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## Appeal Decision

Inquiry held on 14 and 15 January 2014

Site visit made on 14 January 2014

**by Ava Wood Dip Arch MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 11 February 2014**

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**Appeal Ref: APP/K2420/A/13/2202989**

**Land off Workhouse Lane, Burbage, Leicestershire LE10 2JW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Bellway Homes Ltd. against the decision of Hinckley & Bosworth Borough Council.
  - The application Ref:13/00147/FUL, dated 19 February 2013, was refused by notice dated 31 July 2013.
  - The development proposed is demolition of existing residential dwelling and erection of 35 no. residential units, associated highway and engineering operations.
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### Decision

1. The appeal is allowed and planning permission is granted for demolition of existing residential dwelling and erection of 35 no. residential units, associated highway and engineering operations at land off Workhouse Lane, Burbage, Leicestershire, in accordance with the terms of the application, Ref: 13/00147/FUL, dated 19 February 2013, subject to the conditions set out in the Schedule of Conditions annexed to this letter.

### Application for costs

2. At the Inquiry Mr Young, on behalf of the appellant, indicated that an application for costs was to be made against the Council. It was agreed that the application would be made in writing after the Inquiry closed and the Council would respond likewise. Dates for each stage of the application were agreed at the Inquiry but there was a delay in the response on behalf of the Council. The application for costs and my decision on it will therefore be the subject of a separate Decision to be issued in due course.

### Preliminary Matters

3. At the start of the Inquiry the Council conceded that, for the purposes of this Inquiry only<sup>1</sup>, it was unable to demonstrate a 5 year supply of housing land. The final version of the Statement of Common Ground completed at the Inquiry points to an agreed supply of between 3.3 and 4.2 years<sup>2</sup>. The Statement of Common Ground further records that there is a residual of 123 dwellings in Burbage (as of April 2013) against the minimum requirement for 295 dwellings

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<sup>1</sup> Document 18 – Confirmation note from Mr Leader dated 31 January 2014

<sup>2</sup> These figures are based on the appellant and Council's requirement and supply calculations respectively.

(between 2006 and 2026) set out in Policy 4 (Development in Burbage) of the Hinckley and Bosworth Core Strategy 2009 (CS) .

4. Given the circumstances described, the Council's relevant policies for the supply of housing cannot be considered up to date and for the purposes of this appeal the second bullet point of paragraph 14 of the National Planning Policy Framework (NPPF) dealing with decision-taking is engaged. Furthermore, the Council withdrew its first reason for refusal relating to housing requirement for Burbage.

### **Main Issues**

5. Having regard to the above, the main issues are:
  - The effect the proposed development would have on landscape character and on the setting of Burbage.
  - Whether the adverse impacts of allowing the proposal significantly and demonstrably outweigh its benefits, when assessed against the policies in the NPPF as a whole.

### **Reasons**

#### ***The Main Issues***

6. The development plan for the area comprises the aforementioned CS and saved policies of the Hinckley and Bosworth Local Plan 2001 (LP).
7. In addition to committing to delivery of land for a minimum of 295 new dwellings in the village of Burbage, to be focused primarily to the north, CS Policy 4 places on the Council obligations to (among other matters) protect and preserve open landscape to the east, and seek to enhance the landscape structure which separates the village from the M69 corridor. The policy draws support from the Hinckley and Bosworth Landscape Character Assessment (produced in 2006) for these objectives. The document goes on to identify the main characteristics of the Character Area in which the appeal site is located. It describes the close relationship between the village and the open landscape to the east as being of key importance (to be protected and preserved) and identifies a strategy of enhancing the landscape structure separating the village from the M69.
8. As the appeal site substantially lies in the countryside i.e. outside of the settlement of Burbage, it is subject to the controls imposed by LP Policy NE5. Although the policy did not find its way into the second reason for refusal, it is of relevance to the appeal insofar as it flows from the stated intent of safeguarding the appearance and amenity of the countryside<sup>3</sup>. That objective is not too distant from the NPPF desire to see the planning system contributing to and enhancing the natural and local environment by protecting and enhancing valued landscapes.
9. The protection and preservation accorded to the landscape to the east of Burbage under CS Policy 4 does not apply to the appeal site which abuts the southern edge of the village. The site is not protected by any special landscape designation, but it forms part of the open (i.e. undeveloped) area of land

