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## Appeal Decision

Hearing held on 8 December 2015

Site visit made on 9 December 2015

**by Karen L Baker DipTP MA DipMP MRTPI**

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

**Decision date: 3 March 2016**

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**Appeal Ref: APP/B3030/W/15/3133508**

**Land at Highfields School, London Road, Balderton, Newark on Trent NG24 3AL**

- 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 Ben Bailey Homes against the decision of Newark & Sherwood District Council.
  - The application Ref. 14/01964/FULM, dated 31 October 2014, was refused by notice dated 14 July 2015.
  - The development proposed is residential development comprising 83 units and associated infrastructure, including the relocation of the existing school car park and sports pitches and the removal of 8 TPO trees.
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### Procedural Matters

1. Although the application form describes the proposed development as detailed above, this was amended during the course of the planning application. The Council's Decision Notice refers to the development proposed as residential development comprising 91 units and associated infrastructure, including the relocation of the existing school car park and sports pitches, the provision of a Multi Use Games Area (MUGA) and the removal of 8 TPO trees. I have, therefore, considered the appeal on this basis.
2. At the Hearing, the appellants requested that they be allowed to submit a completed Unilateral Undertaking by 15 January 2016. An extension of time was sought by the appellants on 14 January 2016<sup>1</sup>, with a final deadline set of 29 January 2016. Following the close of the Hearing, the appellants submitted a certified copy of the completed Unilateral Undertaking<sup>2</sup> on 26 January 2016. This includes obligations relating to the provision of a footpath link from the site to Barnby Road; the submission and implementation of a Landscape and Habitat Management Plan; the implementation of the Reptile and Amphibian Mitigation Strategy; and the entering into a Routing Agreement for extraneous traffic linked to the development; along with financial contributions towards education provision (£217,645 Index Linked); highways improvements (£13,400 Index Linked); and libraries (£4,174 Index Linked). I shall have regard to this Unilateral Undertaking and the Council's response<sup>3</sup> to it, during my consideration of this appeal.

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<sup>1</sup> Document 7

<sup>2</sup> Document 10

<sup>3</sup> Document 11

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3. The Council's position, as at 31 March 2015, was that it could not demonstrate a 5 year housing land supply against the housing target in the Newark and Sherwood Local Development Framework Core Strategy Development Plan Document (DPD), adopted in March 2011. However, the Council now considers that it has in excess of a 5 year housing land supply, based on the Objectively Assessed Need (OAN) identified in the recently completed Nottingham Outer Strategic Housing Market Assessment (SHMA), which was commissioned in collaboration with Ashfield and Mansfield District Councils. Notwithstanding this, the Council does not contend the principle of the overall quantum of development proposed in this appeal.
4. Following the close of the Hearing, the appellants submitted a recent appeal Decision (Ref. APP/B3030/W/15/3006252)<sup>4</sup>, which concluded that the Council is unable to demonstrate a 5 year supply of deliverable housing sites. I note the comments<sup>5</sup> made by the Council in respect of its intention to challenge this Decision and the weight that should be afforded to it. However, the matter of housing land supply is not determinative in this case, given that the principle of the overall quantum of development proposed on the appeal site is not disputed.

### **Decision**

5. The appeal is dismissed.

### **Application for Costs**

6. At the Hearing an application for costs was made by Ben Bailey Homes against Newark & Sherwood District Council. This application is the subject of a separate Decision.

### **Main Issues**

7. The main issues in this appeal are:
  - a) whether or not the proposal would provide satisfactory living conditions for future occupiers of the proposed dwellings with regards to noise;
  - b) the effect of the proposed development on the living conditions of neighbouring residents, with particular reference to privacy;
  - c) whether or not the proposed development would maximise community use of the proposed MUGA, having regard to local and national policy;
  - d) whether or not the proposed development would make adequate provision for infrastructure and affordable housing, having regard to the viability of the scheme; and,
  - e) whether or not the proposal would represent sustainable development.

### **Reasons**

#### *Living Conditions of Future Occupiers*

8. The proposed development would include the construction of 91 dwellings, the relocation of the existing school sports pitches and their replacement with a

