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## Appeal Decision

Site visit made on 27 July 2023

**by David Nicholson RIBA IHBC**

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

**Decision date: 1 August 2023**

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**Appeal Ref: APP/W0530/W/21/3282234**

**Land at St. Peters Street, Caxton CB23 3PS**

- 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 Messrs R and W Grain and Mrs E Reeve against the decision of South Cambridgeshire District Council.
  - The application Ref 20/04704/OUT, dated 16 November 2020, was refused by notice dated 23 July 2021.
  - The development proposed is: Outline planning for the erection of up to nine self-build dwellings and associated garaging with some matters reserved except for access from Rosemary Greene Close.
  - This decision supersedes that issued on 1 March 2022. That decision on the appeal was quashed by order of the High Court<sup>1</sup>.
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### Decision

1. The appeal is allowed, and outline planning permission is granted for the erection of up to 9 self-build dwellings and associated garaging on land at St. Peters Street, Caxton, Cambridgeshire CB23 3PS, in accordance with the terms of the application, Ref 20/04704/OUT, dated 16 November 2020, subject to the conditions set out in the attached Schedule.

### Procedural matters

2. As above, the original Decision was quashed. The reasons for this were, in short: that the Council made an erroneous reference in their appeal statement to a Flood Risk Assessment (FRA), when no such assessment was submitted; and that the reference to an FRA was subsequently relied upon by the previous Inspector thereby making a material mistake of fact.
3. The Judge also considered the setting of the listed building at Caxton Hall, including with regard to harm acknowledged by the applicant, and harm to the Hall from flooding. However, the Judge had no doubt that the Inspector had complied with the Duty under s66(1) of the Act<sup>2</sup>, and all other duties as far as required, using reasonable discretion.
4. The main parties subsequently agreed that the redetermination could be carried out by way of written representations and submitted a Statement of Common Ground (SoCG)<sup>3</sup>. Comments on the SoCG on behalf of the Claimant<sup>4</sup>, included draft suggested conditions, were submitted shortly afterwards and I

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<sup>1</sup> [2023] EWHC 16 (Admin) dated 17 January 2023

<sup>2</sup> Listed Buildings and Conservation Areas) Act 1990

<sup>3</sup> Statement of Common Ground between the Council and Appellant dated June 2023

<sup>4</sup> Comments on SoCG from Cerda on behalf of Ivor Harrison of Caxton Hall, dated June 2023

have taken both into account. Notwithstanding the Claimant's suggestion that a Hearing might be preferable, I am satisfied that I have all the necessary information to reach my Decision.

### **Preliminary matters**

5. The proposal is in outline form with all details reserved except for access, which would be from Rosemary Greene Close.
6. A Unilateral Undertaking, dated 17 December 2021, would ensure that the proposed dwellings would accord with the definition contained in the Self-Build and Custom Housebuilding Act 2015 (as amended). The Council does not dispute that this would be effective, and I have taken it into account.
7. Following the Judgment, the Appellant submitted an FRA<sup>5</sup> and the Claimant submitted a Heritage Impact Assessment (HIA)<sup>6</sup>.

### **Main Issues**

8. As well as the main issues in the original Decision, I have added
  - whether the scheme would harm heritage assets and their settings;
  - the effect of the proposals on potential downstream flooding.

### **Reasons**

9. A description of the site, surroundings and proposals are set out in the SoCG and were summarised by the previous Inspector. The main parties agree that the self-build position has not improved, indeed the number on the register significantly exceeds year on year permissions. It was also common ground that the village is not wholly lacking in sustainability credentials with recent upgrades to footpath and cycleway connections.
10. Apart from an emerging plan, which the main parties agree is at an early stage and should carry no weight, there have been no significant policy changes since the quashed Decision. Having reviewed these, and for the same reasons, I agree with the previous Inspector that the proposed development would be in conflict with the most relevant development plan policies dealing with the location of new housing, including Policies S/6, S/7, S/11 and T1/2 of the South Cambridgeshire Local Plan (LP), adopted in 2018 .
11. Following my visit, I find that the site is closely linked to the village, despite being beyond the village boundary, and that the scheme would have little impact on the setting of the village or the adjacent countryside. Having reviewed the previous Decision, I agree that there would be no significant harm to the character or appearance of the village or the countryside and no conflict with LP policies NH/2 and HQ/1, as previously set out.
12. The Council did not consider that any designated heritage asset<sup>7</sup> would be affected and did not submit detailed assessments. The previous Inspector found little, but not no, intervisibility, concluding that the scheme would comply with heritage policy. I have undertaken my own assessment, partly assisted by the HIA. I find that the significance of the Caxton Conservation Area is largely derived from its street patterns and wealth of historic buildings, focussed on

