



Appeal Decision

Hearing held on 2 February 2016

Site visit made on 2 February 2016

by **R W Allen B.Sc PGDip MRTPI**

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

Decision date: 4 March 2016

Appeal Ref: APP/T2405/W/15/3133922

Land rear of 33 Willoughby Road, Countesthorpe, Leicestershire LE8 5UA

- 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 The 200 Trust against the decision of Blaby District Council.
 - The application Ref 15/0575/OUT, dated 22 April 2015, was refused by notice dated 26 June 2015.
 - The development proposed is outline planning application for the demolition of No 33 Willoughby Road and the erection of thirty three new dwellings with all matters reserved.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Although not originally a main issue between the parties, I raised some concerns at the Hearing in respect to discrepancies in the requested sums, general omissions, and apparent errors with the wording and content of the appellant's planning obligation, which was in the form of a Unilateral Undertaking dated 3 November 2015. The Council also raised its own concerns, which the appellant did not rebut or refute. I subsequently allowed the appellant and the Council a further five days from the date of the Hearing to address the outstanding issues and for the appellant to submit a final revised and signed obligation, which I received dated 8 February 2016. The Council was given a further five days to formally respond, and they raised additional concerns at this point. I have taken into account their response, and that from the Leicestershire County Council (the County Council), in reaching my Decision.
3. Because of this, I find that the adequacy of the obligation is also a main issue, and I am satisfied that my decision will not prejudice the main parties, who have had adequate opportunity to respond accordingly.

Main Issues

4. Therefore the main issues are:
 - Whether the Council is able to demonstrate that it has a five year supply of housing land, focusing firstly on whether the housing requirements for the plan period are appropriate; secondly how previous undersupply should be
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dealt with (the 'Liverpool method' vs the 'Sedgefield method'); and thirdly whether local plan policies relevant to the supply of housing are out-of-date;

- The effect of the proposed development on the character and appearance of the area;
- Whether the appeal site is sustainably located to local services and facilities such that they can be reasonably reached by means other than by private motor car;
- The effect of the proposed development on the living conditions of occupiers of surrounding residential properties having specific regard to noise, disturbance and privacy; and
- Whether the proposed development makes adequate provision for local facilities, services and infrastructure made necessary by the development.

