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BOROUGH OF KETTERING
DEVELOPMENT SERVICES

RECEIVED
29 FEB 2008

Mark Flood
Wilbraham Associates Ltd
18A Regent Place
Rugby
Warwickshire
CV21 2PN

Our Ref: APP/L2820/A/07/2047741

28 February 2008

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEAL BY DEEJAK PROPERTIES LTD - LAND AT CRANFORD ROAD,
BURTON LATIMER**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mary Travers, BA (Hons) DipTP MRTPI, who held a public local inquiry, which commenced on 13 November 2007, and was formally closed, in writing, on 29 November 2007, into your client's appeal under Section 78 of the Town and Country Planning Act 1990 against the failure of Kettering Borough Council to give notice within the prescribed period of a decision on an application for residential development, with associated infrastructure, including realignment of Cranford Road, construction of internal access roads, provision of public open space and drainage works, on land at Cranford Road, Burton Latimer (application ref. KET/2006/0603, dated 20 June 2006).

2. On 21 August 2007 the 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.

3. The Inspector, whose report is reproduced in the Annex to this letter, recommended that the appeal be allowed and planning permission be granted, subject to conditions. All paragraph references, unless otherwise stated, refer to the Inspector's report (IR). For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and with her recommendation.

Policy Considerations

4. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the Regional Spatial Strategy for the East Midlands 2005 (RSS8), and policies of the Northamptonshire Structure Plan (NSP) 2001, and the Kettering Borough Local Plan (KBLP) 1995 that have been saved and therefore remain part of the development plan. The Secretary of State agrees with the Inspector that the development plan policies most relevant to the appeal are those set out in IR8-12 and IR73-78.

Department for Communities and Local Government
Zone 1/J1
Eland House
Bressenden Place
London SW1E 5DU

Tel 020 7944 8076
Fax 020-7944-3919
Email andrew.lynch@communities.gsi.gov.uk

5. On 28 November 2007, the day before the inquiry was formally closed in writing, the Panel Report into the Examination in Public of the emerging RSS8 was published. The Secretary of State therefore attaches some weight to this document (IR13). She also attaches some weight to the North Northamptonshire Core Spatial Strategy (CSS), as it has reached examination stage (IR14), although not as much as to RSS8. The Secretary of State attaches no weight to the emerging Local Development Framework for Kettering as it is at a very early stage in its process towards adoption (IR17). She agrees with the Inspector that the emerging development policies most relevant to the appeal are those set out in IR13-16.

6. The Secretary of State has also had regard to the Urban Design Framework for Burton Latimer which was adopted in 2006 (IR18).

7. Material considerations which the Secretary of State has taken into account include PPS1 *'Delivering Sustainable Development'*, PPS3 *'Housing'*, PPG4 *'Industrial and Commercial Development and Small Firms'*, PPG13 *'Transport'*, PPG17 *'Planning for Open Space, Sport and Recreation'* and PPS25 *'Development and Flood Risk'*.

8. A further material consideration which the Secretary of State has taken into account is *"Planning and Climate Change"* (Supplement to PPS1), which was published on 17 December 2007. In the circumstances of this case, the Secretary of State does not consider that this document raises any new issues which would either affect her decision on this appeal, or require her to refer back to parties for further representations prior to reaching her decision.

Main Issues

9. The Secretary of State agrees with the Inspector that the main considerations in this appeal are those set out in IR71.

Housing Land Supply

10. For the reasons in IR85, and paragraph 5 of this letter, the Secretary of State agrees with the Inspector that RSS8 should carry more weight than the emerging CSS. She agrees with the Inspector that there is a housing land supply in the Borough that ranges from 1.9 years (assuming no contribution from windfalls), 2.5 years (assuming 445 units from windfalls) or 2.7 years (assuming that the Council's estimate is sound) (IR85-87). For the reasons in IR87, she agrees with the Inspector that, even at 2.7 years, this supply is seriously inadequate (IR87).

