



Appeal Decision

Hearing held on 6 June 2013

Site visit made on 6 June 2013

by John Woolcock BNatRes(Hons) MURP DipLaw MPIA MRTPI

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

Decision date: 24 June 2013

Appeal Ref: APP/P3040/A/13/2190546

Hollygate Lane and Colston Gate, Cotgrave, Nottinghamshire NG12 3JY

- 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 Mr P Parker against the decision of Rushcliffe Borough Council.
 - The application Reference No:11/01567/OUT, dated 20 April 2012, was refused by notice dated 20 July 2012.
 - The development proposed is residential development at a density of 32 dwellings per hectare and associated works.
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Applications for costs

1. At the Hearing applications were made by Mr P Parker and by Rushcliffe Borough Council for awards of costs against each other.¹ These applications are the subject of separate Decisions.

Decision

2. I dismiss the appeal.

Preliminary matters

3. The appeal application is in outline with all matters reserved for later consideration. I have had regard to Figure 1: Site Concept Plan/Illustrative Detail as illustrative material not forming part of the application. With the submission by the appellant of an ecological assessment at the appeal stage, the Council indicated in its Hearing Statement that it was satisfied that its fourth reason for refusal could be dealt with by way of appropriate planning conditions, and is no longer contested by the Council as part of this appeal.
4. The appeal site is rectangular, with an area of 1.55 ha, and lies to the north-east of the town of Cotgrave. It is currently unused but was last used for agriculture four years ago.² Based on the gross site area the proposal would provide for 50 dwellings. The appeal site's south-western boundary is defined by the rear fences of a row of detached dwellings which face onto Colston Gate. On the opposite side of Colston Gate, near Rivermead, there is a parking area and pedestrian access route to the town centre. The site's southern boundary is marked by an overgrown hedgerow next to this part of Colston Gate. There is a large residential estate on the southern side of Colston Gate. The north-eastern boundary of the appeal site is defined by a hedgerow with agricultural

¹ HD14 and HD15.

² Evidence of Mr Parker at the Hearing.

land beyond. There is also an overgrown hedgerow along the northern site boundary, which fronts onto Hollygate Lane. Opposite to part of this frontage there are several houses. Hollygate Lane joins Bingham Road west of the junction with Colston Gate. Further to the north-east is an industrial estate, beyond which is the former Cotgrave Colliery site. This has outline planning permission for development, which would deliver 30% affordable housing and provide financial contributions towards infrastructure.³

5. The appeal site lies outside the settlement of Cotgrave, within the Nottinghamshire-Derbyshire Green Belt, as defined in the development plan, which with the revocation of the East Midlands Regional Strategy (RSS), now comprises solely the Rushcliffe Local Plan, adopted 1996 (LP). Saved LP Policy ENV15 states, amongst other things, that the purposes of the Green Belt are to check unrestricted sprawl of large built-up areas, to safeguard the surrounding countryside from further encroachment, to prevent neighbouring towns from merging into one another, to preserve the special character of historic towns and to assist in urban regeneration. The Council adopted a non-statutory replacement local plan in 2006 (RLP), which does not include housing and employment allocations. A Core Strategy (CS) was submitted for examination in October 2012, but is currently in suspension so that further work can be undertaken. I have given polices concerning the Green Belt in the RLP and emerging CS some weight, insofar as these are consistent with the Green Belt provisions in the *National Planning Policy Framework*.⁴
6. A unilateral undertaking, dated 9 June 2013, provides for affordable housing, along with contributions to children's play provision, sports pitch provision, health care, primary school education and monitoring, on commencement of the development that is the subject of this appeal.⁵

Main issues

7. The main issues in this appeal are:
 - (a) Whether the development conflicts with policy to protect the Green Belt and the effects of the proposed development on the openness of the Green Belt and upon the purposes of including land within it.
 - (b) Whether any potential harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances that would be necessary to justify the development.

