

11 August 2008

Iain Painting
Barton Willmore
7 Soho Square
London W1D 3QB

Our Ref: APP/L2820/A/07/2058863

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEAL BY R W BEATY FARMS LTD AND BELLWAY HOMES LTD
LAND NORTH OF HIGHAM ROAD, BURTON LATIMER, NORTHAMPTONSHIRE
APPLICATION Ref: KET2007/0559**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, M Middleton BA (Econ) DipTP Dip Mgmt MRTPI, who held a public local inquiry between 1 and 2 April 2008, into your clients' appeal against the failure by Kettering Borough Council ("the Council") to give notice within the prescribed period of a decision on an application for outline planning permission for residential development, comprising 248 units, new access arrangements, associated open space and drainage works, on land north of Higham Road, Burton Latimer, Northamptonshire, NN15 5PU (application reference KET2007/0559).

2. On 26 November 2007, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990. The appeal was recovered as it relates to residential development of 150 or more dwellings which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable mixed and inclusive communities.

Inspector's Recommendations and Summary of the Decision

3. The Inspector recommended that the appeal be allowed and outline planning permission granted, subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's recommendations. A copy of the Inspector's report (IR) is enclosed. All paragraph references, unless otherwise stated, are to that report.

Procedural Matters

4. The Secretary of State has had regard to the fact that after the submission of the appeal, and following further discussions between the appellants and the Council, revised plans and additional documents were submitted on 4 March 2008 (IR3). For the reasons in IR3, the Secretary of State agrees with the Inspector that, in determining this appeal, consideration of these revised plans and additional

documents would not prejudice anyone's interest in the case. The Secretary of State, like the Inspector, has considered the appeal in the context of all the drawings and documents that accompanied the amended scheme together with the parts of the original documents that have not been superseded (IR4).

5. The Secretary of State notes that, for the other reasons set out in IR6, the Council no longer opposes the proposal (IR6). The Secretary of State notes that the only remaining area of contention between the appellants and the Council relates to conditions.

6. The Inquiry was formally closed in writing on 22 April, after an executed copy of the S106 Agreement had been received (IR7).

Policy Considerations

7. 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 includes the Regional Spatial Strategy (RSS) for the East Midlands (RSS8), published in March 2005; the North Northamptonshire Core Spatial Strategy (CSS), adopted in June 2008, after the close of the Inquiry into this appeal proposal; the saved policies of the Northamptonshire Structure Plan (SP), adopted in 2001, and the Local Plan for Kettering Borough Council (LP), adopted in 1995.

8. The Secretary of State considers the most relevant development plan policies include those set out in IR12-16. She agrees that those policies and data in the adopted CSS identified by the Inspector at IR19-21 are relevant (although she notes that policies 7 and 10 of the adopted CSS were numbered 8 and 11 in the emerging CSS and policies 15 and 16 in the adopted CSS were numbered 16 and 17 in the emerging CSS). She also notes that paragraph 3.62 in the adopted CSS was numbered paragraph 3.63 in the emerging CSS (IR20). The Secretary of State also considers that CSS policy 14 (numbered policy 15 in the emerging CSS) *Energy Efficiency and Sustainable Construction* is also relevant.

9. Emerging policy includes the review of RSS8 (IR17-21). The Secretary of State has had regard to the fact that a Schedule of Proposed Changes to RSS8 was published for consultation on 22 July, and she considers that, for the purposes of this decision, there are no significant amendments in the proposed changes which would require her to refer back to parties before she proceeds to a decision. The Secretary of State therefore accords the emerging RSS8 significant weight in the determination of this appeal.

10. The Secretary of State has had regard to the Urban Design Framework for Burton Latimer, adopted in 2006 (IR22), and to the supplementary planning guidance referred to in IR23 as material considerations in this appeal.

11. She has also had regard to the consultation drafts of the North Northamptonshire Sustainability Appraisal Supplementary Planning Document, and the North Northamptonshire Sustainable Design Supplementary Planning Document, the consultation period on both of which ended on 2 July 2008. The Secretary of State considers that there is nothing in these documents which is so material as to constitute a need to refer back to parties before she proceeds to a decision. She affords these draft documents little weight in her determination of this appeal.