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<sup>4</sup> Document 12

<sup>5</sup> Document 13

- rugby/sports pitch and a MUGA. The Council and local residents are concerned that the future occupiers of some of the proposed dwellings would not benefit from satisfactory living conditions, with regards to noise from the proposed rugby/sports pitch and the MUGA. At the Hearing, the Council confirmed that it is concerned about the living conditions of the future occupiers of 18 proposed dwellings on Plots 16, 17, 18, 21, 22, 33, 34, 35, 44, 45, 46, 47, 48, 61, 62, 63, 64 and 94, which are in close proximity to the proposed rugby/sports pitch and the MUGA, with 14 of these (excluding the dwellings on Plots 61, 62, 63 and 64) within 20m of the boundary of these facilities.
9. The appellants submitted a Noise Impact Assessment, dated 6 February 2015, with the planning application. An updated and amended Noise Impact Assessment, dated 5 March 2015, was also submitted by the appellants to accompany the planning application. The Noise Impact Assessment refers to British Standard 8233:2014 'Guidance on sound insulation and noise reduction for buildings' which it says recommends daytime (0700hrs – 2300hrs) noise levels of 35dB(A) for living rooms and bedrooms and 40dB(A) for dining rooms. Furthermore, it refers to the guidance on noise levels in external amenity spaces in BS 8233:2014, which says that for traditional external areas that are used for amenity space, such as gardens and patios, it is desirable that the external noise level does not exceed 50dB<sub>L<sub>AeqT</sub></sub>, with an upper guideline value of 55dB<sub>L<sub>AeqT</sub></sub>, which would be acceptable in noisier environments.
  10. Table 2 of the Noise Impact Assessment states that the maximum noise impact associated with the sports pitch operation on the neighbouring proposed residential properties would be L<sub>Aeq, 1 hour</sub> 56dB(A). The Noise Impact Assessment assumes that the proposed dwellings that would surround the proposed sports pitches would be provided with 'standard thermal' double glazing and non-acoustic trickle vents, with opening windows used for 'purge' ventilation and summertime cooling. On this basis, with regards to maximum predicted internal noise levels, Table 2 of the Noise Impact Assessment says that with 'background' ventilation (windows closed and trickle vents open) this would be L<sub>Aeq, 1 hour</sub> 31dB, rising to L<sub>Aeq, 1 hour</sub> 38dB<sup>6</sup> with 'purge' or summertime ventilation (windows open).
  11. I acknowledge that the proposed rugby/sports pitch and MUGA would not benefit from floodlighting and that the hours of use could be limited by an appropriately worded planning condition. Nevertheless the maximum predicted external noise level would be significantly above the desirable external noise level for gardens and patios set out in BS 8233:2014 and would slightly exceed the upper guideline value which would be acceptable in noisier environments. The Noise Impact Assessment considers that the orientation of the proposed dwellings surrounding the rugby/sports pitches and MUGA would provide significant natural acoustic shielding to back gardens and noise levels in these back gardens are generally predicted to be less than L<sub>Aeq, 1 hour</sub> 55dB(A), thus complying with the recommendations in BS 8233:2014. Furthermore, for those plots with rear gardens not shielded by the proposed dwellings, namely Plots 22 and 35, I note that some form of acoustic fencing could reduce external noise levels within these rear gardens. This matter could be controlled by a planning condition on any approval.

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<sup>6</sup> Table 2 of the Noise Impact Assessment indicates that the maximum predicted internal noise level would be L<sub>Aeq, 1 hour</sub> 41dB, however this figure was amended by the appellants at the Hearing

12. It is, however, the maximum predicted internal noise levels which are of concern. Although, with the windows closed and trickle vents open, the maximum predicted internal noise level would comply with the most stringent guidance given in BS 8233:2014, this would be exceeded when the windows of these properties are opened to allow for 'purge' or summertime ventilation. Although the Noise Impact Assessment considers that this would be acceptable as the sports facilities are a requirement of the scheme and would be in place when future residents occupy the most exposed plots, it is apparent that these future occupiers would be likely to experience significant noise and disturbance within their homes, particularly during the summer months when the facilities would be likely to be used for a longer period and when residents would be more likely to open their windows.
13. I conclude, therefore, that the proposal would not provide satisfactory living conditions for future occupiers of the proposed dwellings with regards to internal noise levels.

#### *Living Conditions of Neighbouring Residents*

14. Highfields School is located on the north eastern side of London Road in a predominantly residential area. The appeal site includes part of the school's grounds, along with an area known as Bailey's Fields, which was formerly used as playing fields, to the rear. The dwellings on the other side of London Road, to the south west of Highfields School and the appeal site, are mostly mature 2 storey semidetached properties, with small front gardens and larger rear gardens. To the south and south east of the appeal site and Highfields School, the dwellings are predominantly substantial modern detached properties, set within generous plots. Nos. 27 and 29 London Road are mature detached properties sited between Highfields School and the modern residential properties along The Woodwards and Glebe Park.
15. The Council and local residents are concerned about the impact of the proposed development on the living conditions of neighbouring occupiers at No. 27 London Road, 11a and 12 The Woodwards and 31 and 33 Glebe Park, with particular reference to privacy. The proposed development would include a row of 2 storey detached dwellings to the north of the boundary with these neighbouring properties (Plots 82 - 94), beyond a proposed ecology corridor around 2m in width, the rear elevations of which would be sited between 8 and 12m from the existing boundary wall/fence which delineates this boundary. I consider the effect of the proposed development on each of these neighbouring dwellings below.
16. Government guidance in the National Planning Policy Framework (The Framework) says, as one of its 12 core planning principles, that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. Policy DM5 of the Newark and Sherwood Local Development Framework Allocations and Development Management DPD, adopted in July 2013, says that all proposals for new developments shall be assessed against a number of criteria including that the layout of development within sites and separation distances from neighbouring development should be sufficient to ensure that neither suffers from an unacceptable reduction in amenity including overbearing impacts, loss of light and privacy. It goes on to say that development proposals should have

regard to their impact on the amenity of surrounding land uses and where necessary mitigate for any detrimental impact.