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<sup>5</sup> By MTC Engineering dated March 2023

<sup>6</sup> Prepared by Dr Hoggett, March 2023

<sup>7</sup> As defined in the National Planning Policy Framework

Ermine Street but including part of the drive to the Grade II\* listed Caxton Hall. Much of the significance of the latter is derived from the survival of historic fabric, from the second half of the 17<sup>th</sup> Century with later extensions and alterations, but also from its setting.

13. Caxton Hall stands around 100m from the site. As well as an entrance off St. Peters Street, there is access via a long drive from Ermine Street running along the site boundary and partly within the Conservation Area. Although the ownership may have recently changed, the Hall stands at the end of the drive and the avenue of mixed deciduous trees, probably planted in the 19<sup>th</sup> Century and through which there are views to open fields on both sides, which would have been planted to accentuate the access and so contributes to the Hall's significance.
14. I consider that the development would be likely to put the site within the setting of both these heritage assets. In walking the length of the drive, I saw that there are many gaps between the trees, looking into the site, with doubtless more views in winter. I acknowledge that planting could increase the level of screening in due course, but there would then be a loss of rural context. I therefore find that the proposals would have a slight but unwelcome impact on the context of the drive and so in turn to the contribution which the setting of the Hall makes to its significance. As a feature of the conservation area, its setting would also be slightly harmed.
15. For these reasons, I find that there would be slight harm to the settings of both these designated heritage assets. In line with the Statutory duty, I give considerable importance and weight to the desirability of preserving the setting of Caxton Hall, all the more so given its Grade II\* listing. I note the conflict with LP Policy NH/14, which protects the District's historic environment including heritage assets and their settings, and national heritage policy in the National Planning Policy Framework (NPPF), paragraph 199, which requires great weight to be given to the conservation of a designated heritage asset when considering the impact of a proposed development on its significance. In the context of this appeal, I find that the harm to both assets would fall towards the bottom end of any spectrum of less than substantial harm and so should be weighed against public benefits, as required by NPPF paragraph 202.
16. The site is also near a number of listed buildings along Ermine Street. On my visit, I saw that there would be little intervisibility between the site and most of these, including the Grade II\* listed Crown House/The Old Post House which stands 90m away. Its significance lies mainly in its 16<sup>th</sup>/17<sup>th</sup> Century origins and use as a coaching inn. Given the distance from the site, and the lack of intervisibility, I conclude that the development would not detract from the contribution that setting makes to the significance of this heritage asset.
17. The Council's Strategic Flood Risk Assessment (SFRA) concludes that the site is less than 1ha in area, in Flood Zone 1, is not affected by surface water flooding and is of low risk of flooding by any means. On this basis, the Council's drainage officer was content in principle that compliance with LP Policy CC/9 could be achieved by way of a suitably worded condition requiring technical drainage details at reserved matters stage and that this would provide sufficient control such that there would be no increase to flood risk elsewhere.
18. Following the Judgment, the FRA identified the site as undeveloped paddock, with a drain along the western boundary running into the Bourn Brook, where

the Environment Agency surface water mapping shows the whole site to be at a very low risk of surface water flooding. The FRA assessed that the fluvial flood risk to any development would be less than 1 in 1,000, due to the constant fall of the site towards the west; found that the risk from any other source would also be low; and concluded that the site is of low risk of flooding by any means.

