



Appeal Decision

Site visit made on 26 April 2016

by J S Nixon BSc(Hons) DipTE CEng MICE MRTPI MCIHT

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

Decision date: 5 August 2016

Appeal Ref: APP/Y2430/W/16/3142640

Site address: Land adjacent to 61 Main Road, Kirby Bellars, Nr Melton Mowbray, Leicestershire, LE14 2DU.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against the refusal of outline planning permission.
 - The appeal is made by Eric's Fuels Ltd against the decision of Melton Borough Council.
 - The application Ref. No: 14/00477/OUT, dated 6 June 2014 was refused by notice dated 7 May 2015.
 - The development proposed is for an anaerobic digester and up to 49 associated homes, including new site access.
-

Decision

1. For the reasons given below, this appeal is dismissed.

Clarification

2. Although the description of the proposal on the application form includes a new site access, this is an outline application with all matters, including access, reserved for subsequent approval. This was confirmed by the parties. In addition to the components of the proposal described above, the Design and Access Statement advises that the scheme looks to provide an on-site shop that would sell locally produced fruit and vegetables and general convenience items. This is clearly an attempt to improve the sustainability accreditation of the enterprise and, as such, forms part of the proposal for consideration.
 3. The Council's decision cites five reasons for refusal. The first and third pertain to the sustainability of the appeal site in terms of its location remote from a village and the difficulty of accessing services and other destinations by walking or alternative sustainable modes of travel. The second reason stems from an objection by the Local Highway Authority (LHA) to the creation of a new access to a Class 1 road (A607), and the potential danger to highway safety and the free flow of traffic. The fourth follows an objection from the Waste Authority and its perception that the appeal scheme would move waste down the hierarchy. The fifth and final reason for refusal relates to fears the scheme would compromise buried archaeological remains.
 4. Reference is made to a s.106 Undertaking in the Appellants' Statement of Case, but this has not been produced with a later request declined on the basis that, while they are "...in agreement to the provision of a Section 106
-

subject to the Inspector's final decision" and "The Section 106 contributions are outlined in Andrew Tyrer's letter (LCC) dated 3 March 2016,.....", but "...are not intending on providing any further details with regards to the Section 106". The letter referred to has not been forwarded to the Planning Inspectorate, but there is an indication in the submissions that an affordable housing contribution would be included.

5. In addition, Leicestershire County Council indicates in its representations that it would also be looking for contributions to adult social care and health, waste management, economic development, education, highways and transportation, library services and sports and recreation facilities. It is not clear whether there is a meeting of minds on these aspects of the scheme.
6. Having said this, the s.106 must be in place before a favourable planning consent could be issued as the standard tests and Community Infrastructure Levy (CIL) compliance would have to be demonstrated. Without this, the benefits that would flow from a signed s.106 Undertaking for affordable housing or other infrastructure contributions cannot be included as benefits of the appeal scheme in the overall planning balance.
7. A request for a set of draft conditions from the LPA was responded to and generated an exchange of views, which have been taken into account.
8. The appeal has been dealt with on this basis.

Policy overview

9. This appeal must be determined in accordance with the development plan policies, unless the material considerations indicate otherwise. The Development Plan (DP) policies relied upon by the parties flow from the saved policies of the Melton Local Plan (LP) and the Leicestershire & Leicester Waste Development Framework Core Strategy & Development Control Policies up to 2021 (WCS), adopted in October 2009.
10. In the former, a raft of policies is advanced including Policy OS2 that resists development outside town and village envelopes and Policy OS3 covering conditions and legal agreements. LP Policy BE1 looks for new buildings to harmonise with their surroundings, not to impose on neighbour interests and to provide satisfactory access and parking provision. Other policies seek to safeguard archaeological interests (Policy B11), secure adequate amenity and open space (Policies H10 and H11), protect high quality agricultural land (Policy C1) and ensure ecological interests are protected (Policies C13 and C15).
11. Turning to the WCS, Policies WCS3, WCS4, WCS14 and WDC5 are cited in the reasons for refusal. Policy WCS3 looks for non-strategic waste sites to be located near to Hinckley or Melton Mowbray. Policy WCS4 evinces the sequential strategy approach to locating waste sites in accordance with the objectives of WCS2 and WCS3 (Policy WCS2 deals with the strategy for strategic waste sites, which is not relevant here). Policy WCS14 delivers the strategy for the transportation of waste, concentrating on promoting sites in close proximity to arisings in order to minimise the need to transport waste and with easy access to the County's lorry route network. Finally, Policy WDC5 looks to resist waste management development within the countryside, unless it can be demonstrated that the development cannot be

