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## Appeal Decision

Inquiry Held on 17 to 20 April 2018

Site visits made on 19 & 20 April 2018

**by Cullum J A Parker BA(Hons) MA MRTPI IHBC**

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

**Decision date: 29 May 2018**

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**Appeal Ref: APP/V0510/17/3186785**

**Land off Mildenhall Road, Fordham, Cambridgeshire**

- 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 Gladman Developments Limited against the decision of East Cambridgeshire District Council.
  - The application Ref 17/00481/OUM, dated 21 March 2017, was refused by notice dated 5 October 2017.
  - The development proposed is '*outline permission for the erection of up to 100 dwellings with public open space, landscaping and sustainable urban drainage (SuDS) and vehicular access point from Mildenhall Road*'.
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### Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 100 dwellings with public open space, landscaping and sustainable urban drainage (SuDS) and vehicular access point from Mildenhall Road at Land off Mildenhall Road, Fordham, Cambridgeshire in accordance with the terms of the application, Ref 17/00481/OUM, dated 21 March 2018, subject to the conditions set out in Appendix A.

### Background and main issues

2. During cross-examination the Council's witness conceded that the noise from the adjoining R. Palmer & Sons Ltd (RPS) and the LOC<sup>1</sup> sites could be mitigated either on the appeal site through design methods and/or the strict application of existing planning conditions imposed on those sites. As such, the Council conceded at the Inquiry that it was no longer pursuing their second and third reasons for refusal in respect of noise.
3. The third reason for refusal relates to highway safety and capacity matters. Prior to the Inquiry it was confirmed that this reason for refusal was no longer contested by the Council given the submission of further information by the Appellant.
4. Accordingly, the main issues are:
  - The effect of the proposed development on the character and appearance of the area, and;

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<sup>1</sup> I understand LOC is the name of the organisation occupying that site.

- Whether the Council is able to demonstrate a five year supply of housing land for their area, and;
- Whether the proposal makes adequate provision in respect of local infrastructure with regard to matters such as affordable housing, libraries, and highways.

### **Planning Policy Context**

5. Notwithstanding the reasons given on the decision notice, at the Inquiry the **Council's planning witness confirmed that the proposal was considered to be contrary to Policies Growth2, ENV1, ENV2, HOU2 and COM7 of the adopted *East Cambridgeshire Local Plan* April 2015 (LP).**
6. Policy Growth2 sets out the locational strategy for the delivery of the adopted housing requirement figure of 11,500 homes as set out in Policy Growth1 of the LP. It sets out that more limited development will take place in villages which have a defined development envelope, thereby helping to support local services, shops and community needs. The Council agreed that in their view this policy is not up-to-date as it relies upon an 'out-of-date' housing requirement figure.
7. Policies ENV1 and ENV2 deal with landscape and settlement character, and design. In particular they seek high quality design that enhances and complements local distinctiveness and public amenity by relating well to existing features, settlement edges and the wider landscape.
8. Policy HOU2 refers to housing density. The appropriate density of a scheme will be judged on a site-by-site basis taking account of the existing character of the locality and the settlement, housing densities within the surrounding area, and the need to make efficient use of land.
9. Policy COM7 deals with transport impact. It indicates that development should be designed to reduce the need to travel, particularly by car, and should promote sustainable forms of transport appropriate to its particular location.
10. My attention has been drawn to emerging planning policies contained within both the *Proposed Submission East Cambridgeshire Local Plan* (PS) issued for consultation in December 2017 and the *Fordham Neighbourhood Plan, Draft for Pre-submission Consultation (March 2018)*<sup>2</sup> (NP). Both documents provide some indication of the broad direction of local planning within the village of Fordham. However, both remain to be considered by further examination and/or consultation.
11. After the Inquiry closed, I was informed **that the 'Regulation 16 Consultation'** has commenced in relation to the NP. I understand that this consultation will continue until 29 June 2018. The views of the main parties were sought on this matter and responses provided. I have taken these responses into account.
12. Nonetheless, given the currently untested status of both the PS and NP, and the need to consider any representations made after the consultation period(s) have ended, I afford these no more than very limited weight within the overall planning balance.

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<sup>2</sup> See IP3

## Reasons

### **Character and appearance**

13. The appeal site is predominantly an agricultural field of about 4.38ha in size and located on the southern side of Mildenhall Road. A majority of the appeal site is located outside of the defined development envelope for Fordham; although it lies directly adjacent to it. Built development comprises both residential and commercial uses on the north, east, and west boundaries. To the south the site is bounded by a fragmented hedgerow, with agricultural fields beyond. Public footpath 92/16 (PROW) is located a few hundred metres to the south of the site boundary.
14. The proposal seeks the erection of up to 100 dwellings with associated infrastructure such as roads and Sustainable Urban Drainage Systems (SuDS). As it is made in outline with all matters reserved, except access, any potential layout, landscaping, appearance and scale specifics would be agreed at a details stage which could be imposed by condition.
15. The main parties agree that most of the site is located within the countryside for planning policy purposes as it lies outside of the development envelope. It would therefore conflict with elements of Policy Growth2, which seek to direct development to within these envelopes; unless specific reasons exist. **The Council do not dispute that 'in principle' the site is acceptable for housing;** albeit with reservations over the density of the proposal and its visual impact. I saw during my site inspections that within the village of Fordham are churches, public houses, two small supermarkets, community/village halls, pre-school and primary school. There are also a number of bus stops, for which I understand the No. 12 service provides hourly services to larger settlements most days of the week.
16. It is agreed between the main parties that within the context of the settlement hierarchy Fordham is not considered to be as sustainable as the larger city or towns of Ely, Soham and Littleport<sup>3</sup>. Nevertheless, a range of day-to-day services is provided within close proximity to the appeal site. I agree with the main parties in respect of the broadly positive locational sustainability of the site with regard to access to services.
17. Furthermore, I do not consider that the lack of some services within the immediate village would result in unacceptable increases in car journeys given that the site is clearly located within a rural village where reliance on cars is likely to be greater than within the centre of a large city. Moreover, there are regular bus services to larger settlements which together with a travel plan would encourage new residents to utilise these public transport modes.
18. Concerns have been raised in respect of the scale of development within the context of the settlement of Fordham, also **referred to as the 'cumulative impact'**. **The village is subject to an increase of housing stock by about 345 homes and a 75 bedroom care home through other proposed developments.** In percentage terms the already permitted growth would amount to an increase of roughly 30% in housing stock within the village.
19. However, there is nowhere within the adopted development plan which sets a specific percentage when the growth of a settlement would be a tipping point

