

9. Two technical arguments about policy need to be considered here. Firstly, whether policy 3 refers to valued landscapes as mentioned in paragraph 109 of the NPPF. 109 says that the planning system should enhance the local

environment by “protecting and enhancing valued landscapes”. There is no definition of a valued landscape which tends, therefore, to be determined on a case by case basis. However, the appellant argues that here the JCS is up to date and has been found to be sound and compatible with the NPPF. Policy 3 is where the JCS deals with landscape and so it must incorporate paragraph 109 of the NPPF. So the appellant argues that where policy 3 uses the word “important” this is a local iteration of “valued landscapes”.

10. I cannot agree with this as it seems to me to be reading into policy 3 something that is not there. There is no mention of valued landscapes in policy 3 except in the commentary paragraphs and it cannot simply be assumed that the Council meant the policy itself to include that concept. The JCS does not need to mention every idea in the NPPF and a finding of soundness does not mean that every paragraph from the NPPF is incorporated into the document. In my view policy 3 does not mention valued landscapes, so the Council were correct to consider this issue separately.

#### *Policy 35*

11. Secondly, saved policy 35 clearly supports housing development within town boundaries, but this is not meant to be the end of the matter as the policy allows for other policies in the plan to be taken into account. Presumably this would allow for matters such as residential amenity or impact on listed buildings, or flooding, the list could be extensive, to be taken into account. The appellant argues that as there are no other relevant policies from the 1995 plan that have been saved this caveat is redundant and policy 35 provides a blanket presumption in favour of housing development within town boundaries.
12. I cannot take such a restrictive view of the policy as that. When referring to “this Plan”, I can only assume the authors meant to the development plan, especially as in 1995 the local plan would have been the only plan providing detailed development control advice. But even if I am guilty of reading something into the policy that isn’t there, the wording is only a result of the convoluted evolution of the development plan system over the last 20 years. There can clearly be no presumption in favour of housing development regardless of the consequences, so I do not think the policy overrides all other concerns. It does not “mandate” housing development as the appellant argues.
13. However, as the appellant pointed out, policy 35 has been saved on numerous occasions and no attempt has been made to redraw the town boundary to exclude the appeal site. Even the Neighbourhood Plan leaves the town boundary as it is.

#### *Historically and Visually Important Open Spaces (H&VIOS)*

14. In 2015 the Council carried out an H&VIOS assessment to update the old Local Plan policy 94 which identified Environmentally Important Open Space. The Hawthorns part of the site was discounted as a previously developed site but the central and some of the western parts of the site were considered in detail. They were not considered to be Historically and Visually Important. The land next to the houses was not considered important to the setting of the historic core of the town. The land by the River Ise was attractive but there was nothing in visual or historic terms to make the site of particular significance. However, it was noted that the potential for improving the green infrastructure

of the land by the river should be explored. Consequently the site has recently been examined and found to be not worthy of any particular designation.

15. The latest information from the Neighbourhood Plan is that the Damms should be protected as a HVIOS. However, this area is largely excluded from development in the masterplan for the proposal and is intended to be designated as public open space by the appellant. So whether or not The Damms is designated as a HVIOS has little bearing on the outcome of the appeal.

#### *Previously developed land*

16. The site of the leisure centre is without doubt previously developed land and I saw the overgrown remains of the footprint of the building. The surrounding car parks and hard surfaced court remain and are also previously developed land. The issue in dispute is the playing fields to the west and north of the centre. In my view it was obvious from the site visit they did not appear as natural landscape features but were clearly man made. The field to the north was squared off and had apparently engineered boundaries. The cricket field to the west had an even more artificial appearance as the land had been banked up to the south and cut away to the north to create a level playing field. They could not be mistaken for the fields that surrounded them, and in my view they are clearly man-made features that were closely associated with the former leisure centre and so would have been part of the curtilage of the leisure centre. As such they fall within the definition of previously developed land in the NPPF Annex 2. Although I note the definition states that "*it should not be assumed that the whole of the curtilage should be developed*".
17. The current pumping station lies outside the site, but there was some suggestion that the former sewage works in the field to the north-west of the pumping station might count as previously developed land, but as there is no trace of these works on the ground I consider the rest of the appeal site is not previously developed land.