Reasons

Five year housing land supply

5. Paragraph 47 of the National Planning Policy Framework (the Framework) states that to boost significantly the supply of housing, local planning authorities should ensure that their local plans meet the full objectively assessed need (OAN) for market and affordable housing in their housing market area.
 6. Neither main party disputes that the appropriate housing provision target for the Borough is the 8740 dwellings for the plan period 2006 to 2029, equating to 380 dwellings per annum (DPA), which is set out in policy CS1 of the adopted Blaby District Local Plan Development Plan Document 2013 (Core Strategy). However while a more recent and up-to-date OAN of 360-420 DPA is set out in the Strategic Housing Market Assessment (SHMA) from 2014, it is modelled on a different time period, and underpinned by a different evidence base than that calculated for the Core Strategy, such that I find that the two figures cannot be directly compared in this manner. I acknowledge that the SHMA was found to be sound at the recent Charnwood Borough Council core strategy examination. However it is not axiomatic that the current OAN and housing provision set out in Core Strategy policy CS1 is obsolete. In any event, the SHMA OAN range is consistent with the existing growth requirements in Core Strategy policy CS1 which is a minimum requirement. I therefore see no reason to depart from the housing growth provision as set out in Core Strategy policy CS1.
 7. Paragraph 47 of the Framework also states that local authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against housing requirements. An additional 5% or 20% buffer is also required, and I have no reason disagree with the main parties that the higher figure should be used.
 8. Paragraph 035 of the housing and economic land availability assessment section of the Planning Practice Guidance (Reference ID: 3-035-20140306) (the Guidance) states that normally, local planning authorities should aim to deal with any undersupply within the first five years of the plan period where possible (the Sedgefield method).
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9. The Council currently has an undersupply of 1017 dwellings to 2014/15. The Council argues that the undersupply should be reapplied over the remainder of the plan period to 2029 (the Liverpool method). The justification for this approach is that the Core Strategy housing growth is predicated on over half of the total provision (5750) being met within and adjoining the principal urban area (PUA) of Leicester, and specifically the vast majority of the PUA provision (4250) would be met on a sustainable urban extension of Lubbethorpe (the Lubbethorpe SUE). The Lubbethorpe SUE is planned to come forward towards the middle and end of the plan period. Accordingly, the Council says that lower housing growth was always planned to exist in the early years of the plan period, but that growth would accelerate and recover in the middle part of the plan period, such that by the end of 2019/20, the undersupply would be eradicated.
 10. The Council's approach relies heavily on its housing trajectory growth forecasts for the remainder of the plan period, which I was told at the Hearing forms part of Core Strategy policy CS1 and is found at Appendix F to the Plan. The trajectory shows that past completions from 2006/07 to 2011/12 fell considerably short of the annual 380 DPA requirement, reflecting the Council's expectations of lower housing growth in the early years of the plan period. However the annual monitoring reports (AMR) for the years 2012/13 to 2014/15 show that the trajectory forecasts for those years were also missed, such that undersupply to 2014/15, forecast to be 760, has in fact increased by 257. While this additional undersupply may not be insurmountable to claw back, I do not share the Council's view that the increased level of undersupply is not significant.
 11. The trajectory also forecasts that within the PUA area, some 1630 dwellings would be provided in the next five years to 2019/20, much of this on the Lubbethorpe SUE. This would comprise 100 houses delivered in its first year to 2014/15 and 300 in each of the next two years 2015/16 and 2016/17. However the Council's five year housing land supply assessment, dated April 2015, sets very different and much reduced delivery rates on the Lubbethorpe SUE of 540 to 2019/20, with 50 units delivered in its first year 2015/16 and 100 in 2016/17. And this assessment contrasts again with a document put forward by the Council entitled 'Site Wide Planning Strategy and Programme', also dated 2015, in which 710 dwellings are forecast at the Lubbethorpe SUE, comprising 90 in the first year 2015/16 rising to 120 in 2016/17.
 12. The varying growth forecasts cast considerable doubt as to the reliability of the contribution the Lubbethorpe SUE can be expected to deliver in the next five years. This is further undermined by the fact that at the time of the Hearing, the development has yet to begin, and I found nothing convincing in the Council's case that persuades me that commencement is imminent or that it amounts to only a minor delay. Even assuming that development was to commence in the coming months, because it is two years late, I find it unlikely that it would be capable of delivering anywhere near the anticipated levels of housing growth over the next five years as originally forecast by the trajectory or indeed by the five year housing land supply assessment.
 13. The commencement of, and delivery rate of the Lubbethorpe SUE is critical to the credibility and robustness of the planned housing growth set out in the Core Strategy. Because it is late, and is making no current contribution to housing growth, and taking into account the higher levels of undersupply
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against the trajectory forecast to date, I have serious doubts that the undersupply in housing delivery would be capable of being eradicated by 2019/20 as the trajectory forecasts. While I acknowledge that the Council has brought forward non-PUA sites in the early plan period and is working towards a higher DPA over the requirements of Core Strategy policy CS1, it has not been sufficient to prevent the growth in the undersupply or to compensate for the late commencement of the Lubbesthorpe SUE.

