
Appeal Decision

Hearing held on 12 March 2015

Site visit made on 12 March 2015

by C J Anstey BA (Hons) DipTP DipLA MRTPI

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

Decision date: 26 May 2015

Appeal Ref: APP/A2470/A/14/2222210

Greetham Garden Centre, Oakham Road, Greetham, Oakham, LE15 7NN.

- 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 Hanover Developments Ltd. against the decision of Rutland Council.
 - The application Ref 2013/0956/OUT, dated 28 October 2013, was refused by notice dated 15 January 2014.
 - The development proposed is the redevelopment of the former Greetham Garden Centre for residential development for up to 35 dwellings, and the provision of access.
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Decision

1. The appeal is allowed and outline planning permission is granted for the redevelopment of the former Greetham Garden Centre for residential development for up to 35 dwellings, and the provision of access, at Greetham Garden Centre, Oakham Road, Greetham, Oakham, LE15 7NN, in accordance with the terms of the application Ref 2013/0956/OUT, dated 28 October 2013, and the plans submitted with it, subject to the conditions set out in the attached Schedule.

Preliminary Matters

2. Refusal Reason 2 related to the failure in the appeal application to make any commitment to developer contributions. As part of the appeal submissions two unilateral undertakings have been submitted. I consider that these two undertakings are compliant with *paragraph 204* of the *National Planning Policy Framework (the Framework)* and *Regulation 122* of the *CIL Regulations 2010*. In arriving at this view I have taken account of the replies from the Council and the Police Authority to the Planning Inspectorate's letter of 5 May 2015 relating to 'pooled' contributions. The first unilateral undertaking, dated 22 January 2015, makes provision for various contributions towards health services, indoor activity services, libraries, museums, outdoor sports, open space, children's services and policing. As the contribution to policing is in line with the amount per dwelling specified in the adopted Developer Contributions Calculation increasing this amount would not be justified. The second unilateral undertaking, dated 12 March 2015, will ensure that at reserved matters stage a Section 106 agreement is drawn up to secure 35% affordable housing. Consequently I believe that Refusal Reason 2 has now been addressed.

3. Refusal Reason 3, relating to flood risk, has been addressed by a revised Flood Risk Assessment which has been accepted by the Environment Agency. In the light of this I consider that flood risk could be satisfactorily dealt with by means of an appropriately worded condition.

Main Issues

4. The main issues in this case are:
 - whether relevant policies for the supply of housing in Rutland are up-to-date, having regard to the 5-year supply of housing land;
 - the effect on the rural setting of Greetham and on the character and appearance of the local area and; and
 - whether the appeal scheme represents sustainable development.

Reasons

Description

5. The appeal site is a disused garden centre that ceased trading about 2 years ago. The Council accepts that it is brownfield, previously developed land. The site is located on the western edge of Greetham village, with a frontage to the north side of Oakham Road. There are dilapidated buildings and hard-surfaced areas on the front part of the site, whilst the rear part is mainly grassed. There is housing to the east and agricultural land to the west and north and across Oakham Road to the south.
6. The scheme is submitted in outline form with all matters, apart from access, reserved for subsequent approval. The application included an illustrative master plan indicating how up to 35 dwellings could be arranged across the site.

Issue 1: Supply of housing

7. In August 2014 the Inspector who examined the **Council's Site Allocations and Policies Development Plan Document (SAPDPD)** and determined it to be sound found that a 5 year supply of housing land in Rutland was in place. Notwithstanding this recent finding there is still a need to examine the current position as regards housing land supply.
8. There is a fair measure of agreement between the two main parties as to the approach to be taken to calculating housing land supply in the current appeal and the number of dwellings that need to be delivered. Both adopt the Sedgefield method and include a 20% buffer applied to the requirement and the shortfall. This gives a requirement figure of about 1033 dwellings over the next 5 years or some 206 dwellings per year. I have no reason to disagree with this overall approach or these figures.
9. The Council argue that there is now 5.39 years supply of housing land (anticipated supply of 1114 dwellings). This figure is disputed in the appellant **company's hearing statement when it is argued that the figure is 4.94 years** (anticipated supply of 1021 dwellings or 204 dwellings per year). At the **hearing the appellant's representatives**, taking account of information tabled by the Council about Oakham North, argued that the figure was likely to be in the

order of 4.29 years (anticipated supply of 887 dwellings or 177 dwellings per year)