accommodated within the urban areas; there is an overriding need for the development; and the landscape character of the area would not be harmed

12. In addition, reference is also made to the Leicestershire Local Transport Plan 3 2011-2026 (LTP) and the 6Cs Design Guide. The 6Cs Design Guide deals with highways and transportation infrastructure for new developments in areas for which Leicestershire County Council is the local highway authority (LHA). Both documents seek to prioritize sustainable travel options, the latter through Policies IN4 and IN6. Policy IN5 looks to restrict new accesses to Class A roads, where, as here, the speed limit is above 40mph; roads are essentially rural in nature; roads are at or near capacity; and roads with an existing highway safety problem.
13. The National Planning Policy Framework (the Framework) identifies the creation of renewable energy as a core planning principle (paragraph 17). In addition, it establishes the presumption in favour of development that is sustainable (paragraphs 11-16) and gives very strong encouragement to projects that would lead to a reduction in greenhouse gases (paragraph 95), including small scale projects (paragraph 98). There are several more references in the Framework to sustainable development and meeting the challenge of climate change. Also of relevance are paragraphs 32 and 35 concerning access. The Planning Practice Guidance (PPG), which was first published in March 2014 is a living document attracting regular updates, and puts flesh on the Framework policies.
14. Specifically in the context of this project, in the Government's National Anaerobic Digestion Strategy and Action Plan (the Strategy), published in 2011, there is a commitment to increasing energy from waste through anaerobic digestion. In summary, Government evinces very strong support for the types of process proposed on the appeal site.

Main Issues

15. From the written representations and my visit to the appeal site and surroundings, it follows that the main issues to be decided in this appeal are:
 - i. whether there is a five year supply of readily available housing land;
 - ii. the implications of the proposal on the safe and free flow of traffic on the A607;
 - iii. whether the proposal would accord with the national and local waste strategies;
 - iv. the ability to safeguard the archaeological assets that may lie under the appeal site;
 - v. the sustainability accreditation of the site and project; and
 - vi. in the final planning balance whether the harm to identified interests of acknowledged importance could be addressed satisfactorily by the imposition of appropriately worded conditions or an s.106 Undertaking or whether the cumulative residual harm would significantly and demonstrably outweigh the benefits of the scheme when looked at against the policy objectives of the DP and/or Framework taken as a whole.

16. In addition to the main issues, there are a number of considerations raised by third parties, including noise; odour; by virtue of being a category three village/hamlet Kirby Bellars is not suitable for new housing or employment development; detriment to the ethos of the community; harm to an historic rural location; flooding and drainage; shop and farm stall on site; and lack of service destinations within walking distance. These are all looked at in this decision.

Reasons

Housing land position

17. In the Council's Statement of Case it is conceded that there is not a 5-year housing land supply (HLS) of readily available land. Where local planning authorities cannot demonstrate such a supply, DP policies controlling the supply of housing cannot be considered up-to-date and, in accordance with paragraph 49 of the Framework, housing developments should be determined in accordance with the presumption in favour of sustainable development. In turn, this triggers paragraph 14 of the Framework, which explains that under such circumstances, planning permission should be granted unless the adverse impacts of a particular scheme would significantly and demonstrably outweigh the benefits, when assessed against the DP policies and those evinced by the Framework, taken as a whole.
18. Taking these factors together, the shortage in the Council's 5-year HLS means that the delivery of up to 49 new dwellings, with a proportion of these being affordable, attracts significant weight to take forward to the overall planning balance. The policies that must be considered out of date include the village boundaries, agricultural land, where no lower grade alternative is available, and open countryside not designated or protected for its landscape quality.

