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## Appeal Decision

Site visit made on 13 February 2018

**by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 22<sup>nd</sup> February 2018**

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**Appeal Ref: APP/X1925/W/17/3184448**

**Land to the rear of 39-59 Station Road, Ashwell, Hertfordshire**

- 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 Tingdene Homes Ltd against the decision of North Hertfordshire District Council.
  - The application Ref 16/02863/1, dated 11 November 2016, was refused by notice dated 17 March 2017.
  - The development proposed is described as "*outline planning application (all matters reserved, except for access) for residential development comprising of 9 dwellings with associated access off Green Lane.*"
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The application is in outline with all matters reserved except for access. I have dealt with the appeal on this basis. An indicative site plan has been provided to which I have had regard in respect of the illustrative layout of dwellings within the site.
3. I have taken the description of the development from the appeal form, as this is more precise than the description given in the original application form.
4. As part of the appeal an additional plan has been submitted reference 15001-05 Rev A entitled 'Green Lane Highway Mitigation Measures.' This relates to the widening of Green Lane. With regard to the 'Wheatcroft Principles'<sup>1</sup> I am satisfied that no party would be prejudiced by my taking the additional plan into account in my determination of this appeal.
5. My attention has been drawn to the North Hertfordshire District Council Local Plan Proposed Submission (October 2016). However, as far as I am aware this remains unexamined and un-adopted and as such the weight I can attach to this is limited.

### Main Issues

6. The main issues are the effect of the proposal upon (a) highway safety and (b) the character and appearance of the area.

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<sup>1</sup> *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]

## Reasons

### *Site Description*

7. The appeal site forms an open arable field located behind dwellings along Station Road. The site is bordered north-west by dwellings along Green Lane and part of the site adjoins directly on to Green Lane. To the south-east are modern dwellings at Philosophers Gate.
8. Consent is sought for 9 dwellings. The site would be served by an access from Green Lane and a separate pedestrian and cycle access would be created via an existing access track between Nos 37 and 39 Station Road.

### *Highway Safety*

9. Green Lane currently serves a total of 28 dwellings, including 22 flats at 'The Maltings,' a historic converted former maltings building which is positioned close to the junction of Green Lane with Station Road. The first 40metres of Green Lane is surfaced with road markings and is wide enough for two vehicles to pass. Beyond this Green Lane becomes an unmade gravelled track which, as set out within the submitted transport statement, varies in width from between around 3 – 3.7 metres wide, plus grass verges to each side. The gravelled part of Green Lane serves 6 dwellings, as well as agricultural land including the appeal site.
10. The site has been subject to a number of previous applications for development, including development for 14 dwellings in 2015 (reference 15/00694/1). This was refused and a subsequent appeal dismissed on the basis of highway safety concerns in respect of the restricted width of Green Lane and likely conflict between vehicles travelling in different directions, including large vehicles and emergency vehicles.<sup>2</sup> Concern regarding manoeuvring out onto Station Road due to the regular presence of on street parking at Green Lane, close to the junction, was also raised.
11. As originally submitted as part of the planning application, improvements would include altering the existing junction markings at Green Lane/Station Road in order to enhance visibility splays to 2.4m by 43m and incorporate a passing place to the proposed site access which would facilitate another goods vehicle (OGV) (including a refuse vehicle) passing a private car. It is understood that these measures were also proposed as part of the 2015 scheme.
12. Based upon the appellant's evidence, it is predicted that the development for 9 dwellings would generate 45 trips per day, with 22 arrivals and 23 departures, as well as 4 OGVs during the working week. This would represent a reduction from the previously dismissed scheme which predicted 70 trips per day, and 7 OGVs.
13. However, the trip generation arising from the appeal site would remain significant, and in light of the length and narrow width of Green Lane, I consider that it would still be highly likely that vehicles would need to reverse a considerable distance of up to around 70metres to allow for safe passage for vehicles travelling in the opposite direction. This would pose a significant safety risk to drivers, as well as pedestrians using Green Lane, which acts as a

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<sup>2</sup> APP/X1925/W/15/3136314

- shared surface. Access to the site by an emergency vehicle would also be significantly compromised as they could be delayed in reaching an incident.
14. Moreover, I was also able to view a number of cars parked at the wider section of Green Lane, near to the junction with Station Road. In spite of a reduction in daily journeys from the previous scheme, I still consider that the development would be likely to entail a not insignificant number of manoeuvres out onto Station Road, which would pose a significant safety risk.
  15. As shown on the additional plan submitted as part of the appeal proposals, it is now proposed to increase the width of Green Lane to 5.5metres along the unmade part of the road, other than a 10metre section outside of No 5, which would narrow to 3.7metres in width. It is proposed that such works could be secured by the imposition of a Grampian planning condition which would prohibit the development authorised by the planning permission until the widening of Green Lane has taken place.
  16. I consider that the widening of the majority of the road would be sufficient to allow for two vehicles to pass safely, including OGVs and emergency vehicles and would overcome my concerns in this regard. Pedestrian safety would also be improved. Green Lane is long and straight with good visibility and as such I do not consider that the safety of users would be impeded by the remaining small narrow section approximately 1/3 of the way down the road as vehicles would be able to wait safely.
  17. However, Planning Practice Guidance (PPG) states that Grampian conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission. Where the land or specified action in question is within the control of the local authority determining the application (for example, a highway authority where supporting infrastructure is required) the authority should be able to present clear evidence that this test will be met before the condition is imposed.<sup>3</sup>
  18. There are significant question marks in respect of the status of the unmade part of Green Lane as a public highway and in respect of land ownership. The appellant considers that, while unadopted, Green Lane is a public highway, but not maintainable at public expense, a matter disputed by a number of local residents of Green Lane.
  19. Plans indicating the extent of the public highway appear to have changed. The public highway plan provided by the County Boundaries and Land Charges Team dated 16<sup>th</sup> March 2017 (appendix F of the appellant's appeal statement) shows the area of highway extending along Green Lane to the appeal site, whereas the plan dated 9<sup>th</sup> May 2013 indicates only a small section of Green Lane up to The Maltings to be public highway. It is understood that local residents have sought legal advice and are in the process of challenging that change with the Council and that this remains unresolved.
  20. The ownership of the land is also disputed; it is alleged by the appellant that the highway is broadly a 10m corridor, as depicted on the updated public highways plan referenced above, based upon a Finance Act Map of 1909/1910. It is on this basis that the appellant also claims that The Maltings and Nos 8 and 10 and Baldwins Corner have unlawfully encroached into the highway, in