10. The lower figures advanced for the appellant company are essentially based on different views about likely supply. It is argued for the appellant that a 10% non-implementation rate to all large sites should be applied as it is unrealistic to expect that all the large sites in the supply figures will be built. This is due to various inherent uncertainties, including financial constraints, number of house builders involved, rate of sales, material shortages, legal disputes and site problems. In particular it is argued that too much reliance is put by the Council on the delivery of sites at Oakham North where it is anticipated that well over 600 dwellings will be built in the 5 year period, with about 400 of these by a single developer (Larkfleet Homes). It is contended for the appellant that a developer is unlikely to build more than 50 dwellings per year on a site and consequently in the order of 450 dwellings would be built at Oakham North, about 150 less than anticipated by the Council.
11. In my view the Council has sought to make a realistic assessment of the likely housing land supply position in the County over the next five years. It has engaged positively with landowners and developers to determine delivery on particular sites and on the basis of these discussions drawn up its 5-year supply figures. Not all allocated sites have been included. In the light of this I do not believe that there is sufficient justification for the inclusion of an arbitrary 10% non-implementation rate to all large sites. Even if I had been **swayed by the appellant's argument** in this regard the delivery figure would at 1021 dwellings have only been 12 dwellings below the agreed figure of 1033 needed over the next five years to meet the requirement and shortfall. Such a very small difference could not have been accorded significant weight.
12. As regards Oakham North written confirmation has been received from Larkfleet Homes confirming a commitment to continue with Phases 9 and 10 together. Consequently I consider that it is reasonable for the Council to include these sites within the 5 year supply. In reaching this view I am mindful that the argument put forward for the appellant about the number of dwellings likely to be built by a developer on a site is a generalised one and does not relate to this specific case.
13. I conclude, therefore, that there is a five year supply of housing land in Rutland and therefore policies for the supply of housing remain up-to-date.

Issue 2: Rural setting

14. In my judgement the close relationship of this brownfield site to the built-up part of the Greetham is of considerable importance. Immediately to the east of the appeal site there is a small housing estate and to the rear of that land allocated for housing in the recently adopted **SAPDPD**. Upon leaving or entering the village the appeal site, and the buildings thereon, appear as being within the developed part of the village and not part of the surrounding countryside. The conifer trees and hedgerows along the western and northern boundaries of the site mark the extent of the built-up part of the village along the north side of Oakham Road. Beyond these firm physical boundaries, with the exception of the sewage treatment works to the north-west, there are open fields. Consequently the proposed housing scheme would not intrude into the surrounding attractive countryside or harm the rural setting of the village.

15. The current derelict and unsightly appearance of the front part of the appeal site detracts from the approach to Greetham and the character of the local area. Given its location within the built-up part of the Greetham **the site's** redevelopment with a sensitively designed housing scheme would enhance the character and appearance of this part of the village.
16. I conclude, therefore, on the second main issue that the proposal would not harm the rural setting of the village and would enhance the character and appearance of this part of Greetham.

Issue 3: Sustainable development

17. *Paragraph 14* of the *Framework* makes it clear that there is a presumption in favour of sustainable development, which has three dimensions: economic, social and environmental. In my judgement the proposal would fulfil the economic role of sustainable development and would contribute to building a strong, responsive and competitive economy, by helping to ensure that there is housing land available to support growth. In terms of the social dimension the scheme would contribute to boosting housing supply by providing a range of sizes and types of housing for the community, including a number of much-needed affordable housing units. The site is available and in the absence of any significant constraints could be developed in the near future.
18. As regards environmental considerations the site is well located in terms of accessibility to the various services and facilities available in Greetham. The village is identified in the *Core Strategy DPD (CSDPD)* as a Local Service Centre, with a range of facilities and access to public transport. It is clear from my consideration of the second main issue that in terms of the environment the proposal would not harm the rural setting of the village and would enhance the character and appearance of this part of Greetham.
19. In my view, therefore, the positive attributes of the development, in terms of the economic, social and environmental gains, means that the scheme would constitute sustainable development. Consequently the *Framework's* presumption in favour of sustainable development applies.
20. I conclude, therefore, on the third main issue that the proposed scheme constitutes sustainable development.

Other matters

21. Local people have raised a number of other concerns including the impact on residential amenity, density and layout. However, having considered all the material before me, none of these matters individually or cumulatively would be likely to cause overriding harm, and they are not, therefore grounds for dismissing the appeal.