12. Material considerations include Planning Policy Statement 1: *Delivering Sustainable Development* (PPS1); *The Planning System: General Principles*; Planning Policy Statement: *Planning and Climate Change* (supplement to Planning Policy Statement 1); Planning Policy Statement 3: *Housing* (PPS3); Planning Policy Guidance Note 13: *Transport* (PPG13); Planning Policy Guidance Note 15: *Planning and the Historic Environment* (PPG15); Planning Policy Statement 22: *Renewable Energy*; Planning Policy Statement 25: *Development and Flood Risk* (PPS25); Circular 11/95: *The Use of Conditions in Planning Permission*; and Circular 5/2005: *Planning Obligations*.

13. The Secretary of State has also had regard to the consultation document *Building a Greener Future: Towards Zero Carbon Development*.

Main Issues

14. The Secretary of State considers that the main issues are: whether the proposal would accord with the development plan for the area; PPS3: *Housing*; and PPG13 *Transport*.

Development Plan

15. For the reasons in IR67-71, the Secretary of State agrees with the Inspector that the proposal would be in accordance with RSS Policies 2 (*Locational Priorities for Development*), 3 (*Sustainability Criteria*), 4 (*Priority Design*), 5 (*Locating Development in Urban Areas*), 33 (*A Regional Approach to the Water Environment*), and Milton Keynes South Midlands Northamptonshire Policy 1 (*The Spatial Framework*) (IR72).

16. The Secretary of State agrees with the Inspector that, for the reasons in IR73, the proposal is capable of satisfying SP Policies GS5 (*Design*), GS6 (*Infrastructure, Facilities and Services*), T3 (*Transport Requirements*), T9 (*Parking Standards*) and T10 (*Parking for Housing*) (IR73). For the reasons in IR74 and 75, she also agrees that the proposal is capable of satisfying LP Policies 30 (*New Development*), 37 (*Density and Site Layout*), 39 (*Affordable Housing*), 47 (*Residential Amenity*), 84 (*New Development Access and Layout Considerations*), 85 (*Car Parking and Servicing for New Development*), 94 (*Existing Open Space*), 95 (*New Open Space*), 117 (*Community Facilities*), B2 (*Burton Latimer: Environmental Improvement*), and B5 (*Burton Latimer: Affordable Housing*) (IR74 and 75).

17. For the reasons in IR76, 78 and 79, the Secretary of State considers that the proposal would be largely in accordance with the recently adopted CSS, including in relation to the provision of affordable housing. The Secretary of State has had regard to the Inspector's comments (IR77) about conflict with the CSS policy 10 (referred to as emerging CSS policy 11 by the Inspector). However, notwithstanding the fact that the CSS is now adopted, for the reasons given by the Inspector at IR77, she attaches little weight to this matter.

18. Overall, the Secretary of State concludes that the proposal would largely accord with the development plan.

PPS3: Housing

19. The Secretary of State agrees with the Inspector that the suggested conditions would enable the Council to ensure that the housing is well designed and

built to a high standard (IR80). For the reasons in IR81, she agrees with the Inspector that the proposal would support a wide variety of households in the area and improve choice, including meeting local needs (IR81).

20. The Secretary of State has had regard to the fact that, depending upon whether the trajectory for the delivery of housing put forward in RSS8 rather than the CSS is accepted, there is an agreed shortfall in housing land supply of 2.2 or 1.8 years respectively. In either event, she agrees with the Inspector that, under the provisions of paragraph 71 of PPS3, this proposal should be considered favourably in the context of the considerations in paragraph 69 of PPS3 (IR83).

21. Overall, for the above reasons, and the reasons in IR82 and 84, the Secretary of State agrees with the Inspector that the proposal would accord with the advice in PPS3.

PPG13: Transport

22. For the reasons in IR85-87, the Secretary of State agrees with the Inspector that proposal is in accordance with the advice in PPG13.

Other matters

23. The Secretary of State has had regard to the fact that, following the submission of a Revised Flood Risk Assessment, the Environment Agency is now satisfied that there would be no increased risk to flooding, providing a Stage 2 Flood Risk Assessment is carried out, and any identified necessary measures are implemented. She agrees that this is capable of resolution by a condition (IR88).

