



## Appeal Decisions

Hearing held and site visit made on 12 April 2016

**by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI**

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

**Decision date: 29 June 2016**

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### **Appeal A Ref: APP/X2410/W/15/3049408**

**Land adjacent to Hardy Court, Muckle Gate Lane, Seagrave, Leicestershire LE12 7NY**

- 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 Mrs Julia Aspell, Mrs Dena Mardel-Ferreira and Dr Justine Hardy against the decision of Charnwood Borough Council.
  - The application Ref P/14/1606/2, dated 12 August 2014, was refused by notice dated 27 March 2015.
  - The development proposed is up to 10 dwellings.
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### **Appeal B Ref: APP/X2410/W/15/3133041**

**Land adjacent to Hardy Court, Muckle Gate Lane, Seagrave, Leicestershire LE12 7NY**

- 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 Mrs Julia Aspell, Mrs Dena Mardel-Ferreira and Dr Justine Hardy against the decision of Charnwood Borough Council.
  - The application Ref P/15/0834/2, dated 14 April 2015, was refused by notice dated 4 August 2015.
  - The development proposed is the erection of up to 5 dwellings.
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### **Decision**

1. The appeals are dismissed.

### **Procedural matters**

2. The applications were submitted in outline form with all matters reserved for future consideration. The appeals will be determined on the same basis. Submitted site layout plans will be considered to be for illustrative purposes only.

### **The appeal sites**

3. The site in Appeal A is about 0.75 hectares of agricultural land. The site has a north-east boundary to Muckle Gate Lane, a track that leads to redundant farm buildings to the north-west of the site. On the opposite side of the track is land associated with a residential property but which is, lawfully, mainly agricultural land. To the south-west of the site is agricultural land and to the south-east is a recently built residential development at the north-west corner of Seagrave. The village includes a church, a public house, a village hall and a primary school.
  4. The site in Appeal B is about half, the south-east half, of the Appeal A site.
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## **The proposed developments**

5. The proposed development in Appeal A is the erection of up to 10 dwellings and in Appeal B it is the erection of up to 5 dwellings. Signed and dated unilateral undertakings were submitted at the Hearing that make provision for 40% of the dwellings, in both cases, to be affordable housing.

## **Planning policy**

6. The development plan, for the purposes of the appeals, includes saved policies of the Charnwood Local Plan 2004 (LP) and the Charnwood Local Plan 2011 to 2028 Core Strategy (CS).

7. Saved LP policy ST/2 states that built development will be confined to land within limits of development identified on the Proposals Map. The appeal sites are outside the defined limit of development for Seagrave. Saved LP policy CT/1 seeks to control development in the countryside and lists a number of small scale types of development that are acceptable in the countryside. Saved LP policy CT/2 requires development that is acceptable in principle not to harm the character and appearance of the countryside.

8. CS policy CS 1 sets out a development strategy for the Borough and, with regard to small villages including Seagrave, states that services and facilities will be safeguarded and that the Council will respond positively to development that meets a specific local social or economic need. CS policy CS 11 seeks to protect the character of the countryside.

9. Paragraph 49 of the National Planning Policy Framework (NPPF) states that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five-year supply of deliverable housing. Paragraph 215 of the NPPF states that due weight should be given to relevant policies in existing plans such as the LP and the CS according to their degree of consistency with the NPPF.

## **Reasons**

10. The main issues are; first, whether, for the purposes of applying the provisions of the NPPF, the Council can demonstrate a five year supply of housing land; and second, in terms of the NPPF, whether the proposed housing schemes would be sustainable development.

The first issue – housing land supply

11. Paragraph 47 of the NPPF requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements. The Council claims that they have 5.95 years of housing supply. The Appellants maintain that the Housing Trajectory relied on by the Council is dependent on delivery of houses on three Sustainable Urban Extensions (SUE); the North East Leicester (NEL) SUE, the West of Loughborough (WofL) SUE and the North of Birstall (NofB) SUE. They claim that the delivery of housing on these sites assumed by the Council is unrealistic.

