The Planning Inspectorate

Appeal Decision

Hearing held on 17 November and 15 December 2015
Site visit made on 15 December 2015

by Peter Rose BA MRTPI DMS MCMI

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

Decision date: 22nd February 2016

Appeal Ref: APP/J1915/W/15/3127807
Land south of Froghall Lane, Walkern

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Gladman Developments Ltd/Simon John Cordell, Philip Cordell, Jane Louise Cordell, and Alison Joanne Sendall against East Hertfordshire District Council.
- The application Ref 3/14/2200/CP, is dated 5 December 2014.
- The development, as originally proposed, was a residential development for up to 98 houses including site access, public open space and landscaping.

Decision

1. The appeal is allowed and outline planning permission is granted for a residential development for up to 85 houses including site access, public open space and landscaping at Land south of Froghall Lane, Walkern, in accordance with the terms of the application Ref: Ref 3/14/2200/CP dated 5 December 2014, and subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs has been made by the appellants against East Hertfordshire District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application is for outline planning permission, with all matters except access reserved for subsequent approval.

4. Whilst the originally submitted proposal referred to an upper limit of 98 houses, a revised scheme was submitted reducing the upper limit to 85. Although the Council failed to determine that scheme, it was subject to formal publicity on that basis and the appeal was publicised in similar terms. Both the main parties confirmed the appeal proposal is based upon the revised limit and both agree that, should the appeal be allowed, a condition be imposed to limit development to 85 dwellings.

5. The appellants are concerned, however, that a revised description referring to 85 dwellings would not reflect the terms of the original application. I find that the alternative of a description referring to 98 dwellings but then reduced by a

condition to 85 would be unnecessarily confusing, and that no interests would be prejudiced by such a change. In the interests of consistency and clarity, I have therefore amended the description accordingly.

6. Although matters of appearance, layout, landscaping and scale are not formally submitted for determination as part of the appeal application, the submission is accompanied by illustrative details to which I have regard. These include a design and access statement and Development Framework plans.

7. At the hearing, a Unilateral Undertaking made under section 106 of the Town and Country Planning Act 1990 was submitted and has been signed and executed as a deed dated 15 December 2015.

8. The Council formally considered the application on 19 August 2015. Whilst no longer able to formally determine the submission, it resolved that planning permission would have been refused for the reasons set out in its letter dated 20 August 2015.

9. I consider the appeal on the above basis.

Main Issues

10. The main issues in this appeal are:

(a) the scale of the proposed development relative to the status and capacity of Walkern;

(b) the effect of the proposed development upon the character and appearance of the local countryside, and including its relationship to proposed open space, and;

(c) whether the proposed development would satisfactorily promote sustainable modes of transport.

Reasons

Development status

11. The appeal site comprises some 4.17 hectares of agricultural land located to the south west of Walkern. It lies outside the village boundary as defined by the East Herts Local Plan Second Review April 2007 (the Local Plan).

12. The site is served by an existing vehicular access via Aubries and that is identified in the application as the proposed access point for the development.

13. The site is also accessed from Froghall Lane which is a relatively narrow road also serving houses to the north which look across the appeal site. No formal vehicular access into the site exists from Froghall Lane. To the east, the appeal site is enclosed by a residential development at Aubries. The site slopes down from Froghall Lane towards a further residential development at Moors Ley which encloses the southern boundary of the site. The western boundary is unenclosed and comprises open land offering views towards Stevenage.

14. Walkern is defined as a Category 1 Village by Policy OSV1 of the Local Plan. Policy OSV1 allows limited small-scale and infill housing development within the confines of the village, and subject to various detailed criteria.

15. The more recent East Herts Draft District Plan Preferred Options Consultation January 2014 (the District Plan) identifies Group 1 Villages for an increase in housing stock of at least 10% over the period 2016-2031. The District Plan identifies a 10% growth in Walkern as 47 households.

16. Policy GBC3 of the Local Plan applies to the appeal site as a rural area beyond the Green Belt. This states that permission will not be given for new buildings other than for defined exceptions which mainly involve small-scale development linked to the rural character.

17. Whilst the appeal proposal would not come within the terms of permissible development identified by Policy GBC3, the Council has previously accepted the principle of a residential development of the appeal site. Rather, the Council's concern relates to the scale of the proposed development and has commissioned a consultancy, Tibbalds, to undertake preliminary feasibility work towards preparation of an appropriate framework for residential development of the site.

18. Nevertheless, and notwithstanding the Council's acceptance of the principle of the development and the on-going work by Tibbalds, I find that the proposed scheme would lie outside the village and be contrary to the provisions of Policy GBC3.