17. The Council does not have any guidance on separation distances which would be appropriate between dwellings. Indeed, paragraph 7.16 of the reasoned justification to Policy DM5 says that, given the range of sites and development proposals within them that this policy will be used to assess, it is not intended to adopt prescriptive standards of amenity but rather establish a framework to form the basis of assessment. Paragraph 7.18 of the reasoned justification says that where proposals involve multiple residential units they should be designed so as to avoid direct overlooking and overbearing impacts on each other. It goes on to say that where new residential development is proposed adjacent to existing dwellings, it should be designed so as to avoid either the existing or proposed development being subjected to the same impacts. In both these instances, the separation distances required to achieve an adequate standard of amenity will be determined by the individual site characteristics including levels and intervening boundary treatments.
18. The appellants have referred me to common separation distances that are applied within other local planning authority areas of 22m between main elevations and 12m between main and secondary elevations, which they say would not normally be applied to conservatories or private amenity space.
19. *No. 27 London Road*: The northern elevation of this dwelling forms part of the boundary with the appeal site, with a substantial brick wall forming the remainder of the northern boundary of this property. No. 27 is predominantly 2 storeys in height, with a single storey projection on its eastern elevation, with a conservatory/sun room beyond. It was apparent from my site visit that this single storey projection includes a window in the northern elevation which opens into a living room. No. 27 contains 2 bedrooms in the attic space of the converted building attached to the western elevation of the main house. The northern roof slope of this part of No. 27 includes rooflights opening into these bedrooms and a bathroom. The eastern elevation of the dwelling includes 2 first floor windows, which each open into a bedroom. Although sited on a large plot, the main area of private amenity space associated with this dwelling is located immediately to the east of the conservatory, to the south of the boundary wall with the appeal site, which includes a paved patio, grassed area, trees and shrubs.
20. The rear elevations of the dwellings on Plots 90 – 94 would face the northern elevation of No. 27 and/or its private amenity space. These dwellings would be 2 storeys in height and would be the Norbury (Plots 91 and 94) and Cotham (Plots 90, 92 and 93) housetypes. The Norbury housetype would include 3 first floor windows opening into a total of 2 bedrooms in its rear elevation and the Cotham housetype would include 5 first floor windows opening into a total of 3 bedrooms in its rear elevation, facing the dwelling and/or the rear garden of No. 27. I note the appellants' statement that the first floor rear elevation of the dwelling on Plot 93 is situated around 14m from the northern boundary of No. 27. However, having regard to the submitted plans, this reduces to around 13m and 12m respectively between the rear elevations of the dwellings on Plots 92 and 91 and the northern boundary of No. 27.
21. Although part of the rear elevation of the Norbury housetype would be set back and a substantial wall exists along the northern boundary of No. 27, I am

- concerned that, given the close proximity of the dwellings on Plots 91, 92 and 93 to the rear single storey extension and conservatory of No. 27, along with the private amenity space to the east of this dwelling, there would be some overlooking of, and loss of privacy to, the occupiers of this neighbouring dwelling within their home and garden from the first floor bedrooms within these proposed dwellings. Furthermore, given the siting of these proposed dwellings, along with the number of windows in their rear elevations, there would be a significant perception of being overlooked by the occupiers of No. 27 in both their dwelling and private amenity space. In my opinion, this would result in an unacceptable reduction in amenity which would be detrimental to the living conditions of these occupiers.
22. *No. 12 The Woodwards*: The rear elevation of this 2 storey property, which contains a number of habitable room windows at ground and first floor, along with 3 pairs of French doors which open out onto the patio and private amenity space, is between around 19m and 20m from its northern boundary wall with the appeal site. Several shrubs and trees provide some screening within the rear garden of No. 12. The rear elevations of the dwellings on Plots 88, 89 and 90 would face the rear elevation of No. 12 and would be sited between around 13m and 14m from the northern boundary of this neighbouring property. Given the substantial separation distances between No. 12 and the proposed dwellings on Plots 88, 89 and 90, which would not be dissimilar to those on The Woodwards and Glebe Park, along with the existing planting within the rear garden of No. 12, I consider that the proposed development would not lead to an unacceptable level of overlooking of, or loss of privacy to, the occupiers of No. 12 in their dwelling or rear garden. As such, this would not be detrimental to their living conditions.
23. *No. 11A The Woodwards*: The northern elevation of this 2 storey property is sited close to the boundary with the appeal site. No. 11A is roughly an 'L' shaped design, with a substantial heated conservatory located to the east of the main part of the house and to the north of a 2 storey projection. Within the 2 storey projection there are 2 first floor windows in the northern elevation which open into a bedroom, with a number of other ground and first floor habitable room windows in the eastern elevations of both the main part of the house and the 2 storey projection. A close boarded fence of around 2m in height is sited on the northern boundary of No. 11A with the appeal site.
24. The rear elevations of the dwellings on Plots 86, 87 and 88 would be sited between around 11m and 13m from the northern boundary of No. 11A. Plots 86 and 88 would be occupied by an Oakham housetype, which would include 2 first floor windows opening into 2 bedrooms. The Tetbury housetype, which would be located on Plot 87, would include a first floor bedroom window around 11m from the northern boundary of No. 11A. I was unable to gain access to No. 11A during my site visit. However, from the evidence before me, it is apparent that the main private amenity space associated with this dwelling is to the east and the property is in a more elevated position than the appeal site. Given the difference in levels, the close proximity of the dwelling, including its conservatory, to the northern boundary and the separation distances between it and the dwelling on Plot 86, there would be some overlooking of, and loss of privacy to, the occupiers of this neighbouring dwelling within their home and garden from the first floor bedrooms within this proposed dwelling. Furthermore, given the siting of this proposed dwelling, along with the number of windows in its rear elevation, there would be a significant perception of

being overlooked by the occupiers of No. 11A in both their dwelling and private amenity space. In my opinion, this would be detrimental to the living conditions of these occupiers.

