

Mr Chris Hough
Sigma Planning Services
Sigma House
6 Garden Street
Tunbridge Wells
Kent TN1 2XB

Our Ref: APP/G2435/A/09/2102468

16 March 2010

Dear Mr Hough

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEAL BY HALLAM LAND MANAGEMENT LIMITED
APPLICATION REF: 08/01588/OUTM
LAND AT LOWER PACKINGTON ROAD AND MEASHAM ROAD, ASHBY DE LA
ZOUCH, LE65 1TS**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Graham C Cundale BA(Hons) MSc MRTPI MIEEM, who held a public local inquiry on 13-30 October and 30 November 2009, into your clients' appeal 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 outline planning application for approximately 1000 dwellings, local centre with retail (A1, A3), business (B1), healthcare (D1) and community (D2) uses, expansion of Willesley Primary School, sports pitches, community park, pocket parks with public open space and equipped play areas, woodland planting, structural planting, balancing ponds and flood alleviation works, new highway access, roads, footpaths, cycleways and bus routes, plus ancillary works, on land at Lower Packington Road and Measham Road, Ashby de la Zouch, LE65 1TS.

2. On 24 April 2009 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, because the appeal involves residential development of over 150 units or on sites of over 5 hectares, 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.

3. The Inspector, whose report is enclosed with this letter, recommended that the appeal be dismissed and planning permission refused. For the reasons given below, the Secretary of State agrees with the Inspector's recommendation. All paragraph references, unless otherwise stated, refer to the Inspector's report (IR).

Procedural matters

4. The Secretary of State has taken account of those matters relating to the adequacy of the Environmental Statement (ES) (IR1.2) which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. Notwithstanding that certain information has not been included in the ES, the Secretary of State agrees with the Inspector that the currently proposed mitigation has been considered at the inquiry, and that in this case its absence from the Environmental Statement does not itself mean that to grant planning permission without further public consultation would be prejudicial to the interests of third parties.

5. With regard to the separate matter of the adequacy of the ES as a whole, given that the Secretary of State is refusing planning permission for this proposal, and is doing so on grounds unrelated to the adequacy or otherwise of the ES, he is satisfied that any doubts about its adequacy in terms of a “paper chase” are not determinative to his decision, and he has, therefore, not found it necessary to conclude on this point (IR1.2).

6. Applications for costs were made by the North West Leicestershire District Council, the Highways Agency and the Packington Nook Residents’ Association against the appellant. The Secretary of State’s decisions on those applications are the subject of separate letters.

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 comprises the East Midlands Regional Plan (2009) and the ‘saved policies’ of the North West Leicestershire Local Plan (2004). The Secretary of State considers that the development plan policies most relevant to the appeal are those set out by the Inspector at IR5.1-5.4.

8. Other material considerations include those national planning policy documents listed in section 1 of the document list. Circular 11/95: *Use of Conditions in Planning Permission*, Circular 05/2005: *Planning Conditions*, are also material considerations.

9. The Secretary of State has also taken account of Circular 06/2005: *Biodiversity and Geographical Conservation – Statutory Obligations and their Impact within the Planning System*, which provides administrative guidance on the application of the law relating to planning and nature conservation as it applies in England. It complements the expression of national planning policy in *Planning Policy Statement 9: Biodiversity and Geological Conservation* (PPS9) and the accompanying *Planning for Biodiversity and Geological Conservation: A Guide to Good Practice*. Together, these provide guidance on the application of the *Conservation (Natural Habitats &c) Regulations 1994* (“the Habitats Regulations”) which, in turn, transpose EU Directive 92/43/EEC (21 May 1992) on the conservation of natural habitats and of wild fauna and flora (“the Habitats Directive”).

10. The emerging Local Development Framework for North West Leicestershire is a material consideration, but given that this is some way from adoption the Secretary of State affords it limited weight.

11. Since the inquiry closed the Government has published PPS4: *Planning for Sustainable Economic Growth*. The policies in this document replace, amongst other things, certain relevant policies in PPS7: *Sustainable Development in Rural Areas*. However, the Secretary of State does not consider that there has been any material change in those policies to the extent that it would affect his decision or require him to refer back to parties for further representations prior to reaching his decision.

12. The Secretary of State has also had regard to the draft PPSs on *Planning for a Low-Carbon Future in a Changing Climate* and *Planning for a Natural and Healthy Environment*, both issued for consultation on 9 March 2010. As these documents are in draft form and subject to change, he has accorded them little weight.

Main Issues

13. The Secretary of State agrees with the Inspector that the main issues in this appeal are those set out in IR17.1.

The River Mease Special Area of Conservation

14. The Secretary of State agrees with the Inspector's reasoning and conclusions on the River Mease Special Area of Conservation (SAC), as set out in IR17.3-17.16. He agrees with those concerns identified by the Inspector (concerns which he notes are shared by Natural England and the Environment Agency) regarding the proposed mitigation – for example the risk of costs exceeding the cap on the appeal site owners' financial liability and the problems that might result from that (IR17.13). He also considers that in the absence of any one or all of these matters being adequately addressed he cannot ascertain that the appeal scheme would not adversely affect the integrity of the SAC (IR17.15), and concludes that planning permission for the scheme should not, therefore, be granted on the basis of Regulation 48 of the Habitats Regulation (IR17.16).