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<sup>3</sup> SOCG March 2018, Para. 3.6.9

from sustainable to unsustainable growth. What is required is a case-by-case identification and assessment of any potential harmful impact, and if identified whether it can be mitigated or not. In addition to my considerations on the provision of existing services within the village above, I will assess any impact on local infrastructure when considering the submitted S106 agreement and the Community Infrastructure Levy (CIL) Regulations.

20. The principle concerns of the Council centre on views from Mildenhall Road and the PROW towards the appeal site, and the potential density of the development. I now consider these in turn before coming to a conclusion on character and appearance matters.
21. It is undeniable that the character of the appeal site would change from an agricultural field to a small housing development. However, it is set back from Mildenhall Road (the B1102), with a single narrow access point to the site located within existing built form. As a result, whilst it would be possible to see the site and the proposed houses from the main highway, visually it would not be dissimilar to Eldith and Newport Avenues to the east of the appeal site.
22. When travelling in either direction along Mildenhall Road it is clear that you have entered the settlement: once you pass the junction with Chippenham Road (travelling westward) or from the village centre (travelling eastwards), as on both sides of the road there is built development. Given the existing narrowness of the access gap in relative terms, which is about a housing plot wide, and the context of the wider street scene, I find that the proposal would not result in harm to the character of the area as viewed from Mildenhall Road.
23. I undertook an unaccompanied site visit on 19 September 2018, at around 17:15 to 18:00, to view the appeal site from the PROW and the wider area. The originally submitted Landscape and Visual Impact Assessment (LVIA) **assessed the visual effects on users of the PROW as 'moderate adverse', reducing to 'slight adverse' upon maturity of the proposed landscaping.** I was able to see that views of existing built form along Mildenhall Road and leading off it, such as the large green gable end of the industrial building at RPS site and the cream/white coloured first floors of two-storey houses along Eldith Avenue, are possible from the PROW.
24. Mr Holliday<sup>4</sup>, clarified that whilst any landscaping would take time to grow, such as a pine belt and hedgerows, their contribution to reducing the visual impact of the development would begin to take effect from years 3 to 5 onwards. Such features are typical of the wider landscape, with many boundaries to the village and area more widely formed by pine belts. Whilst two storey houses would be visible from the PROW, they would be seen within the context of an existing row of built form and as a continuation of the development at Eldith Avenue rather than as an isolated form of urban sprawl into the countryside. As a consequence, I concur with the findings that the proposal would result in no more than a slight adverse impact on the users of this short part of the PROW when the proposed landscaping matures.
25. **I acknowledge the Council's concerns in respect of the proposed acoustic fence** along two boundaries of the intended public open space at the north-western part of the site adjoining the RPS and LOC sites. To achieve the level of mitigation to ensure that noise levels from these local businesses is of an

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<sup>4</sup> The Appellant's Landscape and Visual Impact Assessment witness

- acceptable level for future residents, acoustic fencing of around 3 metres in height on the northern and western edges of the public open space would need to be erected.
26. The specific details of such boundary treatment would be a reserved matter, which would be considered more fully at that stage. Nonetheless, there is a necessity in this case for this acoustic barrier. Three metres would be noticeably taller than a typical two metre close boarded panel, but it is possible to using fencing materials which appear as normal timber fences. It is important to recognise that in the main this fencing would be facing areas of public open space and it would be possible to use landscaping to ameliorate its visual impact.
27. An example of how this could be successfully used is demonstrated within **Appendix 9 of Mr Holliday's POE. When an acoustic barrier is seen within the** proposed context, on two edges of an area of public open space with the sensitive use of planting, I consider that the visual impact on future occupiers or visitors to the site and more generally would be minimal and not materially harmful.
28. With regard to density, consideration of this is partially restricted by the outline nature of the proposal. Nonetheless, an illustrative drawing of what could be achieved on the site was submitted to the Council. From this the Council considers that the scheme would represent about 35 dwellings per hectare **(dph) against a local 'average' of 17dph.** Through cross-examination of Mrs Greengrass<sup>5</sup>, this average relies solely upon using a site area similar to that for the appeal site and moving this over to the east of the appeal site to contain the area around Eldith Drive. Mr Holliday<sup>6</sup> confirmed at the Inquiry that if the areas of public open space were also included within the calculation for the site, the figure would reduce to roughly 22dph.
29. Trying to compare the density of housing from the early part of the 20<sup>th</sup> Century to ensuring the most efficient use of land in the early 21<sup>st</sup> Century, as Policy HOU2 seeks, is not an entirely scientific method. For example, a small block of five flats could have the same land space as a single five bedroom dwelling but would result in very different dph figures. More importantly, it is the visual impact of development on the site in terms of whether it would look cramped that Policy HOU2 also seeks to ensure by pointing the decision-maker to think about residential amenities such as parking and open space.
30. Much discussion by the main parties at the Inquiry was directed to a development approved on the northern side of Mildenhall Road; partially opposite and to the north west of the appeal site. In particular, there was a focus on gardens sizes and whether the appeal site would appear as cramped due to the number of proposed dwellings and potential size of gardens compared to those found in the wider area. However, this is again to miss the fundamental point that good design is about securing an environment where people want to live and work. This matter would be subject to detailed scrutiny at the reserved matters stage.
31. Taken in the round, I do not find that the proposed density, which would be analysed in greater detail at the reserved matters stage, is objectionable in