25. *No. 31 Glebe Park:* The dwelling at No. 31 is a substantial 2 storey detached property with rooms in the roof space. A first floor box window in the dwelling's western elevation includes fenestration which faces the appeal site to the north. A second floor bedroom window is located in the northern elevation of this dwelling. The main private amenity space associated with No. 31 is sited to the west of the dwelling, with a boundary fence and substantial planting located within the area which would become the ecology corridor associated with the proposed scheme. The rear elevations of the dwellings on Plots 83, 84 and 85 would face the northern side elevation of No. 31 and/or its rear garden. Plot 83 would be occupied by a Tetbury housetype, while Plots 84 and 85 would each be occupied by the Cotham housetype. These dwellings would be sited between around 15m and 16m from the boundary with No. 31. Although this would be a similar distance to that between the rear elevation of the dwelling at No. 11A The Woodwards and the western boundary of No. 31, the rear elevation of the dwelling at No. 31 is set back a substantial distance from this boundary. The relationship between the side elevation of No. 31 and the proposed dwellings to the north would be significantly less and given the siting of the second floor bedroom window in this elevation and the number of windows opening into bedrooms within the rear elevations of the dwellings on Plots 83 and 84, I consider that there would be some overlooking and loss of privacy to these occupiers within their dwelling. In my opinion, this would be detrimental to the living conditions of these occupiers. I am satisfied, however, that, given the size of the rear garden at No. 31, the planting along its northern boundary and the distances between the rear elevations of the dwellings on Plots 84 and 85, there would be no undue overlooking and loss of privacy within the private amenity space.
26. *No. 33 Glebe Park:* This dwelling is a mirror image of No. 31, with some differences including the insertion of a larger window in the northern elevation at second floor level, which opens into a study/home office, and a substantial single storey garden room extension to the eastern elevation on the ground floor, close to the northern boundary with the appeal site, which has provided an enlarged kitchen, dining and living area for the occupiers of this property. The private amenity space associated with this dwelling is to the east and includes areas for sitting out adjacent to the dwelling and within the eastern end of the rear garden. A detached 2 storey property on Plot 82 would be sited to the north of No. 33. The side elevation of this Kirkham housetype would face No. 33 and its rear elevation would be set further to the east than the rear elevation of No. 33. These dwellings would not be directly parallel with each other, but with the rear elevations angled towards the mutual boundary. The rear elevation of the dwelling on Plot 82 would contain 3 first floor windows, each opening into a bedroom. A fence around 2m in height currently exists to the north of No. 33, with a substantial hedge beyond along the northern boundary of this property.
27. The side elevation of the dwelling on Plot 82 would include 2 first floor windows which would contain obscure glazing as they would open into the bathroom and an en suite shower room. As such, I am satisfied that there would be no loss of privacy to the occupiers of No. 33 within their dwelling. I am concerned, however, that, given the orientation of the proposed dwelling on Plot 82, the

number of first floor bedroom windows and the siting of a sitting out area at the eastern end of the rear garden of No. 33, there would be some overlooking and loss of privacy to these neighbouring residents within their rear garden, to the detriment of their living conditions.

28. I conclude, therefore, that the proposed development would harm the living conditions of the occupiers of No. 27 London Road, No. 11A The Woodwards and Nos. 31 and 33 Glebe Park, with particular reference to privacy. As such, the proposal would be contrary to Policy DM5 of the Allocations and Development Management DPD and would not accord with the guidance in The Framework.

#### *Community Use of the Proposed MUGA*

29. The proposed development would include the replacement of an existing pitch around 0.9ha, currently used exclusively by Highfields School, with a Rugby/Sports Pitch and a MUGA extending to around 1.1ha which would be used by the school and made available to neighbouring schools and clubs, as well as the wider community, through a Community Use Agreement. The Council considers that the proposed development would not be able to maximise the use of the proposed MUGA, given the lack of floodlighting and its close proximity to some of the proposed dwellings.
30. One of the 12 core planning principles in The Framework says that planning should take account of, and support, local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs. Furthermore, Government guidance in paragraph 74 of The Framework says that existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless it satisfies one of 3 criteria, including the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location. Core Strategy Spatial Policy 8 generally reflects this guidance and says that the loss of existing community and leisure facilities will not be permitted unless it can be clearly demonstrated, amongst other things, that sufficient alternative provision has been made elsewhere which is equally accessible and of the same quality or better as the facility being lost. Paragraph 4.57 of the reasoned justification to this policy advises that it applies to sports fields, education facilities and school playing fields, amongst other things.
31. I acknowledge that amendments were made to the planning application, prior to its determination, following discussions between the appellants and Sport England and Hockey England which would mean that the MUGA would provide for a variety of other sports including football, tennis and netball. At the Hearing, Highfields School confirmed that it had approached other schools in the local area on an informal basis to ascertain whether or not they would be interested in using the proposed MUGA. However, there is no substantial evidence before me relating to this exercise or the feedback received and no details of the proposed Community Use Agreement. I also note the doubts expressed by the Council in its statement and at the Hearing relating to the use of the proposed MUGA by local sports clubs and the wider community, given the size of the proposed pitches, their availability and the lack of floodlighting and changing rooms.