#### **Housing Land Supply**

18. It is agreed that the Council can show a 5 year supply of housing sites and that paragraph 49 of the NPPF is not engaged. As far as paragraph 14 is concerned there was no dispute that the development plan is up to date and in the "for decision taking" section the first bulletpoint is relevant – "approving development proposals that accord with the development plan without delay".
19. However, this is not the end of the housing land supply issue. The JCS looks ahead to 2031 and in seeking to consider the housing land supply question beyond the first 5 years has identified that Desborough should provide land across the whole plan period for 1360 dwellings. Completions and existing permissions leave 247 to be found, but the Council has added a 10% buffer so there is a residual requirement of 407 dwellings.
20. A considerable amount of work has gone into identifying sites for these 407 dwellings. In 2015 the "Lathams" report carried out work commenting on all the proposed sites. The appeal site was at the time split into three possible development sites which received guarded encouragement from Lathams. There were concerns about the access to the western site and the level of local concerns regarding the sensitivity of the old leisure centre site, but

nevertheless, Lathams put all three sites forward for consideration and noted a masterplan to develop them as one site would be preferable. In November 2016 as part of the Site Specific Part 2 Local Plan Housing Land Allocations report the Council was advised by its officers that sites for 683 houses had been identified in and around Desborough, well in excess of the 407 required. The three sites had by now been amalgamated into DE/210, the current appeal site. The Council had already refused an outline application and officers recognised there were ecology and landscape sensitivities with the site, but recommended it remained in contention. Primarily this was because it would deal with a large proportion of Desborough's housing need which was useful given the uncertainties surrounding a number of the other sites. As the appellant points out, most of the other sites lie outside the town boundary and the appeal site is the only large site left within the development boundary. The appellant argues that it is surely better to develop a site within the town which would significantly reduce the number of sites that will need to come forward in the open countryside, that is, beyond the town boundary.

### *Neighbourhood plan*

21. The Desborough Neighbourhood Plan is also being drawn up, but is at an early stage. Before the Inquiry opened the July 2017 version was the latest draft. This showed DE/210 as a site for housing in Policy 4 but also as a green space to be protected in Policy 3. However, at the Inquiry the latest version of the plan was presented, dated 25 October 2017, which contained a lot more detail on the various housing sites. Now, DE/210 has been discounted due to the strength of local opposition. The plan shows land available for over the 407 units required assuming the sites that the Council previously considered to be questionable due largely to access issues would come forward.
22. The current Inquiry is not the forum for determining Desborough's future housing allocations, but it is perhaps inevitable with the Neighbourhood Plan at an early stage and the Council still considering their future housing options and the Part 2 Local Plan still evolving that local people should argue there are better sites available. However the housing sites argument seems to be going round in circles at the moment, until the sites around Desborough have been subject to more scrutiny it is difficult to say whether DE/210 will be needed or not. The Neighbourhood Plan and the Part 2 Local Plan both attract little weight due to the uncertainties that surround them, but the Neighbourhood Plan is a clear indication of the strength of local feeling, which was also obvious at the Inquiry. Nevertheless, up until the issue of the latest version of the Neighbourhood Plan, the site has always been in contention for housing development and has been favoured by the Council's officers.

### *Conclusions*

23. Taking all this together it is possible to summarise the situation as follows. The site lies within the town boundary where policy 35 supports the development of housing. For a number of years the site has been considered as a potential housing site for Desborough and actively supported by Council Officers. There is sufficient other land for housing in Desborough but enough of that land has uncertainties associated with it to make the appeal site a possible contender. Local residents strongly oppose the development but up until this appeal, what investigations of the landscape character there have been have found it to be

not worthy of any particular designation. Part of the site is previously developed land the re-use of which would be a positive benefit.

### **Landscape Arguments**

24. Much of the Inquiry was taken up with the parties opposing views on the quality of the landscape of the site. This included disagreement on whether the site was a valued landscape in terms of paragraph 109 of the NPPF, whether it was public open space and whether the proposal harmed the green infrastructure corridor. I shall deal with these below.

#### *The Green Infrastructure (GI) corridor*

25. The GI corridor is the subject of policy 19 and is defined in the plan as a wide corridor stretching across Desborough, incorporating much of the built up area of the town and both sides of the Ise valley stretching up towards Rothwell, it is thus a wide corridor that covers a varied quality of landscape. Policy 19 allows development in the corridor as long as its integrity is not compromised. The corridor is so wide and drawn somewhat generally rather than with specific boundaries that it is hard to see how anything other than a large development could threaten to damage its integrity. However, the Council argued that it was like a motorway and blocking or narrowing it would cause harm, and I accept that like the green belt it could be damaged by cumulative proposals.

26. In the location of this appeal, the Ise valley is clearly the key important factor for the GI corridor. Although the valley will be encroached upon, development is kept clear of the river for the entire length of the site. Even if I were to focus solely on the green corridor of the river and its northern bank, I do not think this would be severed or its overall integrity harmed by the development. The fields along the north bank are not to be developed and a clear corridor along the river valley is retained. It follows that the wider GI corridor remains unaffected and the proposal is not contrary to policy 19.

#### *Public Open Space*

27. Mr Dudley, the Council's landscape witness, described the whole site as public open space, but accepted he was using this colloquially to denote that the public accessed the land, not that it was formally designated as public open space.

