APPEAL REFERENCE: APP/B3438/W/19/3239821

LEEK COHOUSING LTD (APPELLANT)

RESPONSE TO COUNCIL'S STATEMENT OF CASE

APPENDIX C

Appeal Decision

APP/V2635/W/19/3237042

Land west of Knights Hill Village, Grimston Road, South Wootton, Norfolk

Recovered appeal allowed on 14 July 2020. See paragraph 13.

Ministry of Housing, Communities & Local Government

Our ref: APP/V2635/W/19/3237042
Your ref: 16/02231/OM

Mr Paul Belton
Carter Jonas
1 Station Square
Cambridge
CB1 2GA

14 July 2020

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY WHISTLE WOOD AND REFFLEY WOOD LIMITED AND MR P DE GREY OSBORN AT LAND WEST OF KNIGHTS HILL VILLAGE, GRIMSTON ROAD, SOUTH WOOTTON, NORFOLK
APPLICATION REF: 16/02231/OM

1. I am directed by the Secretary of State to say that consideration has been given to the report of R Barrett BSc (Hons) MSc Dip UD Dip Hist Cons MRTPI IHBC who held a public local inquiry between 14 and 17 January 2020 into your client's appeal against the decision of King's Lynn and West Norfolk Borough Council to refuse your client's application for planning permission for residential development of the land to provide up to 600 dwellings, incorporating affordable housing, together with a local centre for uses A1, A2, A3 and/or A5 (600m2) with the total quantum of A1 net sales area not to exceed 279m2 in the alternative, D2 community floorspace (up to 500m2), open space, formal sports pitches, a car park to serve Reffley Wood and associated development to include substations, drainage features, roads, cycle and pedestrian paths and other such works, in accordance with application ref: 16/02231/OM, dated 22 December 2016. The appeal application is made in outline with all matters reserved save for access.

2. On 31 October 2019, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed.

4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with his recommendation. He has decided to allow the appeal. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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Andrew Lynch, Decision Officer
Planning Casework Unit
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Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. Having taken account of the Inspector's comments at IR8, the Secretary of State is satisfied that the Environmental Statement complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Matters arising since the close of the inquiry

6. Following the close of the Inquiry the results of the Housing Delivery Test: 2019 measurement were published. The comments of the two main parties were invited and have informed the Inspector's report. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties.

Policy and statutory considerations

7. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

8. In this case the development plan consists of The King's Lynn and West Norfolk BC Local Development Framework - Core Strategy (2011) (CS); The Site Allocations and Development Management Policies Plan (SADMPP) (2016); The South Wootton Neighbourhood Plan 2015-2026 (2014) (SWNP); The Core Strategy and Minerals and Waste Development Management Policies Development Plan Document 2010-2026 (September 2011); The Minerals Site Specific Allocations Development Plan Document (October 2013, amendments adopted December 2017); and The Waste Site Specific Allocations Development Plan Document (October 2013). The Secretary of State considers that relevant development plan policies include those set out at IR24-29, and agrees with the Inspector at IR223 that the most important policies for the determination of this appeal are CS policies CS12, CS11 and SADMPP policies DM15 and E4.1.

9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').

10. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

Emerging plan

11. The emerging plan comprises the draft King's Lynn and West Norfolk Local Plan (eLP). The Secretary of State considers that the emerging policies of most relevance to this

case include those listed at IR30, and he also notes the Council's intention to delete the allocation of the appeal site as set out at IR31.

12. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The Secretary of State agrees with the Inspector that the emerging plan is at an early stage (IR226) and at the time of the Inquiry it was anticipated that the eLP pre-submission publication and consultation would take place later in 2020, working towards examination in 2021 and adoption mid-2022. Overall the Secretary of State agrees with the Inspector (IR226) that the emerging policies carry very limited weight.

Main issues

Housing

13. The Secretary of State agrees that the Council has a five-year supply of housing, as required by the Framework (IR187). He agrees with the Inspector's conclusions at IR187 that the delivery of the appeal site would increase flexibility in delivering a five-year housing supply which is a matter of significant importance considering the 2019 housing delivery test results (below 85%) and considering national policy to significantly boost the supply of housing. He has considered further that the proposal would result in the loss of a greenfield site (IR197). However, the appeal site is an allocated site in an adopted Development Plan for at least 600 dwellings, and that it is essential to deliver the adopted CS strategy that focuses on the expansion of King's Lynn and identifies areas of growth to fulfil that aim (IR188). He has considered at IR196 that a proportion of affordable housing, in accordance with the requirements of CS policy C09 is proposed which would meet the requirements of SADMPP policy E4.1. In addition, a range of house sizes, types and tenures would need to be proposed to meet the same policy requirement; the details of which would be considered at a later stage. He further agrees with the Inspector at IR189 that the provision of affordable housing is a significant benefit. While the Secretary of State notes the stated intention to remove the site allocation from the emerging plan, as that plan is yet to be consulted upon or examined, he has found that it carries very limited weight. Overall, the Secretary of State agrees the proposal would accord with policies CS01,02, 03 and 09 and SADMPP policy E4.1 and considers housing provision attracts substantial weight in favour of the scheme.