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<sup>3</sup> Paragraph 5.6.2 of the LP

- extending to the M69, referred to in Policy 4 and in the Burbage Village Design Statement.
10. Workhouse Lane extends in a southerly direction. It narrows as one passes the last bungalow (4 Workhouse Lane) on the west marking the end of the established built-up part of Burbage and incidentally also its settlement boundary. Built development along the length of the lane is restricted to a small group of houses opposite the site, isolated dwellings further south and an assortment of structures scattered across allotments on the east side of the lane. Workhouse Lane otherwise exhibits the rural characteristics of a country lane enjoyed by walkers and riders.
  11. That said, the nature of the southern edge of Burbage has changed from the time an appeal was considered on part of the site in 1999<sup>4</sup>. This is largely due to the new residential development of 60 or so dwellings taking shape on Britannia Road. This development extends the built up edge of Burbage southwards. On top of that, a smaller compartment of land between the Britannia Road scheme and the appeal site is due to be developed with 9 houses in due course. At the time of my visit, the infrastructure for this development had commenced. The appeal site will therefore shortly be contained by development on its western and northern boundaries and its eastern edge already partially abuts a row of houses facing Britannia Road and Workhouse Lane.
  12. The new houses associated with the appeal proposal would similarly be contained by the backcloth of recent developments on Burbage's southern fringe when viewed from Workhouse Lane and indeed also from afar. The development would no more extend towards the M69 than the schemes already granted permission and well on their way to being implemented. There is no doubt that the incursion of built development into the start of the more rural sections of Workhouse Lane would be apparent. However, for the remaining length of the lane, its tranquillity would prevail.
  13. In essence, while the development would lead to loss of open land, and one valued by the community, its impact on the wider landscape would be limited due to the site's containment. The relationship between Burbage and the countryside beyond would be largely maintained, by virtue of the area of open land between the motorway and the developments (including that on the appeal site) marking the new southern limit of the village. The transition between village and the countryside would remain intact, and no more diminished by the appeal scheme than has already taken place with the Britannia Road developments.
  14. There is scope to reinforce the planting on the site's southern edge, which in time would soften the development's impact. However, the development in itself is unlikely to enhance the landscape structure in the way sought in CS Policy 4. Complete compliance with the policy may not be achieved in this respect. In addition to which, the development would be sited at the southern end of Burbage and not the northern location preferred by the policy.
  15. Given the housing land deficit in the Borough there is a question mark over the extent to which the housing supply element of Policy 4 is relevant. In any event, conflict with elements of the policy and any landscape harm must be

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<sup>4</sup> Appeal ref: APP/K2420/A/99/1026122

balanced against a number of potential benefits that would flow from the proposed development.

16. Its principal advantage is the contribution to addressing the under-delivery in the Borough's housing supply and meeting the numbers in CS Policy 4. Furthermore, the evidence confirms that there are few, if any, opportunities for new homes in Burbage to be accommodated on previously developed land and recourse to greenfield sites is inevitable.
17. The Statement of Common Ground, and evidence provided on behalf of the Council at the Inquiry, confirms easy accessibility of the appeal site to a range of local services and facilities by means other than private vehicles. The scheme could not be described as imaginative but it would be of no lesser quality than the new developments nearby and the Council regards it as acceptable in terms of layout, scale and design generally. Concerns about a poor relationship with existing dwellings are unfounded, given the distance of new houses from existing ones and the range of styles/scale of buildings in the locality.
18. The provision of new houses in a mix of sizes and tenure would comply with the relevant requirements of CS Policy 4. The 7 affordable houses would accord with the Council's policy and bring forward 2 and 3-bed homes for which there is a demand<sup>5</sup>, while the larger family homes would help diversify the stock of housing in the village. The proposal would trigger the new Homes Bonus payment to the Borough and County Councils. The financial contributions delivered through the s106 planning obligation could not be categorised as additional benefits, as they are necessary to alleviate pressures on local resources and infrastructure.
19. When considered in the round, the proposed development would contribute to the economic and social dimensions of sustainability. I accept that some harm to the area's landscape character and to Burbage's setting would occur. However, the scale of environmental harm would not be so extensive as to override the clear planning benefits of helping with an unmet housing and affordable housing need in a sustainable manner. The NPPF presumption in favour of sustainable development applies and there are strong material considerations in favour of the appeal scheme, even in the face of doubts about full compliance with CS Policy 4 and conflict with the aims of LP Policy NE5.