Reasons

Green Belt

8. The proposed residential development would not fall within any of the exceptions set out in paragraph 89 of the *Framework*, and so the construction of new buildings would be inappropriate in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The *Framework* provides that

³ HD4 shows location and parameters for residential and employment development, along with enhanced pedestrian links to the town centre. This site is identified in the emerging Core Strategy for the provision of 470 dwellings.

⁴ This is referred to in this decision as the *Framework*.

⁵ HD2.2.

substantial weight should be given to any harm to the Green Belt, and very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Residential development would erode the openness of the Green Belt and would not assist in safeguarding the countryside from encroachment. This would harm the Green Belt.

9. The dwellings and related urban infrastructure that would comprise the proposed development would, in this location, harm the setting of the town, and adversely affect the character of the area. The illustrative detail submitted with the application shows a link road between Hollygate Lane and Colston Gate, which would require the removal of parts of the roadside hedgerows to provide access and appropriate visibility splays.⁶ This would be detrimental to the appearance of the area. I consider that the proposal would have an adverse impact on the character and appearance of the area, which would be additional to the harm to the Green Belt.
10. The appellant argues that there are six other considerations to weigh against the harm I have identified above:
 - (a) The strategic context and the recognition of the need for a Green Belt review.
 - (b) The Council's previous allocation of the site for housing, and hence its suitability for development.
 - (c) The effect on the supply of housing, including affordable housing.
 - (d) The effect on choice and competition in the market for land.
 - (e) The highway benefits of the scheme.
 - (f) The proposal would result in sustainable development.
11. For (a) above, the Council is considering in its approach to the CS how to deal with representations calling for a review of the Green Belt. The likely outcome of this is far from clear at this stage, and even if a review were to take place there is no guarantee that this would alter the status of the appeal site. Furthermore, the RSS, which did call for a review of the Green Belt within Rushcliffe, is no longer part of the development plan. Cotgrave does not lie between Derby and Nottingham, but the Green Belt has purposes other than just maintaining the separation between these urban areas. Neither the strategic context nor the likelihood of a Green Belt review is an 'other consideration' of much weight in the balance to be applied here.
12. The appeal site has been considered before for housing in consultation documents and draft allocations (b), but the underlying considerations which applied at that time and suggested that the site may have been suitable for development might no longer apply. A factor to take into account in this regard is that the distribution of new housing between the Principal Urban Areas and rural settlements is now a matter to be resolved through the CS process. Not much weight can, therefore, be given to previous draft allocations.
13. The appellant emphasised the significance of (c), with particular reference to a five-year supply of deliverable housing sites. The need for the development is relevant in weighing 'other considerations', but I have reservations about

⁶ HD11.

whether this extends specifically to the absence of a five-year land supply. Even if it was the case that the Council cannot demonstrate a five-year supply of deliverable housing sites, I have doubts about where that would take the argument.⁷ It seems to me that applying the policies set out in the *Framework* to what weight should be given to a five-year supply deficit as an 'other consideration', results in something of a circular argument, along the following lines.

14. If the Council cannot demonstrate a five-year supply of deliverable housing sites then paragraph 49 of the *Framework* provides that relevant policies for the supply of housing should not be considered up-to-date. Paragraph 14 states that where relevant policies are out-of-date planning permission should be granted unless specific *Framework* policies, including those related to land designated as Green Belt, indicate development should be restricted. Inappropriate development in the Green Belt should be restricted unless very special circumstances exist. The way to test whether inappropriate development should be restricted in accordance with paragraph 14 is, as set out in paragraph 88, to weigh other considerations against Green Belt, and any other, harm. But this is where the analysis started. Such an approach would be attempting to determine how much a consideration weighed in a balance that had already been tipped. Furthermore, it would be a pointless exercise because a favourable finding for the appellant would be dependent upon a determination that very special circumstances existed, which by itself would be sufficient to justify granting planning permission for the inappropriate development.
15. The absence of a five-year housing land supply would not, by itself, amount to an 'other consideration' that should be given significant weight. Nonetheless, the *Framework* aims to boost significantly the supply of housing, and an additional 50 dwellings, including some affordable housing, albeit short of the Council's requirement, would be beneficial, and should be given significant weight.
16. For (d) the appeal scheme would offer more choice of housing sites for Cotgrave and the wider area, and this would gain some support from the *Framework*, which aims to deliver a wide choice of high quality homes. This is a consideration to which I give moderate weight.
17. Concerning highway benefits (e), there is no footway provision on the southern side of Hollygate Lane or the eastern side of Colston Gate in the vicinity of the appeal site. The Highway Authority therefore requires the proposed development to provide a highway link through the site with 2 m wide footways either side of a carriageway wide enough to allow the free passage of public transport.⁸ Such a link would be a beneficial addition to the local road network. The Highway Authority also notes that pedestrians from the proposed development would be attracted to local amenities in the precinct area of Cotgrave, and considers that it would be desirable to close the short section of Colston Gate between Hollygate and Rivermead to through traffic.⁹ The