Capacity of Walkern and scale of development

19. I have had careful regard to representations on behalf of local residents who consider that development on the scale proposed to be unsustainable in Walkern. The status of Walkern as a sustainable settlement and as a location for future growth is also questioned. It is maintained that road infrastructure through the village and available public transport are already inadequate and insufficient employment opportunities and lack of school provision will increase the existing dependence upon the use of private cars.

20. Notwithstanding any future status of Walkern, the village is formally defined by the development plan as a settlement for growth and that could involve more than 47 households. The threshold for growth has not been defined with regard to any specific capacity assessment, but through a strategic allocation of the District's needs, and the appeal scheme seeks to respond to likely impacts with specific mitigation.

21. There would be commensurate increases in demands for local services and the Undertaking includes commitments to further facilities at Walkern Primary School and to funding of additional health facilities in accordance with the Council's requirements. Additional play facilities would also be provided within the existing High Street play area. No case has been made by the local planning authority for contributions to pre-school or to secondary education.

22. Even though the site lies within Flood Zone 1, I note the previous history of flooding in Walkern, and that particular issues relate to the south-west corner of the site.

23. An outline scheme has been prepared by the appellants to demonstrate possible technical solutions to matters of drainage and flooding. Responsibility as Lead Local Flood Authority (LLFA) transferred to the County in 2015 after submission of the application, but neither the local Council nor the Environment Agency had previously raised any objection to the principle of the development.

Whilst some preliminary discussions have taken place, the County is yet to be satisfied of the full details of a scheme. It was agreed in principle by the appellants, the local Council and the LLFA that this could be progressed by way of a suitably worded planning condition should the development be otherwise found to be acceptable. There was disagreement regarding the detailed form of wording, but not regarding the approach, and I concur with the principle of that way forward.

24. The scheme would also be intended to include some wider betterment through the proposed works, improving both the existing very limited on-site drainage but also providing facilities for storage of water from elsewhere.

25. I deal with issues of highway and public transport capacity separately as part of sustainable transport issues below. Those matters apart, I find that implications of the development would be satisfactorily mitigated by the measures proposed and would thereby be broadly consistent with the capacity of Walkern to absorb further development of this scale, and with its status as a Group 1 Village in the development plan accommodating at least 10% growth.

Character and appearance of the countryside

26. The overall character and appearance of the appeal site is as a large expanse of gently rising open land containing relatively few natural features. Whilst it enjoys a relatively open aspect to the west, it is effectively enclosed by housing on three sides. Although overlooked from the frontages of properties in Froghall Lane to the north, the eastern and southern boundaries comprise housing of various styles, but with little overall distinctiveness of character or appearance.

27. Little specific evidence has been provided by the Council to substantiate a harmful impact, but a full Landscape and Visual Impact Appraisal has been submitted by the appellants. The Appraisal concludes no more than a minor adverse landscape effect overall, mitigated by a scheme of green infrastructure which would include unoccupied areas of open space.

28. Policy ENV1 of the Local Plan states that all development proposals will be expected to be of a high standard of design and layout to reflect local distinctiveness, and that development proposals will be expected to demonstrate compatibility with the structure and layout of the surrounding area, as well as effective connection with existing routes and spaces.

29. Policy LRC3 of the Local Plan commits the Council to seeking provision of adequate and appropriately located open space and recreation facilities in conjunction with new residential development.

30. Whilst comprising greenfield land and of a rural character, the appeal site otherwise has no formal designation in relation to landscape quality, and few specific landscape features.

31. A core principle of the National Planning Policy Framework (the Framework) is to recognise the intrinsic character and beauty of the countryside. Paragraph 109 of the Framework further states that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. I am also mindful of the Minister of State for Housing and Planning's affirmation by letter dated 27 March 2015 of the importance of the impact of development upon landscapes outside designated

areas. In this regard, I have noted the public opposition from the local community, and I accept that 'valued' does not necessarily just equate to designated landscapes, and that most open land adjacent to residential areas may have a value to local residents. Nevertheless, I am not persuaded on the evidence that it has features or quality that would place it in the category of being a valued local landscape in the sense intended by the Framework.

32. Although of substantial size, the site is largely enclosed by existing development to the north, east and south and is thereby screened from surrounding sensitive landscapes.

33. The western side of the side is adjacent to open countryside, however, and affords more distant views beyond the appeal site. The appellants identify the potential for lower housing density and planting to the west which would combine to create a filtered edge to the development linking to the adjacent open countryside.

34. Public views beyond the site towards the west may be impeded, but that would remain to be fully considered as part of future layout, design and landscaping proposals. Views from properties in Froghall Lane will change markedly as they will cease to face open land. Nevertheless, Froghall Lane is set at a higher level to the remainder of the site and significant potential is indicated within the Development Framework for green infrastructure integral to the scheme and for retention of existing trees and hedges.