32. The proposed rugby/sports pitch and MUGA would not benefit from floodlighting and I note the appellants' statement that this is so that a balance would be achieved between the use of the sports facilities and the living conditions of future and existing residents nearby. I also note the views of the Council's Environmental Health Officer, who suggests limiting the hours of use. A condition has been suggested by the Council and agreed by the appellants that the rugby/sports pitch and MUGA shall only be used between 0800hrs and 2000hrs (Mondays to Fridays) and 0900hrs to 1700hrs at weekends and on Bank/Public Holidays. Nevertheless, given the lack of floodlights, during the winter months the use of these facilities would be more restricted due to the dark evenings. Given this, along with the use of these facilities by the school during term time, it would be likely that wider community uses would be limited to the weekends during the winter months. However, until a Community Use Agreement is prepared, I have no evidence before me to show when this would be likely to take place or to what extent.
33. The existing sports pitches at the school do not benefit from floodlights. The proposed rugby/sports pitch and MUGA would provide an improvement on the existing facilities, given the inclusion of a Type 5 surface which would provide a more suitable surface for hockey and would also be available for a variety of other sports. Community use of this facility could be secured through the imposition of an appropriate planning condition, as suggested by the Council, which would require the preparation and completion of a Community Use Agreement, prior to the occupation of any dwellings on the site. Although I concur with the Council and Sport England that the use of the proposed MUGA would not be maximised, given the lack of floodlighting and the need to balance its use with any impacts on future and existing neighbouring occupiers, I am satisfied that the proposed sports pitches and MUGA would not result in the loss of a community facility, as sufficient alternative provision has been made within the proposed development which is equally accessible and of better quality than the facility being lost.
34. I conclude, therefore, that although the proposed development would not maximise community use of the proposed MUGA, it would accord with Core Strategy Spatial Policy 8 and Government guidance in The Framework.

*Provision of Infrastructure and Affordable Housing*

35. The appellants have submitted a Unilateral Undertaking which includes obligations relating to the provision of a footpath link from the site to Barnby Road; the submission and implementation of a Landscape and Habitat Management Plan; the implementation of the Reptile and Amphibian Mitigation Strategy; and the entering into a Routing Agreement for extraneous traffic linked to the development; along with financial contributions towards education provision (£217,645 Index Linked); highways improvements (£13,400 Index Linked); and libraries (£4,174 Index Linked). Furthermore, a Community Infrastructure Levy (CIL) charge of £691,107 would be required for this proposed development. The Council is concerned that the proposed development would not provide any affordable housing, a children's play area or community facilities and seeks obligations in respect of 30% on-site affordable housing (or £864,000 commuted sum in lieu of); an on-site children's play area (or £173,602.52 commuted sum in lieu of); and, on-site community facilities provision (or £107,493.75 commuted sum in lieu of).

36. Government guidance in paragraph 173 of The Framework says that pursuing sustainable development requires careful attention to viability and costs in decision taking. It goes on to say that to ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing landowner and willing developer to enable the development to be deliverable.
37. Further, Government guidance in paragraph 019 of the Planning Practice Guidance (The Practice Guidance) on Viability says that in making decisions, the local planning authority will need to understand the impact of planning obligations on the proposal. It goes on to say that, where an applicant is able to demonstrate to the satisfaction of the local planning authority that the planning obligation would cause the development to be unviable, the local planning authority should be flexible in seeking planning obligations. Furthermore it says that this is particularly relevant for affordable housing contributions which are often the largest single item sought on housing developments and they should not be sought without regard to individual scheme viability. Assessing viability should lead to an understanding of the scale of planning obligations which are appropriate.
38. Core Strategy Core Policy 1 says that for all qualifying new housing development proposals, the provision of affordable housing is required, as defined in national planning policy, which is accessible and affordable to those unable to compete in the general housing market. It goes on to say that the Council will seek to secure 30% of new housing development on qualifying sites as affordable housing, but in doing so will consider a number of factors, including the impact of this on the viability of any proposed scheme. In circumstances where the viability of the scheme is in question, the developer will be required to demonstrate, to the satisfaction of the Council, that this is the case. Policy DM3 in the Allocations and Development Management DPD says that the delivery of planned growth set out in the Core Strategy is dependent upon the availability of infrastructure to support it. The required infrastructure will be provided through a combination of CIL, planning obligations, developer contributions and, where appropriate, funding assistance from the Council. It goes on to say that planning applications will be expected to include appropriate infrastructure provision.
39. The Newark and Sherwood Local Development Framework Developer Contributions and Planning Obligations Supplementary Planning Document<sup>7</sup> (SPD), adopted in December 2013, sets out the Council's policy for securing planning obligations from new developments that require planning permission and how this will operate alongside the CIL. Paragraph 6.17 of this SPD says that, in order to ensure that the impact of planning policies are considered consistently, the Council will undertake viability assessments or seek independent assessments of viability, on a Viability Assessment Model of its choice, on sites where the developer has raised issues of viability. The results of the assessment will indicate the level of affordable housing and other planning obligation contributions that the proposed development may reasonably accommodate without becoming economically unviable. Paragraph 6.19 of this SPD says that where the Council is satisfied that an otherwise