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<sup>5</sup> LPAs Planning witness

<sup>6</sup> Appellant's Landscape and Visual Impact witness

itself. Whilst a figure of 35dph would be high when considered against the Council's 'average' calculation of 17dph, this latter figure is severely constrained by the fact that how it was worked out is not shown. What is more, including the public open space, so that the site as a whole is considered, this falls to 22dph, which whilst higher than buildings from the early 20<sup>th</sup> Century is not excessively so. Lastly, the adopted policy does not require adherence to a specific figure but rather a site-by-site assessment, which I have undertaken here. In conclusion, I do not find that the proposal would result in an unacceptable density of housing in this case.

32. I therefore conclude, as identified by Mr MacKenzie in his POE, there would be some conflict with Policy Growth2 of the LP, which seeks to direct development to within defined development envelopes. It would accord with the elements of the Policy that seek to limit growth to villages in order to support local services and with regard to Fordham being a sustainable village in locational terms. (Though I recognise that most of the appeal site is adjacent rather than within the development envelope of the settlement). There would be some limited harm to the character and appearance of the area in respect of slight adverse impact on users of the PROW. Therefore the proposal would conflict with Policies ENV1 and ENV2 of the LP.
33. I do not find that the proposal would be contrary to Policies HOU2 or COM7 of the LP in respect of the proposed density of the development nor in respect of any cumulative impact or use of the private car for journeys.

### **Five year housing land supply**

34. Both main parties agreed through cross-examination and as evidenced within their Closings<sup>7</sup>, that some policies of the adopted development plan are out of date. As a consequence, the 'tilted balance' which requires the decision-maker to consider whether adverse impacts significantly and demonstrably outweigh benefits, as set out in Paragraph 14 of the *National Planning Policy Framework* (the Framework), is engaged. This is the case irrespective of whether a five year supply of housing sites exists or not.
35. Be that as it may, before being able to accord weight to the provision of housing within any planning balance, it is important to identify if there is a five year supply of housing land within the local authority area or not in this instance. This is especially relevant in this case where the Appellant considers that there is only 3.86 years of supply whereas the Council considers there to be between 7.70 and 8.04 years of supply<sup>8</sup>.
36. The main parties agree that the Council is able to demonstrate a five year supply of deliverable sites in the region of 4,544 units. The dispute between the parties revolves around three components: firstly, what the housing requirement figure should be; secondly what the backlog is, and thirdly what level of buffer should be applied.

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<sup>7</sup> LPA2 and APP8

<sup>8</sup> See table APP5 column 4 (20% buffer and Sedgfield using APP local plan requirement) and columns 9a and 9b (5% buffer and Liverpool, Standard method and OAN 2016). Paragraph 47 of the Framework seeks the significant boosting of the supply of housing. For obvious reasons, the weight a decision-maker affords to unplanned housing in a local authority area where a supply of 8 years is present will be less than that where there is currently an under-provision; albeit it remains for that decision-maker to determine the attributable weight.



37. The fact that the first component **has arisen is surprising as the Council's Local Plan** was adopted in 2015. It is a fairly recent document and has been found sound in the post-Framework period. This provides an adopted housing requirement figure of 11,500 between 2011-2031, equating to 575 dwellings per annum. This is not a situation where there is an absence of either a housing requirement figure or an Objectively Assessed Need (OAN) figure.
38. The Council point me to the *Planning Practice Guidance* (the Guidance) which indicates that *'Housing requirement figures in up-to-date adopted Local Plans should be used as the starting point for calculating the 5 year supply. Considerable weight should be given to the housing requirement figures in adopted Local Plans, which have successfully passed through the examination process, **unless significant new evidence comes to light.**'*<sup>9</sup>
39. **The suggested 'significant new evidence'** is Office for National Statistics (ONS) figures, which are updated on a biannual basis, and some updated economic forecasts, **which are updated annually. These then inform the Council's 2016 OAN and the draft 'Standard Methodology'**. However, I consider the reliance **on these figures as 'significant new evidence' is flawed in the context of a Section 78 planning appeal for the following reasons.**
40. These figures are updated on a regular basis<sup>10</sup> which in practical terms would require every local planning authority to review and potentially alter their housing requirement every two years; the antithesis of a plan-led system providing certainty to developers and communities and contrary to what the Guidance indicates by saying that *'this does not automatically mean that housing assessments are rendered outdated every time new projections are issued'*.
41. What is more, whilst reliance is placed upon the 2016 OAN, the Council itself is not using it to formulate the housing requirement figure within the emerging local plan. If it is evidence of such significance that requires a radical deviation from a housing requirement figure within an adopted development plan from less than three years ago which was publically examined and tested, it is strange that it does not form the substantive basis on which to plan for the next local plan period. Its relevance is further weakened by the fact that it does not cover the whole housing market area, which one would typically expect to occur in a properly plan-led system approach.
42. **I acknowledge that both the OAN 2016 and 'Standard Methodology' are of some speculative interest.** Yet both are based upon different (but not significant) evidence, they have not been tested through a local plan examination, they do not appear to cover the relevant housing market area and lastly it is unclear as to how they adequately deal with any shortfall accumulated since the adoption of the adopted development plan in 2015. In such circumstances, the housing requirement figure provided within the recently adopted development plan is not out of date for the purposes of this appeal and should be the starting point for determining whether the Council is able to demonstrate a five year supply of housing land.