35. Taking the above factors together, I therefore find that the proposed development would not be harmful to the character and appearance of the local countryside, and including its relationship to proposed open space. Accordingly, the development would not be contrary to Policies ENV1 and LRC3 of the Local Plan or to the expectations of the Framework.

Sustainable transport

36. Policy TR1 of the Local Plan requires developments generating additional traffic to incorporate measures commensurate with the scale of additional generation and to ensure that alternative transport options to the private car are available to users of the site. Such measures may include pedestrian links, cycle paths and improvements to the passenger transport network.

37. Policy TR12 of the Local Plan requires, where possible, that new developments include appropriate routes and facilities for cyclists and pedestrians.

38. A core principle of the Framework is to promote sustainable transport. The Framework advises that patterns of growth should be managed to make fullest possible use of public transport, walking and cycling, and focus development in locations which are or can be made sustainable. Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Plans and decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised.

39. Whilst concerns are raised by both the local planning authority and highway authority with regard to the shortcomings of the scheme in relation to sustainable transport, little direct technical evidence has been submitted to substantiate the alleged harm.

40. The appellants have made various technical submissions, including a transport assessment and proposals for a travel plan.

41. In terms of highway capacity, the submitted evidence indicates that the scheme would have no material impact upon the occurrence of accidents but confirms there would be an increase in traffic in the AM and PM peak hours at key local junctions. I also heard evidence from local residents at the hearing regarding existing problems of traffic congestion within the High Street itself. The appellants' evidence shows a traffic increase at nearby junctions but indicates the junctions would be capable of operating in an acceptable manner during the critical peak periods.

42. Nevertheless, it is clear to me that the High Street does suffer significant problems of traffic congestion and the likelihood is that development of the scale proposed would add further highway pressures. Further, I accept there is already a high car dependency within the village, and particularly in relation to links to Stevenage. I find it significant, however, that the High Street benefits from little existing on-street parking control and the scheme is accompanied by a contribution of £40,000 through the Unilateral Undertaking for future measures to improve parking provision in the High Street.

43. In terms of public transport, the site is served by a limited bus service with stops in both Stevenage Road and the High Street. Buses link to Stevenage, and the village is also served by a number of school buses.

44. I consider the site provides a reasonable context for journeys by foot and cycle, but note the dangers arising from local traffic conditions, and the limitations of existing links.

45. Whilst noting the Council's case for an appropriate link to Moors Ley to the south, I find the overall material benefits of such a link for sustainable transport to be relatively limited. There would be some closer proximity to bus stops for some residents, but pedestrian and cycle access to the south would still be available via Aubries.

46. The proposal includes a commitment to a travel plan with accompanying funding, and also £50,000 funding for additional bus services, all of which is supported by the highway authority.

47. The Undertaking also invites me to consider a sustainable transport contribution of either the sum of £100,000 as a contribution towards the cost of a cycleway link between Walkern and Stevenage and/or improvements to public rights of way, or the sum of £10,000 as a contribution towards improvements to public rights of way in the vicinity of the site, or a sum of £30,000 towards public rights of way improvements which may include a pedestrian link to the north-east corner of the site. Walkern is highly dependent upon Stevenage for many services and Stevenage also benefits from a cycleway network to a wider area. Given the potential increase in car use arising from the development, and the accompanying need to promote and support alternative sustainable modes of transport, I find that a £100,000 contribution towards a cycleway link would be a reasonable and necessary provision.

48. Of the three options presented, I find that more significant and more appropriate mitigation as a necessary contribution to sustainable transport

would be yielded by development of a cycleway link between Walkern and Stevenage and I consider the proposal on that basis. Although the cycleway link is part of an option which includes possible extensions to other public rights of way, I see the cycleway as the priority provision. I also note the cycleway link was indicated at the hearing to be the Council's preferred option and that it considers the identified sum would be likely to cover the cost of provision.

49. I acknowledge the development would undoubtedly lead to greater vehicular generation, but that would be significantly offset over time by the mitigation proposed. Whilst I find there would still be some net impact upon the local road network, and particularly in the short term prior to the full effect of the mitigation, I do not consider that the net impact, given the detailed modelling evidence submitted by the appellants and the absence of substantive evidence to the contrary, would in itself be sufficient reason to withhold planning permission in this instance. In particular, the Framework advises that development should only be resisted where the residual cumulative impacts of development would be severe, and I am unable to conclude that would be the case in this instance.

50. I therefore conclude that the proposed development would lead to some additional traffic generation upon local roads but the scheme is accompanied by satisfactory proposals to promote sustainable transport and by other such measures to mitigate the harm arising. Accordingly, on balance, I find the development would not be contrary to Policy TR1 or TR12 of the Local Plan, or to the expectations of the Framework.