⁷ The most recent Council's Local Plan Monitoring Report at HD7 finds a 1.6 years supply in total, but a 5.2 years supply for rural Rushcliffe. However, the source of the plan target includes the now revoked RSS [HD6], and reference was made at the Hearing to reliance on more up-to-date household projections. In these circumstances establishing precisely a five-year supply is problematic, and a task which was not achieved at this Hearing.

⁸ HD12.

⁹ I note that the Council's suggested Condition 8, based on HD11, refers to the prior approval of measures to prevent or deter use of Colston Gate between Bingham Road and Rivermead.

appellant acknowledges that this would lead to improved pedestrian and cycle links with the town centre, and therefore highway and health benefits, but does not consider that such a scheme would be necessary or related to the appeal scheme. The accident record for this length of road does not provide justification for such a requirement.¹⁰ The evidence before me does not establish the necessity for the imposition of such a condition, and so not much weight can be given to any benefit of the appeal scheme arising from traffic calming on Colston Gate.

18. The proposed development would be within walking distance of local services and facilities, and sited adjacent to a bus route. However, this would not make it sustainable development (f). This would only be so if it accorded with the *Framework*, when taken as a whole, and raises a similar circular argument to that outlined above for (c).
19. Nevertheless, the construction of 50 dwellings, and their subsequent occupation, would contribute to growth and towards the local economy of the town. This would assist with regeneration. These are considerations to which I give moderate weight.
20. In this balancing exercise I give minimal weight to (a), (b) and (f) as 'other considerations' for the reasons set out above. The benefits of additional dwellings and further choice for the market, along with the provision of some affordable housing, and the resultant contribution towards the local economy, regeneration and overall growth, are considerations to be weighed against the harm to the Green Belt and to the character and appearance of the area. So too, are the highway benefits that would result from a link road between Hollygate Lane and Colston Gate. However, substantial weight should be given to the harm to the Green Belt. Taking all the above into account, I find that the 'other considerations' in this case do not clearly outweigh the harm I have identified, and the very special circumstances necessary to justify the development do not exist.

Other matters

21. There is a dispute about the provisions in the obligation. The Council and the appellant had been negotiating a planning agreement for affordable housing and contributions to services and facilities. However, three days before the Hearing the appellant submitted a Note on Viability of Development, which purported to justify a 10% affordable housing quotient, and recreation contributions that excluded a maintenance contribution.¹¹ I am not convinced that the evidence adduced justifies the 10% provision for affordable housing as set out in the unilateral obligation. It was not possible at the Hearing to properly interrogate the modelling which underlies the appellant's approach to viability assessment, and the Council had not had sufficient time to properly investigate the basis of the 10% offer prior to the Hearing. I have considered whether recreation contributions should include a maintenance contribution.¹² Some weight should be given to the Council's Supplementary Planning Guidance *Development Requirements*, which states that the commuted sum is to cover the cost of maintenance over a period of 15 years.¹³ I do not consider that the obligation properly addresses this matter. My concerns about the

¹⁰ HD12.

¹¹ HD5.