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<sup>9</sup> What is the starting point for the 5-year housing supply?, Paragraph: 030 Reference ID: 3-030-20140306, Revision date: 06 03 2014, emphasis added

<sup>10</sup> How often are the projections updated?, Paragraph: 016 Reference ID: 2a-016-20150227, Revision date: 27 02 2015

43. As a result the annual requirement starting point is 575 dwellings per annum over the five year period – equating to 2,615 dwellings. The base year for the housing requirement is 2011, and since that date there has been a shortfall or undersupply of 2,026 dwellings. The main parties disagree as to whether this **shortfall should be applied using the 'Liverpool' method; that is spreading the shortfall over the rest of the plan period as the Council seeks, or the 'Sedgefield' method**, in which the shortfall is met within the first five year period, as the appellant seeks. They also disagreed as to whether a 5% or 20% buffer should be applied as per Paragraph 47; second bullet point of the Framework, and whether any such buffer should be applied to the backlog.
44. In terms of dealing with any shortfall, there are no specific rules as to which approach should be used. It is important to consider the local planning context. In the examination report for the adopted development plan, the Local Plan Inspector was clear in adopting the Sedgefield approach<sup>11</sup>. This was further endorsed by an appeal decision at Witchford<sup>12</sup>, in which the Inspector used the Sedgefield approach, applied a 20% buffer and applied this buffer to the backlog.
45. At a national level, the Guidance states that *'Local planning authorities should aim to deal with any undersupply within the first 5 years of the plan period where possible. Where this cannot be met in the first 5 years, local planning authorities will need to work with neighbouring authorities under the duty to cooperate.'*<sup>13</sup> In considering both local and national contexts, it is clear that the preference is towards adopting the Sedgefield approach here.
46. The Council makes the point that it is relying upon strategic sites to deliver roughly 48%<sup>14</sup> of the housing requirement. However, this point is slightly at odds with the findings of the Local Plan Inspector. That Inspector would have had a comprehensive and detailed picture of housing needs in the context of plan-making, with various submissions from interested parties, and an ability to **examine the robustness of the Council's evidence base. This would have enabled him to make a reasoned assessment as to the likelihood of the supply coming forward, for example.**
47. This is not evidence before this Inquiry, as it properly sits within the plan-making element of planning. This is one reason why the plan-making and decision-making elements of the planning system are distinct. The point is that after a fairly omniscient approach, the Inspector considered Sedgefield to be appropriate at the time in relation to the adoption of the Local Plan which provides the context for considering the proposal here. There is little to suggest that I should adopt a different approach. For consistency and the aforesaid reasons, I apply the Sedgefield methodology in this case.
48. In terms of buffer typically a 5% should be applied unless there has been a record of persistent under-delivery of housing, where the buffer should be raised to 20% to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land. In this instance, there is a backlog of 2,026 dwellings for the relevant period. The evidence of

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<sup>11</sup> CD 7.2: East Cambridgeshire Local Plan Report

<sup>12</sup> CD10.1, APP/V0510/A/14/2224671, dated 23 June 2015, Land off Field End, Witchford, Cambridgeshire, CB6 2XE, Appeal Allowed

<sup>13</sup> How should local planning authorities deal with past under-supply?, Paragraph: 035 Reference ID: 3-035-20140306, Revision date: 06 03 2014

<sup>14</sup> POE Mr Kay, page 28, paragraph 5.81



Mr Kay<sup>15</sup> **concedes that the 'delivery of homes by developers in the very recent past has been disappointing'**, but he considers that a 5% buffer is appropriate.

49. Yet, Mr Kay provided a table at paragraph 5.78 of his Proof which shows that in 2014 to 2017, average completions equated to 193 units (net). This is clearly below the 500+ units that all three methods suggested by the main parties seek as an annual figure suggesting that there has been a past record of under-delivery. The adoption of a 20% buffer in the Witchford decision<sup>16</sup> strengthens the use of a 20% buffer in this case where the situation since that decision in 2015 has worsened rather than improved.
50. I have been directed to the Waverley Borough Local Plan Examination. The Inspector in that case considered that the 20% buffer did not apply even though the Council had under-delivered in the past eight years in a row. The Council considers that this justifies the position in East Cambridgeshire.
51. However, not only does this plan-making process relate to a different part of the country, but I understand it is subject to an on-going legal challenge. In any case, it does not detract from the point in the appeal before me, in that within the relevant local planning authority area, another Inspector found a persistent record of under-delivery which has only gotten worse since 2015. To come to any other conclusion that a 20% buffer should not be applied would be perverse in this case. In such circumstances, I consider that the 20% buffer should be applied.
52. Lastly, the Council put forward the argument that this buffer should not be applied to the backlog. However, there is no obvious planning basis for such **an approach. Indeed, the Council's witness was unable to point to any** Inspector or Secretary of State decision where such a novel approach was adopted. Nor was any national or local planning policy or guidance provided to substantiate this approach. In such circumstances, the appropriate approach is to apply the 20% buffer to both the backlog and the housing requirement figure.
53. To conclude on this issue<sup>17</sup>, the housing requirement figure is that from the adopted development plan Policy Growth1 of 575dpa equating to 2,875 units over five years, added to this is the backlog of 2,026, resulting in 4,901 units, added to which is a 20% buffer comprising 575 (requirement element) and 405 (backlog). This totals a five year requirement of 5,881 dwellings. Against an agreed supply of 4,544, the Council is only able to demonstrate a 3.86 years housing land supply. It should also be noted that even if a 5% buffer were applied using the Sedgefield approach, this would equate to 4.42 years of housing land supply.
54. As a consequence, on the basis of the evidence before me, the Council is currently unable to demonstrate a five year supply of housing land. Accordingly, relevant policies for the supply of housing should not be considered up-to-date in respect of Paragraph 49 of the Framework. As a **consequence, the 'tilted balance' set out in Paragraph 14 of the Framework is** engaged in this instance. I consider the implication of this within the overall conclusion section of this decision.