28. There was some discussion about the site of the leisure centre, which still has signs denoting it as a "Designated Public Space". Information as to what this meant was not easy to come by, but the appellant was able to show it related to an order made by the Council under the Criminal Justice and Police Act (2001) due to anti-social behaviour and excessive drinking. The provision to make such designations was repealed in 2014 so the signs have no force any more.

29. The Council argued that the public were allowed to access the leisure centre site. This takes the form of tolerated trespass and is even encouraged as evidenced by the provision of a dog waste bin. I noticed the Council also obviously maintain the two playing fields by keeping them mowed. To all intents and purposes, the Council argue, the land is treated as if it were public open space.

30. While the appellant may be correct that the strict legal position is that the public are trespassing and could be prosecuted it is difficult to imagine the Council would have any incentive to do so and clearly have not done so up until now. That said this is Council owned land which is currently in limbo as the Council are promoting it for housing. It is understandable that until the position is clarified the Council would let matters rest, but what would happen in the future if the appeal were dismissed is entirely speculative. The status quo might be maintained or a different function for the land might be sought.
31. In my view, apart from the public rights of way across the land there is no legal public right of access, but that nevertheless, the public do enjoy access to the playing fields around the leisure centre which would definitely be lost if the appeal were to be allowed. However, the weight to be given to that loss is reduced by the fact that it is technically trespass and could be withdrawn in the future if different uses for the land were to be found.

### *Valued Landscape*

32. The concept of valued landscapes was introduced by paragraph 109 of the NPPF. There is no definition of what would constitute a valued landscape or how to define one and this has been left to be determined on a case by case basis. However the courts dealt with the matter in the Stroud<sup>1</sup> case. In that case the Inspector found the land in question not to be a valued landscape and the Courts upheld that judgement. In that sense the Court did not define any particular characteristics that a valued landscape should have, but agreed with the Inspector's assessment that as the landscape in question did not have certain characteristics it was reasonable to conclude it was not a valued landscape. The site was popular, crossed by three rights of way and the proposed development would interrupt views of the adjacent AONB, but none of this was sufficient to deem it to be a valued landscape. The Inspector concluded that nothing took the site out of the ordinary and there had been no demonstrated physical attributes to make it valued. The Court concluded this was a perfectly reasonable position to take.
33. I think this judgement is much more helpful than the appellant would have me believe as it introduces the idea of a valued landscape being somewhat out of the ordinary, not just "*mere countryside*". What would take it out of the ordinary could be physical characteristics, of which there were none in the Stroud case, or other matters, which brings me to Box 5.1.
34. This box is contained in GLVIA3<sup>2</sup> and is headed "*Range of factors that can help in the identification of valued landscapes*". The appellant points out this box is not expressly related to the NPPF but in my experience it is generally used as a guide to help identify a valued landscape. In my view Box 5.1 which talks of landscape and scenic quality, rarity, representativeness, conservation, recreation, perception and associations, helpfully fleshes out the sort of characteristics that would take a site out of the ordinary. Mr Dudley use Box 5.1 in his landscape analysis and concludes the site is a valued landscape, Ms Tinckler, acting for the appellant, disagrees with this approach, but in essence she accepted that Box 5.1 was a starting point that needed to be extended by one's own fine-grain analysis and I do not think is particularly controversial. However, a stark difference between the two expert witnesses arose from their

---

<sup>1</sup> Stroud DC v SSE [2015] EWHC 488

<sup>2</sup> Guidance for Landscape and Visual Impact Assessment Third Edition

idea of which landscape character should be the starting point, and this underpins the approach of both sides to the quality of the landscape in general.

*Landscape character areas*

35. Northamptonshire has the benefit of a county wide Landscape Character Assessment. Desborough lies partly within the Rolling Ironstone Valley Slopes landscape type to the south and Wooded Clay Plateau to the north. Urban areas are noted in grey and not included in the landscape assessments. The map showing these landscape types is included in the JCS at figure 13. Even at the small scale of the JCS it is clear that the grey area outlining Desborough follows the town boundary in the south and so the appeal site falls within the urban category. The boundary with the Rolling Ironstone Slopes is the River Ise, and the sub category of the landscape type on the southern side of the river is 4f Kettering and Wellingborough Slopes.
36. This is important because Ms Tinckler starts from the premise that the site is within the urban area and that, by definition, it has a lower value than land in the countryside. Mr Dudley argues that the boundaries between landscape types and character areas are not hard and fast. Inevitably there will be places on the ground where following the sort of detailed analysis such as engendered by this appeal it becomes clear that a particular site has the characteristics of a neighbouring type rather than the category in which it has been placed. Ms Tinckler argued that as a matter of principle one could not look beyond the boundaries as they were shown on the maps, they were in effect set in stone.
37. I wasn't pointed to any document that stated the landscape boundaries were sacrosanct, it seemed to be Ms Tinckler's opinion. I accept that the boundaries are the result of careful thought and detailed analysis as shown in the assessment of the various sub categories of the Rolling Ironstone Valley Slopes. They should not therefore be set aside lightly. But I find it impossible to imagine that every boundary is exactly correct and there is no room for experts to argue that the characteristics of one area might bleed across to another area in a particular location. I find this particularly true of the urban areas especially as the southern border of Desborough simply follows the town boundary of many years standing. The fields in the centre and west of the proposed development, and Tailby Meadow LNR (also included within the town boundary) are self-evidently countryside not urban. It is entirely possible they could have all or some of the characteristics of Area 4f and that it would be reasonable to start ones analysis of impacts on that basis.