Access

19. Access to the appeal site would be taken by way of a priority junction to the A607. In addition, footway links would be improved to provide better pedestrian access to services in Ashfordby and the provision of new bus stops.
20. Looking first at the proposed vehicle access, this attracts objection from the LHA on both policy and site specific grounds. This would be a new access to the A607, where the current speed limit is above 40mph, the road is essentially rural in nature alongside the appeal site and there are recorded accidents involving turning movements. Against this background, and albeit there is no capacity problem, there is a strong policy objection to the appeal scheme, though the 6Cs Design Guide is non-statutory.
21. Turning to site specific concerns, it is proposed as part of the development that bus stops would be located either side of the A607. This would facilitate use by prospective residents of the appeal site and workers of the regular services in the vicinity of the appeal site, running between Leicester and Melton Mowbray (4 per hour). This also causes a tension with the LHA, which points out that traffic speeds are generally high on the A607 and that a bus slowing down and stopping on the through carriageway may well invite overtaking on the opposite side of the carriageway. The LHA's view is that this would only be addressed satisfactorily by providing bus lay-bys, leaving the through carriageway as running lanes at all times.

22. The Appellants dispute the speed information provided by the LHA and give average speeds within the existing 40 mph speed limit area for east and west bound traffic of 33.9 and 35.5 mph respectively. They also believe that moving the change in speed limit further to the west and introducing a gateway feature would help to reduce vehicle speeds on this stretch of road. In addition, along with the existing white line carriageway marking further similar intervention would also assist in this regard. This would remove one point of objection to the access, namely the restriction on new access points to A-roads, where the speed limit is above 40mph.
23. For a number of reasons, I entertain significant doubts about what is proposed/ envisaged. In the first place, the speed of vehicles on the A607 is submitted as an average speed, whereas the 85%tile would be a better reflection of potential risk. Secondly, the Appellants' submitted information about bus lay-bys is inconsistent. On the plan submitted with the Design and Access Statement, there are no lay-bys indicated. However, in the Travel Report and on later plans reference is made to providing bus lay-bys, with details to be agreed by the LHA. However, there is no clarity about the ownership of the land needed and no notice served on the LHA. It seems odd that the LHA would raise concerns in this regard if it has been party to a solution.
24. Next, the proposed carriageway marking arrangement is potentially confusing, with two right turns following one immediately after the other. Even then, whereas it is said the layout would satisfy the design criteria, there is no calculation and it is not clear that the arrangement would be acceptable, especially for the type of heavy vehicles that would be accessing the site regularly. Finally, there is a level difference between the carriageway of the A607 and the appeal site where it abuts the highway land. This would require significant re-profiling to achieve a satisfactory junction and, although when considered two dimensionally it seems perfectly feasible to provide a visibility splay of 2.4x120m, there could be some difficulty in achieving this when faced with a three dimensional assessment.
25. Four other related factors also need to be considered. The first of these is that to achieve the visibility splay, two mature ash trees would require removal. These are described as prominent landscape features in the arboricultural report and in good condition, with no other reasons for their removal. As such, this is seen as a visual disbenefit.
26. Secondly, this would not be an obvious part of the Village and those using the A607 who are unfamiliar with the development would not visually appreciate this as part of the residential make-up of the Village and adjust their driving accordingly. It would appear to be rural in nature, contrary to the policy advice in Policy IN5 and, under these circumstances, the hoped for reduction in vehicle speeds may not be achieved.
27. Thirdly, there is the accident record, which, while not numerically significant does include some unexplained turning movement accidents, again infringing Policy IN5. Finally, there is the proposal to provide an on-site shop. While appreciating that this could reduce the number of journeys from the site to retail offers further afield, with no similar offer in the Village it could equally become a destination in its own right, and this would increase the usage of the access.