Impact on landscape and the character of the town

15. The Secretary of State agrees with the Inspector's reasoning and conclusions on the impact on landscape and the character of the town, as set out in IR17.17-17.24. He agrees with the Inspector that the pattern of development (IR17.21) and its scale (IR17.22) would be acceptable. However, he also agrees that the built development would transform the character of the site, and that the visual and accessible amenity of the site as countryside and as an attractive rural setting for the town would be permanently lost (IR17.19). Whilst accepting that the harm brought about by this proposal would be significant (IR17.24), the Secretary of State does not consider that this matter on its own would be of sufficient weight to refuse planning permission, given that any necessary urban extensions around Ashby would inevitably result in a loss of countryside, albeit the extent of this loss would no doubt differ according to location and size.

Noise

16. For the reasons given in IR17.25-17.29, the Secretary of State agrees with the Inspector that the impact of noise from the A42, although not a major consideration, counts against the appeal scheme (IR17.29).

Highway matters

17. For the reasons given in IR17.30-17.38, the Secretary of State agrees with the Inspector that the necessary highways mitigation measures are not fully defined and supported by the modelling work and would not be sufficient to avoid prejudicing road safety, and the provision made for highways is not adequate (IR17.38).

Sustainability

18. The Secretary of State agrees with the Inspector's reasoning and conclusions on sustainability issues, as set out in IR17.39-17.47. The Secretary of State agrees that the appeal scheme does have some sustainability merits but that it does not rate highly in this respect (IR17.46). He also agrees that it is not a distinctly more sustainable location than the alternative sites at Ashby (IR17.46) – though equally, he does not consider it to be that much worse, given the sustainability credentials of Ashby as a whole.

Prematurity

19. The Secretary of State agrees with the Inspector's reasoning and conclusions on prematurity issues, as set out in IR17.39-17.47. He agrees with the Inspector that the degree to which the scheme would prejudice the outcome of the Core Strategy process adds some weight to the sum of the harm attributable to the scheme, but that this would not be sufficient reason in itself to refuse outline planning permission (IR17.55).

Meeting housing needs

20. The Secretary of State agrees with the Inspector's reasoning and conclusions on meeting housing needs, as set out in IR17.56-17.67. The Secretary of State notes that the shortfall in housing is "chronic and severe" and agrees that were the appeal scheme to proceed as proposed it would noticeably reduce the shortfall, even though much of the development would occur after the present five year period. He has afforded the contribution this proposal would make to meeting housing need, including the substantial proportion of affordable housing, significant weight in determining this appeal.

21. The Secretary of State agrees with the Inspector that the need to consider the proposal favourably in terms of meeting housing need should be qualified by any shortcomings in relation to paragraph 69 of PPS3 and the development plan (IR17.67). He also accepts that alternative development sites are likely to come forward in time to boost the 5 year supply and that the time advantage of the proposal is not very substantial and could be subject to delays arising from the need to implement sewage treatment works (IR17.67).

Other matters

22. The Secretary of State agrees with the Inspector's reasoning and conclusions on those other matters set out in IR17.68-17.71. He agrees that the proposed flood alleviation measures would be capable of significantly reducing flood risk at Packington and that this represents a substantive benefit of the scheme (IR17.68).

Planning conditions and obligations

23. The Secretary of State has noted the Inspector's comments on planning conditions and obligations as set out in IR16.1-16.5 and IR17.75-17.87. He shares the Inspector's concerns regarding the efficacy of these in ensuring that there would be no adverse effect on the integrity of the SAC (IR17.87).

Overall conclusions

24. The Secretary of State agrees with the Inspector's overall conclusions set out in IR17.72-17.74.

25. The Secretary of State considers that there are a number of factors weighing in favour of the proposal, such as the contribution towards meeting housing need, including affordable housing need, and the reduction of flood risk at Packington. Those factors weighing against the proposal include, impact on the landscape and character of the town, noise from the A42, highway mitigation and road safety concerns, limited sustainability credentials, and concerns over prematurity. Moreover, the Secretary of State has carefully considered all of the matters relating to the potential effects on the River Mease SAC, including the mitigation and avoidance measures proposed: he does not consider that he can exclude the possibility that the integrity of the SAC will not be adversely affected, and so he cannot allow the appeal.

26. Having weighed up all the relevant considerations the Secretary of State concludes that the factors which weigh in favour of the proposal are outweighed by the harm identified. He does not consider that there are any material considerations of sufficient weight which would justify granting planning permission.

Formal Decision

27. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for approximately 1000 dwellings, local centre with retail (A1, A3), business (B1), healthcare (D1) and community (D2) uses, expansion of Willesley Primary School, sports pitches, community park, pocket parks with public open space and equipped play areas, woodland planting, structural planting, balancing ponds and flood alleviation works, new highway access, roads, footpaths, cycleways and bus routes, plus ancillary works, on land at Lower Packington Road and Measham Road, Ashby de la Zouch, LE65 1TS, in accordance with application number 08/01588/OUTM, dated 6 November 2008.

Right to challenge the decision

28. 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.

29. A copy of this letter has been sent to North West Leicestershire District Council and all parties who appeared at the inquiry.

Yours sincerely,

Michael Taylor
Authorised by the Secretary of State to sign in that behalf