*The landscape character evidence*

38. Mr Dudley sets out the reasons he considers the appeal site has similar characteristics as Area 4f which I find to be convincing. However, as Ms Tinckler points out, this is a fairly broad brush approach. She finds the site to be appropriately located within the urban area not just because of the map, but because it has the characteristics of an urban fringe location; the suburban boundaries, demolished leisure centre, unmanaged grazing fields etc. That this is also convincing suggests to me the land between the river and the built up edge of Desborough has at least two characteristics. That by the river is clearly part of the valley of the Ise, which does seem to have characteristics of Area 4f, channelled views, arable fields, semi-improved pasture, well treed etc, while the fields next to the urban edge are more degraded and more closely affected by urbanising influences identified by Ms Tinckler.

39. A lot of effort has gone into producing two contradictory Landscape Visual Impact Assessments but in the end the issues are quite straightforward and as outlined by Mr Dudley. The Ise valley retains a distinct character which occupies a naturalistic corridor framed by the gently sloping valley slides, crowned to the north by the urban edge of Desborough. There are channelled views along the valley and opportunities to experience it from the rights of way that cross the fields from west to east. At the western end the views of the church and its spire along the Damms are of a high quality.
40. In my view much of what Mr Dudley identifies is positive in landscape terms will not be harmed by the development. The river valley will remain untouched and will still contain channelled views. It will still be a naturalistic corridor and still retain gently sloping valley slides crowned to the north by the urban edge of Desborough, albeit closer. I accept the valley will be narrowed as the houses creep closer to the river and this will reduce somewhat the value of these positive attributes, but much of this will depend on the quality of the built development and the proposed landscaping. I agree with the appellant (and the Council's Officers) that the current urban edge is unplanned and untidy. It looks like a typical suburban edge to a town that has been left somewhat ragged by the developers perhaps with half an eye on possible future developments such as that proposed here. It consists of a series of very ordinary culs-de-sac where the back gardens that largely border the site have a variety of boundary finishes. The housing as a whole turns its back on the valley. A properly planned housing development with a good quality landscaped edge as proposed by the appellant could improve the urban edge and so undo some of the negative elements that the simple fact of building houses on the land will occasion.
41. It follows from the above discussion that I do not consider the site as a whole to be a valued landscape in NPPF terms. Part of the site may well be representative of the 4f Character Area and has some value in recreational terms because of the footpaths. It may also be a pleasant experience walking along the paths and the views down the valley are certainly attractive but none of this suggests to me there is anything unusual or out of the ordinary about the landscape. I have no doubt that a pleasant countryside walk can be had in many parts of the Borough but that does not make the associated landscapes to be valued landscapes. I can fully understand why local residents attach considerable value to the land, but mere popularity is not sufficient so I do not consider the site to be part of a valued landscape.

#### *Rights of way*

42. It is important to consider the rights of way in some detail as these provide the main means of accessing the site and give the local residents the opportunity to sample the pleasures of the Ise Valley. That these are well used is not disputed and I heard first-hand accounts of the value placed on them by local residents. Management of the Tailby Meadows LNR is disputed in the sense that the appellant argues that restricting access would be beneficial but others dispute this. In any event this is not part of the site and so access to the LNR is a matter for future discussion and need not change. The paths across the site have recently been formalised as rights of way. The main path runs north-south down the Damms, and then turns east-west across the edge of the existing houses and into the main westerly field of the site that will be developed. The path then runs into the central section which is to be left open

and splits into two, both parts crossing the middle field parallel to each other (with a link into the existing housing) meeting up at the corner of the LNR and continuing along its northern boundary (the southern boundary of the cricket pitch) with links into the leisure centre providing access back into the housing. It carries on around the edge of the LNR across a bridge over the Ise and then eastwards along the river into the countryside.