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<sup>7</sup> Document 3

desirable development cannot be fully compliant and remain viable, a reduced package of planning obligations may be recommended based on the Viability Assessment.

40. The appellants submitted 2 reports<sup>8</sup> in respect of viability with the planning application. The Council appointed AMK Group to undertake an independent viability review of the submitted details, from which the suggested abnormal costs of development were challenged, and then Gleeds to act as an independent cost surveyor to review the combined details, from which it was concluded that the abnormal costs were realistic. The appellants submitted revised viability details on 27 April 2015, which were reported as their final position in the Planning Officer's Report to the Planning Committee on 7 July 2015. Both the Council and the appellants concur that the delivery of the Council's affordable housing requirement, in addition to the other developer contributions and the CIL payment would render the proposed development unviable. The proposed developer contribution package being offered in this case has been independently verified and the Council's Planning Officer recommended that it was reasonable and appropriate to enable the development to proceed.
41. As part of this appeal, the appellants and the Council have submitted a Statement of Common Ground (Viability), which includes an updated Viability Appraisal undertaken by AMK Group which provides a final position statement in relation to viability, the conclusions of which both main parties agree with. This document considers that the proposed development could not deliver the policy target of 30% affordable housing and even with no affordable housing the development demonstrates negative viability of -£30,208 based on standard development profit return of 20% on Gross Development Value. The Appraisal concludes therefore that it would not be economically viable for the scheme to deliver any affordable housing, though it should be recognised that it would contribute £669,326 of CIL and £235,219 of infrastructure contributions.
42. I note the Council's concerns that there would be no provision for public open space, play provision for children and young people and amenity space. However, the proposal would include a footpath link from the proposed dwellings to Barnby Road Community Park and children's play area, which would enable future residents to gain pedestrian access to these facilities sited to the north west of the appeal site. The proposed scheme would also provide around 1,155sqm of amenity space associated with the proposed apartments. Furthermore, although I have no evidence before me relating to the likely extent of the community use of the proposed MUGA, following the completion of the Community Use Agreement it is likely that some community use of this facility would take place.
43. I also acknowledge the Council's identified need for affordable housing across the District, which includes an estimated shortfall of 558 affordable homes over a 10 year period. However, from the evidence before me, I am satisfied that the provision of the total package of contributions sought by the Council, including affordable housing, a children's play area and community facilities, would render the proposed development unviable. Indeed, it is apparent from the viability assessments and appraisals submitted that the contributions

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<sup>8</sup> Financial Viability Report, dated 27 October 2014, prepared by Atlas Development Solutions and Financial Viability – Planning Considerations, dated 30 October 2014, prepared by RPS Planning and Development

included within the Unilateral Undertaking would be of an appropriate scale, having regard to the viability of the scheme before me.

44. I conclude, therefore, that the proposed development would make adequate provision for infrastructure and affordable housing, having regard to the viability of the scheme. As such, it would not be contrary to Core Strategy Core Policy 1 and Policy DM3 in the Allocations and Development Management DPD, and it would accord with the guidance in the Council's SPD and Government guidance in The Framework and The Practice Guidance.

#### *Sustainable Development*

45. The Council considers that the proposal would not represent a sustainable form of development. Indeed it says that when the noise for future residents, privacy of neighbouring occupiers, a failure to maximise community use and the lack of infrastructure and affordable housing are taken as a whole, the development would not be sustainable.
46. Paragraph 7 of The Framework sets out the 3 dimensions to sustainable development: economic, social and environmental and paragraph 8 says that the roles performed by the planning system in this regard should not be undertaken in isolation, because they are mutually dependent. It goes on to say that, to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system, which should play an active role in guiding development to sustainable solutions. Paragraph 9 says that pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people's quality of life. This includes, but is not limited to, replacing poor design with better design; improving the conditions in which people live, work, travel and take leisure; and widening the choice of high quality homes.
47. There is no dispute between the main parties that the appeal site is sustainable in locational terms, given its proximity to local services and facilities. I note the Sustainability Statement submitted by the appellants with the planning application, which sets out some of the economic, social and environmental benefits of the proposed development. In terms of the economic role, the appellants consider that the occupation of 91 dwellings would enhance the vitality of both Newark and Balderton town centres, through increased spending by future residents.
48. In terms of the social role, the appellants refer to the provision of 91 dwellings within the Newark Urban Area, located on a key transport route, in an accessible location.
49. With regards to the environmental role, the appellants refer to the high quality design and specification of the proposed scheme, which would include various technologies beyond the baseline so that targets for the consumption of energy, water and other resources would be met and exceeded.
50. I concur with the views of the main parties that the appeal site is sustainable in locational terms, given its proximity to local services and facilities and its siting within the Newark Urban Area. The proposed development would provide 91 dwellings, none of which would be affordable. I acknowledge the Council's statement that it now considers that it can demonstrate a 5 year supply of

deliverable housing land. However, it does not contend the principle of the overall quantum of development proposed in this appeal. As such, I am satisfied that the construction of 91 dwellings would benefit the supply of housing within the District.