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<sup>15</sup> POE Mr Kay, LPA Housing Supply witness; page 28, paragraph 5.78

<sup>16</sup> CD10.1, APP/V0510/A/14/2224671, dated 23 June 2015, Appeal Allowed

<sup>17</sup> Figures taken from APP5 - Table showing housing figure position of main parties - In particular, Column 4: 20% buffer & Sedgefield Appellant (Adopted Local Plan)

## **Infrastructure**

55. The Council has an adopted CIL schedule which would secure monies for matters such as education, which would be dealt with at the appropriate time. Further to this, the appellant has submitted a signed and dated (24 April 2018) unilateral undertaking under S106 of the TCPA<sup>18</sup>. This secures monies for infrastructure including a library contribution, provisions for open spaces and SuDS including their on-going management and maintenance, a contribution of £100,000 towards the improvement of the roundabout at the junction with the A142 and Newmarket Road, and monies towards a monitoring fee. These are sought in accordance with Policy Growth3 of the LP.
56. Justification for them is provided within the **County Council's S106 Supporting Statement**. Neither party takes issue with the monies sought or what they would be provided for. It is also clear that none of the provision would exceed five or more contributions for a single scheme. I therefore see no reason not to concur with the main parties in respect of these contributions meeting the tests set out in Paragraph 204 of the Framework.
57. The unilateral undertaking would also secure affordable housing. However, this **is subject to what is known as a 'blue pencil clause' at part 1.1.5**. This means that this decision needs to be clear as to whether it is part a) providing 40% or part b) providing 30%, that complies with the CIL Regulation 122. Policy HOU3 of the LP refers to affordable housing provision, and seeks the provision of a minimum of 40% of the total number on sites in the south of the District; and it indicates that Fordham lies within this part. Accordingly, I find that this obligation would comply with the tests set out in CIL Regulation 122. For the avoidance of doubt, it is part a) and the provision of a minimum of 40% of the total as affordable housing that should be provided in this case.
58. Paragraph 204 of the Framework and CIL Regulation 122(2) set out three tests for seeking planning obligations: that they must be **'necessary to make the development acceptable in planning terms, directly relate to the development, and fairly and related in scale and kind to the development'**. In considering the evidence before me, I find that all of the obligations in this case (including the provision of 40% affordable homes) would meet these tests and would comply with the aforesaid development plan policies. They should therefore be taken into account in the decision.
59. In particular, the provision of up to 40 affordable homes should be afforded significant weight in any planning balance. This is especially pertinent here, as there is currently an under-provision of about 850 affordable dwellings within this district.
60. I note the representations made at the Inquiry that some interested parties would favour the land/affordable housing to be transferred to the local Community Land Trust, and consider that this would provide more certainty in terms of the delivery of these much needed affordable homes. However, this is but one way in which this need in this district could be addressed. It also does not detract from the fact that the Appellant in this case has entered into a legally enforceable obligation to provide this here.

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<sup>18</sup> The main parties agreed that following the S106 session, a completed – that is signed and dated - legal agreement could be submitted no later than Friday 27<sup>th</sup> April 2018.

## Other Matters

61. In addition to the main issues I have identified, a number of concerns have also been raised by interested parties. I now consider these before coming to an overall conclusion.
62. With regard to highways matters, this originally formed the third reason for refusal of the proposal. Further details were submitted prior to the Inquiry, which satisfied the local planning authority and as a result this matter was not contested by the Council at the Inquiry. Nevertheless I heard from two interested parties, who raised concerns over the cumulative traffic impact from 100 new dwellings on the appeal site in addition to other planned developments within Fordham.
63. In particular, concerns were raised over whether traffic assessments had taken into account the pressure on the local road network and through the village centre of Fordham. During questioning, it was identified that not only did the traffic assessments<sup>19</sup> take into account other developments within the wider area, but they rely upon figures not taken during school holidays which may adjust the recorded figures. With little cogent evidence to the contrary, I see no justification to deviate from the agreed SOCG dated March 2018 between the main parties in that subject to suitable mitigation, the proposed development would not have an unacceptable impact on highway safety and the wider highway network<sup>20</sup>.
64. Concerns have been raised by a business premises close to the appeal site on the RPS site. Activities on this site include shot blasting, the moving of steel beams and other materials using heavy machinery, and the cutting of steel for example. These create a certain level of noise, which the occupier of that site is concerned would lead to complaints from future residents of the appeal site.
65. It was discussed at the Inquiry whether such activities were taking place within the lawful use of conditions imposed to control this. For example it is not clear that shot blasting is taking place within an acoustically suitable building. It is not within my remit to establish the lawfulness or otherwise of actions occurring on the adjoining site. However, it is evident that if such buildings are used this would reduce the noise level from activities on the RPS site, which the condition on that permission seeks to achieve.
66. I am also mindful of the fact that the appellant is seeking the use of an acoustic fence and is open to a layout of individual properties so that non-noise sensitive rooms and areas face the noise sources from the RPS site. The **Council's acoustics expert conceded under cross-examination** that such measures could reasonably mitigate the noise impact from the adjoining site. Taken together, there is little convincing evidence that the noise from adjoining land uses would be to a materially harmful level.
67. In conclusion, I do not find that these other matters, whether considered in isolation or cumulatively, provide justification for the dismissal of the appeal scheme.