43. There was some discussion as to whether the experience of walking through a housing state as opposed to across a field would be better or worse. I accept that hard surfacing would make the route more accessible, but there is no shortage of pavements to walk on in Desborough and clearly, in my view, the loss of the experience of walking through the valley would be negative. However, that is not the end of the matter. The masterplan which shows the rights of way diverted, suggests footpaths will run along the southern part of the development through the landscaped buffers that are proposed. These should therefore still offer views across the valley from outside of the houses, although with them closer to the paths than currently. Thus the quality of the experience of walkers will be reduced, but not removed altogether.

#### *Landscape conclusions*

44. In my view the site is not a valued landscape in terms of paragraph 109 of the NPPF, but still has certain characteristics that are worth protecting. In particular the river valley is a pleasant place to walk and acts as a wildlife corridor. The proposed development would be likely to cause some harm to the experience of the valley as houses would encroach further down the slope towards the river, but this would be partially offset by the opportunity to provide a well designed and defensible edge to the town and a landscaped buffer to the river. The experience of using the footpaths across the site would be degraded, but there are opportunities to ensure the valley can still be enjoyed from new or re-routed paths along the edge of the development. There would be the loss of access to the former leisure centre site, although this is currently an informal access and not a right. On the other hand there would be an increase in actual public open space with the central landscaped section of the site a MUGA, a NEAP, the landscaped buffers and the land in the Damms which represents an overall improvement.
45. I consider therefore that while there would be some harm to the landscape of the river valley much of this would or could be offset by good design and landscaping, while there are positive landscape benefits in terms of public open space. I think therefore the impact on policy 3 would be broadly neutral and so the proposed development would not be contrary to that policy. I do not consider there will be any harm to the integrity of the GI corridor and so the proposal is in conformity with policy 19.

#### **Other Matters**

46. I heard a considerable amount of evidence from local residents who had strongly held views about the development of the site, and I was even given poetry written by one resident about the Ise valley. The essence of their landscape arguments are dealt with above. In addition there were concerns about flooding, highways and accessibility. However, the appeal is accompanied by a flood risk assessment which shows the built up areas will all be in Flood Zone 1 where there is little risk of flooding and the use of green spaces will help alleviate any surface water impacts. The photographs show

flooding in the valley but they also show the undeveloped land acting as a flood plain, which it will still be able to do. Conditions would be attached to deal with any flooding and drainage issues.

47. On highways, the Highway Authority are content with the various access points. While this might make some of the approach roads busier that is not a reason to object to the scheme. There was some discussion about the proposed link road for Rothwell, that the development should not be begun until that road is opened. As the appellant points out the enabling development for the link road has stalled and it is unreasonable to hold up the appeal proposal indefinitely when there has been no specific objection from the Highway Authority.
48. The site is not very close to facilities, but parts of the site are within the recommended walking distances in Manual for Streets. In any event it is not a requirement that every new house is a walkable distance from a school and a shop, the NPPF requires people are given a real choice about how they travel. Some can walk, many will be able to cycle and there will also be bus routes in the vicinity. Given that most new development will inevitably have to be on the edges of the town it seems to me this site is locationally sustainable.

#### *Willowbrook Stud Farm*

49. This appeal decision<sup>3</sup> was issued in June 2017 and refused planning permission for up to 147 houses on land to the east of the current appeal site. A challenge by the appellant was not given leave to proceed. I was encouraged to follow the Inspector's lead and similarly find the current appeal proposal to be unacceptable. Indeed it was argued for the Council that the appeals were so similar it was an important matter of administrative consistency they should have the same outcome.
50. The Inspector found that the Council did have a 5 year supply of land, the site was sustainably located, it would not harm the GI corridor but it would harm the landscape. However, when considering the landscape the Inspector found the site to be beyond a tributary of the Ise which formed a natural boundary to the town and the development would be an incursion into the valley landscape, harming views. Although, as the Council pointed out, the fact that the site was outside the settlement boundary was not a part of their case, the fact that it lay in open countryside and breached the natural edge of the settlement clearly weighed with the Inspector. These are all different issues than were raised in the current appeal, where the land has long been considered to be a potential housing site and where there is a neutral impact on the landscape.

### **The Planning Balance**

51. Although there will be minor harms to the landscape and the quality of public access to the Ise Valley these are offset by improvements to the built edge of Desborough, provision of walking and cycling along the edge of the proposal and better public open space. There is therefore no conflict with policy 3. The GI corridor will be preserved and the proposal would be in accord with policy 19. Policy 35 encourages housing development on the site assuming no conflict with other policies, which there is not. Consequently, the proposed

---

<sup>3</sup> APP/L2820/W/16/3149835

development is in accord with the development plan and according to paragraph 14 of the NPPF should be approved without delay.