### **Other Matters**

20. Local residents and councillors question the validity of the housing figures, given the large allocation in the CS to the north of Burbage. However, as that site was already accounted for as a commitment in the Core Strategy, it does not contribute towards the 295 dwellings cited in CS Policy 4 or the Borough's 5 year supply<sup>6</sup>. The Council is proceeding to address its housing obligations through an emerging Sites Allocation document, but the Local Development Scheme confirms that its adoption is likely to be some way off. In the light of the Government's advice to boost significantly the supply of housing, the Council cannot afford to be sanguine about meeting its commitments now.

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<sup>5</sup> Councillor Moore confirmed a need for smaller dwellings

<sup>6</sup> At the Inquiry, it was confirmed that the Council members had erred in refusing the application on the basis of lack of need in Burbage, as the 295 new dwellings are required on top of the identified commitments

21. The Transport Statement submitted with the application confirms that the level of additional vehicular movements generated by the proposed scheme does not trigger a need for formal assessment of traffic impact. I understand local residents' concerns with the increase in vehicles using the stretch of Britannia Road between Lutterworth Road and Workhouse Lane. However, pedestrians have the option of walking to the village centre through a footpath link from Britannia Road. An extension of the footway on the western side of Workhouse Lane is proposed, which would improve the safety in that region. On the whole, I do not consider that pedestrians would be exposed to additional risks or any less safe conditions than commonly experienced in built up environments. The highway authority is satisfied with the arrangements proposed and raised no concerns regarding the build-out of the road outside No.4 Workhouse Lane. There is no evidence to suggest that the build-out cannot be accommodated with the existing dropped kerb in place or that the matter is insurmountable.
22. There is generally adequate off-road parking for existing dwellings in the vicinity of the appeal site. The proposed development would also provide adequate on-site parking spaces for future residents. The occasions of vehicles parking on Workhouse Lane and causing congestion are likely to be few and far between. The issue does not warrant dismissing the appeal.

### **Planning Obligation**

23. The principle of developer contributions to help fund the necessary infrastructure required by new development is accepted in the CS Spatial Objective 6. The County Council evidence informs me that the Statement of Requirements for Developer Contributions in Leicestershire (SRDCL) adopted by the Council was the subject of consultation and updated in 2007. It gives an indication of the level of contributions developers will be expected to make and expects such contributions to be assessed on a site by site basis.
24. In support of the education, library and civic amenity contributions (included in the planning obligation), the County Council provided a clear and detailed analysis of capacity and requirements to justify the amounts sought. The evidence additionally pinpoints the specific facilities to which the contributions would be directed. The sums in respect of the Britannia Road recreation ground contributions are supported by policy<sup>7</sup> and the Council's Play and Open Space Supplementary Document. The health contribution is to be directed to a local GP surgery and is recommended by the Primary Care Trust. The affordable homes are necessary in policy terms and to meet an urgent need.
25. The contributions and affordable homes secured through the planning obligation are necessary, directly related to the development and have shown to be fairly and reasonably related to its scale and kind. I have therefore taken them into account in my decision to allow the appeal.

### **Conditions**

26. The list of conditions agreed between the main parties was discussed at Inquiry. I have reworded them in the light of the discussion and to accord with advice in Circular 11/95.