19. The FRA also considers the downstream risk of flooding as a result of increasing discharge rates. As a scheme of fewer than 10 houses, it concludes that surface water drainage could be dealt with by a condition, as found by the Council's Drainage Engineer. Nevertheless, it goes on to set out a Surface Water Drainage Strategy to demonstrate full compliance with current guidance. This identifies adequate space to incorporate attenuation sufficient to ensure that discharge rates could be restricted such that there would be no adverse impact upon flood risk to the surrounding area. In other words, a strategy to ensure that the situation for downstream riparian properties would be no worse than it is at present. This would depend on applying suitable conditions.
20. As a worst case, the Sustainable Drainage Strategy assumes that there would be no infiltration through the ground and that the run-off from built development would all run off the site. Including an allowance for climate change, this would be restricted to a lower discharge rate than that of the greenfield site. Using an indicative design<sup>8</sup> the FRA calculates the necessary attenuation volumes and concludes that these would reduce current discharge rates in all events which would reduce pressure on downstream infrastructure, particularly during extreme rainfall events, and reduce the downstream risk of flooding. It lists the available techniques, calculates their effects and discusses maintenance responsibilities of future owners and the management company.
21. From my study of the FRA, its appendices, and the view of the Council's Drainage Officer (that the concerns could be overcome by conditions), I am satisfied that the evidence demonstrates that, in principle, the drainage solution can comply with both local and national policy, and that the full detailed design can be agreed at reserved matters stage. I note a disagreement over the area of the site, which could affect the need for an FRA, but as one has now been supplied, this is of little relevance.
22. On my visit I also studied the area with reference to the Claimant's and others' photographs. I saw that Caxton Hall lies close to Bourn Brook which is crossed by the ford and where a depth of 3 feet was recorded. However, I also note that the road rises steeply on either side such that when it was 3 feet deep, the flood did not extend far either side. I also considered the photographs of flood waters reaching the Hall itself and putting it, and its historic fabric in danger.
23. On the other hand, this is an existing situation, and the expert evidence concludes that it would be possible to control new development on the appeal site so as to prevent any increase in flood risk elsewhere, including to Caxton Hall. Subject to conditions, the scheme would therefore comply with LP Policies CC/8, that proposals must incorporate appropriate sustainable surface water drainage systems for to the nature of the site, and CC/9.1d, that there would be no increase in flood risk elsewhere, including limiting discharge of surface water to natural greenfield rates or lower.

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<sup>8</sup> Set out in the Appendices

24. On the benefits side, for the reasons set out, I agree with the previous Inspector that the need to increase the supply of self-build opportunities should carry substantial weight. Even taking account of the s66(1) Duty and policies set out above, I therefore find that the minor degree of harm to the contribution setting makes to the significance of Caxton Hall, and to that of the Conservation Area, would be outweighed by the public benefits of additional self-build housing. On this issue, I find that the scheme would accord with NPPF paragraph 202.
25. Turning to the overall balance, I find that the substantial weight to the benefits of self-build housing on this particular site, where there would be no significant harm to the character or appearance of the village or the countryside and flooding objections could be overcome, would outweigh the conflict with relevant development plan policies dealing with the location of new housing, and the minor heritage harm, and that the appeal should succeed.

### **Conditions**

26. In addition to those previously added, which should be attached for the same reasons, more detailed conditions with regard to flood avoidance have been suggested by the Claimant to minimise the risk of flooding. They would supersede previous condition 4). It is now common ground that these should be included, and I also find that these are necessary and so have attached them. Partly to avoid renumbering, and for cross-referencing with the previous Decision, I have combined these as a single new condition 4). The wording of some conditions has been adjusted for clarity and brevity.

### **Conclusions**

27. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed subject to the attached conditions.