52. In addition the development would provide much needed affordable housing and a minor economic boost to the locality through building work and an apprenticeship scheme that can be secured by condition as well as more spending in the local community. It would also encourage the reuse of previously developed land. Finally, development of the site will reduce pressure on other sites outside of the settlement boundary in Desborough when considering the longer term housing needs of the area. Subject to the conditions and s106 unilateral undertaking discussed below I shall allow the appeal.

### **Conditions and S106 Undertaking**

53. The application is in outline and a number of matters have been promised in order to resolve potential issues with the proposed development. Conditions dealing with remediation of the site are important, particularly because of the possible presence of the remains of sewerage works on part of the land and the old leisure centre. A design code is required to control building types, boundary treatments etc as a high quality of design is important to realise the benefit of an improved urban edge to the town. The maximum capacity of the site is 304 dwellings. The long term management of the LNR should also be secured and a lighting strategy to mitigate any potential ecological harm should be agreed. Parts of the site are likely to yield archaeological remains and a programme of archaeological work should be secured. The development should be carried out in accordance with the flood risk assessment and a surface and foul water strategy needs to be agreed.
54. A construction method statement is needed as the approach to the site will be close to existing houses and ecological and GI management plans need to be agreed as well as bat surveys and boxes and badger protection. The Access to the site needs to be limited to the agreed roads and offsite highway works need to be secured by a Grampian condition. A tree and hedgerow retention and landscape plan should be agreed along with a landscape management plan as landscape will be an important feature of the development. Finally a condition to secure a local apprenticeship scheme is needed. I consider that the simpler version suggested will suffice as the details of the scheme can be agreed in the required statement.
55. At the Inquiry a unilateral undertaking was offered by the appellants to secure various payments to the Council. A CIL compliance schedule was provided but the appellants were concerned that there was insufficient connection between the matters being funded and the development itself in three instances; contributions for secondary schools, the town centre and public transport. Further time was allowed for the Council to provide an updated CIL statement.
56. The advice I have received concerning secondary education is that by 2018/19 when allowing for natural growth (3 year population trends and birth rate), all the secondary schools in the Borough will be full. Given the number of new housing developments already with planning permission these numbers will increase significantly. It is clear therefore that extra space, which is to be created at Montsaye CC, is directly related to the new housing developments in the area of which this will be one.

57. The rather vague comment concerning the Town Centre Environmental Contribution (TCET) that improvements are required in the town centre has been developed by the provision of a list from the town council. These include various improvements and regeneration projects that will benefit all the residents of Desborough including those in the new development. However, there is no suggestion that any of the projects is actually required to deal with or accommodate an increase in the population caused by the proposal. I note the Town Centre Regeneration Contribution in the undertaking itself is directed towards additional car parking, and I assume this is the same as the TCET. If so none of the projects identified in the list appear to be for the expansion of any car parks. These seem to me to be very generalised benefits which do not relate directly to the proposed development.
58. Finally the transport contribution would help fund 2 new bus stops on the B576 to ensure that all the proposed houses would be within 400m of a bus stop; to link the proposed cycleways and footpaths to be provided in the development with the existing network; and to upgrade the pedestrian link from the development to the town centre which is the most obvious pedestrian route for residents. These all seem to me to be directly related to the development.
59. The other matters in the undertaking are contributions for open space, allotments, healthcare, primary education, a travel plan and bus pass, cycleways and footpaths, improvements to the pitch and facilities at the Dunkirk recreation ground and 30% affordable housing. There is no dispute and I agree, that these are all directly linked to the development.
60. Paragraph 4 of the undertaking requires that I expressly find that each element of the undertaking is in accordance with Regulation 122(2) of the CIL regulations otherwise it will have no effect and will be unenforceable. Consequently, this paragraph is confirmation that I find each element in the s106 Unilateral Undertaking dated 15 December 2017 is compliant with the CIL regulations apart from the Town Centre Regeneration Contribution.