51. The proposed development would also provide improved sports facilities for Highfields School. Indeed, I have found that the proposed rugby/sports pitch and MUGA would not result in the loss of a community facility as sufficient alternative provision has been made within the proposed development which is equally accessible and of better quality than the facility being lost, given that the provision of a MUGA would be available for community use, through a Community Use Agreement. In my opinion, this would support this part of Newark as a strong, vibrant and healthy community.
52. Although the proposed development would not provide an on site play area, the proposed development would provide a footpath link to a facility nearby. Furthermore, I have found that the lack of such on site provision, along with the lack of affordable housing and community infrastructure contributions would be acceptable in this case, given the viability of the scheme.
53. I am concerned, however, that the proposed development would not provide satisfactory living conditions for future occupiers of some of the proposed dwellings, with regards to noise, and would harm the living conditions of some neighbouring residents, with particular reference to privacy, contrary to the development plan and Government guidance in The Framework.
54. I have considered all the other matters raised by the appellants including that the proposed development would enable a programme of much needed improvements to Highfields School, including the modernisation of the original interior, updating of the sports hall and the provision of new outdoor sports facilities; the financial benefit to the school; improved footpath links; enhanced wildlife habitat creation; the securing of a popular and vital local education establishment; and, the use of some of the capital to continue the school's bursary scheme. Nevertheless, I consider that the adverse impacts of the scheme before me, which would not provide satisfactory living conditions for future occupiers of some of the proposed dwellings, with regards to internal noise levels, and would harm the living conditions of the occupiers of No. 27 London Road, No. 11A The Woodwards and Nos. 31 and 33 Glebe Park, with particular reference to privacy, contrary to Policy DM5 of the Allocations and Development Management DPD, would significantly and demonstrably outweigh the benefits and render the scheme unsustainable. I conclude, therefore, that, on balance, the proposal would not be a sustainable development and should be dismissed.

*Karen L Baker*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANTS:**

Mr Jonathan Smith MRTPI	Agent - RPS Group
Mr Chris Dwan BSc AMRTPI	Appellants – Avant Homes (Midlands)
Mr Will Staunton MA	Highfields School
Mr Phil Banks BEng MIOA	Agent – Spectrum Acoustic Consultants

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mr Simon Sharp BSc(Hons) BA(Hons) DipTP MRTPI	Consultant – JH Walter LLP
Miss Helen Marriott	Senior Planner
Mr Daniel Marston	Solicitor
Councillor David Payne	Local Councillor – Balderton North and Coddington Ward and Chair of the Planning Committee

### **INTERESTED PERSONS:**

Councillor Johnathan Lee	Local Councillor – Balderton North and Coddington Ward
Councillor David Lloyd	Leader of Newark Town Council and Local Councillor – Beacon (Newark) Ward
Miss Ruth Neilson	On behalf of Mrs Christine Neilson – local resident
Councillor Raymond Rouse	Local resident and Balderton Parish Councillor
Mr John Roberts	Local resident
Mr Andrew Dawson	On behalf of Mr Simon Dawson – local resident
Miss Camilla Duckworth	Local resident
Ms Gwyneth McMinn	Network Development Manager, Sustrans
Mr Dan Godfrey	Local resident
Mr John Lecutier	Local resident
Mr R Fletcher	Local resident

## **DOCUMENTS SUBMITTED DURING THE HEARING**

- 1 Response to the appellants' application for costs, submitted by the Council
- 2 Newark and Sherwood District Council Playing Pitch Strategy, September 2014, submitted by the Council
- 3 Newark and Sherwood Local Development Framework Developer Contributions and Planning Obligations Supplementary Planning Document, adopted in December 2013
- 4 Newark and Sherwood Local Development Framework Affordable Housing Supplementary Planning Document, adopted in July 2013

## **DOCUMENTS SUBMITTED FOLLOWING THE CLOSE OF THE HEARING**

- 5 Email from the appellants, dated 16 December 2015, including a final draft copy of the Unilateral Undertaking
- 6 Email from the Council, dated 5 January 2016, including its response to