Five-year housing land supply

51. The Framework requires the local planning authority to identify and update annually a supply of specific deliverable housing sites sufficient to provide five years' worth of housing relative to its full objectively assessed needs for market and affordable housing.

52. The Council accepts it is unable to demonstrate a five-year supply of housing land. The East Herts Council Authority Monitoring Report 2013-14 of December 2014 identifies a supply of 3.8 years with a 5% buffer and 3.4 years with a 20% buffer based upon a housing target of 750 dwellings per annum.

53. In the absence of a five-year supply of deliverable housing land, it follows, by virtue of paragraphs 47 and 49 of the Framework, that relevant policies in the development plan for the supply of housing are to be considered out-of-date. Further, by virtue of being out-of-date, relevant provisions of the presumption in favour of sustainable development under paragraph 14 of the Framework are also engaged, should the scheme be found to constitute sustainable development.

54. The implications for Policy GBC3, and its possible status as a policy for the supply of housing, are set out in my overall planning balance to follow. The absence of a five-year housing land supply also places a premium upon the housing benefits of the proposed scheme.

Unilateral Undertaking

55. The Unilateral Undertaking makes commitments to various matters to mitigate the impact of the development, including contributions in relation to parking,

sustainable transport, education, health, open space, a play area, a design workshop, a travel plan and in relation to fire and rescue services. The local planning authority and the County have provided evidence of compliance with the relevant provisions set out in Regulations 122 and 123 of the Community Infrastructure Levy (CIL) Regulations 2010 and this is not disputed. I have also had regard to the Framework, and to the relevant advice of both the government's Planning Practice Guidance (the Guidance), and of the Planning Inspectorate's Procedural Guide Planning Appeals - England, published July 2015.

56. The Undertaking also presents a number of options for consideration as part of my decision, and these include the sustainable transport contribution already discussed, and the timings of the education and sustainable transport contributions.

57. I am satisfied with the terms of the commitments in relation to the proposed contributions towards parking, bus services, a travel plan, Walkern Primary School, open space, off-site play and health services.

58. In relation to a sustainable transport contribution, I find option (i) involving a cycle link to the important local centre of Stevenage and/or improvements to public rights of way in the vicinity to be both necessary and reasonable as already discussed. It would serve to promote wider use of sustainable modes of transport by future occupiers and thereby most effectively mitigate the likely impact of additional car-based travel arising from the development.

59. In relation to the timing of the education and sustainable transport contributions, I consider these should be made prior to the commencement of the development so as to afford maximum lead-in time for their provision.

60. I have considered the case for a design workshop contribution of £10,000, but I am unable to conclude this to be either necessary or reasonable. I find it relates to matters which are properly the statutory function of the local planning authority. Whilst I acknowledge the importance of the eventual design of the development, I find no particular justification why such a payment should be required in this instance.

61. The Undertaking includes a commitment to fire hydrants, although the need is disputed by the appellants. I have had regard to Schedule 1 Part B to the Building Regulations 2010, and am not satisfied from the evidence presented that publicly adopted fire hydrants would be otherwise covered in the particular context of the appeal scheme. There would be a need for the availability of a water supply to fight fires associated with the development. This would only arise directly from the development itself, and would not otherwise be available, and I therefore find the Undertaking's contributions to be both necessary and reasonable in that regard.

62. Concerns were raised by the County that the terms of the Undertaking for the purposes of its calculations as they relate to matters arising from proposed housing provision do not adequately address considerations of proposed tenure. Nevertheless, the calculations do reflect the full composition of the development as proposed.

63. The Council confirmed at the hearing that it is satisfied with the form and drafting of the agreement as a deed, which I also find to be generally fit-for-purpose.

64. Accordingly, I take into account the commitments and accompanying terms as outlined above as considerations of my decision.

Affordable housing

65. The development proposes a 40% provision of affordable housing. This is fully compliant with Policy HSG3 of the Local Plan which would otherwise seek up to 40% provision. The Council is also satisfied with the proposed tenure split, and the scheme would make a significant contribution of up to 34 affordable dwellings in the context of the Council's SHMA which identifies an affordable need of some 9,100 dwellings in the period 2011-2033.

66. I am concerned, however, that the appellants do not propose to provide a planning obligation in relation to affordable housing, given the scale of proposed provision and the implications of its delivery, including possible involvement of a Registered Provider. In such circumstances as these, I do not consider a planning condition to provide the most robust or effective means of delivery.

67. The Guidance states that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. It states that ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. This encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency.

68. The Guidance further advises that, in exceptional circumstances, a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. No such case has been made in this instance.