*Simon Hand*

Inspector

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Killian Garvey of counsel

He called

Ian Dudley – landscape witness

Andrew Smith – planning witness

### FOR THE APPELLANT:

Christian Zwart of counsel

He called

Carly Tinkler – landscape witness

William Charlton – planning witness

### INTERESTED PERSONS:

Helen Wood

Cllr Jane Pearce

Cllr Jim Hakewill

John Evans

Andy Phippen

John Roe

Alan Mayes – CPRE

Kevin O'Brien (also on behalf of Mr Conaty

Angela Read

Robert Martin

## DOCUMENTS

- 1 CIL compliance statement
- 2 Speaking notes for Cllr Jane Pearce and updated Neighbourhood Plan policies
- 3 Appellant's opening submissions
- 4 Bundle of papers from appellant
- 5 Photographs and maps provided by Andy Phippen and John Roe
- 6 Speaking notes for Alan Mayes
- 7 Speaking notes for Robert Martin
- 8 Speaking notes for Angela Read
- 9 Suggested conditions
- 10 Revised map of photograph locations for Mr Dudley's LVIA
- 11 Character Area profiles
- 12 October 2017 draft of Neighbourhood Plan
- 13 Written comments from Kevin O'Brien and Mr Conaty
- 14 Pages from the Joint Core Strategy
- 15 Box 5.1
- 16 County Council evidence concerning the Rothwell North link road
- 17 Appeal decision letter concerning valued landscapes
- 18 Letter from Kettering Borough Council updating the reasons for refusal
- 18a Appellant's rebuttal proof for day 3
- 19 Extract from the History of Desborough
- 20 Poetry on the Ise Valley
- 21 Gladman v SSE and Kettering Borough Council
- 22 Various documents from local residents
- 23 Aerial photograph of site showing leisure centre
- 24 Unilateral undertaking
- 25 Draft conditions for apprenticeship scheme
- 26 Late representations from Angela Read
- 27 Council's closing submissions
- 28 Transcripts of various high court cases provided by appellant
- 29 Appellant's closings
- 30 Alleged curtilage of the leisure centre
- 31 Tables comparing the opposing views of the landscape
- 32 Revised unilateral undertaking
- 33 Revised CIL compliance schedule

---

## Schedule 1

These are the conditions referred to in referred to in my decision

---

1. Approval of the details of the appearance, landscaping, layout and scale (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced.
2. Plans and particulars of the reserved matters referred to in condition 1 above, relating to the appearance, layout and scale of any buildings to be erected and the landscaping of the site, shall be submitted in writing to the Local Planning Authority and shall be carried out as approved.
3. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of 3 years from the date of this planning permission.
4. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
5. Unless otherwise agreed by the Local Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until parts A to D below 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.

### 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, - groundwaters 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 (or any model procedures revoking and replacing those model procedures with or without modification)'.

#### 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.

#### 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 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.

#### 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.

6. No reserved matters applications shall be submitted unless or until a Design Code for the site has been first submitted to and approved in writing by the Local Planning Authority. The Design Code shall set out principles and means to achieve them, and include mandatory coding relating to all these relevant matters: character areas; public realm strategy; movement network; GI Strategy; building typologies; boundary treatments; building heights, detailing and materials; open spaces, landscape and SUDS; hardstanding and surfacing; environmental standards; and implementation.
7. Any subsequent reserved matters applications shall be in complete accordance with the approved Design Code (as required by condition 6) and shall be

accompanied by a written statement of conformity to the design code that demonstrates how this is the case.

8. The development shall be limited to a maximum of 304 dwellings.
9. An access management plan detailing the long-term management of the adjacent Local Nature Reserve, known at the Tailby Meadow shall be submitted to and approved by the Local Planning Authority no later than the first submission of any reserved matters application. The management plan shall include results of a visitor survey, proposed access management measures, implementation and monitoring programmes. The plan shall be implemented exactly in accordance with the approved details.
10. Prior to occupation of any of the dwellings hereby approved, an assessment of the lighting strategy design for biodiversity shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall: a) identify those areas/features on site that are particularly sensitive for bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and, b) show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places. All external lighting shall be installed in accordance with the specifications and locations set out in the strategy, and these shall be maintained thereafter in accordance with the strategy. Under no circumstances should any other external lighting be installed without prior consent from the Local Planning Authority.
11. No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Local Planning Authority. The development shall only take place in accordance with the detailed scheme of investigation approved pursuant to this condition.
12. The development hereby permitted shall be carried out in accordance with the approved Flood Risk Assessment (FRA) December 2015, reference number: SHF.1209.001.HY.R.01.B, Letter dated 1 April 2016, reference SHF.1209.001.HY.L.01.A and the following mitigation measures detailed within the FRA: Finished floor levels are set no lower than 150mm above Ordnance Datum (AOD): No development within flood zone 3 as identified on drawing number SHF.1209.001.HY.D.004.2.A  
  
These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing /phasing arrangements outlined within the approved details.
13. Any subsequent reserved matters application shall be accompanied by a written statement of conformity to the approved Flood Risk Assessment (FRA) prepared by Enzygo Ltd dated December 2015. Prior to construction of any of the dwellings hereby approved, an update to the FRA shall be submitted to and approved in writing by the Local Planning Authority outlining full drainage details and any further works required. The development shall be carried out in accordance with the approved details.