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<sup>7</sup> LP Policies REC2 and REC3

27. The approved drawings are specified for the avoidance of doubt and in the interest of proper planning. The off-site highway works are necessary in the interest of highway safety; a condition requiring details and implementation is included accordingly. To prevent cars from parking on the highway, a condition is imposed to ensure that adequate on-site parking spaces are provided to serve each dwelling before its occupation. A condition preventing use of garages for anything other than parking of vehicles does not pass the test of enforceability (as agreed by the Council's witness), and has not been imposed. A condition requiring construction to proceed in accordance with an approved Construction and Environmental Management Plan is necessary, in the interest of the amenity of local residents and to avoid inconvenience to highway users.
28. To prevent flooding and protect water quality, I have imposed a condition requiring the surface water drainage system to be completed in accordance with an approved scheme. The details specified in the suggested condition can be agreed as part of the scheme. At the Inquiry the parties agreed that the new houses should be constructed to meet Code Level 4 of the Code for Sustainable Homes, as required by CS Policy 24.
29. For reasons of compatibility with its surroundings, and to create a pleasant living environment, landscaping conditions would bring forward a scheme for approval and a programme for its implementation. The former would cover reinforcement to existing hedgerows. I understand that there is scope for archaeological remains under the site and a condition is imposed to prevent its loss without proper investigation and recording. To ensure the development is completed to a satisfactory standard of appearance, it is necessary to include conditions to control external materials and finished floor levels.

### **Conclusions**

30. In summary, the proposed development would cause some harm to local landscape quality through loss of part of the undeveloped land marking the setting of Burbage and separating it from the M69. In this way it would not fully comply with the relevant parts of CS Policy 4 and is contrary to the aims of LP Policy NE5. However, in the circumstances of the Council's current housing predicament, the housing supply elements of CS Policy 4 must be considered out of date and can be accorded little weight. The position also warrants a departure from the aims of LP Policy NE5, particularly as the landscape harm would be limited. In any case, the adverse consequences identified would not be so weighty as to significantly and demonstrably override the benefits of allowing what would be a sustainable form of development.
31. The concern about piecemeal development in Burbage was articulated by a number of objectors. However, each proposal that comes forward has to be considered on its particular site merits, on the basis of the national and local policy position, and having regard to the Council's housing land supply circumstances at that time. The scheme before me was considered in those terms. No other matters raised are sufficient to alter the balance of my considerations or the decision.

*Ava Wood*  
INSPECTOR

## **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans listed in Schedule of Plans at the end of these Conditions.
- 3) Notwithstanding Condition 2, development shall not begin until details of the off-site highway works in accordance with Plan no: EL 12-09 01 Rev A have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the works have been completed in accordance with the approved plan and details.
- 4) No dwelling shall be occupied until parking spaces have been laid out to serve each dwelling on the basis of 2 spaces for a dwelling with up to three bedrooms and 3 spaces for a dwelling with four or more bedrooms. The parking spaces laid out shall be retained in perpetuity.
- 5) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
  - i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;
  - iii) storage of plant and materials used in constructing the development;
  - iv) wheel washing facilities;
  - v) means of access for construction vehicles including routes to and from the site.
- 6) No development shall take place until a scheme for the disposal of surface water has been submitted to and approved in writing by the local planning authority. The details shall incorporate sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development. The drainage strategy should demonstrate that the surface water run-off generated up to and including the 100 year critical storm plus climate change will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The development shall be implemented in accordance with the approved details.
- 7) The dwellings hereby permitted shall achieve Level 4 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 4 has been achieved.
- 8) Notwithstanding Condition 2, no development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. In addition to a planting scheme, these details shall include proposed finished levels or contours; means of enclosure; car

parking layouts and other vehicle and pedestrian access and circulation areas; indications of 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.