Heritage impacts

14. The Secretary of State has considered the Inspector's reasoning at IR169-192 concerning the impact of the proposal on the setting and significance of a number of designated heritage assets. For the reasons given at IR170-175 he agrees that there would be harm to the setting of Rising Lodge (Grade II 18th century former farmhouse) as the proposal would result in the loss of some agricultural land with which the listed building was formerly associated. He further agrees (IR174) that such harm would be limited by the proposed intervening open space, and that the listed building would retain its isolated, rural and open setting. For the reasons given at IR175 he agrees that the harm would be less than substantial, at the lower end of that spectrum.

15. For the reasons given at IR176-182 the Secretary of State agrees that the contribution the appeal site makes to the setting of Castle Rising Castle (grade I and SAM) is small (IR180). He further agrees (IR181) that as the appeal site forms part of the former Chase,

some harm would result however that such harm would be limited by a number of factors. In particular, he agrees with the Inspector at IR181 that as the northern extent of development along with its height would be controlled, given the separation distance, topography and planting, the appeal scheme would hardly be visible from the Castle, and that, were it visible, it would not appear out of place, given the varied character and other field boundaries and wooded areas within the former Chase. He agrees with the Inspector at IR182, that any harm to the significance of the Castle would be less than substantial, at the lower end of that spectrum.

16. For the reasons given at IR183-184 the Secretary of State agrees that as there is some intervisibility between the appeal site and the ruins of the Grade I listed Norman St James' church at Bawsey, introducing built development where none exists at present would erode its isolated setting and would interrupt views of the Church in its isolated setting from the appeal site and beyond. He agrees (IR183) that the harm would be limited by the separation distance and the existing and proposed planting that would further act to interrupt those views. There is also existing built development in views from St James' towards the appeal site, including Queen Elizabeth Way and the hospital. He agrees with the Inspector at IR184 that when taking all these considerations into account the level of harm that would result to St James' would be less than substantial, midway within that spectrum.

Cumulative impacts

17. The Secretary of State agrees with the Inspector at IR185 that as some elements of the historic landscape around the appeal site are interrelated, some cumulative harm would arise, in particular with regard to the interrelationship between Castle Rising Castle and Rising Lodge as those assets have a historic functional relationship. This cumulative harm has been taken into account in his assessment above. He further agrees with the Inspector's view that as there are no inter-relationships between St James' at Bawsey and other heritage assets identified, he therefore cannot be assured that there would be any cumulative impacts on that heritage asset.

18. The Secretary of State attaches great weight to the conservation of the heritage assets, in line with paragraph 193 of the Framework. Paragraph 196 of the Framework states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. Should that heritage test prove favourable to the proposals, he agrees with the Inspector that the proposed development would meet the requirements of Local Plan policies CS12 and SADMPP policy E4.1 (IR192).

Highways and transport

19. The Secretary of State notes at IR34 that there are not matters of disagreement between the appellants, Council and the County Council on the subject of highways, transport and access. He has taken into account that the transport assessment has identified mitigation works to deal with the impact of the proposal on the highway network, and these are proposed to be secured by condition (IR159) and agreements., For the reasons given at IR157-168 he agrees with the Inspector at IR159 that the local highway authority is satisfied that the mitigation proposed is appropriate and that the residual cumulative impacts would not be severe on the basis of the findings of the Traffic Impact Assessment (TA). The proposal is therefore not in conflict with paragraph 109 of the Framework. He further agrees with the Inspector at IR168 that the proposals would reduce the need for travel and promote sustainable modes of transport and would therefore accord with policy

CS11 and SADMPP policies DM15 and E4.1 (IR168). For the reasons given at IR190 he considers that the enhancement of public transport, walking and cycling routes would be a benefit to those beyond the appeal site. Furthermore, he agrees with the Inspector at IR190 that it would deliver off-site highway improvements which are unlikely to be delivered in the absence of the appeal development. He considers that both these benefits attract moderate weight.

Other matters

20. The Secretary of State is the Competent Authority for the purposes of the Conservation of Habitats and Species Regulations 2017 and for the reasons set out at IR208-212 he agrees with the Inspector that he is required to make an Appropriate Assessment of the implications of that plan or project on the integrity of any affected European site in view of each site's conservation objectives. Those sites are Roydon Common and Dersingham Bog Special Area of Conservation (SAC) and RAMSAR sites, known together as Roydon Common and Dersingham Bog SAC. The Secretary of State agrees with the assessment and findings in the Inspector's Annex D. He therefore adopts Annex D as the necessary Appropriate Assessment in his role as the Competent Authority on this matter and agrees that there would be no adverse effect on the integrity of the designated sites.