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<sup>19</sup> See CD2.1, Transport Addendum 19.06.17 and CD2.2, Transport Second Addendum 01.09.17

<sup>20</sup> SOCG, dated March 2018, paragraph 3.11.1

## Conditions

68. In considering the suggested conditions as discussed at the Inquiry, I have had regard to Paragraph 206 of the Framework and the Guidance in respect of the use of planning conditions.
69. A condition referring to the submitted drawings is necessary to provide certainty. Conditions relating to the submission of reserved matters (including time limits), that no more than 100 dwellings are erected, and that access is provided as shown on the submitted drawings are reasonable and necessary to comply with S92 of the TCPA and for the avoidance of doubt.
70. Conditions requiring desktop studies and notification if any contaminated land is identified or found is reasonable in order to protect human health. Further conditions requiring mitigation measures in respect of ecology to be agreed and the provision of a biodiversity management plan are necessary in order to ensure the proposal provides for a net gain in biodiversity.
71. Policy ENV14 of the LP requires that at sites of potential archaeological interest, relevant surveys are undertaken. Given the edge of settlement location a condition requiring a programme of archaeological work would be prudent and such a condition is therefore necessary. The submission of a Full Travel Plan is reasonable in order to encourage future residents to fully utilise public transport options.
72. The submission and approval of a Construction Method Statement is necessary in order to minimise the impact on nearby residential occupiers in terms of noise, disturbance and other similar matters during the construction phase. Details agreeing both surface water and foul water arrangements are necessary in order to minimise the risk of localised flooding.
73. The submission of further details such as an arboricultural assessment of trees on or close to the site, details of soft landscaping (including the replacement of plants dying the first five years), details of play equipment and street furniture, are necessary in order to ensure that the duties under S197 of the TCPA are exercised in respect of preservation or planting of trees and in the interest of enhancing the character and appearance of the area.
74. The removal of permitted development rights afforded under the General Permitted Development Order 2015, as amended, was suggested by the Council. However, the Guidance is clear in that such blanket removals should only be used in exceptional circumstances. The imposition of such a condition in this case would be onerous and unreasonable; with no clear planning justification given for its imposition. It should not therefore be imposed.
75. A condition requiring the submission of an energy and sustainability strategy is reasonable to ensure that on-site renewable energy creation is encouraged so as to reduce pollution and carbon emissions.
76. Lastly, three conditions were suggested to deal with noise matters. It was discussed that those suggested were worded in a way that may unnecessarily restrict the design of the development at this outline stage. It was agreed by the main parties that instead it was a noise mitigation scheme that is required. This could contain details such as only non-noise sensitive façades facing the RPS site and that the acoustic fencing was provided, retained and maintained. Given the need to protect the future occupiers from industrial type noises from

the adjacent sites, the use of one condition securing this would be both necessary and reasonable in this instance.

### **Overall Conclusion**

77. Section 38(6) of the *Planning and Compulsory Purchase Act* 2004, as amended, (PCPA) sets out that the determination of proposals must be made in accordance with the development plan, unless material considerations indicate otherwise. In this case, the proposal would be contrary to parts of Policies Growth2, ENV1 and ENV2. This is in respect of being located outside of the development envelope and the very limited harm to users of a short stretch of the PROW.
78. I have found that relevant policies for the supply of housing are not up to date as per Paragraph 49 of the Framework. Therefore **the 'tilted balance' of Paragraph 14 is engaged. The 'tilted balance' is also reflected within Policy Growth5 of the LP.** With regard to specific policies indicating development should be restricted, as shown in the examples of Footnote 9 of the Framework, these do not apply in this case.
79. The adverse impacts here are restricted to the slight adverse impact on users of the PROW; which could be mitigated. There would also be a technical breach of Policy Growth2 as a majority of the appeal site is located outside of the development envelope. However, it has been demonstrated that at the current time the Council is unable to demonstrate a deliverable five year supply of housing sites. This logically suggests that the settlement envelopes will, in the short term, need to be breached in order to deliver the much needed housing in this area.
80. Against these limited adverse impacts are benefits identified above, which include the provision of 100 homes in an area with a shortfall of 2,026 dwellings. There would also be the provision of 40 affordable homes within this figure, in an area where there is a shortfall of 850 affordable homes. The provision of sorely needed market and affordable housing should be attributed significant weight. There would also be benefits accrued from the provision of public open spaces, improvements in biodiversity, the creation of jobs during the construction and on-going stages of the development. These are benefits which accrue modest weight in favour of the proposal.
81. **In applying the 'tilted balance', I find that the adverse impacts do not significantly and demonstrably outweigh the benefits of the proposal when considered against the Framework taken as a whole.** Accordingly, the Framework, which is an important material consideration, indicates that planning permission should be granted. Policy Growth5 of the LP, which uses similar wording to Paragraph 14 of the Framework, also indicates that planning permission should be granted.
82. In applying Section 38(6) of the PCPA, the proposal would accord with a majority of the adopted development plan. There would be some very limited conflict with elements of specific policies. However, material considerations in the form of the Framework indicate that permission should be granted. What is more, I do not find that the emerging district-wide local plan nor neighbourhood plan for Fordham alters this conclusion.