Overall planning balance

22. I have concluded that housing land supply policies in the County remain up-to-date. The appeal site lies outside the Planned Limit to Development for Greetham and within the countryside as defined in the recently adopted *SAPDPD*. Consequently the appeal scheme is clearly contrary to *Policy CS4: The Location of Development* of the *CSDPD* and *Policy SP5: Housing in the Countryside* of the *SAPDPD*, which aim to focus development to within

identified settlements, whilst restricting development in the countryside to that which needs to be there.

23. I have found, however, that the proposal would not harm the rural setting of the village and would enhance the character and appearance of this part of Greetham. I have also concluded that the appeal proposal constitutes sustainable development and would generate various economic and social benefits, including a number of much-needed affordable housing units. I consider that these other material considerations should be accorded very significant weight and, when added together, outweigh the identified conflict with local planning policy. These findings constitute compelling grounds for allowing the appeal subject to conditions.

Conditions

24. I have considered the planning conditions put forward and discussed at the Hearing in the light of the advice in the **Government's Planning Practice Guidance**. I have applied the standard outline conditions (**Conditions 1, 2 & 3**). To ensure that the development proceeds in accordance with what has been approved the plan is specified (**Condition 4**). The submission of samples of materials for approval is required to make sure that those used are in keeping with local character (**Condition 5**).
25. Landscaping details are required to ensure that the site is suitably landscaped and in keeping with local character (**Condition 6**). In order to control the height of the new dwellings, thereby minimising the impact on the surrounding area, details of existing and proposed levels are required (**Condition 7**). In the interests of highway safety the roads and associated elements need to be laid out in a satisfactory manner (**Conditions 8 & 9**). In view of the possible archaeological interest of the site a suitable scheme of investigation needs to be drawn up and implemented (**Condition 10**).
26. In the event that any contamination is found on the site a remediation scheme strategy will be required (**Condition 11**). To safeguard residential amenity hours of demolition/construction need to be specified (**Condition 12**). The provision of appropriate sewerage and drainage works to serve the site are necessary (**Conditions 13 & 14**).

Overall Conclusion

27. My overall conclusion, therefore, is that the appeal should be allowed subject to appropriate planning conditions. None of the other matters raised, including the various appeal decisions submitted, outweigh the considerations that have led to my decision.

Christopher Anstey

Inspector

APPEARANCES

FOR THE APPELLANT:

Michael Rudd	Counsel for the appellant
Matthew Green	Green Planning Studio
David Penny	Land owner

FOR THE LOCAL PLANNING AUTHORITY:

Nick Hodgett	Principal Planning Officer
Brett Culpin	Principal Planning Officer
Sharon Baker	Senior Planning Officer
James Faircliffe	Housing Strategy Officer
David Troy	Planning Policy & Housing Manager

INTERESTED PERSONS:

Michael Lambert	Leicestershire Police
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DOCUMENTS

1. Rutland Core Strategy DPD (Adopted July 2011)
2. Rutland Site Allocations & Policies DPD (Adopted October 2014)
3. Unilateral Undertaking dated 12/3/15
4. Unsigned Section 106 Agreement
5. **Council's Developer Contributions Calculation for the appeal development**
6. Statement of Common Ground
7. **Council's Methodology for Assessing Potential Sites (Sept. 2011)**
8. **Council's calculations** relating to the 20% buffer
9. Extract from SofS Decision relating to 20% buffer (APP/R0660/A/13/2209335)
10. High Court judgement relating to administration costs (CO/4757/2014)
11. Oakham North – Position at 1 March 2015
12. **Inspector's report** - Rutland Site Allocations & Policies DPD
13. Appeal decision relating to isolated houses in the countryside (APP/L3815/A/13/2209917)

PLANS

- A. Illustrative master plan (ref 5420-L-02)