21. For the reasons given in IR193 and 194, the Secretary of State considers that flood risk and foul water / sewerage issues do not weigh against the proposal. Furthermore, he has considered the Inspector's reasons given at IR195 regarding the mitigation of the impact on Reffley Wood, which includes development set back behind wide planted buffer zones, planting and a defined boundary to direct visitors to agreed access locations He agrees with the Inspector that details of landscaping are reserved for consideration at a later stage, however a large buffer would be included on the northern section of Reffley Wood, this will help to ensure no harm to the former clay pit within the Wood.

22. The Secretary of State notes at IR201 that a pedestrian and cycle link are proposed to link the appeal site to the Knights Hill car park area and agrees with the Inspector that the benefits of a shared link would outweigh the small loss of planting envisaged. For the reasons given at IR203 the Secretary of State also agrees with the Inspector that the appeal development would conserve and enhance the landscape and natural beauty of the AONB.

23. He further agrees with the Inspector at IR198 in respect of local infrastructure to meet further primary health care needs that CIL monies and the reserved site for community use, secured through the section 106 agreement would meet the requirements of SADMPP policy E4.1. He further agrees with the Inspector at IR199 that provisions of the s.106 agreement address primary school requirements.

24. He agrees for the reasons given at IR200 that the environmental statement that accompanies the appeal application has assessed the impacts of additional traffic movements on air quality as negligible and that mitigation is provided to address the impacts of dust during construction. He further agrees for the reasons given at IR204 that open space provision is sufficient to meet the needs of the proposed development and to provide for ecological mitigation, and would accord with the requirements of SADMPP DM16 and E4.1. Further he agrees with the Inspector for the reasons given at IR205 that a layout could be secured that would avoid overlooking into existing properties in Ullswater Avenue. He further agrees at IR206 that requirements to accommodate a

major accident hazard high pressure gas pipeline given the development free areas and planting proposed near to the boundary with the A149 can be met (IR206).

Other benefits

25. The Secretary of State agrees with the Inspector's conclusions at IR190 that other benefits include CIL receipts and economic benefits in terms of the direct and indirect economic expenditure from jobs and future spending power. He considers that on-site facilities would be open for use by existing residents include sports pitches and a local centre. He considers that the above benefits each attract moderate weight.

Planning conditions

26. The Secretary of State has given consideration to the Inspector's analysis at IR154-155, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework and that the conditions set out at Annex A should form part of his decision.

Planning obligations

27. Having had regard to the Inspector's analysis at IR213-221, the planning obligation dated 16th January 2020, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR221 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework.

Planning balance and overall conclusion

28. For the reasons given above, the Secretary of State considers that the appeal scheme is in accordance with policies CS12, CS11 and SADMPP policies DM15 and E4.1 of the development plan, and is in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

29. The only material consideration which weighs against the proposal is harm to the setting and significance of the heritage assets, which in line with Framework requirements carries great weight.

30. The Secretary of State considers that the provision of housing carries substantial weight in favour of the scheme, and he further agrees with the Inspector that it is essential this allocated site comes forward to deliver the strategic spatial strategy and objectives of the development plan, particularly in respect of growth [IR197]. He considers that CIL receipts and economic benefits attract moderate weight, as does the provision of on-site facilities and the enhancement of public transport, walking and cycling routes. The off-site highway improvements also attract moderate weight. The Secretary of State considers that the delivery of open space attracts limited weight.

31. Overall the Secretary of State considers that the benefits of the appeal scheme are collectively sufficient to outbalance the identified 'less than substantial' harm to heritage assets he has identified at paragraphs 14-18 of this decision letter. He considers that the balancing exercise under paragraph 196 of the Framework is therefore favourable to the proposal.

32. Overall the Secretary of State considers that the material considerations in this case indicate a decision in line with the development plan – i.e. a grant of permission. The Secretary of State therefore concludes that the appeal should be allowed and planning permission granted, subject to conditions.

Formal decision

33. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants outline planning permission with all matters reserved save for access subject to the conditions set out in Annex A of this decision letter for residential development of the land to provide up to 600 dwellings, incorporating affordable housing, together with a local centre for uses A1, A2, A3 and/or A5 (600m2) with the total quantum of A1 net sales area not to exceed 279m2 in the alternative, D2 community floorspace (up to 500m2), open space, formal sports pitches, a car park to serve Reffley Wood and associated development to include substations, drainage features, roads, cycle and pedestrian paths and other such works.

34. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

35. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

36. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

37. A copy of this letter has been sent to King's Lynn and West Norfolk Borough Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Andrew Lynch
Authorised by the Secretary of State to sign in that behalf