24. The Secretary of State agrees with the Inspector that the detailed concerns originally raised by the Council and others could all be resolved by appropriate conditions, or the terms of the signed Section 106 Agreement (IR97).

Planning Obligations

25. The Secretary of State agrees with the Inspector that the Section 106 Agreement is fundamental to ensuring that the proposed development meets all the requirements of the development plan, and the advice in PPS3 and PPG13, particularly concerning the regeneration of Burton Latimer and sustainability. She agrees with the Inspector that the S106 Agreement meets the policy tests outlined in Circular 05/2005: *Planning Obligations* (IR90).

Conditions

26. The Secretary of State notes that the Council and the appellant have sought to reach agreement on an appropriate set of conditions (IR91-94). For the reasons set out in IR91 and Annex A to the Inspector's report, she agrees with the Inspector that there is a need for adjustment to the conditions to ensure they meet the tests in Circular 11/95: *The Use of Conditions in Planning Permissions*.

27. The Secretary of State has noted in particular the Inspector's comments with regard to draft condition 21 (IR93-94), now condition 20, and the disagreement which remains between the parties in relation to the second part of this condition, paragraph (b). The Secretary of State takes this opportunity to clarify to the parties that, whilst the Code for Sustainable Homes is closely linked to Building Regulations,

it is a voluntary, national, standard to guide industry in the design and construction of sustainable homes. The Code identifies, for certain environmental issues, mandatory minimum performance standards which must be achieved in order to gain a Code rating. These include the energy efficiency improvements which are included in the Government's timetable for achieving its target that, from 2016, all new homes must be built to zero carbon standards. This is to be achieved through a progressive tightening of Building Regulations. There is not a timetable for compliance with increasing levels of the Code, as may be implied from the seventh bullet point in IR28.

28. Paragraph 6 of part 1 to Circular 11/95 confirms that conditions should normally be consistent with national planning policies as expressed in Government Circulars, Planning Policy Guidance notes, Minerals Policy Guidance Notes and other published material. They should also normally accord with the provisions of development plans and other policies of local planning authorities. The Secretary of State considers that her policy in the supplement to PPS 1 on Planning and Climate Change, regarding the importance of local requirements on sustainable buildings and decentralised energy being evidence-based and viable, and the need to ensure any requirement on sustainable buildings is consistent with requirements on decentralised energy, has not been fully reflected, either in this appeal, or in developing what is now Policy 14 of the CSS. Consequently, she gives significant weight to the policies in the supplement to PPS 1 as a material consideration.

29. Having regard to her policy in the supplement to PPS1 on Planning and Climate Change, to Policy 14 of the CSS and to the Inspector's conclusions, she has amended paragraph (a) of what is now condition 20 to ensure that the Council may respond to any future concerns from the developer regarding the feasibility and viability of achieving the higher levels of the Code in this particular case and to ensure that the usual format for assessing whether a particular level of the code has been achieved is adopted.

30. With regard to paragraph (b) of condition 20, the Secretary of State has had regard to the Council's willingness to accept the figure of 10% as being a reasonable requirement (IR57). The Secretary of State notes that policy 14 of the CSS has now been adopted and therefore should no longer be accorded little weight. The Secretary of State has also had regard to her policy in the supplement to PPS1 on Planning and Climate Change. Taking all these matters into account, and for the reasons set out in IR93, in relation to national policy, and IR94, in relation to viability assessment, the Secretary of State considers that a requirement to achieve at least 10% of energy supply from decentralised and renewable or low carbon energy sources is reasonable in the circumstances of this case.

31. With the above exception, the Secretary of State agrees with the Inspector (IR91) that the proposed conditions, as adjusted by the Inspector, comply with the requirements of Circular 11/95: *Use of Conditions in Planning Permission*.

Overall Conclusions

32. The Secretary of State concludes that the proposal would largely accord with the development plan overall. It would provide 248 dwellings in a location identified in the RSS and the CSS for additional development. Being close to Burton Latimer town centre, it would also provide additional population that would help to support and expand local services, and would, through the legal agreement, further

contribute to this objective and help the regeneration of the town centre. The site has good access to jobs elsewhere in Burton Latimer and also on the southern side of Kettering.