¹² HD10.

¹³ HD13. This carries some weight because it has been subject to consultation.

submitted unilateral undertaking also weigh against allowing the appeal.

22. I concur with the Council that the submitted ecological assessment indicates that nature conservation interests in this case could be safeguarded by the imposition of appropriate planning conditions. The proposal would not have a significant adverse impact on the use of the best and most versatile agricultural land.¹⁴ There is local concern about the effects of the proposal on the living conditions of neighbouring residents. However, matters concerning privacy and outlook could be dealt with at the reserved matter stage, and there is nothing to indicate that a reasonable scheme for 50 dwellings could not be designed for this site given its size and configuration. There is an informal footpath across the appeal site. However, there is no substantial evidence to indicate that this would jeopardise residential development of the site.¹⁵ I have taken into account all other matters raised in evidence, but have found nothing to outweigh the main considerations that lead to my conclusions.

Conclusions

23. The proposal would be contrary to saved LP Policy ENV15, which although dated remains broadly consistent with the *Framework*. The conflict with local and national policy concerning the Green Belt weighs heavily against allowing the appeal. I do not consider that the proposal would accord with the requirements for sustainable development set out in the *Framework*. There are no material considerations here which would indicate that a determination other than in accordance with the development plan was justified.

24. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

John Woolcock
Inspector

¹⁴ HD1.

¹⁵ HD3.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Emily Dodd BA(Hons) MSc MRTPI	Area Planning Officer.
Phillip Marshall BA(Hons) BTP MRTPI	Principal Policy Planner.

FOR THE APPELLANT:

Catherine Parker	Agent.
Gary Ogg	Assistant to agent.
Mr P Parker	Appellant.

INTERESTED PERSONS:

Cllr Hayley Chewings	Rushcliffe Borough Council.
Cllr Sarah McGinley	Rushcliffe Borough Council.

DOCUMENTS SUBMITTED AT THE HEARING (HD)

Document 1	Plan showing Agricultural Land Classification of the appeal site.
Document 2.1	Draft Unilateral Undertaking.
Document 2.2	Unilateral Undertaking dated 9 June 2013.
Document 3	Letter from Area Rights of Way Officer dated July 2012.
Document 4	Site Location Plan and Parameters Plan, Cotgrave Colliery.
Document 5	Appellant's covering note on S106 unilateral agreement.
Document 6	<i>Housing Background Paper BD28</i> , Rushcliffe Core Strategy, December 2012.
Document 7	Local Plan Monitoring Report 2011/2012.
Document 8	Council's response to appellant's viability assessment setting out contributions required, dated April 2013.
Document 9	Additional suggested drainage condition.
Document 10	Calculations for commuted sums dated November 2011 and March 2012.
Document 11	Emails dated February and March 2013 between Council and Highway Authority specifying highway design details, and setting out requirements or contributions.
Document 12	Correspondence from Highways Development Control, Nottinghamshire County Council, dated April 2012, July 2012 and May 2013.
Document 13	<i>Development Requirement</i> , Supplementary Planning Guidance, Rushcliffe Borough Council, December 2003.
Document 14	Council's application for costs.
Document 15	Appellant's application for costs.

SCHEDULE OF PLANS

Plan A	Location map with appeal site edged in red.
Plan B	Figure 1: Site Concept Plan/Illustrative Detail.



Costs Decision

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by John Woolcock BNatRes(Hons) MURP DipLaw MPIA MRTPI

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

Decision date: 24 June 2013

Costs application in relation to Appeal Ref: APP/P3040/A/13/2190546 Hollygate Lane and Colston Gate, Cotgrave, Nottinghamshire NG12 3JY

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Rushcliffe Borough Council for a full award of costs against Mr P Parker.
 - The hearing was in connection with an appeal against the refusal of planning permission for residential development at density of 32 dwellings per hectare and associated works.
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Decision

1. The application for an award of costs is refused.

The submissions for Rushcliffe Borough Council

2. The application is made in writing and submits that the application flies in the face of Green Belt policy, and that the appellant failed to engage in timely negotiation on the viability of the appeal site, and to submit an appropriate planning obligation. A draft obligation submitted on 23 May 2013 referred to 30% affordable housing provision, but an email which the Council received on 3 June 2013 advised that 10% provision would be offered due to viability and deliverability considerations. The viability considerations were not raised by the applicant prior to the Council's determination of the application.