11. For the reasons in IR88-89, the Secretary of State, like the Inspector, is not persuaded that the major housing schemes proposed elsewhere in the Borough will deliver housing on any significant scale in time to contribute to the five year land supply (IR88); or that recent windfall rates in Burton Latimer give comfort about the Borough's overall shortfall in housing land supply (IR89).

12. The Secretary of State agrees with the Inspector that, for the reasons in IR85-89, the Borough has a significant under-supply of deliverable sites for housing, and that, therefore, planning applications for residential development should be considered

favourably, having regard to the policies in PPS3, including those in paragraph 69, and all other material considerations (IR90).

Compatibility with PPS3

13. For the reasons in IR91-101, the Secretary of State agrees with the Inspector that the proposal would accord with the advice in PPS3, and with the relevant policies of RSS8 and the emerging CSS for the area; and that there is nothing in the emerging review of RSS8 that would support a different approach to this appeal (IR102).

Drainage Considerations

14. For the reasons in IR82-83, the Secretary of State agrees with the Inspector that, overall, the evidence does not support the case by Beaty/Bellway that the appeal site cannot be drained satisfactorily, or that delays or costs in implementing the drainage arrangements would be likely to set back the timescale for delivery of the first houses on the site in 2010 (IR84).

Other Considerations

15. For the reasons in IR103, the Secretary of State agrees with the Inspector that the appeal scheme would not have a detrimental impact on the character or appearance of the Conservation Area. She also agrees with the Inspector that any potentially harmful effects on Bird Street, Woodcock Street and Wold Road could be avoided by careful site planning and design at the reserved matters stage. She agrees with the Inspector that there is insufficient reason to conclude that the development would increase the risk of crime or anti-social behaviour in the area (IR103).

Development Plan

16. The Secretary of State agrees with the Inspector that the expansion of Burton Latimer by a small urban extension, as proposed, would be in keeping with the broad approach of RSS8, and would not detract from the main focus of the spatial strategy on the growth towns in Northamptonshire. She also agrees that there is no indication that the joint working that is required to bring forward the major urban extensions to larger settlements in the area would be prejudiced by the appeal scheme, and that therefore there would be no conflict with Milton Keynes South Midlands (MKSM) Northamptonshire Policies 1 and 4. She agrees with the Inspector that the guidance on Burton Latimer in paragraph 125 of RSS8 does not support dismissal of the appeal, and that none of the other relevant policies of RSS8 would be infringed by the proposal (IR77).

17. The Secretary of State agrees with the Inspector that the detailed policies of the NSP and the KBLP are of marginal relevance to the main issues, but that, in any event, the development would accord with them except in relation to Policy 94 of the KBLP which protects the site as an open space. However, she agrees with the Inspector that this conflict is outweighed by other material considerations (IR78). In particular, the Secretary of State attaches weight to the fact that the proposal would help reduce the significant shortfall in the five year housing land supply in the

Borough, and that, by securing that 30% of the total number of dwellings will be affordable, it would accord with the most up-to-date assessment of need (IR95).

18. For the reasons in IR77-78 and IR95-102, and the reasons set out in this letter, the Secretary of State concludes that the appeal scheme would be in overall compliance with the development plan.

Effect on the Emerging LDF

19. For the reasons in IR79-80, the Secretary of State agrees with the Inspector that the appeal scheme has implications for the scale and location of residential development in Burton Latimer that will contribute to achievement of RSS8's objectives for the area. However, due to the size and location of the scheme, she agrees with the Inspector that these implications are unlikely to have wider significance outside the local area of Burton Latimer. Like the Inspector, she does not consider that its impact would be on such a scale as to pre-determine decisions that ought to be taken through the LDF process. The Secretary of State therefore agrees with the Inspector that it would not be justified to treat the proposal as premature in these terms (IR81).

Conditions and Obligations

20. The Secretary of State agrees with the Inspector's assessment and conclusions on conditions and the S106 Unilateral Undertaking as set out in IR104-105. She considers that the proposed conditions and the Unilateral Undertaking comply with the requirements of Circulars 11/95 *Use of Conditions in Planning Permission* and 05/2005 *Planning Obligations* respectively.