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters referred to in Condition 1 above shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the approved plan [i.e. Illustrative master plan (ref 5420-L-02)].
- 5) No development shall commence until samples of the materials to be used on the external elevations of the dwellings hereby permitted, have been submitted to and approved in writing by the local planning authority. Thereafter, the development shall not be constructed other than in accordance with these approved materials.
- 6) All hard and soft landscape works approved pursuant to condition (1) above shall be carried out in accordance with the approved details. These details shall include existing trees, shrubs and other features, planting schedules, species (which should be native species where possible and of a type that will enhance or encourage local biodiversity), plant sizes and numbers where appropriate, means of enclosure, hard surfacing, materials, an implementation programme and protection measures during construction. All planting shall be carried out during the first planting and seeding season (October-March inclusive) following the commencement of the development or in such phased arrangement as may be agreed in writing with the local planning authority. Any trees or shrubs that, within a period of 5 years of being planted, die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species.
- 7) The details submitted in pursuance of condition (1) shall show details of existing and proposed ground levels across the site and the levels of the proposed floor slabs and heights of the proposed dwellings and shall be submitted to and approved in writing by the local planning authority. Development shall be carried out as approved.
- 8) Prior to the commencement of development full details of the estate roads and footways (including layout, levels, gradients, surfacing and means of surface water drainage) shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 9) Before any dwelling is occupied minimum visibility splays of 2.4m x 65m westbound and 2.4m x 54 m eastbound shall be provided on to Oakham Road and shall be maintained at that minimum standard thereafter.
- 10) No demolition/development shall take place until a programme of archaeological work, commencing with an initial phase of trial trenching, has been detailed within a written scheme of investigation, submitted to

and approved in writing by the local planning authority. The development shall not be occupied until the site investigation and post-investigation assessment and dissemination of the results, has been completed in accordance with the programme set out in the written scheme of investigation

- 11) No demolition/development shall take place until a scheme to deal with contamination of the site has been submitted to and approved in writing by the local planning authority. The scheme shall include an investigation and assessment to identify the extent of contamination and the measures to be taken to avoid risk to the public when the site is developed. The development shall not be occupied until the measures in the approved scheme have been implemented.
- 12) No demolition or construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times: Monday to Friday 0730-1800 hours and Saturdays 0730-1300 hours, unless with the prior written approval of the local planning authority.
- 13) No demolition or construction work shall take place until a scheme for the provision, implementation, ownership and maintenance of the surface water drainage for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority. The development shall not be occupied until the measures in the approved scheme have been implemented.
- 14) No demolition or construction work shall take place until a scheme for the provision of on and off site mains foul water drainage, including phasing, has been submitted to and approved in writing by the local planning authority. The development shall not be occupied until the measures in the approved scheme have been implemented.

Costs Decision

Hearing held on 12 March 2015

Site visit made on 12 March 2015

by C J Anstey BA (Hons) DipTP DipLA MRTPI

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

Decision date: 26 May 2015

Costs application in relation to Appeal Ref: APP/A2470/A/14/2222210 Greetham Garden Centre, Oakham Road, Greetham, Oakham, LE15 7NN.

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Hanover Developments Ltd. for a partial award of costs against Rutland Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the redevelopment of the former Greetham Garden Centre for residential development for up to 35 dwellings and the provision of access.
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Decision

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

Reasons

2. The *Planning Practice Guidance* makes it clear that local planning authorities are required to behave reasonably in relation to procedural matters at the appeal, for example by complying with the requirements and deadlines of the process. One of the examples of unreasonable behaviour that may result in an award of costs given in the *Guidance* is the failure to notify the public of an inquiry or hearing, where this leads to the need for an adjournment.
3. The Council failed to notify the public of the hearing which was originally scheduled for 28 January 2015. As a result the hearing was postponed at short notice to allow the public to be notified and the re-arranged hearing was held on 12 March 2015. Consequently the Council clearly acted unreasonably in terms of the *Guidance*.
4. In turn this meant that the appellant company incurred additional administrative costs in dealing with the postponement and re-arranging the necessary representation at the hearing. Furthermore as the Council was unable to provide a venue on 12 March 2015 the appellant company arranged and paid for a venue. This additional cost would have not been incurred if the original hearing had proceeded.
5. In summary, therefore, the Council has acted unreasonably in terms of the *Guidance*. This has led the appellant company to incur unnecessary expense, namely additional administrative costs and the cost of hiring the venue on 12 March 2015. Consequently there are grounds for an award of partial costs in terms of the *Guidance*.

Costs Order

1. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Rutland Council shall pay to Hanover Developments Ltd the partial costs (i.e. additional administrative costs and the cost of hiring the venue on 12 March 2015) of the appeal proceedings described in the heading of this decision
2. The applicant is now invited to submit to Rutland Council details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Christopher Anstey

Inspector