
Appeal Decision

Inquiry opened on 27 January 2016

Site visit made on 19 February 2016

by Paul Griffiths BSc(Hons) BArch IHBC

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

Decision date: 08 August 2016

Appeal Ref: APP/T2405/W/15/3035677

Land off Cosby Road, Countesthorpe

- 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 Persimmon Homes against the decision of Blaby District Council.
 - The application Ref.14/0211/1/OX, dated 26 February 2014, was refused by notice dated 17 November 2014.
 - The development proposed is described as an outline application for up to 150 dwellings with access provided off Cosby Road with an ancillary access for emergencies off Willoughby Road.
-

Preliminary Matters

1. The Inquiry opened on 27 January 2016 and sat on that day, then 28 and 29 January, before it was adjourned. The Inquiry resumed on 19 February 2016 and was closed on the same day.
2. Immediately after the Inquiry closed, as agreed with the main parties, I carried out an unaccompanied site visit where I took in the appeal site, the area immediately around it, and the settlement of Countesthorpe generally.
3. The originating application was made in outline with approval for access sought but appearance, landscaping, layout and scale reserved for future determination. I have dealt with the appeal on the same basis.
4. On 22 March 2016, I reverted to the main parties in order to ascertain whether the decision of the Court of Appeal in *Suffolk Coastal DC v Hopkins Homes; Cheshire East BC v SoSCLG & Richborough Estates* [2016] EWCA 168 and the High Court in *Cheshire East BC v SoSCLG & Renew Land* [2016] EWHC 571 (Admin)¹ had any implications for the cases presented to the Inquiry. I have taken the responses received into account in determining the appeal.
5. On 10 May 2016, correspondence from the appellant was received relating to a decision taken by a colleague on an appeal relating to housing on a site in Willoughby Road, Countesthorpe². Given its obvious relevance to the appeal before me, and the conclusions reached about housing land supply in particular, I decided to accept the correspondence, seek the views of the Council upon it, and then allow the appellant the opportunity to make final comments. I have taken the appeal decision, and the views of the main parties upon it, into account in determining the appeal.

¹ Referred to hereafter as *Richborough* and *Renew Land* respectively

² APP/T4205/W/15/3133922

Decision

6. The appeal is dismissed.

Main Issues

7. On my analysis the main issues are (1) the effect of the proposal on the character and appearance of the area; and following on from that (2) whether or not the proposal accords with policy, local and national.

Reasons

Character and Appearance

8. In their reasons for refusal, the Council took a two-pronged approach on this issue. First, they identified the appeal site as green-field and pointed out that the proposal would represent an unwarranted and significant encroachment of urban development into the countryside, in other words, a landscape issue. On top of that, accepting that the layout promulgated was to be treated as illustrative, the Council expressed disquiet about it, and in particular the way in which it addressed surrounding land and provided links to the existing settlement. That is a design issue.
9. Dealing with the design issue first, CS³ Policy CS2 requires development, in simple terms, to attain high standards of design that is contextually appropriate. That accords with the approach of the Framework⁴ which says that we should always seek to secure high-quality design.
10. While the Council may have legitimate misgivings about the layout put forward, the fact remains that, as they readily accept, it is illustrative, and appearance, landscaping, layout and scale are reserved matters. If outline planning permission was granted for the proposal, these aspects would have to be explored through the consideration of reserved matters. It is at that point when issues around design could, and should, properly be addressed.
11. The landscape issue requires a different approach. CS Policy CS18 deals with what it terms the countryside and says that in such areas, planning permission will not be granted for built development which would have a significantly adverse effect on the appearance or character of the landscape. The policy goes on to explain that the need to retain countryside will be balanced against the need to provide new development (including housing) in the most sustainable locations. In very broad terms, that accords with the approach of the Framework and in particular, the need to recognise the intrinsic character and beauty of the countryside, and support thriving communities within it.
12. I was referred too to paragraph 109 of the Framework. This is clear that valued landscapes should be protected and enhanced. The term 'valued' is not however defined and I should say at the outset, and mindful of the approach the High Court has taken to the matter⁵ that I do not believe that the fringes of Countesthorpe, while attractive, have any demonstrable physical attribute that would set them apart from countryside generally, and allow them to be deemed 'valued' and given the special status the Framework intends.