14. Accordingly and having regard to the Framework's requirement to significantly boost housing supply, I find that to allow the undersupply to be reapplied as per the Liverpool method would undermine the credibility of the Core Strategy to deal with existing and increased levels of undersupply. Conversely, applying the undersupply as per the Sedgefield method would have the effect of boosting housing requirements in the next five years, which would go some way to compensating for the delayed start of the Lubbesthorpe SUE, and would allow a greater chance of eradicating the undersupply by 2019/20 in line with the planned growth approach as set out in trajectory forecasts.
 15. For these reasons, I find that the undersupply of housing should be met within the next five years, in line with the Guidance. The implication of this is that, as agreed by the main parties, the Council would not be able to demonstrate that it has a five year supply of housing land.
 16. In reaching my decision, I have taken account of additional points raised by the Council. I have noted a number of appeal Decisions which purport to accept the Liverpool method as the appropriate way to deal with undersupply in the Borough. However these Decisions either predate, or are dated from around the time the Core Strategy was adopted in 2013, as well as predating the advice in the Guidance. As such the Inspectors would not have been privy to the evidence before me in respect of subsequent performance and actual housing delivery rates against the trajectory, as well as the delayed start to the Lubbesthorpe SUE. My Decision in any event has been made on the evidence before me. I acknowledge also that Core Strategy policy CS5 sets a growth requirement for Countesthorpe as 520, which has already been reached. But this is a minimum requirement and does not set a ceiling limit or prevent additional dwellings being provided.
 17. I also acknowledge that the AMR figures for this year 2015/16 up to and including September 2015, and updated orally by the Council at the Hearing to December 2015, show that housing completions have exceeded the trajectory figure for the year, and I agree that this would have some effect in reducing the cumulative undersupply. However no substantive evidence is before me that suggests that this level of delivery would be repeated in forthcoming years, such that my concerns above have not been allayed.
 18. The appeal site lies outside of the settlement boundary of Countesthorpe. The Council considers that a presumption against residential development exists, supported by both Core Strategy policy CS18, and policy C2 of the Blaby Local Plan 1999 (Local Plan). Because both policies, amongst other things, state that all countryside areas will be protected from all built development per se, I find that they must be considered as relevant policies for the supply of housing. Paragraph 49 of the Framework states that such policies should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites, which I have already found above.
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19. I therefore afford Core Strategy policy CS18 and Local Plan policy C2 insofar as they seek to resist all forms of built development beyond settlement boundaries little weight in my Decision. Paragraph 14 of the Framework states that planning permission should be granted for development where relevant policies are out-of-date, unless any adverse impacts of doing so would significantly and demonstrably outweighs the benefits. Taking all the above matters into consideration, I find that the proposed development would have significant benefits in delivering much needed housing in the shorter term to address the deficiencies I have already identified.

Character and appearance

20. The appeal site is a roughly triangular-shaped parcel of located to the rear of row of detached properties fronting Willoughby Road, accessed via a narrow land strip between Nos 33 and 35 Willoughby Road. It is currently a horse paddock, and contains a small stable block on its southern boundary. The land is generally level and is well screened with trees and hedges along its boundaries, which I observed made it clearly divisible from the larger agricultural fields which are immediately adjacent to the south west boundary and adjacent to the disused railway cutting which forms the north west boundary.

21. While not a designated landscape, it is an attractive field which I found positively contributes to the overall character and appearance of the area, and developing the site would conflict with Core Strategy policy CS18 and Local Plan policy C2 insofar as they seek to protect valued landscapes and the character of the countryside generally. However at my site visit, I observed that views of the site from the surrounding area were extremely limited. Because of its distance to Willoughby Road and having regard to the two-storey nature of the proposed dwellings, the development would be largely unseen from surrounding vantage points and would not in my judgement appear as large or prominent structures in the street scene.

22. Core Strategy policy CS18 also requires a balance to be drawn between countryside and landscape protection and housing need. For the reasons given above, I find that the level of harm caused by the proposed development to the character and appearance of the area would not be significant, and would not be sufficient to outweigh the considerable benefits in providing much needed housing which I have already identified.

23. While the proposed layout would result in an alternative development pattern to the surrounding built form of road frontage housing and large rear gardens, it would not be so obviously alien to persuade me to find considerable harm on this matter alone.

Whether within reasonable walking distance to local services and facilities

24. Core Strategy policies CS10 and CS21 say, amongst other things, that the Council will seek to reduce the need to travel by private car by locating development where people can access services and facilities without reliance of private motor vehicles, and that new development will be focused in sustainable locations which provide for safe and attractive walking and cycling opportunities.