83. For the reasons given above, I conclude that the appeal should be allowed subject to the conditions set out in Appendix A.

*Cullum J A Parker*

INSPECTOR



## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

David Whipps, Solicitor

Instructed by Rebecca Saunt of ECDC

#### *He called*

Richard Kay, BA(Hons), DipTP, MA  
Richard Budd BEng(Hons), CEng, MIOA  
Barbara Greengrass BSc(Hons), MSc, MRTPI  
Rebecca Saunt

Strategic Planning Manager  
Acoustic Consultant  
Senior Planning Officer  
Planning Manager (conditions session only)

### FOR THE APPELLANT:

Sarah Reid of Counsel

Instructed by Mr Mackenzie of  
Gladman Developments Ltd

#### *She called*

Matthew Spry, BSc(Hons), DipTP (Dist),  
MRTPI, MIED, FRSA  
Gary Holliday, BA(Hons), MPhil, CMLI  
John Mackenzie, BSc, DipTP, MRTPI  
Mark Dawson\*, BSc, MA, CEnv

Senior Director, Lichfields (Housing)  
Director, FPCR (Landscape)  
Planning Director (Planning balance)  
Wardell Armstrong (Noise)

*The evidence of Mr Dawson was not given orally as the Council did not contest this reason for refusal at the Inquiry.*

### INTERESTED PERSONS:

Councillor Julia Huffer  
Parish Councillor Malcolm Roper

Ward Member, ECDC  
Vice-Chairman, Fordham Parish Council

## DOCUMENTS SUBMITTED AT THE INQUIRY

- LPA1 Opening Statement on behalf of East Cambridgeshire District Council  
LPA2 Closing on behalf of ECDC
- APP1 Noise readings 3 April 2018 – 10 April 2018  
APP2 Opening submission on behalf of the Appellant  
APP3 Judgement in *Bloor Homes and SoS CLG & Hinckley and Bosworth Borough Council [2014] EWHC 754 (Admin)* dated 19 March 2014  
APP4 (Lichfields) Inquiry Note 'Applying the proposed Housing Delivery Test'  
APP5 Table showing housing figure position of main parties  
APP6 Draft Section 106 (undated)  
APP7 List of 22 suggested conditions  
APP8 Closing submissions on behalf of the Appellant  
APP9 Drawings/photos contained within Appendix 5 Mr Holliday's POE, with better print quality  
APP10 Completed legal agreement (unilateral undertaking) dated 24 April 2018
- IP1 Statement on behalf of Fordham Village by Julia Huffer, District Councillor for Fordham Villages Ward  
IP2 Statement of Malcolm Roper, Vice-Chairman of Fordham Parish Council  
IP3 Fordham Neighbourhood Plan, Draft for Pre-submission Consultation (March 2018)

## **Appendix A – list of conditions imposed 3186785**

1. Development shall be carried out in accordance with the following drawings: Location plan 627A-20 and Principle access arrangement 16-To47-04.
2. Details of the access, landscaping, appearance, scale and layout (hereinafter called 'the reserved matters') shall be submitted to and approved by the local planning authority in writing before any development is commenced, and shall be carried out as approved.
3. Access to and within the development shall be carried out in full accordance with the details shown on the Access Plan 16-T047 04 before the occupation of the first dwelling on the site.
4. The development hereby approved shall be for no more than 100 dwellings.
5. 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 permission and the development hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
6. No part of the development shall be commenced on site unless and until:
  - a. A site investigation has been designed for the site using the information obtained from the desktop investigation (Phase 1 Desk Study) February 2017). This shall be submitted to and approved in writing by the local planning authority prior to the investigation being carried out on site;
  - b. the site investigation and associated risk assessment have been undertaken in accordance with details submitted to and approved in writing by the local planning authority; and
  - c. A method statement and remediation strategy, based on the information obtained from (b) above, including a programme of works, have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved remediation strategy.

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 subsequent replacement or equivalent standard). Any remediation works proposed shall be carried out in accordance with the approved details and timeframe as submitted to and agreed in writing by the local planning authority.

7. 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 to the local planning authority within 48 hours. No further works shall take place until an investigation and risk assessment has been undertaken and submitted to and approved in writing by the local planning authority. Where remediation is necessary, a remediation scheme must be submitted to and approved in writing by the local planning authority. The necessary remediation works shall be undertaken, and following completion of measures identified in the approved remediation scheme a verification report must be prepared, and approved in writing by the local planning authority.
  
8. No development shall take place until such time as details of mitigation measures as recommended within the submitted ***Preliminary Ecological Assessment by Ecology Solutions Limited*** (dated February 2017) have been submitted to and agreed in writing by the local planning authority. The details of mitigation measures shall include:
  - a. timetables for their implementation;
  - b. details of on-going maintenance and management; and
  - c. a programme for the undertaking of updated surveys in relation to commencement of development on site (or relevant phase)

The programme for surveys shall include the specification of maximum periods between undertaking of surveys and commencement development on site (or relevant phase).