28. The key to this issue is whether paragraphs 32 and 35 of the Framework would be materially breached. It is possible that some of these tensions could be resolved or mitigated, but it is clear to me that there is still some way to go. As circumstances stand, this constitutes a significant objection to the scheme, as being potentially at odds with both paragraph 32 and 35 of the Framework, contrary to LP Policy BE1 and compromising sensible and pragmatic policy objectives in the 6Cs Design Guide.

Waste

29. There are two opposing views about the benefits or otherwise of the anaerobic digester in terms of managing waste. Again, these involve both principle and site specific matters. On the policy side, the Waste Authority takes the view that this would be recovery and, therefore, one rung lower in the waste hierarchy than reuse. It also believes that sufficient composting capacity is available in the area for this to be achieved. Thus, if applied rigidly, this would be contrary to the National Planning Policy for Waste.
30. In locational terms, the Waste Authority does not accept that an anaerobic digester is necessary in this location and believes it could be sited in or nearer to an urban area. Finally, it opines that there is no justification on the proximity principle for either arisings or product. These factors all run contrary to the aims and objectives of the Waste CS Policies referred to above.
31. On the other hand, the Appellants see the anaerobic digester as part of an integrated sustainable enterprise, with a proportion of the feedstock being produced on site and the remainder imported from origins close-by. Moreover, there would not only be energy generated to support the digester and the new housing, but there would be an end product in the form of fertiliser, which would be available for use on the site and any surplus for export. Incidentally, the Waste Authority sees this as a benefit, but not of sufficient import such as to outweigh the harm.
32. There is limited information available to form a complete view. Even so, there are some key indicators that can be established. It would be contrary to a rigid application of national and local policy. However, as noted above, Government encourages the use of anaerobic digesters, especially farm scale, where they are making use of arisings from the farming enterprise itself. In this case, despite some of the waste being generated by the new houses and the garden enterprises they may adopt, a significant amount of additional waste would be required as feedstock and this would have to be imported. Although I do not believe this should of itself be judged fatal, there are two factors that need to be considered.
33. The first of these is whether the feedstock attracted would reduce that available for the Waste Authority to such an extent as to threaten its re-use operations. This information is not available. The second point is the catchment for the balance of the feedstock and whether this would involve lengthy journeys.
34. As I understand the project, the biodegradable arisings from the dwellings on the appeal site would form the base feedstock. Unfortunately, there is no clarity about the quantities involved. To this must then be added an indeterminate import component to form the balance. Some suggestions are

made as to where this might be sourced, but there is nothing committed. This leaves the Waste Authority with the fear that the ideal of fixed local sources and timed loads would not be achievable. The corollary to this means that storage on site may be necessary, which, in turn, could lead to odour and vermin concerns.

35. Similarly, the destination of the digestate in the form of fertiliser is unknown. It is certain that it would not all be used on site and, therefore, storage and additional transport would be needed.
36. From this there are some positives and some negatives, but the lack of detail and commitment generate significant doubts. The key points to draw from the submissions are first, that this should be looked at as an eco-sustainable venture in its entirety. Although the process might not be as high up the waste hierarchy as the Waste Authority might wish, the use of the power generated on site is a distinct benefit. The quantities of fertiliser product to be exported are unclear and this leaves doubts about the need for storage. The origin of the feedstock for the anaerobic digester is uncertain and, therefore, there are potential environmental concerns.
37. Looked at overall, the waste issue raises policy objections to several aspects of the WCS Policies referred to in paragraph 11 above. However, having regard to the eco-concept of the appeal scheme, it may not be determinative in its own right. What is certain is that more input is required before it can be removed as a moderate to significant objection to be weighed in the overall balance.