³ The Blaby District Local Plan - Local Plan (Core Strategy) Development Plan Document adopted February 2013

⁴ The National Planning Policy Framework

⁵ *Stroud DC v SoSCLG & Gladman Developments Ltd* [2015] EWHC 488 (Admin)

13. The guidelines for the Blaby, Countesthorpe and Whetstone Fringe LCA⁶ seek the protection of the open and undeveloped nature of the land, and the conservation of existing hedgerows. The potential loss of hedgerows across the appeal site was discussed in some detail as was the potential for replacement. While the eventual layout would have an influence, it is clear that some existing hedgerows would be lost. Moreover, those that remained might well lose much of their current function, bordering open fields. Notwithstanding the potential for replacement, expansion and augmentation, existing hedgerows would not be conserved by the proposal.
14. Similarly, while I acknowledge the potential for strong landscaped buffers, the open and undeveloped nature of the appeal site, which is readily apparent from Cosby Road, and various points along Hill Lane, would largely be lost as a result of the proposal. In effect, the edge of the settlement would move westwards into undeveloped open pasture and if we are to recognise the countryside for its intrinsic character and beauty, it is axiomatic that this would have a harmful impact on the character and appearance of the area.
15. However, the first part of CS Policy CS18 only inhibits development that would have a significant adverse impact on the landscape. On my analysis, if the landscaping treatment of western and southern boundaries was carefully designed, something that could be secured through reserved matters, the overall impact of the proposal on the landscape could be mitigated to a reasonable degree. On that basis, while there would still be an adverse impact resulting from the proposal, it could not reasonably be described as significantly adverse.
16. That takes us to the second part of CS Policy CS18, and the balance necessary between housing requirements, and countryside protection. It appears to me that that analysis must take place through the filter of policy considerations, not least because a failure of the Council to demonstrate a five-year supply of deliverable housing sites would lead to a conclusion that CS Policy CS18, a relevant policy for the supply of housing⁷, is not up-to-date.

Policy

17. The appellant has taken a multi-faceted approach to the question of policy. Unsurprisingly, given the approach of the Framework, and paragraphs 47, 49 and 14 in particular⁸, the starting point for an analysis of the proposal against policy, local and national, is whether the Council can demonstrate a five-year supply of deliverable housing sites.
18. As the appellant helpfully set out in closing, assuming a 20% buffer, as agreed to be necessary by the main parties because of persistent under-delivery, there is agreement that if the 'Liverpool' methodology is used to address the shortfall in delivery to date⁹, the Council can demonstrate a five-year supply of deliverable housing sites¹⁰. On the other hand, it is agreed that if the 'Sedgefield' methodology is employed¹¹, then the Council cannot¹². A conclusion

⁶ Landscape Character Area

⁷ On the basis of the conclusion reached by the Court of Appeal in *Richborough*

⁸ The approach to which having been helpfully clarified by the judgments in *Richborough* and *Renew Land*

⁹ That is spreading it over the remaining Plan period (also called the residual approach)

¹⁰ The Council's figure is 5.66 years

¹¹ This approach seeks to make up the shortfall in the next five-year period

¹² The figure would be 4.39 years on the Council's calculations; 4.08 years on the appellant's

on whether the Council can demonstrate a five-year supply of deliverable housing sites clearly rests squarely on the preferred methodology.

19. The correct place to start with that analysis is the development plan. The Inspector who examined the relatively recently adopted¹³ CS endorsed, implicitly, the 'Liverpool' method for dealing with the shortfall given the prevailing circumstances in the District¹⁴ and the way in which the Lubbesthorpe Sustainable Urban Extension¹⁵ will be brought forward, in particular. Given that this is a relatively recent endorsement, it is not one that ought to be set aside lightly, when cognisant of the plan-led system.
20. As the appellant sets out, the Planning Practice Guidance¹⁶ tells us that local planning authorities should aim to deal with any undersupply within the first five years of the plan period where possible. However, that endorsement of the 'Sedgefield' method is somewhat equivocal. In its use of language, and in particular the phrases 'should aim' and 'where possible', the PPG accepts that there will be situations where the 'Liverpool' method could be preferred. That, it appears to me, is what the Inspector who examined the CS concluded.
21. On top of that, the appellant argues that progress with the SUE is not reaching the levels envisaged in the CS and is unlikely to deliver what was intended in the plan period, and that justifies a change of approach. I acknowledge that in relatively recent decision¹⁷ a colleague, on the basis of the evidence presented at a Hearing, and citing the PPG advice, preferred the 'Sedgefield' method, largely on the basis of this disquiet, and allowed an appeal granting planning permission for thirty three new houses in Countesthorpe.
22. However, on the basis of the evidence I heard from the Council, which stood up to very close scrutiny, the actual situation with the SUE is not as clear cut as my colleague set out. It is obvious that the Council is paying close attention to the SUE and doing everything it can to ensure proper progress with it. What is more, the Council is clearly willing to countenance alternative windfall sites, following the hierarchical approach in the CS, a matter I return to below, if progress appears to be faltering. Far from being complacent about the delivery of housing in the District, it seems to me that the Council is being flexible with the tools at its disposal, and forward looking.
23. I note too that part of the reason behind the appellant's concern about progress with the SUE is the need to apply a 10% lapse rate to housing delivery. This would have the effect of depressing numbers coming forward and making the situation in terms of delivery appear worse than it really is. However, I can find no justification in the Framework for such a device. If a lapse rate was meant to be applied, then one might expect some reference to be made to one in footnote 11 to paragraph 47.
24. In any event, it was for precisely the reason that progress with the SUE might be a little slower than envisaged, that the Inspector who examined the CS, was content with the 'Liverpool' approach. It strikes me that to set aside that approach as a result of a perceived failure of the SUE to deliver in a timely way, and bring forward sites elsewhere instead, would very likely blow the