33. There is a shortfall in the five year supply of housing land in Kettering Borough, and the proposal would meet the criteria set out in paragraph 69 of PPS3, and so should be considered favourably. Overall, subject to the recommended conditions and the Section 106 Agreement, the proposal would accord with the advice in PPS3 and PPG13.

34. The Secretary of State concludes that there are no material considerations which lead her to determine the appeal other than in accordance with the development plan

Formal Decision

35. 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, comprising 248 units, new access arrangements, associated open space and drainage works, on land north of Higham Road, Burton Latimer, Northamptonshire, NN15 5PU (application ref. KET2007/0559 dated 21 June 2007, as amended), subject to the conditions set out in Annex A to this letter.

36. 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 fails to give notice of their decision within the prescribed period.

37. 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

38. 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 within six weeks from the date of this letter.

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

Yours faithfully,

Christine Symes
Authorised by the Secretary of State
to sign in that behalf

Annex A

Conditions

1. Details of the access, appearance, landscaping, layout, scale and internal road layout of the site, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
3. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
4. The reserved matters shall reflect the principles set out in the approved Framework Plan, the Conceptual Storey Heights Plan (Drg no. 08.6532.110) and the Conceptual Density Plan (Drg no. 086532.111). The development shall be for a maximum of 248 dwellings and there shall be no dwellings above two and a half storeys in height or with a finished floor level to eaves height of more than 6.5 metres.
5. Prior to the commencement of the development hereby permitted and no later than the first submission of any reserved matters, a comprehensive layout plan and phasing programme together with design codes for the areas of public realm, including design and hierarchy of the streets and any on street car parking, shall be submitted to and approved in writing by the Local Planning Authority. The comprehensive layout plan and phasing programme shall take reference from and shall include the Public Open Space and green corridor shown on the approved Framework Plan. Unless otherwise agreed in writing by the Local Planning Authority, the development shall not be carried out other than in accordance with the approved comprehensive layout plan and phasing programme.
6. No development shall take place until plans and full details of the location, layout, landscaping, equipment, surfacing, fencing and associated items of the Local Equipped Area for Play (LEAP) and all other public open space areas, including the green corridor and balancing ponds shown on the approved Framework Plan, have been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved details.
7. A management plan shall be submitted for approval by the Local Planning Authority no later than the first submission of the details required under condition 6. The management plan shall describe the proposals for the management and maintenance of the areas of Public Open Space as identified on the approved Framework Plan. The management plan shall include schedules for all the areas of soft landscaping to be provided in public areas that are not to be adopted as public highway, as well as full details of the arrangements for their subsequent management and maintenance.
8. The public open space and play areas, together with their associated equipment/hard and soft landscaping shall be provided on site in accordance with a timetable to be set out in the approved Management Plan. Thereafter, these areas and all equipment and hard and soft landscaping shall be managed and maintained in complete accordance with the approved management plan, in perpetuity, unless otherwise agreed in writing with the Local Planning Authority. The areas set out as Public Open Space on the approved Framework Plan shall be permanently open and available for public use.
9. 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.

10. All hard and soft landscaping works shall be carried out in accordance with the approved details. The works shall be carried out in accordance with the implementation programme to be agreed in writing with the Local Planning Authority (as required by condition 5). 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.
11. No development shall take place until a scheme and management plan (the "Biodiversity Management Plan") for the enhancement and creation of biodiversity, including long-term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small privately owned gardens and land adopted by the Highway Authority, has been submitted to and approved in writing by the Local Planning Authority. The scheme and management plan shall demonstrate a net gain in biodiversity overall on the site and shall compliment that required to be submitted under condition 5. The Biodiversity Management Plan shall be implemented and carried out as approved in accordance with a written timetable which shall be set out in the management plan.
12. No development shall take place until plans and details showing positions, heights and materials for boundary treatment/screening has been submitted to and approved in writing by the Local Planning Authority. The details shall include a phasing programme for the implementation of such boundary treatment. The boundary treatment/screening shall be completed in accordance with the approved phasing programme.
13. No dwelling shall be occupied until its designated car parking spaces and in the case of flats, its covered cycle store(s) have been provided and constructed ready for use in accordance with details that shall have been submitted to and approved in writing by the Local Planning Authority. The cycle stores shall thereafter be retained for the storage of cycles only.
14. Notwithstanding the provisions of the submitted Foul Drainage Assessment, no development shall commence until details of a scheme, including phasing, of mains foul water drainage, on and off-site has been submitted to and approved in writing by the Local Planning Authority. No dwellings shall be occupied until the scheme is carried out and becomes operational in accordance with the approved scheme.
15. No development shall commence until 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. The development shall not be carried out other than in accordance with the approved scheme.
16. Prior to the commencement of the development, a reserved matters level "Stage 2" Flood Risk Assessment in accordance with the parameters set out in the approved Flood Risk Assessment (as amended by Revision C dated 11/01/08) shall be submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved Flood Risk Assessments.
17. No development of any phase pursuant to condition 5 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. The development shall not take place other than in accordance with the approved details.