12. Delivery of housing on the three SUEs was considered in the decision, dated 6 November 2015, on an appeal against refusal of planning permission for housing on land off Cotes Road in Barrow upon Soar (Appeal Ref. APP/X2410/W/15/3004925). The Inspector in that case concluded that "If delivery on all three sites were to be

put back...the Council's delivery assumptions would have to be reduced...In such circumstances there would undoubtedly be a shortfall". The Inspector in a more recent appeal for the erection of one dwelling on land off Green Lane in Seagrave (Appeal Ref. APP/X2410/W/15/3028131) adopted the Cotes Road Inspector's conclusion on housing land supply in the Borough.

13. Circumstances have moved on since the two previous appeal decisions and the Council has provided their assessment of the likely development programme for each of the SUEs. For NEL the programme indicates that a reserved matters application would be submitted in April 2016 but no such application has been submitted. It is improbable therefore that the application will be determined in June. Furthermore, the programme indicates that discharge of reserved matters conditions would be achieved in the following month but for a site of such size and complexity this is wholly unrealistic, as is the prediction that housing would be delivered in December 2016 following the start of site preparation in September. Housing delivery on a site of any size is unlikely to be anything less than nine months after the commencement of site preparation.

14. The same assumptions for the elapse of time between the commencement of site preparation and the delivery of housing is applied in the programmes for the other SUEs; for WofL it is 2 months and for NofB it is 2 to 3 months. For large complex sites where there are significant infrastructure implications this is unrealistic. In both cases the discharge of reserved matters conditions is assumed to be in the month after the application is granted. Reserved matters approvals for large complex developments are likely to have many prior approval conditions some of which are likely to be conditions precedent. In these circumstances discharge of conditions is almost certain to take more than one month.

15. The Appellants have only challenged, with regard to the Council's trajectory for the five year period 2016-21 that informs their assessment of housing supply, the contributions by the three SUEs. They have also not challenged the Council's method for assessing housing supply. The Council's assessment is that there would be 6885 houses delivered in the five year period with a surplus, over a requirement of 5784 houses, of 1,101 houses.

16. If the time period between the commencement of site preparation and the delivery of housing is taken to be a realistic 9 months then the SUE programmes would slip by about six months. If discharge of reserved matters conditions takes a realistic seven months, rather than one month, then the programmes would slip by another six months. In the last year of the period the three SUEs are predicted to contribute 670 houses to supply. If delivery of houses on the three SUEs slips by one year then this number of houses can be subtracted from the overall delivery figure of 6885 houses. Overall delivery over the five year period would thus be 6215 houses which equates to a housing land supply of 5.37 years.

17. To fall below the five years supply required by paragraph 47 of the NPPF the supply of housing on the three SUEs would have to slip by in excess of 1.6 years. There is no evidence to indicate that the programmes would slip to this degree. Given, in fact, the commitment by the Council and other stakeholders towards delivery of housing on the three sites it is safe to conclude that the Council can demonstrate, at this time and on the evidence provided, housing supply in excess of five years. This is a different conclusion to that reached by the Inspector in the Cotes Road appeal but none of the evidence before him was presented in this case, in particular research into housing delivery elsewhere that, the Appellants in that

case maintained, demonstrated that the lead in time for sites with a capacity of more than 200 houses is about 2.5 years from the grant of outline planning permission. The housing supply issue in this case has been considered on the basis of the evidence submitted by both main parties.

The second issue – sustainable development

18. Paragraph 7 of the NPPF states that there are three dimensions to sustainable development; economic, social and environmental. With regard to the last of these roles a core planning principle of the NPPF includes recognition of the intrinsic character and beauty of the countryside and supporting thriving communities within it. Seagrave is a countryside settlement and the CS, unlike the LP, does not distinguish the village from the countryside that surrounds it. The farm buildings to the north-west of the site are typical of a countryside area and such groups of buildings are often seen in both remote locations and in close proximity to settlements. The site is not, in this regard, an infill site and is, as a matter of fact, part of the countryside. There are views across the site from Muckle Gate Lane, which extends out into the countryside as a public footpath, and with agricultural land to the south-west and north-east the proposed development, in both cases, would be a significant intrusion, both physically and visually, into the countryside.