Overall conclusions

21. The Secretary of State concludes that the proposal would be in overall accordance with the policies of the development plan, in particular in RSS8, concerning the scale and location of new housing. It would also be in keeping with the emerging Core Spatial Strategy for North Northamptonshire which directs growth to Burton Latimer. The proposal would contribute to meeting a pressing need for an increase in the housing land supply in Kettering Borough, and would accord with the advice in PPS3 on the matters that should be taken into account when determining applications for new residential development. The Secretary of State does not consider that the uncertainty about proposed locations for urban extensions to Burton Latimer, pending adoption of a local development document on the matter, is a good reason for dismissing the appeal. She concludes that there are no material considerations which suggest she should determine the appeal other than in accordance with the development plan.

Formal Decision

22. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. She hereby allows the appeal and grants outline planning permission for residential development, with associated infrastructure, including realignment of Cranford Road, construction of internal access roads, provision of public open space and drainage works, on land at Cranford Road,

Burton Latimer, in accordance with application no. KET/2006/0603, dated 20 June 2006, subject to the conditions set out in Annex A to this letter.

23. An applicant for any consent, agreement or approval required by a condition of this permission 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.

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

Right to challenge the decision

25. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court.

26. A copy of this letter has been sent to Kettering Borough Council and all parties who appeared at the inquiry.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Andrew Lynch', with a stylized flourish at the end.

Andrew Lynch

Authorised by the Secretary of State to sign in that behalf

Annex A

1. Approval of the details of the siting, design and external appearance of the buildings, and the landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the local planning authority in writing before any development is commenced.
2. Plans and particulars of the reserved matters referred to in condition 1 above, relating to the siting, design and external appearance of any buildings to be erected, and the landscaping of the site, shall be submitted in writing to the local planning authority and shall be carried out as approved. The plans and particulars shall include details of the extent, type and location of open space to serve the development.
3. Application for approval of the reserved matters shall be made to the local planning authority before the expiration of 3 years from the date of this permission.
4. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
5. No development shall take place until a scheme of hard and soft landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall include planting plans; written specifications; schedules of plants, noting species, plant sizes, proposed numbers/densities; and an implementation programme. The scheme shall also indicate all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.
6. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the local planning authority. If within a period of five years from the date of planting, any trees or plants or any replacement planting is removed, uprooted, destroyed or dies (or becomes, in the opinion of the local planning authority, seriously damaged or defective) replacement trees and plants of the same species and size as that originally planted shall be planted in the next planting season, in the same place, unless the local planning authority gives its written consent to any variation.
7. A management plan for enhancement and creation of biodiversity, including long-term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small, privately-owned domestic gardens, shall be submitted to and approved in writing by the local planning authority prior to the first occupation of the development or any phase of the development, whichever is the sooner. The management plan shall include measures for the management and maintenance of the former railway cutting adjoining the eastern site boundary, as well as a scheme for the future maintenance of the on-site balancing ponds. The management plan shall be carried out as approved.
8. No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions,

design, materials and type of boundary treatment to be erected or retained. The approved boundary treatment shall be completed before first occupation of the dwelling to which it relates.

9. No dwelling shall be occupied until its designated car parking spaces have been laid out and constructed ready for use in accordance with details that shall have been submitted to, and approved in writing by, the local planning authority.

10. No development shall commence until details of a scheme for surface water management and disposal in accordance with the parameters described in the site-specific flood risk assessment report dated 10 July 2007 and cascade modelling report dated 15 October 2007, have been submitted to and approved in writing by the local planning authority, and the development shall be carried out in accordance with the approved details. Such details shall include phasing and a programme for implementation. The scheme shall only be carried out in accordance with the details so approved, unless otherwise agreed in writing with the local planning authority, and there shall be no occupation until the works have been completed in accordance with the approved scheme.

11. No development shall commence until precise details of an off and on-site scheme for the provision, phasing and monitoring of foul water drainage have been submitted to and approved in writing with the local planning authority and there shall be no occupation until the scheme is carried out and operational in accordance with the details so approved.