Archaeology

38. There has been a desktop study completed and submitted with the application. However, the LPA has made it clear that its firm view is that some pre-application on-site investigation – trial trenching – would be necessary. The Appellants point out that this would be expensive, and, while happy to execute the work would require the benefit of a permission to justify the cost.
39. My view is simple. To condition an outline planning permission requiring work that could render the scheme non-viable would not accord with the tests of reasonableness embodied on the PPG. Under the circumstances of the strong position taken by the LPA, waiting until an outline consent has been issued cannot be countenanced. In this context, the LPA has communicated some organisations that it believes would be interested and could defray some or all of the costs involved in the work. It is not clear if this offer has been investigated. As such, this remains a strong unresolved objection and runs contrary to LP Policy B11.

Sustainability

40. The Framework defines sustainability as the golden thread running through both plan-making and decision-taking, and looks for proposals to be assessed against the three dimensions, economic, social and environmental. The Framework also sets out the 12 core planning principles underpinning planning decision taking and these provide useful guidance on how the sustainability accreditation of individual applications should be assessed.

These principles have been factored in when weighing the benefits and disbenefits of the appeal scheme.

Economic benefits

41. As for the economic dimension, this proposal would generate most of the benefits of any housing development and Government recognises the importance of these. There would be the short term construction jobs and purchase of building materials and, in the future the generation of service jobs such as cleaning, child care, decorating and household repairs. It is fair to say, however, that there is no claim that the construction workers would be drawn from village residents or that unfilled local jobs exist. A proportion of the income of new residents would be disposable and this could be used to support the local facilities, local buses and other activities in the nearby villages and towns, whether through the Parish Council precept or other less formal organisations and events.
42. In addition, there would be the benefit of the anerobic digester, the renewable energy this would generate, the jobs it would create and the fertiliser produced. The neighbouring pub would gain support from new residents, and this may be considered a village asset.
43. There is no village shop offering a top-up shopping facility or a Post Office. This means that all main convenience shopping and comparative retail activity would be undertaken elsewhere. Bearing in mind the nearest retail outlets are at or beyond the reasonable walking limit, these trips are very likely to be undertaken by car, contrary to 6Cs Policy IN6. The upside is that produce could be grown and sold on site and this could reduce the need to travel for many basic foods. This could also add to the services available to existing villagers. Taken together, the negative factors dent the sustainability accreditation of this dimension, though it might be judged marginally positive overall.

Social benefits

44. Turning to the social benefits, one main gain could be the affordable housing provision. However, the Appellants have not produced an Economic Viability Assessment for the scheme and delivery is not embodied in a s.106 Obligation. It is likely that the type of eco-dwelling envisaged would be more expensive in terms of construction costs than a conventional build, albeit much cheaper to run in the longer term. This leaves the financial contribution to affordable housing and other infrastructure costs uncertain. Then there would be the provision of general housing, in a situation where the supply and delivery falls short of the planned figure.
45. The Appellants argue that there is Village Hall and this would be supported by new residents. However, all infant, primary and secondary schooling would be remote and the Council says that the services and/or social destinations within the Village have decreased since the application was submitted. Overall, the development has the potential to be marginally positive in the social dimension, but the lack of certainty about the provision of affordable housing severely dents the position.