25. The bulk of the facilities and services serving Countesthorpe, which include a supermarket, primary school, optician, health centre and pharmacy lie at the village centre some 2km to the east. Walking times are around 20-25 minutes and require the pedestrian to walk along Willoughby Road and then Cosby Road, the latter I found to be a busy thoroughfare. At my site visit, I undertook the walk to the village centre, and I found the distance rather long, and the experience alongside the busy main road to be somewhat unpleasant. Those persons carrying shopping or taking and collecting children from the primary school would in my view experience considerably longer walking times. Notwithstanding the advice in the Manual for Streets in respect to acceptable walking distances in rural areas, it is my judgement that walking would be unlikely to be a desirable means to visit the village centre.
26. However I note that some services, including a secondary school and college, a nursery, a convenience store and a barber lie a relatively short distance away approximately 10 minutes walking distance; and a post office, library and the village hall are a little further away about 14 to 15 minutes walking distance from the appeal site. These facilities being considerably closer are much more likely to be walked. Countesthorpe is also well served by a daily and frequent bus service which provides a direct service to the village centre, as well as to Leicester city centre in a little over a 40 minute journey time. The location of the bus stop approximately 600m to the north of the appeal site is not unacceptably distant.
27. Therefore while I find the private motor car is, on the balance of probability, more likely than not to be the preferred method of transport for the future occupiers of the proposed development travelling to the village centre, it is not inconceivable that alternatives to the car would or could be used, and the appeal site is not so isolated from all local facilities and services. I therefore find that the appeal site is not in an unsustainable location, and the proposed development would not conflict with Core Strategy policies CS10 and CS21 as outlined above.

Living conditions

28. Although the Council's concerns relate to the living conditions of all surrounding residences, it was agreed at the Hearing that it is principally concerned with the effect of the proposed development on the living conditions of the occupiers of Nos 31 and 35 Willoughby Road, having specific regard to general nuisance caused by vehicular traffic entering and exiting the appeal site.
29. The appellant's transport assessment indicates that overall, traffic generation from the proposed development at the peak periods (0800-0900 and 1700 to 1800) would equate to one additional trip every three and a half minutes, such that the level of car movements generated by the proposed development would not be significant. In the absence of evidence to the contrary, I have no reason to disagree. The appellant's noise assessment states that there would be a rise in noise levels as a result of the vehicular traffic movement, but that the installation of noise reducing boundary treatments alongside the boundaries of Nos 31 and 35 Willoughby Road would mitigate the additional disturbance caused.
30. I can fully appreciate that the construction of an access road, and the subsequent vehicular traffic that will ensue, would not be particularly welcomed
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and would be seen as a nuisance by the occupiers of the adjoining properties. However, I am satisfied that any harmful effects caused by vehicular traffic movements can be mitigated as recommended by the appellant, which when taken with the additional landscaping and tree planting discussed above, would not unduly prejudice the living conditions of those occupiers of the adjoining properties.

31. I also acknowledge the concerns of residents in respect of lighting and light pollution particularly as the appeal site is currently unlit. While this is a matter for the Council to control at reserved matters stage, I find nothing before me which doubts that a suitable scheme could be put forward which would have the desired effect of limiting light pollution to those occupiers of surrounding properties.
32. The Council's reason for refusal also cites privacy concerns. These have not been substantiated in evidence either in written form or at the Hearing. Although the layout and floor plans of the dwellings are not before me, I am satisfied that sufficient distance would exist between the proposed properties and those in Willoughby Road, further reinforced by the existing tree screening along the common boundary, such that there would be no significant actual or perceived loss of privacy to the occupiers of these properties.
33. The proposed development would therefore accord with Core Strategy policy CS2 and Local Plan policy R1. These say, amongst other things, that development should be sympathetic to their surroundings and should not have an unsympathetic relationship with other nearby uses that would be significantly detrimental to their amenities enjoyed by the occupiers of those properties including light, noise and disturbance.

Whether adequate provision is made for local facilities, services and infrastructure