¹³ February 2013

¹⁴ At paragraph 52 of the report

¹⁵ Referred to hereafter as SUE

¹⁶ PPG Paragraph: 035 Reference ID: 3-035-20140306

¹⁷ APP/T2405/W/15/3133922 dated 4 March 2016

whole strategy of the CS completely off-course. There is no justification for that, in my view, in the light of the CS being so recently adopted, and the obvious efforts the Council is making to ensure the SUE it largely relies upon for new housing, comes to fruition.

25. In that overall context, I find that the 'Liverpool' method remains suitable and as a consequence, the Council is able to demonstrate a five-year supply of deliverable housing sites. There is no justification, therefore, for following the route from paragraph 47 to paragraph 14 of the Framework set out when policies relevant for the supply of housing are considered not up-to-date.
26. The appellant also argues that, in any event, the proposal accords with the Development Plan. CS Policy CS1 sets out the strategy for locating new development, including housing, and directs most of it to within and adjoining the PUA¹⁸ of Leicester. Outside the PUA, development is to be focussed within and adjoining Blaby, and then within and adjoining the settlements of Enderby, Narborough, Whetstone and Countesthorpe, referred to as the 'Larger Central Villages'. Lower levels of growth will be allowed elsewhere.
27. In general terms, the policy seeks to promote urban concentration and prevent excessive development in the non-PUA¹⁹. The appellant made some play of the fact that this approach sprang from the now revoked East Midlands Regional Plan. However, that does not make it unsound, as a principle, and it was of course found to be a sensible approach by the Inspector who examined the CS.
28. CS Policy CS5 deals with the distribution of housing and in order to focus it on the most appropriate locations, with provision for at least the housing requirement figure for each settlement, shows a series of housing requirements in tabular form. For Countesthorpe, that figure is a minimum of 520 units. That figure has already been exceeded because, according to the appellant, Countesthorpe is a sustainable settlement with a good range of facilities and services. The appellant argues that because 520 units is expressed as a minimum in CS Policy CS5, further development, as proposed²⁰, would not be contrary to it.
29. In my view, that is too simplistic an analysis. CS Policy CS5 cannot be taken in isolation; it must be read under the overall umbrella of CS Policy CS1. To argue that because CS Policy CS5 expresses housing numbers as a minimum, further housing over and above that figure is generally permissible, is to ignore the clear hierarchical strategy set out in CS Policy CS1. If housing is continually brought forward in settlements like Countesthorpe, at the expense of the PUA and other areas ahead of 'Larger Central Villages' in the hierarchy, that would clearly undermine the strategy of urban concentration and the prevention of excessive development in the non-PUA, set out in CS Policy CS1.
30. I recognise that the Council has permitted housing in Countesthorpe in the recent past, because as I have set out above, it uses suitable and accessible windfall sites to maintain its housing supply. In a situation where the Council is able to demonstrate a five-year supply of deliverable housing sites, there is no need to do that here.

¹⁸ Principal Urban Area

¹⁹ CS paragraph 7.1.7 refers

²⁰ Which according to the appellant's figures would bring the figure to 721 (though to that may need to be added the 33 units from the recent appeal decision referred to above).

31. On that overall basis, I find that the proposal falls contrary to CS Policies CS1 and CS5. Moreover, for the same reasons, the balance inherent in CS Policy CS18 falls against the proposal. There is no current justification for the harm to the character and appearance of the area it would cause.
32. Finally the appellant advances the suggestion that because the Framework exhorts us to boost significantly the supply of housing, the development, which could be delivered quickly, ought to be granted planning permission.
33. Paragraph 47 of the Framework does stress the importance of boosting significantly the supply of housing but it is important to appreciate that paragraph in full. Local planning authorities are told that to boost significantly the supply of housing they should identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements, with an appropriate buffer. As set out above, based on the 'Liverpool' method, the Council has done that.
34. Paragraph 47 cannot readily be interpreted as giving the green light to any housing, anywhere. To do so would undermine the primacy of the plan-led system, the importance of which the Framework acknowledges and stresses.