The response by Mr P Parker

3. The *National Planning Policy Framework* provides for exceptional circumstances in the Green Belt. The appellant provide a full Hearing statement, which looked at harm to the Green Belt and to special circumstances. The viability issue was raised with the Council and the appellant engaged on this matter, but the Council would only accept 30% affordable housing in the Green Belt, when its policy is to require up to 30%. The Council did not engage in the mechanisms and triggers for the obligation. The appellant devised an obligation which was proportionate and applicable.

Reasons

4. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

5. The *National Planning Policy Framework* states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The appellant's statement sets out six other considerations to be taken into account in this regard. Whether these would clearly outweigh harm to the Green Belt and any other harm is a matter of judgement. Notwithstanding that I have come to a different conclusion on this, the appellant's case did not lack substance, and was sufficient to comply with paragraph B13 of the Circular.
6. The way in which the appellant dealt with negotiations in the lead up to the Hearing was not fully in accordance with paragraph B4 of the Circular, which refers to resistance to, or lack of co-operation with, the other party in providing information and discussing the appeal. However, this did not extend the duration of the appeal or result in any unnecessary expense on the Council's part. The Council's case at the Hearing was simply that it had not had time to seek further specialist advice on viability issues, and so could only reiterate its previous position with respect to the 30% offer foreshadowed in the earlier draft obligation.
7. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009 has not been demonstrated. I conclude that neither a full or a partial award of costs is justified.

John Woolcock

Inspector



Costs Decision

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Decision

1. The application for an award of costs is refused.

The submissions for Mr P Parker

2. The application is made in writing and submits that the Council acted unreasonably in the way that it dealt with the Green Belt issue, the use of agricultural land, and negotiations about affordable housing provision and the drafting of a planning obligation.

The response by Rushcliffe Borough Council

3. The Green Belt was dealt with adequately in the officer's report and the Hearing statement, and due regard was given to whether very special circumstances applied. However, it was considered that the proposal would not comply with policy. The Council submitted an updated plan at the Hearing about agricultural land classification, which in the circumstances was not unreasonable. A skeleton section 106 obligation was available but the Council found it difficult to negotiate if this excluded figures. The draft obligation had initially referred to 30% affordable housing, and the Council did not have access to the viability models used to justify a lower provision of 10%.

Reasons

4. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
5. The Officer's Report considered the arguments then advanced by the applicant about considerations which were purported to result in very special circumstances. The Council's decision refers to relevant policy and concluded that very special circumstances had not been demonstrated. The Hearing

Statement subsequently submitted by the Council addressed the considerations raised in the appellant's Grounds of Appeal. I do not consider that the way that the Council dealt with the Green Belt issue was unreasonable.

6. The Council's sixth reason for refusal states that it had not been demonstrated that the proposed development would not involve the loss of best and most versatile agricultural land. The appellant's Grounds of Appeal state that this impact would be negligible, but it was not until its Hearing statement that the appellant notified that Natural England had confirmed that the land is part Grade 3a and part Grade 3b. The Council submitted a plan at the Hearing to confirm this. This did not take any significant time at the Hearing, and it was not unreasonable for the Council to deal with this matter in the way that it did.
7. The Council's reasons for refusal refer to the need for a legal agreement. When negotiations about this broke down, it seems to me, that the onus was then on the appellant to submit evidence in support of the position that 10% affordable housing would be appropriate. I do not, therefore, consider that the Council acted unreasonably in the way that it dealt with negotiations about a planning obligation.
8. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009 has not been demonstrated. I conclude that neither a full or a partial award of costs is justified.

John Woolcock

Inspector