14. No development shall commence on site until a detailed surface water drainage scheme, based on sustainable drainage principles and an assessment of hydrological and hydro-geological context of the development has been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.
15. No development shall commence unless or until a scheme for the maintenance of the surface water drainage system proposed on site has been submitted to and approved in writing by the Local Planning Authority. The development shall be maintained in accordance with the approved details.
16. No development shall commence until a foul water strategy has been submitted to and approved in writing by the Local Planning Authority. No dwellings shall be occupied until the works have been carried out in accordance with the foul water strategy as approved.
17. No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period and the approved measures shall be retained for the duration of the construction works unless otherwise agreed in writing by the Local Planning Authority.
18. Before development commences a scheme for achieving the noise levels outlined in BS8233:2014 with regards to the residential units shall be submitted and approved by the Local Planning Authority. Once approved the scheme shall be implemented prior to the occupation of the residential units affected and thereafter maintained in the approved state. No alterations shall be made including roof, doors, windows and external facades, layout of the units or noise barriers without the prior written approval of the Local Planning Authority.
19. Prior to the submission of any reserved matters application the following strategies shall be submitted to and approved in writing by the Local Planning Authority:
  - An outline Construction Ecological Management Plan
  - A strategic Landscape and Ecological Management Plan
  - A Green Infrastructure Strategy
  - A Sustainable Urban Drainage Strategy
  - An update to the Ecological Assessment submitted, the scope of which to be first submitted to and approved in writing by the Local Planning Authority and shall include an updated surveys for crayfish and otters;Any subsequent reserved matters applications shall be in complete accordance with the details contained in the approved strategies. Any measures of mitigation or ecological enhancement shall be carried out in complete accordance with the approved strategies.
20. An updated bat survey shall be submitted to and approved in writing by the Local Planning Authority prior to the submission of any reserved matters application. The development shall accord with the approved recommendations

and mitigation measures, as set out in a strategy based on the findings of the bat survey work undertaken.

21. Prior to first occupation of any of the dwellings hereby permitted, a scheme for the provision of bird and bat boxes shall be submitted to and approved in writing by the Local Planning Authority. The boxes shall be installed in complete accordance with the approved details.
22. The measures to protect badgers as outlined on Page 23, Section 6.4 of the submitted Preliminary Ecological Assessment report number RT-MME-119581-01 dated July 2015 and those outlined on page 28, Section 7.1 of the submitted Outline Ecological Mitigation Strategy report number RT-MME-120106-06 dated January 2016 both received on 19/01/2016 shall be carried out exactly as stated within these approved documents.
23. The access to the site hereby approved shall only be constructed in accordance with the following approved plans: - B576/Rothwell Road access shall be constructed in accordance with drawing reference 210076-01c received 06/05/2016; and - Sycamore Drive access shall be constructed in accordance with drawing reference 210076-02 received on 06/05/2016.

Any amendment to these plans shall first be submitted to and approved in writing by the Local Planning Authority.

24. Prior to submission of any reserved matters application, plans showing necessary off-site highways works including: - Mitigation works on the Lower Street/B576 Rothwell Road junction (ghost island right turn lane) - A cycle lane link from the access on the B576 to the site to where this meets the existing cycle path at the River Ise Bridge going south to Rothwell; shall be submitted to and approved in writing by the Local Planning Authority. The approved works shall be carried out prior to the occupation of any dwellings hereby approved.

Further assessment of the following junctions shall be carried out prior to submission of any reserved matters application: - The mitigation measures on the junction of Gold St/Rothwell Road/High St (signalised junction); - Mitigation works on the junction the B576/Greening Road (Signalised Junction). Any necessary offsite works identified by this assessment shall be undertaken in accordance with detailed plans of the works which shall first be submitted to and approved in writing by the Local Planning Authority. The works shall be undertaken in accordance with the approved details.

25. Prior to submission of any reserved matters application a tree and hedgerow retention plan shall be submitted to and approved in writing by the Local Planning Authority. Trees and hedgerows shall be retained in accordance with the approved details.
26. Prior to first occupation of the development a scheme of hard and soft landscaping works which shall specify species, planting sizes, spacing and numbers of trees, hedgerows and shrubs to be planted, the layout, contouring and surfacing of all open space areas shall be submitted to and approved by the Local Planning Authority. The works approved shall be carried out in the first planting and seeding seasons following the occupation of any of the dwellings hereby approved, unless these works are carried out earlier. Any trees or plants which, within a period of 8 years from the date of planting, die,

are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

27. Prior to first occupation of any of the dwellings hereby permitted a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small, privately-owned, domestic gardens, shall be submitted to and approved in writing by the Local Planning Authority. The landscape management plan shall be carried out as approved.
28. No development shall take place, including any works of demolition, until a Construction Employment Statement has been submitted to, and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide details of the minimum total of new entrant person weeks of employment per £1 million spent on the construction of the site; the local area of residence of new entrants and the definition of new entrants. The development shall be implemented in accordance with the approved details.