Environmental benefits

46. Finally, when considering the environmental dimension, benefits are very definitely harder to find. Even so, there are some. With the use of low profile structures and green roof technology, the design of the dwellings could minimise the visual impact from locations beyond the appeal site and especially from the north. There is no special landscape designation that adds protection to the countryside policies and there is an opportunity to improve ecological diversity. Drainage would be sustainable, with a slight caveat about managing surface water run-off in times of heavy rain. There would be the considerable benefits of the digester itself in waste management and energy generation terms, added to the production of fertiliser.
47. The village of Kirby Bellars is not defined as a sustainable village in the CS and the appeal site lies well outside the defined village envelope. Though village envelopes have been found to be 'out of date' at a number of appeals, this does serve to demonstrate the significant separation between the appeal site and the village core. In any event, virtually all destinations and services are at some distance away. They are located in the villages of Asfordby and Frisby-on-the-Wreake. Both these Villages are at or beyond the acceptable 2km limit for walk trips, when measured from the dwellings on the appeal site.
48. This means that, even with footways improved, very few journeys would be made by sustainable means. The modal split for nearby Frisby-on-the Wreake identifies some 87% of journeys by car, but this Village is much larger than Kirby Bellars hosting many more key service and support destinations. On this basis, I would expect car journeys from the appeal site to be well in excess of 90%. Although a Travel Plan can be required by condition, there is no indication about how this would be monitored, enforced and even whether it would be realistic given the remote location of the site.
49. As concluded above, the access to the site and its consequent use draws its own difficulties and challenges. While it is now accepted that the anaerobic digester itself should not produce any odour, there would be the potential for smells from outdoor storage of feedstock and product from the anaerobic digester. This is particularly so as we have no firm information about sources for the waste or market for the digestate. The suggested condition about storage could lead to the need for more built development and this should be resolved so that it can be taken into account in the planning decision.
50. The site is located between a Boarding Kennels and a Public House, the Flying Childers. Both are noise generators in entirely different ways and to these must be added the potential for noise from the anaerobic digester operation itself. Housing is, of course, a sensitive noise receptor. Dealing with the anaerobic digester first, I am confident that this would not generate noise levels sufficient, on their own, to be intrusive. The plant could all be enclosed in sound proof units and the delivery vehicles are not frequent enough to stand out against the background of the traffic noise from the A607.
51. The Boarding Kennels produce an alien, unpredictable and intermittent noise that can be disturbing for some, especially at certain times of the day. The proposal seeks to address this by constructing a 2.5m high fence for some 90m along the boundary, nearest to the source. In addition, the dwellings

would be soundproofed and orientated to shield outdoor areas from the noise source. The Noise Report shows this to provide indoor conditions entirely commensurate with desired standards and the outdoor experience to be satisfactory.

52. I fully accept internal conditions can be devised to produce an acceptable noise climate. This would be using noise attenuating materials on potentially vulnerable elevations. Apart from the fact this might be judged incongruous in a location where living the outdoor life is promoted, I agree it would be achievable, albeit with the loss of interface with the outdoor noises associated with the countryside.
53. Where I harbour doubts is about enjoyment of the external space. As pointed out, this is a scheme promoting the outdoor life and so one can expect residents to be outside for considerable periods. There are three particular worries. The first is that, while the assessment purports to show the screening benefits of the 2.5m fence and positioning of dwellings on the outdoor spaces, it is not clear if the attenuated figures have taken account of noise reflection. This could materially increase the noise experienced.
54. Secondly, whereas the assessment identifies the L_{max}, the number of occasions this occurs is absent. Many people find dogs barking or whining distressing. For this reason, I would have liked to see these factors included to provide a robust assessment. The danger is that a neighbour tension is created between the residents and the operators of the Kennels that could inhibit the business. In the absence of a more robust assessment, I see this as a further moderate reason for resisting the current proposal.
55. Thirdly, the erection of a 90m x 2.5m fence may introduce its own visual intrusion in an open countryside location. This may be softened by the use of a willow wall or similar, which is referred to obliquely, but the efficacy of this is not demonstrated. The imposition of a condition requiring submission of a scheme does not inspire confidence that an acceptable solution could be found and again I would look for this to be resolved so that the extent of any attenuation and possibly additional built works could inform the planning decision.
56. Finally, nothing proactive is intended to mitigate noise from the Public House. It is inevitable that doors would be left open and some activities would take place outside on warm summer days and evenings. To address this, I think some screening, probably in the form of earth mounding between the Pub and the appeal site would prove beneficial. This could be required by condition and, therefore, does not add appreciably to the negative noise aspect.
57. Moving onto the loss of agricultural land, as I understand the quality of the land this is not of the best and most versatile. The Council has raised no objection on this ground and I see no reason to disagree.
58. Taken overall, I consider the environmental harm to be substantial.

Other matters

59. Of those raised by third parties that have not been covered so far, we have concerns about the scale of development in a category three village/hamlet Kirby Bellars, judged not suitable for new housing or employment development; detriment to the character and ethos of the community; harm

to an historic rural location; flooding and drainage; and the creation of a shop and farm stall on site.