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<sup>3</sup> Paragraph: 009 Reference ID: 21a-009-20140306

spite of this land being incorporated into the registered titles of these properties. Again, this is a matter contested by residents who query the accuracy of this based upon the 1863 enclosure map and text and given that the 10metre corridor cuts through part of The Maltings building itself as well as through registered land.

21. Both the appellant and local residents have cited various legislation in respect of private legal rights regarding land ownership as well as duties under the Highways Act and other case law.
22. Based on the submitted evidence of all parties involved, the issues are highly complex and it is beyond my remit in dealing with this Section 78 appeal to determine such matters. However, as it stands, I simply cannot be certain as to regards the status of Green Lane as a public highway and its ownership, and crucially, whether the highway could be widened to accommodate 2-way traffic.
23. I also note that no formal submissions as part of the appeal have been made by the Highways Authority or the Council in respect of the widening of the road, as well as any clarification given in respect of the status and ownership of the land. While the appellant asserts that they have entered into dialogue with the Highway Authority, there is no written evidence of this. No Statement of Common Ground has been entered into nor is there any legal agreement in place.
24. Paragraph 206 of the National Planning Policy Framework (the Framework) states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Without any adequate resolution or certainty in respect of the status and ownership of Green Lane, including from the Highways Authority, and based upon PPG advice, I have significant doubts as to whether there would be a reasonable prospect of any widening being undertaken within the statutory time limits applied to the grant of outline consent. In this regard, I do not therefore consider that the imposition of a Grampian condition would be reasonable or enforceable and I therefore conclude that this matter cannot be dealt with by condition.
25. Accordingly, I conclude that the development would compromise highway safety of users, causing harm. This would conflict with paragraph 32 of the Framework which requires that safe and suitable access to the site can be achieved for all people. No specific development plan policies have been cited in respect of this matter.

#### *Character and Appearance*

26. The site is greenfield land, located to the north-eastern part of the village. Saved policy 6 of the North Hertfordshire District Local Plan No 2 with alterations seeks to maintain the existing countryside and villages and their character. The proposed development would transform open, arable land, to built development and would not meet any of the criteria as set out in Policy 6, which relate to rural need and enhancements.
27. However, the development would be of a low density and is surrounded on 3 sides by built development within Ashwell, subject to future consideration in respect of appearance, layout and other design matters. The reduction in housing units from the previous appeal scheme would also further help to

assimilate the site into the landscape/edge of settlement. Consistent with the conclusions of my colleague, I am thus satisfied that any harm from the loss of open land would be mitigated, and would not result in significant harm to the character and appearance of the countryside or the village.

28. The site partially abuts the boundary of the Ashwell Conservation Area. However, as the development would be located to the rear of existing dwellings along Station Road and Green Lane, and subject to appropriate design to be determined at the reserved matters stage, I am satisfied that the development would preserve the character and appearance of the conservation area, in accordance with section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

#### *Other Matters*

29. While I note the concern of local residents in respect of the capacity of local services, there is no firm evidence to suggest that the development would adversely affect these.
30. In light of my conclusions in respect of the Grampian condition, I have not assessed the effect of the widening of the road in respect of living conditions or otherwise.

#### *Planning Balance*

31. The Council accept that there is no demonstrable 5-year housing land supply, and therefore, as set out within paragraph 49 of the Framework, this renders policies relevant to the supply of housing as being out of date. Paragraph 14 therefore applies which requires granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.
32. The provision of 9 units in an area of housing shortfall would provide modest social and economic benefits, as would the sites proximity and accessibility to local services and facilities within Ashwell. The environmental impacts are also reduced, as stated above.
33. In order to achieve sustainable development, the Framework identifies that economic, social and environmental gains must be sought jointly and simultaneously. However, I have found that there would be severe harm to highway safety. As such, I do not consider that the appeal proposal would achieve that balance.
34. Overall I conclude that the adverse impacts of granting planning permission significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework, taken as a whole. The proposals cannot therefore be considered sustainable development for which the Framework presumes in favour.

#### **Conclusion**

35. For the reasons above, taking into account all other matters raised, I dismiss the appeal.

*C Searson*

INSPECTOR