34. Core Strategy policy CS12 says that contributions will be expected from development where requirements for infrastructure, services and facilities arising from growth are identified. It is also supported by the Council's Supplementary Planning Document entitled 'Planning Obligations and Developer Contributions 2010' (SPD). Paragraph 204 of the Framework says requests for planning obligations must meet three tests, which are: (i) necessary to make the development acceptable in planning terms; (ii) directly related to the development; and (iii) fairly and reasonably relate in scale and kind to the development.
 35. The planning obligation before me makes provision for 25% of the total number of units to be affordable, and provides financial contributions towards education; off-site highways improvements; libraries and off-site open space provision. The appellant has not disputed the need for, or the sums sought by the Council or the County Council. I am satisfied that all the requests made by the Council and the County Council towards local facilities, services and infrastructure have been sufficiently reasoned and justified, and that they meet the tests of the Framework. There are however some discrepancies in the amounts in the obligation to that sought by the County Council including an absence of a provision for monitoring costs; and the Council points to some matters where additional clarification or changes would be required. Had these been the sole areas of my concern with the obligation, I would have allowed the appellant another opportunity to comment or amend the sums accordingly.
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36. However I have serious concerns that there is a possibility that the provisions in the obligation would not be triggered. This is because Recital paragraph 3 states that the developer does not own the land, but is a person with an interest in the land as owner of an Option. The stated owner of the land is not a signatory of the obligation. Without the landowner or any person with a controlling interest in the land being party to the obligation, I find that the obligation is ineffective if the Option is not exercised, as the owner of the land could implement the development without being required to mitigate the effect of the proposed development on local facilities, services and infrastructure. As I have found the requests to be reasoned and justified and meet the tests of the Framework, such circumstances would place considerable additional pressures upon local facilities, services and infrastructure which in my judgement would cause significant harm to the local area.
37. For these reasons, I find that the obligation as drafted is ineffective and inadequate, and that it would not accord with CS policy CS12 or the Council's SPD.

Other Matters

38. Concerns have been raised by residents in respect to the condition of existing local roads in the area and the perceived existing traffic problems in the area, the cumulative effect with other new developments which are accessed from Willoughby Road, and to parking availability at the village centre. As I found above, the proposed development would generate relatively little additional traffic, and no evidence is before me which suggests the local road network, even accounting for other developments, would be unduly prejudiced. The Council did not raise this as an issue.
39. Concerns have also been raised in respect of the effect of the proposed development on wildlife. While I have no specific details before me, I am satisfied that the Council and the County Council's principal ecologist have examined these effects. Here, it appears the main issue of concern would be the proximity of houses to the established hedgerows on the site's boundaries and that a buffer zone between the two should be provided. I am satisfied that this matter, and others in respect to providing an updated ecology survey and that construction avoids the bird nesting season could be controlled by condition or by the Council at reserved matters stage.

Conclusion and Planning Balance

40. On the main issues and based on the evidence before me, I conclude that the housing undersupply should be dealt with in the next five years (the Sedgefield method) rather than over the plan period (the Liverpool method). The implications are that the Council is unable to demonstrate that it has a five year supply of housing land. I attach considerable weight to the benefits the proposed development would bring in delivering much needed housing. These benefits are sufficient to outweigh the harm I have identified to the character and appearance of the area caused by the loss of an attractive and pleasant field.
41. I am satisfied that the appeal site is in a sustainable location having regard to distances to all local facilities and services and access to public transport. Any harm that would be caused to the living conditions of occupiers of neighbouring properties can be satisfactorily addressed through the installation of noise
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controlling fences and additional landscaping, and other matters can be controlled by the Council at reserved matters stage or through the imposition of appropriate planning conditions.

42. However, because the planning obligation fails to bind the landowner or any person with a controlling interest in the land to comply with its terms, the provisions made to local services and infrastructure are ineffective. Because there is a real and probable risk that the scheme could be developed without the provisions in the obligation coming forward, it would place considerable additional pressures upon local facilities, services and infrastructure and subsequently would have a significantly harmful effect on the area. The lack of contribution or mitigation would in my judgement amount the circumstances where the harm would significantly and demonstrably outweigh the benefits of the scheme which I have identified above.
43. Therefore for the reasons set out above, I find that the appeal should be dismissed.

Richard Allen

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

Mr A Jones BA (Hons) MRTPI	Planning Consultant
Mr T Rose BA (Hons) MCIHT MTPS	Transport Consultant
Mr N Benison B.Sc MICE	Transport Consultant
Mr C Nichols CMLI	Landscape Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Ms L O'Doherty	Planning Officer
Ms J Sampson	Planning Officer
Mr I Davies	Planning Officer

DOCUMENTS SUBMITTED AT THE HEARING

1. Letter of notification of the date, time and venue for the Hearing.
2. Copy of an unnumbered indicative layout drawing which is dated 21 August 2015.

Richborough Estates