60. In the absence of a 5-year HLS for the Borough, it is necessary to look for additional housing land that would be appropriate for development. It is accepted that this site is isolated and would greatly increase the size of the Village. As such, this must be carried forward as a negative aspect of the scheme to be weighed against the significant benefits of providing new housing.
61. Although I have accepted that more needs to be done on the heritage front before a permission could be granted, there is no objective evidence that any particular asset would be harmed substantially. There is no objection to the drainage protocols proposed for the site by the responsible authorities, and I concur that appropriately worded conditions could address this concern. The proposal looks to adopt sustainable drainage techniques and this is to be commended. It seems that there is a need to manage surface water run-off to avoid localised flooding as part of the scheme. However, in the absence of any insurmountable objections from the responsible authorities, this could be addressed using a suitably worded condition.
62. The creation of the proposed shop and farm stall on the site has a mix of benefits and disbenefits. The benefits to those living on the site in not having to travel a distance for basic supplies and fresh goods must be an asset. However, if successful in a Village with no other outlets it could become a destination in its own right and this would have the disbenefits of attracting more activity and use of the access. It is not clear from the submissions how crucial this is to the overall scheme. However, as it is clearly intended to form an integral part of the sustainability accreditation of the proposal it may be judged unreasonable to impose a condition precluding this use.

Conditions and s.106

63. Sometime after my visit, draft conditions were proffered by the Council and these generated an exchange of comments between the Council and the Appellants. These have been taken into account and could resolve some matters. However, there are still several areas where the conditions could be judged unreasonable, imprecise or unenforceable.
64. The situation with regard to the submission of a s.106 Undertaking/Obligation remains unsatisfactory. This must be submitted and signed before a decision can be issued. While appreciating that the Appellants would not want to go to the cost of preparing one without knowing the outcome of the appeal, this is not the way the system works. Furthermore, in this case there appears to be distinct differences between what the Appellants would accept and what the LPA and Leicestershire County Council are seeking. Finally on this point, having read the submissions, I am not entirely clear if the County Council's suggestions would be CIL compliant.

Summary and planning balance

65. The starting point is to consider if the project accords with the DP. In this case it does not conform in land use terms and falls well short when examining other site specific and generic matters. However, in the absence of a 5-year supply of readily available housing land, there is a presumption in

favour of sustainable development, unless the harm would significantly and demonstrably outweigh the benefits, when assessed against the policies evinced by the Framework, taken as a whole.

66. In this context, the benefits arise from the provision of housing of which some should be affordable. Although there is a hierarchical tension between the operation and prevailing waste policies, the anaerobic digester would assist in terms of waste management, energy generation and end product. All of these would accord with DP and Framework policy, though a strict application of the waste policy hierarchy does cast a doubt. There are also some small economic and social benefits that would emanate from the appeal scheme.
67. Looking at the harm, there are a number of points. The first is the access, which draws significant objection. A second is the failure to demonstrate that there are no buried archaeological remains that would preclude or restrict the development. Thirdly, the locational disadvantages of the scheme in terms of services, school and retail destinations within walking distance. To these must be added concerns about noise, odour, the difficulty with conditions and the absence of a s.106.
68. Thus, despite the significant benefits in some respects, there are many objections that remain unresolved or still attract serious negative weight. Taken together these constitute substantial harm to the extent that the proposal cannot be judged sustainable development in the terms given in the Framework. Importantly, the harm caused to interests of acknowledged importance and breach of the national and local policies referred to above, are sufficient, cumulatively, to significantly and demonstrably outweigh the benefits of the appeal scheme taken as a whole.

Formal decision

69. Having regard to the written representations and my visit to the appeal site and surroundings, I have found that, notwithstanding the HLS position, the adverse impacts of the appeal scheme would not accord with the DP and Framework policies referred to above and, thereby, significantly and demonstrably outweigh the benefits of the appeal scheme, when looked at against the Framework as a whole. Accordingly, and having taken into account all other matters raised, I conclude, on balance, that the appeal should fail.

J S Nixon

Inspector