69. Whilst the Council acknowledges its use of conditions for such purposes in smaller scale developments, it would prefer a planning obligation to be available given the significance of the scheme and the need to address such matters as transfer arrangements. The Council's Affordable Housing and Lifetime Homes Supplementary Planning Document, January 2008 also makes clear that section 106 agreements should be used in most cases to secure affordable housing in preference to a condition. It identifies an agreement to be a more effective means of delivery, explaining that the matters involved are usually too complex for a condition.

70. Nevertheless, it is possible, in principle, for affordable housing to be secured by way of a planning condition, and evidence has been provided of such arrangement at a similar appeal. I consider this matter further as part of my overall planning balance to follow.

Other Matters

71. I have carefully considered all other matters raised, both at the hearing and in written submissions.

72. There is a concern from local residents that, if growth is to be accommodated, it should not be focussed upon a single site, but there is no spatial policy in place to distribute development across the village in such a way.

73. I have noted details of pre-application discussions between the main parties, and public consultations undertaken by the appellants prior to submission.

74. I note that the development has been assessed by the authority as not to involve Environmental Impact Assessment development.

75. The appellants' Ecological Appraisal includes a number of surveys and does not identify the site to be of particular overall significance, and little evidence is otherwise available to that effect. The scheme proposes retention of mature trees and hedges where possible and the detailed design of the scheme, through planting and provision of green open spaces, would seek to provide ecological benefits in accordance with the expectations of the Framework.

76. Given its proposed location, the development does not have any heritage implications for either listed buildings or for Walkern Conservation Area. The appeal site adjoins post-war edges of Walkern and this is an outline application with all matters of appearance and landscaping reserved for subsequent approval should the appeal be allowed.

77. I have also had regard to all other sites and planning decisions as referred to in the submitted evidence, and to related matters raised. This includes reference to a 1973 appeal decision at the site, and to a recent appeal decision for a housing development at Braughing. Notwithstanding any similarities and the importance of consistency in decision-making, the planning circumstances of any individual site and of any proposed scheme will be different to others, and each proposal and site must be considered with reference to its own particular merits.

78. A letter was also sent to the local planning authority from a third party post-event and which has been forwarded to me. Whilst I have noted the content, particularly related to matters of land ownership and to the District Plan, this does not affect the evidence I heard at the event and has not been a determining factor of my decision.

79. I have had regard to all other concerns raised, both at the hearing and in written evidence, and including references to neighbourhood planning. These have not been raised as objections by the Council and I have little reason to conclude that such matters represent grounds to preclude development.

Sustainable development

80. The Framework makes clear that housing applications should be considered in the context of the presumption in favour of sustainable development.

81. The purpose of the planning system is to contribute to the achievement of sustainable development. Sustainable development is defined by the Framework with reference to the policies in paragraphs 18 to 219 taken as a whole. At the heart of the Framework in paragraph 14 is a presumption in

favour of sustainable development. The Framework further identifies economic, social and environmental dimensions to sustainable development.

82. The scheme would undoubtedly provide significant housing benefits, in terms of both affordable and market provision, and such benefits would be consistent with the social dimension of sustainable development. The investment represented by the development would also be consistent with the economic dimension. The undisputed economic benefits would include investment in construction and related employment for its duration. Benefits would also include an increase in local household spending and demand for services, and the financial contributions to the Council through New Homes Bonus payments.

83. In environmental terms, the scheme would incur loss of an open field and some public views across the site. Nevertheless, as already described, the intrinsic environmental qualities of the field are limited and it should be possible as part of the eventual layout for some public views to be safeguarded, particularly towards the open land towards the west. Further, the illustrative Development Framework indicates significant potential for green infrastructure, including open space and landscape buffers. Detailed arrangements, once agreed, would also be in place to mitigate flood risk. On balance, I find the environmental implications of the development would be reasonably sustainable.

84. Further, Walkern is identified by the development plan as a settlement for growth and, in principle, the location is recognised as a sustainable one.

85. I therefore conclude, having regard to the expectations of the Framework as a whole, that the proposed scheme would be sustainable development. Accordingly, the presumption in favour of sustainable development set out in paragraph 14 of the Framework is engaged, and this has two possible implications. Firstly, unless material considerations indicate otherwise, paragraph 14 makes a presumption in favour of approving proposals that accord with the development plan without delay. Secondly, it states that, where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Overall Planning Balance

86. Policy GBC3 seeks to impose a general restriction on development, including housing, outside defined limits. It thereby acts as a constraint to future housing supply by presuming against housing development outside development boundaries. As the Council is unable to demonstrate a five-year supply of housing land, it follows that, for the purposes of paragraph 49 of the Framework, Policy GBC3 is to be considered out-of-date.