- 9) 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 a programme agreed with the local planning authority.
- 10) No development shall commence until a programme of archaeological work including a Written Scheme of Investigation has been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and:
  - a) the programme and methodology of site investigation and recording;
  - b) the programme for post investigation assessment;
  - c) provision to be made for analysis of the site investigation and recording investigation, including a timetable;
  - d) provision to be made for archive deposition of the analysis and records of the site investigation, including a timetable;
  - e) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

No development shall take place other than in accordance with the Written Scheme of Investigation approved under this Condition and the site investigation and post investigation assessment and the provision made for analysis, publication and dissemination of results and archive deposition shall be completed in accordance with the programme set out in the Written Scheme of Investigation approved under this Condition.

- 11) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 12) No development shall take place until details of the finished floor levels of the dwellings hereby permitted in relation to existing and proposed ground levels have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved floor level details.

### **End of Conditions**

### **SCHEDULE OF PLANS**

Location Plan drawing no. BHWLB/P/103

Layout Plan drawing no. BH/WLB/01f

House type drawing no. BH/HT\_DIS/01B

House type drawing no. BH/HT\_DIS/02A



House type drawing no. BH/HT\_LAU/01  
House type drawing no. BH/HT\_LAU/02  
House type drawing no. BH/HT\_LAW/01  
House type drawing no. BH/HT\_LAW/02  
House type drawing no. BH/HT\_TWY/01  
House type drawing no. BH/HT\_TWY/02  
House type drawing no. BH/HT\_TIL/01  
House type drawing no. BH/HT\_TIL/02  
House type drawing no. BH/HT\_GLE/01  
House type drawing no. BH/HT\_GLE/02  
House type drawing no. BH/HT\_ROT/01  
House type drawing no. BH/HT\_ROT/02  
House type drawing no. BH/HT\_SOM/01  
House type drawing no. BH/HT\_SOM/02  
Screen Details drawing no. BH/HT\_SD/01  
Pump Station elevations drawing no. BH/PS/01  
Soft landscaping details drawing no. JBA 12/362-01 Rev A  
Garages drawing no. BH/HT\_GAR/01A  
Pump station detail drawing no. STD1015 Rev 01  
Pump station detail drawing no. STD1018 Rev 02  
Off site highway works EL12-09 01 Rev A

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Timothy Leader of counsel	Instructed by the Solicitor for Hinckley and Bosworth Borough Council
He called	
Mr Simon Wood	Regional Planning and Building Control Manager
BA(Hons) BTP RTPI	– Urban Vision

### FOR THE APPELLANT:

Mr Christopher Young of counsel	Instructed by Mr Gary Lees, Pegasus Planning Group
He called	
Mr Gary Lees BA(Hons)	Director, Pegasus Planning Group
BTP MRTPI	

### INTERESTED PERSONS SPEAKING AT THE INQUIRY:

Mrs Varia and Mr Tyrer	On behalf of Leicestershire County Council
Councillor John Moore	Councillor for Burbage and member of planning committee
Councillor David Inman	Councillor for Burbage
Mr J Bevington	Local Resident
Mrs Bevington	Local Resident

## **DOCUMENTS SUBMITTED AT THE INQUIRY AND AFTER THE INQUIRY CLOSED (AS AGREED)**

1	Appeal notification letter and consultation list
2	Councillor Moore's written statement
3	Councillor Inman's written statement
4	Mr Bevington's written statement
5	Leicestershire County Council proof of evidence and appendices
6/1-6/4	Third party letters including a letter from David Tredinnick MP
7/1-7/3	Council papers relating to the Local Development Scheme
8	Copy of 1999 decision letter (and plan) submitted by Mr Cowley
9	Mrs Bevington's written statement
10	Extract from Burbage Village Design Statement
11	List of agreed conditions
12	Extract from Hinckley and Bosworth Local Plan
13	Statement of Common Ground
14	Closing submissions on behalf of the local planning authority
15	Closing submissions on behalf of the appellant
16	Completed planning obligation
17/1-17/3	Costs application on behalf of the appellant, response on behalf of the local planning authority and counter-response on behalf of the appellant
18	Note from Mr Leader, dated 31 January 2014