9. No development shall take place until a Biodiversity Management Plan for all created and retained habitats (and including a timetable for its implementation) has been submitted to and agreed in writing by the local planning authority. The development shall thereafter be implemented and maintained in accordance with the agreed management plan.
  
10. No development shall take place until the applicant, or their agents or successors in title, 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 in writing by the local planning authority.

11. No dwelling shall be occupied until a Full Travel Plan, broadly in accordance with the Framework Residential Travel Plan (dated February 2017), has been submitted to and agreed in writing by the local planning authority. The Full Travel Plan shall include a programme for implementation, monitoring, regular review and improvement and shall subsequently be implemented, maintained and developed as approved.

12. 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 CMS shall be adhered to throughout the construction period.

The CMS shall provide for:

- a. the hours of work;
- b. the parking of vehicles of site operatives and visitors;
- c. loading and unloading of plant and materials;
- d. storage of plant and materials used in constructing the development;
- e. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- f. wheel washing facilities;
- g. measures to control the emission of dust and dirt during construction;
- h. a scheme for recycling/disposing of waste resulting from construction works;
- i. means of protection of trees and hedgerows during site preparation and construction; and
- j. access arrangements for emergency vehicles during the construction phase.

13. No development shall begin until a surface water drainage scheme for the site, based on sustainable drainage principles, has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details before development is completed.

The scheme shall be based upon the principles within the agreed ***Flood Risk Assessment (FRA) & Outline Drainage Strategy*** prepared by LK Consult Ltd (ref: FRA 16 1032) dated February 2017 and adhere to the hierarchy of drainage options as outlined in the National Planning Policy Framework and national Planning Practice Guidance (unless otherwise agreed in writing with the local planning authority) and shall include;

- a. Full calculations detailing the existing surface water runoff rates for the QBAR, 3.3% Annual Exceedance Probability (AEP) (1 in 30) and 1% AEP (1 in 100) storm events
  - b. Full results of the proposed drainage system modelling in the above-referenced storm events (as well as 1% AEP plus climate change) , inclusive of all collection, conveyance, storage, flow control and disposal elements and including an allowance for urban creep, together with an assessment of system performance;
  - c. Detailed drawings of the entire proposed surface water drainage system, including levels, gradients, dimensions and pipe reference numbers;
  - d. Full details of the proposed attenuation and flow control measures;
  - e. Site Investigation and test results to confirm infiltration rates;
  - f. Details of overland flood flow routes in the event of system exceedance, with demonstration that such flows can be appropriately managed on site without increasing flood risk to occupants;
  - g. Full details of the maintenance/adoption of the surface water drainage system;
  - h. Measures taken to prevent pollution of the receiving groundwater and/or surface water;
  - i. Access requirement to each water management component for maintenance purposes.
14. Notwithstanding any details shown on the approved drawings, a detailed arboricultural assessment of the trees and hedges on or close to the site shall be submitted to and approved in writing by the local planning authority at the reserved matters stage. The assessment shall include mitigation measures together with tree protection measures during construction for any trees to be retained in accordance with BS 5837: 2012 (or any replacement or equivalent standard). The approved details shall be implemented as agreed.
15. In pursuance of Conditions 1 and 2, the landscaping for the site shall include a full schedule of all soft landscape works, to include hedgerow enhancement planting. The scheme shall evidence how consideration has been given to Natural England's ***Accessible Natural Greenspace Guidance*** (or equivalent or replacement guidance) in developing the layout and design of on-site green

infrastructure, in particular to make it multi- functional. Any proposed new planting should encourage displaced biodiversity and provide new habitats. The schedule shall include, planting plans, a written specification; schedules of plants noting species, plant sizes, proposed numbers/densities; and a detailed implementation programme. It shall also indicate all existing trees and hedgerows on the land and details of any to be retained. The works shall be carried out in accordance with the approved details in line with an agreed planting timetable, compliant with the phasing of the development. If within a period of five years from the date of the planting, or replacement planting, any tree or plant is removed, uprooted or destroyed or dies, another tree or plant of the same or similar species and size as that originally planted shall be planted at the same place.

16. Prior to occupation of any dwelling full details of the hard landscape works shall have been submitted to and approved in writing by the local planning authority. These details shall also include: play equipment and street furniture. The works shall be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme agreed with the local planning authority.
17. No development shall take place until a scheme for the disposal of foul water has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the occupation of any dwelling on the site.
18. Prior to or as part of the first reserved matters application, an energy and sustainability strategy for the development; including details of any on site renewable energy technology and energy efficiency measures, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved strategy.
19. Prior to or as part of the first reserved matters application, a Noise Mitigation Scheme shall be submitted to and approved in writing by the local planning authority. Such a scheme shall:
  - (i) Identify noise levels from adjoining features such as the R Palmer and Sons, and LOC Plant Hire sites, and public highways;



- (ii) Demonstrate how the proposed dwellings and have been designed so as to ensure that non-noise sensitive frontages or rooms face noise creating areas or sources;
- (iii) Detail where and how 3 metre high solid and effective noise barrier(s) or fences shall be installed prior to first occupation of any dwelling, and provide details of the design and maintenance arrangements; including that the barrier will be maintained in accordance with manufacturers instructions so as to retain its noise insulation properties;
- (iv) That the noise barrier(s) or fences shall be installed prior to occupation of any dwellings and retained thereafter.

The agreed details of the Noise Mitigation Scheme shall be implemented as approved.

**\*\*END OF CONDITIONS\*\***