*David Nicholson*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

- 1) No development shall commence until details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") for the relevant dwelling plot, or for the communal areas of the site, have been submitted to the local planning authority (LPA) and approved in writing. The development shall be carried out in accordance with the approved details.
- 2) Applications for approval of the reserved matters shall be made to the LPA not later than 3 years from the date of this permission. The development shall be commenced not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 3) During the construction period, no machinery or plant shall be operated, no works audible at the site boundary shall be carried out, and no construction-related deliveries shall be taken at or despatched from the site, at any time except between the following hours:  
Mondays to Fridays 08.00 – 18.00  
Saturdays 08.00 – 13.00.
- 4) No development shall take place until a scheme for the disposal of foul and surface water drainage has been submitted to the LPA and approved in writing. The scheme design shall illustrate that it is feasible to limit discharge of surface water (post development volume and peak rate) to natural rates or lower, in accordance with local Policy CC/9: Managing flood Risk. The scheme shall include details of how the foul and surface water systems are to be retained, managed and maintained throughout the life of the development (including appropriate legal and financial mechanisms). Thereafter, no dwelling shall be occupied until the foul and surface water drainage infrastructure to serve it has been installed and brought into operation. The layout and landscaping details to be submitted and approved under the Reserved Matters application(s) shall include approval of the full details of the proposed surface water drainage scheme required by this condition.
- 5) No dwelling shall be occupied until details of the arrangements for the future management and maintenance of the internal estate roads, footways and any other communal areas have been submitted to the LPA and approved in writing. Thereafter, the roads footways and communal areas shall be managed, retained and maintained in accordance with these approved details, either until adopted by the Highway Authority, or for the life of the development.
- 6) No development, site clearance or site preparation shall be commenced until a Construction Ecological Management Plan (CEMP) has been submitted to the LPA and approved in writing. The CEMP shall include details of any ecologically sensitive features or species present on the site, and proposed measures to mitigate the impacts of the development on those features and species during construction. The development shall be carried out in accordance with the approved CEMP.
- 7) No dwelling shall be occupied until a Landscape and Ecological Management Plan (LEMP) has been submitted to the LPA and approved in writing. The LEMP shall include details of existing and proposed ecological features, and proposals for their future management. Thereafter, these ecological features shall be managed in accordance with the approved LEMP for the life of the development.



8) No development, site clearance, site preparation or site investigation works shall commence until a tree and hedgerow protection scheme has been submitted to the LPA and approved in writing. The scheme shall include details of measures for the protection of the existing trees and hedgerows on and adjoining the site during the course of the development. These measures shall be implemented in accordance with the approved details. Where the approved details require the installation of protective fencing or ground protection, these shall be put in place before any development takes place, and before any equipment, machinery or materials are brought on to the site; and shall be retained until these have been removed from the site, following the completion of the relevant dwelling or part of the development. Nothing shall be stored or placed in any area fenced in accordance with this condition, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the LPA.

9) The landscaping details to be submitted and approved for each dwelling or part of the development, under Condition 1 above, shall include details of the proposed timing for the implementation of those approved works. Thereafter, the landscaping works shall be carried out in accordance with the programmes and other details thus approved. If, within a period of five years from the date of planting, any tree or plant dies, or becomes seriously damaged or diseased, or is removed or lost for any reason, it shall be replaced in the next planting season with another of the same size and species.

10) No development, site preparation or site clearance works shall take place until a programme of archaeological work has been implemented, in accordance with a written scheme of investigation which has been submitted to and approved in writing by the LPA.

11) No dwelling shall be occupied until it has been made capable of accommodating fibre-optic, high-speed broadband cabling, in accordance with the guidance note 'Data Ducting Infrastructure for New Homes' published by MHCLG in 2008, or any successor document published by HM Government prior to the commencement of development.

12) All dwellings within the scheme shall be designed to achieve a 10% reduction in carbon emissions, compared to a baseline figure to be calculated by reference to the Building Regulations, through the use of on-site renewable energy and/or low carbon technologies. No dwelling shall be occupied until the necessary measures to achieve such a reduction have been installed and brought into operation, in accordance with an Energy Statement for that dwelling which shall have been submitted to the LPA and approved in writing. Thereafter, these energy reduction measures shall be retained and maintained, in accordance with the manufacturer's specification, unless otherwise approved by the LPA.

13) All dwellings within the scheme shall be designed and constructed to incorporate water saving fittings and systems, so as to be capable of achieving a minimum water efficiency standard equivalent to 110 litres per person per day. No dwelling shall be occupied until a Water Efficiency Statement for that dwelling has been submitted to the LPA and approved in writing, confirming that this standard has been met. Thereafter, the required water saving fittings and systems shall be retained and maintained, in accordance with the manufacturer's specification, unless otherwise approved by the LPA.