18. No development shall take place until full details of the site access junction, traffic calming gateway feature, footway/cycleway enhancements and bus stop enhancements have been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until the approved works have been completed in full.
19. Details required to be submitted under condition 1 shall include the submission of a Quality Audit which demonstrates that the internal street layout(s) will be laid out and constructed to highway adoption standards.
20. (a) Those dwellings completed during the period up to 31 December 2012 shall achieve level 3 of the Code for Sustainable Homes (CSH) as a minimum. Unless for reasons of feasibility or viability otherwise agreed by the Council in writing, those dwellings completed 1 January 2013 to 31 December 2015 will meet CSH level 4 as a minimum and those completed 1 January 2016 onwards will meet CSH level 6. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that the appropriate Code Level has been achieved.

(b) At least 10% of the energy supply of the development shall be secured from decentralised and renewable or low-carbon energy sources. Details and a timetable of how this is to be achieved, including details of physical works on site, shall be submitted to and approved in writing as a part of the reserved matters submissions required by condition 1. The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter, unless otherwise agreed in writing by the Local Planning Authority.
21. No development shall take place within the application area until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation, which has been submitted by the applicant and approved in writing by the Local Planning Authority. The development shall only take place in accordance with the detailed scheme approved pursuant to this condition. The archaeological works shall be carried out by a suitably qualified body acceptable to the Local Planning Authority.
22. (a) The development hereby permitted, shall not be commenced until details of a comprehensive contaminated land investigation has been submitted to and approved in writing by the Local Planning Authority. This submission shall be made to the Local Planning Authority in the following sequence:-
 - (1) a site investigation taking into consideration the findings of the desktop study (*Desk Study of Land off Higham Road, Burton Latimer*) undertaken by Hydrock Consultants and dated January 2008, and providing further risk assessed conclusions on the potential for ground contamination, and if required by the Local Planning Authority following (1);
 - (2) a remediation method statement setting out the measures to be carried out on site to mitigate against any unacceptable risks to all identified receptors.
(b) If required, the remediation of the site shall be carried out fully in accordance with the approved details and timetable contained therein. Within one month of completion of the remediation works, two copies of a closure report shall be submitted to the Local Planning Authority.

(c) If during the development of the site, contamination not previously considered is identified, no further work shall be carried out until the Local Planning Authority has been notified in writing of the discovery and a method statement detailing a scheme for dealing with the contamination has been submitted to and approved in writing by the Local Planning Authority. The remediation shall be carried out in accordance with the approved detail.
23. In conjunction with the first submission of the reserved matters application, the acoustic investigation (Noise Assessment, reference 14041, dated May 2007) produced by

Analytical and Environmental Services for Bellway Homes Ltd and submitted as part of the outline planning application shall be reviewed and updated as necessary to reflect the reserved matters application. A report detailing this review and update shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. The development shall not take place other than in accordance with the approved details.

24. Prior to the commencement of the development, a working design, method statement and timetable of works to mitigate against any undue adverse effects to badgers caused by the development, shall be submitted to and approved in writing by the Local Planning Authority. No development shall take place except in accordance with the approved details.
25. The details required to be submitted by conditions 1 and 5 shall include parking spaces on site to accommodate "car club" vehicles as may be facilitated as part of the approved travel plan. These parking spaces shall be made permanently available for "car club" vehicles unless otherwise agreed in writing by the Local Planning Authority.