Conclusion

35. For the reasons set out above, the proposal would harm the character and appearance of the area and fall contrary to CS Policies CS1, CS5 and CS18. I acknowledge that the proposal would deliver badly-needed affordable housing at a rate of 30%, which is greater than the 25% required by CS Policy CS7, and bring forward biodiversity gains as supported by paragraph 109 of the Framework. However, these material considerations are not sufficient in weight to justify setting aside the approach of the development plan.
36. A completed Agreement under Section 106 was presented that includes various Obligations. I acknowledge the submissions made by Leicestershire County Council, and Leicestershire Police on these matters but given my conclusions set out above, there is no need for me to take this matter further.
37. For the reasons given above I conclude that the appeal should be dismissed.

Paul Griffiths

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Jack Smyth of Counsel	Instructed by Louisa Horton, Head of Legal Services, Blaby DC
He called	
Ian Grimshaw BA(Hons) MA MSc CMLI MRTPI	Director, The Environmental Partnership (TEP) Ltd
Ian Davies BSc(Hons) DipTP MRTPI	Deputy Development Services Manager, Blaby DC
Lucy O'Doherty BA(Hons) MCD	Principal Planning Policy Officer, Blaby DC

FOR THE APPELLANT:

John T S Edmond BA(Hons) Law LARTPI	Marrons Shakespeares
He called	
Philip C Rech BA BPhil LD CMLI FPCR	Director, FPCR
Matthew Stevens MCIHT	Managing Director, Milestone Transport Planning
Michael Carr BA(Hons) DipLA MA/PG DipUD	Director, Pegasus Group
Anthony Bateman BA(Hons) TP MRICS MRTPI MCMi MIOd FRSA	Managing Director, Pegasus Group
Paul Hunt ²¹	Persimmon Homes

FOR LEICESTERSHIRE POLICE:

Nina Pindham of Counsel	Instructed by Michael Lambert of Leicestershire Police
Michael Lambert	Leicestershire Police

FOR LEICESTERSHIRE COUNTY COUNCIL:

Anthony Cross Solicitor	Instructed by Leicestershire CC
Andrew Tyrer	Developer Contributions Officer, Leicestershire CC

INTERESTED PERSONS:

Councillor David Findley	Ward Councillor for Countesthorpe and Local Resident
Mrs E Flynn	Local Resident
Simon Moulton	Local Resident

²¹ Took part in the discussion about the Section 106 Agreement

DOCUMENTS

- 1 Appellant's Opening Statement
- 2 Submission of Councillor Findley
- 3 Draft Agreement under Section 106
- 4 Land Supply and Housing Requirement Comparative Tables
- 5 Gillam Butts, Countesthorpe: Planning Statement, DAS and House Types
- 6 PoE of Ian Davies relating to appeal at Seine Lane, Enderby (2014)
- 7 GVLIA Box 5.1
- 8 Extracts from Countesthorpe Community College website about available services and facilities
- 9 Arriva Bus 85: Timetable
- 10 IHT Guidelines for providing for Journeys on Foot (page 49)
- 11 Appeal Decisions: APP/G2435/W/15/3005052; APP/X2410/W/15/3028131; and APP/T2405/A/09/2118414
- 12 Appeal Decision: APP/C1625/A/13/2207324 and subsequent judgement of the High Court
- 13 Copy of proposals Map from Blaby Local Plan 1999
- 14 BfL 12 Guide
- 15 BfL assessment by Mr Carr and Pegasus BfL accredited project examples
- 16 Hedgerow Removal Plans
- 17 Complete DAS
- 18 Summary Table of Distance to Facilities
- 19 E-mail dated 25 January 2016 – Lubbesthorpe Update (Andrew Senior to Lucy O'Doherty)
- 20 Revised Facilities Plan
- 21 Submission of Mrs E Flynn
- 22 Submission of Simon Moulton (including photographs)
- 23 Information regarding Leicester Forest East
- 24 Copy of Blaby District Local Plan
- 25 Statement of Common Ground
- 26 List of Suggested Conditions
- 27 Council's Closing Submissions
- 28 Appellant's Closing Submission
- 29 Closing Submissions on behalf of Leicestershire Police
- 30 Post-Inquiry Correspondence relating to Court of Appeal and High Court Decisions
- 31 Post-Inquiry Correspondence relating to APP/T2405/W/15/3133922
- 32 Completed Agreement under Section 106

PLANS

- A 5726-SK-03 Revision E: Illustrative Masterplan
- B 5726-P-01: Application Boundary Plan
- C 052/TA02: Potential Emergency Access from Willoughby Road
- D 052/TA/03: Proposed Off-Site Mitigation: Signalisation of A426 Lutterworth Rd/Countesthorpe Rd Junction
- E 052/TA/04: Potential Off-Site Mitigation: Cosby Road/Winchester Road/Willoughby Road