12. No development shall commence until details of a scheme for ensuring water-efficiency during construction, and water-efficient consumption by occupiers, has been submitted to and approved in writing by the local planning authority, and the development shall be carried out in accordance with the approved details.

13. No development shall commence until details of a scheme for ensuring waste minimisation and re-use during construction, and to provide recycling facilities for residents, has been submitted to and approved in writing by the local planning authority, and the development shall be carried out in accordance with the approved details.

14. No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority and the development shall be carried out in accordance with the approved details.

15. Prior to the commencement of development, a scheme for the provision of fire hydrants shall be submitted to and approved in writing by the local planning authority and the development shall be undertaken in accordance with the approved scheme.

16. The land shall be developed at a minimum net density of 40 dwellings per hectare.

17. Notwithstanding the ground investigation report submitted with the application, no development shall be commenced until details of a further site investigation of ground gases has been submitted to and approved in writing by the local planning

authority. Any remediation which the local planning authority considers should be undertaken shall be carried out in accordance with an agreed method statement and to an agreed timetable. Within one month of completion of any necessary remediation works, two copies of a closure report shall be submitted to the local planning authority. If during the development of the site, contamination not previously considered is identified, no further development shall be undertaken until the local planning authority has been notified in writing of the discovery and a method statement detailing a scheme for remediation has been submitted to and approved in writing by the local planning authority. The remediation shall be carried out in accordance with the approved scheme.

18. Prior to commencement of the development hereby permitted, full engineering, drainage, street lighting and constructional details of the diversion of Cranford Road including public transport infrastructure, pedestrian crossing facilities and means of treatment and severance of the existing Cranford Road shall be submitted to and approved in writing by the local planning authority. The details to be submitted shall accord generally with drawing 4435/03/005C unless the local planning authority agrees to any variation. The highway works shall be completed in accordance with the details approved prior to first occupation of the dwellings hereby permitted.

19. The existing highway of Cranford Road shall not be severed to through-traffic unless or until the revised alignment of Cranford Road has been completed in accordance with the details approved under condition 18.

20. No development shall take place until arrangements have been made for highway improvement works to the Church Street/High Street junction in accordance with a detailed scheme showing full engineering, drainage, street lighting and constructional details to be first agreed in writing with the local planning authority. Such a scheme shall include provision for its implementation before the first occupation of the development hereby permitted.

21. No development shall take place until arrangements have been made for highway works to Bird Street and Woodcock Street in accordance with a detailed scheme showing full engineering, drainage, street lighting and constructional details to be first agreed in writing with the local planning authority. Such a scheme shall include provision for its implementation before the first occupation of the development hereby permitted.

22. No development shall take place until arrangements have been made for highway works to form the roundabout and associated works on the A6 in accordance with Drawing No 4435/03/001 Revision A dated 20.10.05 have first been agreed in writing with the local planning authority. These arrangements shall include provision for the implementation of the scheme prior to first occupation of the development hereby permitted.

23. The development hereby permitted shall be served by estate streets laid out and constructed to adoption standards.

24. Prior to commencement of the development hereby permitted, full details of the temporary construction access and strategy to prevent associated vehicles travelling through Burton Latimer shall be submitted to and approved in writing by the local

planning authority. The agreed details shall thereafter be implemented and maintained unless alternative construction access facilities are required as may be agreed in writing with the local planning authority.

25. No earthwork materials shall be imported or exported from the site unless agreed in writing with the local planning authority.

26. The reserved matters referred to in condition 2 shall include proposals for the provision of live/work units on the site, which shall represent a minimum of 5% of the open-market dwellings to be erected. The live/work units shall comprise single residential units with attached, dedicated office or light industrial workspace falling within Class B1 of the Town and Country Planning (Use Classes) Order 1987 (or any Order revoking or re-enacting that Order). Each unit of permitted residential and business accommodation shall not be subdivided and/or occupied separately unless otherwise agreed in writing with the local planning authority.