87. The scheme would occupy existing countryside, would incur some loss of views and would add to vehicle generation in the vicinity of the site. Nevertheless, the development would be accompanied by commitments to mitigate, including sustainable transport measures, which I consider to be both effective and reasonable.

88. Weighed against the sum of the harm, I am satisfied the scheme would constitute sustainable development with significant economic, social and environmental benefits as described.

89. Of particular weight would be up to 85 new homes in a District which is unable to demonstrate a five-year housing land supply. The associated affordable housing benefits would also be significant and would amount to 40% of the dwellings.

90. I consider the scheme would give rise to environmental benefits through an emphasis upon green infrastructure, and particularly along its boundaries in key relationships to adjacent sites, and would include improvements to drainage infrastructure.

91. I share the Council's concerns, however, that the affordable housing benefits would not be delivered through the robustness of a planning obligation, and note the advice of the Guidance in this regard. Whilst not preferable, a planning condition could still, in principle, deliver. Given the Council's absence of a five-year housing land supply, its acknowledged need for affordable housing, the early delivery proposed, and the full 40% allocation proposed, I find that the particular circumstances of the scheme, in terms of the affordable housing benefits, to be sufficiently exceptional to justify use of a condition in this instance. I also do not find my concerns in that regard out-weigh the significant benefits of the development otherwise arising.

92. I therefore find, on balance, that the adverse impacts of the scheme would not significantly and demonstrably out-weigh the benefits, when assessed against the policies in the Framework taken as a whole, and with regard to the development plan as a whole.

Conditions

93. I have considered the conditions put forward by both main parties to the hearing. In assessing such matters, I have regard to the advice set out in both the Guidance and in the Framework in terms of both the need for individual conditions and of appropriate wording, and to the relevant representations of third parties.

94. For the avoidance of doubt and in the interests of proper planning, a condition is imposed to ensure the development is undertaken in accordance with the relevant drawings.

95. Given the Council's pressing need for further housing, the period for submission of reserved matters is an agreed 18 months, with commencement on site within 12 months of the final approval.

96. Whilst all matters other than access remain reserved for further approval, it is necessary for the outline permission to define the maximum capacity of development. In accordance with the appellants' revised submission, the capacity is set at a maximum of 85 dwellings.

97. Although the submitted drawings to be approved set out general principles of the access, full details of its design remain to be submitted and are required for approval by the local planning authority.

98. It is necessary to protect the living conditions of future occupiers of both the development and existing and future occupiers of adjacent properties in connection with drainage and flooding by ensuring that appropriate measures are agreed and put in place as part of the development. A related condition

also precludes development within the south-west portion of the site affected by extreme flooding. A condition also requires a scheme of sewage disposal.

99. In order to make an appropriate contribution to addressing local housing need, a condition makes arrangements for delivery of affordable housing.

100. To contribute to a sustainable development, a green travel plan is required. A detailed plan of measures based upon the proposed ecological enhancements identified in the appellants' Ecological Appraisal is also necessary. A condition also safeguards any archaeological value of the site by way of a programme of investigative works.

101. It is necessary to protect the living conditions of future occupiers of the development by ensuring that appropriate arrangements are made for identification and treatment of any on-site contamination.

102. It is also necessary to safeguard the future environment of the site by ensuring measures are in place both to retain and to protect existing trees and hedges.

103. To protect the living conditions of neighbouring occupiers during construction, it is necessary to limit the hours of construction works, and to have in place a Construction Method Statement for the duration of the works. This also includes arrangements for waste management.

104. The Council has suggested inclusion of indicative drawings prepared by Tibbalds as part of the approved details. These matters do not form part of the application and have not been subject to necessary publicity as part of that process. They relate to future matters which would remain to be approved, and I see no reason why a permission should need to make such reference at this time. I also note the objections raised to their content by interested third parties at the hearing, and the hitherto absence of formal consultation.

105. Similarly, the appellants have suggested inclusion of a condition referring to their illustrative Development Framework plan as setting parameters for future submissions. This application relates to the principle of the development and to access, and other reserved matters, including layout and landscaping, remain to be formally considered. Objections have also been raised by the Council and other parties to the content of this plan. I find it would therefore be equally inappropriate to introduce such matters in this way, and could prejudice the interest of other parties.

106. The appellants also suggest reference could be variously made to future landscaping, provision of open space and to detailed matters of internal roads and associated layout. These are not matters which formally comprise part of the application and such conditions could fetter their future consideration.

107. The appellants also request reference to a scheme of works to Froghall Lane agreed with Hertfordshire County Council as highway authority and set out in submitted drawing 1370/10. The local planning authority, however, has concerns towards the scheme and suggests a broader condition to enable the details to be further considered, particularly in light of third party objections. A condition to this effect is included. The Council suggests this be extended to include works within the main High Street but such matters would lie well beyond the confines of the application site and any relevant matters relating to the High Street are instead addressed through the Unilateral Undertaking.