- the appellants, dated 21 December 2015, to the final draft copy of the Unilateral Undertaking
- 7 Email from the appellants, dated 14 January 2016, seeking a request for an extension to the deadline for the submission of the Unilateral Undertaking, along with an amended Unilateral Undertaking
- 8 Email from the appellants, dated 18 January 2016, including an amended version of the Unilateral Undertaking
- 9 Email from the appellants, dated 21 January 2016, including a signed but undated copy of the Unilateral Undertaking
- 10 Certified copy of the executed Unilateral Undertaking, submitted by the appellants
- 11 Letter from the Council, dated 28 January 2016, setting out its comments on the Unilateral Undertaking
- 12 Email from the appellants, dated 12 February 2016, including a copy of a recent appeal Decision (Ref. APP/B3030/W/15/3006252)
- 13 Letter from the Council, dated 12 February 2016, in response to the submission of appeal Decision (Ref. APP/B3030/W/15/3006252)
- 14 Email from the appellants, dated 15 February 2016, in response to the Council's letter, dated 12 February 2016

### **APPLICATION PLANS**

- A1/1 Planning Layout (Drawing No. BB.211713.101 Rev. U)
- A1/2 Site Location Plan (Drawing No. BB.211713.LOCP)
- A1/3 MUGA Proposals (Drawing No. BB.211713.103)
- A1/4 Plot Separation Distances (Drawing No. BB.211713.105 Rev. A)
- A1/5 Site Sections (Drawing No. BB.211713.106 Rev. A)
- A1/6 B.8 – Fenwick – 3 Block – Planning Elevations (Drawing No. BB.211713.120)
- A1/7 B.8 – Fenwick – 3 Block – Planning Plans (Drawing No. BB.211713.121)
- A1/8 M3.1 – Tetbury – Planning Elevations (Drawing No. BB.211713.132 Rev. B)
- A1/9 M3.1 – Tetbury – Planning Plans (Drawing No. BB.211713.133)
- A1/10 Durham – Planning Elevations (Drawing No. BB.211713.134 Rev. B)
- A1/11 M3.4 – Durham – Planning Plans (Drawing No. BB.211713.135)
- A1/12 M4.1 – Kirkham – Planning Elevations (Drawing No. BB.211713.138 Rev. B)
- A1/13 M4.1 – Kirkham – Planning Plans (Drawing No. BB.211713.139)
- A1/14 M4.2 – Langham – Planning Elevations (Drawing No. BB.211713.140 Rev. B)
- A1/15 M4.2 – Langham – Planning Plans (Drawing No. BB.211713.141)
- A1/16 Oakham – Planning Elevations (Drawing No. BB.211713.142 Rev. B)
- A1/17 M4.4 – Oakham – Planning Plans (Drawing No. BB.211713.143)
- A1/18 Hartlebury Alt – Planning Elevations (Drawing No. BB.211713.146 Rev. C)
- A1/19 Hartlebury Alt – Planning Plans (Drawing No. BB.211713.147 Rev. C)
- A1/20 Apartments – Planning Elevation (Drawing No. BB.211713.148 Rev. C)
- A1/21 Apartments – Planning Elevation (Drawing No. BB.211713.149 Rev. C)
- A1/22 Apartments – Planning Elevation (Drawing No. BB.211713.150 Rev. C)
- A1/23 Apartments – Planning Elevation (Drawing No. BB.211713.151 Rev. C)
- A1/24 Apartments – Planning Plans (Drawing No. BB.211713.152 Rev. A)
- A1/25 Apartments – Planning Plans (Drawing No. BB.211713.153 Rev. B)
- A1/26 Garages – SGL – Planning Plans and Elevations (Drawing No.

- A1/27 BB.211713.155 Rev. A)  
Garages – DBL – Planning Plans and Elevations (Drawing No. BB.211713.156)
- A1/28 Garage – Quad – Planning Plans and Elevations (Drawing No. BB.211713.158)
- A1/29 Cotham – Planning Elevations (Drawing No. BB.211713.160 Rev. A)
- A1/30 M3.3C - Cotham – Planning Plans (Drawing No. BB.211713.161)
- A1/31 M3.3C – Cotham Alt – Planning Elevations (Drawing No. BB.211713.162 Rev. A)
- A1/32 M3.3C – Cotham Alt – Planning Plans (Drawing No. BB.211713.163)
- A1/33 T.4 Alt Alt – Hartlebury – Planning Elevations (Drawing No. BB.211713.164 Rev. B)
- A1/34 T.4 Alt Alt – Hartlebury – Planning Plans (Drawing No. BB.211713.165 Rev. B)
- A1/35 Kilmington – Planning Elevations (Drawing No. BB.211713.166 Rev. B)
- A1/36 Kilmington – Planning Plans (Drawing No. BB.211713.167 Rev. B)
- A1/37 Norbury – Planning Elevations (Drawing No. BB.212614.168)
- A1/38 Norbury – Planning Plans (Drawing No. BB.212614.169)
- A1/39 Kilmington – Semi – Planning Elevations (Drawing No. BB.211713.170)
- A1/40 Kilmington – Semi – Planning Plans (Drawing No. BB.211713.171)
- A1/41 Coleford – Semi – Planning Elevations (Drawing No. BB.211713.172)
- A1/42 Coleford – Semi – Planning Plans (Drawing No. BB.211713.173)
- A1/43 Figure 2 Tree Survey Plan (Drawing No. L4630/01 Rev. C)
- A1/44 Figure 3 Tree Constraints Plan (Drawing No. L4630/02 Rev. C)
- A1/45 Figure 4 Tree Protection Plan (Drawing No. L4630/03 Rev. D)

Richborough Estates