19. There is no evidence to indicate that either development is required to support local services, the primary school is not, for instance, under threat of closure, or to support what is already a thriving community. The developments would create jobs, during the construction period, but this is a benefit that can be attached to any housing development in any location. The developments would include 40% affordable housing and, though this is a policy requirement, this may be regarded to be a demonstrable benefit of the schemes. There are employers in the area, both in the village and in close proximity to it, and there could therefore be job opportunities for intended residents without the need to travel by car. The village is connected to nearby large villages and towns by a bus service, albeit only an hourly service that does not operate on Sundays, and intended residents would not be wholly reliant on using motor cars for access to shops, services and facilities. Taking into account these and other factors the proposed developments would not conflict with the economic and social roles of sustainable development.

20. The developments would be on greenfield land and would harm the character of the countryside. The developments would therefore fail to protect the natural environment and would not therefore satisfy the environmental role of sustainable development. Development must satisfy all three roles to be considered to be sustainable development. The developments considered in this decision fail one of the roles and must therefore be considered not to be sustainable development.

The planning balance and overall conclusions

21. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (the 2004 Act) requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. This requirement of planning law is at the heart of the balancing exercise. The planning balance requires planning judgement to be exercised.

22. The Council can demonstrate a five-year supply of deliverable housing and, with regard to paragraph 49 of the NPPF, relevant policies for the supply of housing can be considered to be up to date. Relevant policies in the LP and the CS are consistent with the NPPF and, with regard to paragraph 215, can be afforded full

weight. The proposed developments would be in the countryside and would harm the character of the area. The proposed developments thus conflict with saved LP policies ST/2, CT/1 and CT/2 and with CS policies CS 1 and CS11.

23. If the conclusion on the first main issue had been the reverse, policies for the supply of housing would not be afforded full weight but would be afforded some weight, because they seek to protect the countryside from inappropriate development. In any event, even if they were to be afforded no weight the presumption in favour of sustainable development, as set out in paragraph 14 of the NPPF, would not apply because the developments have been found not to be sustainable development. Furthermore, the harm that would be caused to the character of the countryside significantly and demonstrably outweighs the contribution that the developments would make to redressing, if there is any, the under supply of housing land in the Council area.

24. The proposed developments are not in accordance with the development plan and there no material considerations to indicate that determination of the applications must be made other than in accordance with the development plan. Planning permission is therefore withheld for the erection of up to 5 dwellings and up to 10 dwellings on land adjacent to Hardy Court, Muckle Gate Lane, Seagrave.

*John Braithwaite*

Inspector

Richborough Estates

## **APPEARANCES**

### **FOR THE APPELLANTS:**

Mr N Harris                                      Enigma Planning Ltd  
Mr P Hardy

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

Mr N Thompson                                 Principal Planning Officer  
Mr R Brown                                      Principal Planning Officer

### **INTERESTED PERSONS:**

Mr R Brown                                      Local resident  
Mr C Walker                                      Local resident  
Mr G Thorpe                                      Local resident  
Ms M Hill                                         Local resident

## **DOCUMENTS**

- 1 Highway Authority consultation response for planning appl. P/15/0834/02.
- 2 Bus timetable for Service 27 – Loughborough-Seagrave-Thurmaston.
- 3 Employment in and near Seagrave.
- 4 Appeal Decision APP/X2410/W/15/3038204.
- 5 Appeal Decision APP/X2410/W/15/3030423.
- 6 Appeal Decision APP/X2410/A/14/2227518.
- 7 Appeal Decision APP/X2410/W/15/3007980.
- 8 Newspaper extract.
- 9 Site plan for Appeal B.
- 10 Plan of Seagrave showing location of employment sites.
- 11 Local Plan Proposals Map showing development limit of Seagrave.
- 12 Saved policies of the Borough of Charnwood Local Plan.
- 13 Charnwood Local Plan Core Strategy.
- 14 Unilateral Undertaking for Appeal B.
- 15 Unilateral Undertaking for Appeal A.