108. A condition has also been proposed for works to upgrade local bus stops. Such works would again lie well beyond the application site and would relate to matters not within the control of the appellants. Accordingly, I find such a condition to be unreasonable.

109. The Council has also suggested a condition requiring full details of connecting footway and cycleway routes, including landscaping implications, from Moors Ley via the garage court adjacent to No 70 Moors Ley, and via the land to the north east of the site which links to Froghall Lane. For the reasons already discussed, I do not consider it would be either necessary or reasonable for such links to be a requirement of a permission, particularly in light of third party constraints relating to land ownership beyond the control of the appellants.

Conclusion

110. At the heart of the Framework is a presumption in favour of sustainable development. I find the proposed scheme would accord with that expectation having regard to the development plan and to the Framework as a whole.

111. For the above reasons, and with regard to all other matters raised, I conclude the appeal should be allowed.

Peter Rose
INSPECTOR

SCHEDULE OF CONDITIONS

1. Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and be approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

2. Application for approval of the reserved matters shall be made to the local planning authority not later than 18 months from the date of this permission.

3. The development hereby permitted shall begin not later than 12 months 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 following approved drawings: Site Location Plan: 5578-L-03 Rev; and Proposed Site Access Arrangements Ref: 1370/05A.

5. No more than 85 dwellings shall be developed within the site.

6. Prior to the commencement of any development, full design details of the proposed access into the site based upon the drawings hereby approved, and including all associated works and proposed materials, shall be submitted to and be approved in writing by the local planning authority. The development shall be undertaken in accordance with the details as approved and the access shall be completed prior to the first occupation of any dwelling.

7. No development shall take place until full details of a scheme of sustainable surface water drainage has been submitted to and been approved in writing by the local planning authority, and the scheme shall be implemented in full accordance with such details and in full accordance with an accompanying programme as approved. Before any scheme details are submitted for approval to the local planning authority, a full and detailed assessment shall be carried out of the potential for disposing of surface and other water, having regard to DEFRA's non-statutory technical standards for sustainable drainage systems (or any subsequent version) and all other relevant guidance, and including with regard to run-off rates and all relevant flow routes, to critical storm events, and with regard to all other necessary factors relevant to flood risk. The full results of this assessment shall be made available to the local planning authority. Details of the sustainable drainage scheme and associated measures to address these matters shall include information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site, arrangements for on-site flood water storage, the measures to be taken to prevent pollution of the receiving groundwater and/or surface waters, and allowances for climate change. Details shall also include a timetable for implementation, and shall provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme as may be necessary throughout its lifetime.

8. The layout shall not include any built development within the south-west portion of the site affected by a 1 in 100 year surface water flood as shown on Enzygo plan reference SHF.1132.045.HY.D.004.2 dated November 2015.

9. No development shall take place until full details of a scheme for sewage and foul water drainage have been submitted to and been approved in writing by the local planning authority, and the works shall be implemented in accordance with the approved details and an agreed programme.

10. No development shall take place until a scheme for the provision of affordable housing as part of the development has been submitted to and been approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2: Glossary of the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:
    a. the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 40% of housing units
    b. a tenure split of 75% affordable rent and 25% shared equity
    c. the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing
    d. the arrangements for the transfer of the affordable housing to an affordable housing provider or such other arrangements for the management of the affordable housing if no Registered Social Landlord is involved
    e. the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing
    f. the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

    The affordable housing shall be retained in accordance with the approved scheme.

11. No development shall take place until a site investigation of the nature and extent of any contamination has been carried out in accordance with a methodology which has previously been submitted to and been approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and be approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and in accordance with an agreed programme. If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and be approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures in accordance with details and a programme of works to be approved in writing by the local planning authority.

12. Prior to the commencement of any development, a programme of archaeological work shall be submitted to and be approved in writing by the local planning authority. The development shall be carried out in accordance with the details of the scheme as agreed and in accordance with an agreed timetable.

13. Prior to the occupation of any dwelling, a green travel plan shall be submitted to and be approved in writing by the local planning authority and the development shall be undertaken in accordance with the details as approved.

14. Prior to the commencement of any development, a detailed plan of implementation based upon the proposed ecological enhancements identified in the appellants' Ecological Appraisal shall be submitted to and be approved in writing by the local planning authority and the development shall be undertaken in accordance with the details and a programme of works as approved.

15. No site works, including the operation of all plant or machinery in connection with all demolition, preparation and all other works, shall be undertaken outside the hours of 07:30 and 18:30 Mondays to Fridays and 07:30 to 13:00 on Saturdays, and not at all on Sundays or Bank Holidays.

16. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and been approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
    a. the programme and phasing of works
    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 hoardings, 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 demolition and construction works
    i. construction vehicle routing and access
    j. measures for safeguarding pedestrian safety in the vicinity of the site
    k. a scheme to control noise during the construction phase.

17. All existing trees and hedges shall be retained unless otherwise approved in writing by the local planning authority.

18. Prior to the commencement of any development, a scheme for the protection of all existing trees and hedges for the duration of the works shall be submitted to and be approved in writing by the local planning authority

and the development shall be undertaken in accordance with the details as approved.

19. No dwellings shall be occupied unless and until full details of a scheme for enhanced pedestrian access along Froghall Lane have been submitted to and been approved in writing by the local planning authority, and the works shall be undertaken in accordance with the details as approved and in accordance with an agreed programme.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Tim Hagyard	Development Team Manager and case officer
Isabelle Haddow	Senior Planning Officer, Policy

FOR THE APPELLANT:

Chris Still	Gladman Developments Ltd
Tim Jackson	Fpcr
Simon Helme	Ashley Helme Associates
Duncan Hartley	Rural Solutions
Jonathan Easton	Counsel
Dr Paul Hardwick	Water Sciences, Enzygo Ltd

FOR HERTFORDSHIRE COUNTY COUNCIL:

Alexandra Stevens	Hertfordshire County Council (Planning Obligations Officer)
Oliver Sowerby	Hertfordshire County Council (Highways)
John Rumble	Hertfordshire County Council (Environmental Resource Planning)

OTHER INTERESTED PERSONS:

Steve Jenner	Chair, Walkern Parish Council
Chris O'Brien	Walkern Neighbourhood Planning Group and Walkern Action
Michele Rist	Walkern Neighbourhood Planning Group
Jaqueline Veater	Planning consultant to third parties

DOCUMENTS SUBMITTED TO THE HEARING:

By the Council:

1. Note referring to section 106 Obligations and CIL Compliance
2. Hearing notification letters dated 7 August and 22 October 2015
3. Planning application notification letter dated 24 April 2015
4. East Herts Council Response to Costs Application
5. Letter from the Planning Inspectorate dated 21 February 2007 relating to East Hertfordshire Local Plan Inspector's Report
6. Policy OSV1 of East Herts Local Plan Second Review April 2007
7. East Herts Draft District Plan (Preferred Options) January 2014 North West Quadrant
8. East Hertfordshire Local Plan Second Review April 2007 North West Quadrant Sheet A
9. East Herts Council Authority Monitoring Report 2013-14 December 2014
10. East Herts Draft District Plan Preferred Options Consultation January 2014
11. Email from Tom Goldsmith to Tim Hagyard dated 20 November 2015
12. Section 3. Housing of East Herts Local Plan Second Review April 2007
13. Section 18. Housing of East Herts Local Plan Second Review April 2007
14. Suggestions for amended Council conditions submitted on 15 December 2015
15. Tibbalds Development Concept plans dated September 2015
16. Affordable Housing and Lifetime Homes Supplementary Planning Document dated January 2008
17. Planning Obligations Supplementary Planning Document dated October 2008
18. Comments in relation to possible planning condition for affordable housing dated 30 December 2015

By the appellant:

19. Flood Risk and Drainage Statement
20. Reply on behalf of the appellants (costs) dated 17 November 2015
21. Email from Tim Hagyard dated 12 August 2015
22. Proposed modifications to pages 6 and 7 of draft Unilateral Undertaking
23. Schedule 1 Part B of the Building Regulations 2010
24. Suggested list of conditions 1 – 22
25. Plan of adopted public highways

26. Response to amended Council conditions submitted on 15 December 2015

27. Comments in relation to possible planning condition for affordable housing dated 23 December 2015

28. Unilateral Undertaking dated 15 December 2015

Jointly by the Council and the appellant:

29. Statement of Common Ground dated November 2015

By Hertfordshire County Council:

30. Statement in support of planning obligations sought towards Hertfordshire County Council Services (Property Services)

31. Email from Alexandra Stevens, Planning Obligations Officer, Hertfordshire County Council dated 14 December 2015

32. Secretary of State decisions dated 11 August 2015 relating to appeals at Sewell Park, St. Albans (Refs: APP/B1930/A/12/2180486 and APP/B1930/A/13/2201728)

33. Letter from Chief Legal Officer dated 15 July 2011

34. Planning obligations guidance - toolkit for Hertfordshire, January 2008, Hertfordshire County Council

By other third parties:

35. Joint statement of Walkern Parish Council, Walkern Parish Neighbourhood Plan Group and Walkern Action