



Appeal Decision

Hearing held on 27 March 2013

Site visit made on 28 March 2013

by P E Dobsen MA (Oxon) DipTP MRTPI FRGS

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

Decision date: 15 April 2013

Appeal Ref: APP/X2410/A/12/2187470

Land at (the former) Rearsby Roses Ltd, Melton Road, East Goscote LE7 4YP

- 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 GEG Properties against the decision of Charnwood Borough Council.
 - The application (Ref: P/12/1709/2), dated 13 August 2012, was refused by notice dated 12 October 2012.
 - The development proposed is "erection of 60 dwellings following demolition of nursery buildings and formation of site access (revised scheme)".
-

Decision

1. The appeal is allowed and outline planning permission is granted for the erection of 60 dwellings following demolition of nursery buildings and formation of site access, on land at the former Rearsby Roses Ltd, Melton Road, East Goscote LE7 4YP, in accordance with the terms of the application, Ref: P/12/1709/2, dated 13 August 2012, and the plans submitted with it, subject to the conditions in the attached schedule.

Preamble to statement of main issue

2. The application is in outline, with all matters reserved except for access. It is supported by a design and access statement and by various technical and other studies, as listed in a Statement of Common Ground (SCG, para. 2.2). The SCG confirms that there are no technical or design issues between the main parties, and that design details and miscellaneous other matters could be addressed by a number of agreed planning conditions [Doc 6].
3. Likewise, the main parties agree that the provision of some 18 dwellings as affordable housing (30% of 60, in accordance with the Council's policy), together with various financial contributions towards local infrastructure - including payments to the Council, Leicestershire County Council and Leicestershire Police - would be met by the terms of a unilateral planning obligation [Doc 4], submitted at the hearing.
4. Thus the main issue between the main parties is the principle of development on what is at present a greenfield site designated as part of an Area of Local Separation (ALS) between the 2 villages of East Goscote and Rearsby.

5. The following matters in particular are disputed: i) the weight of saved local plan policies aimed at protecting the countryside, notably in ALSs, from significant development; ii) the nature and degree of any harmful impact from the proposed development on the East Goscote/Rearsby ALS, in terms of its strategic purpose and integrity, and its landscape characteristics and value; and iii) whether any conflict with policy is outweighed by the Council's acknowledged lack of a 5 year housing land supply, and/or by the presumption in favour of sustainable development stated in the National Planning Policy Framework ("the Framework").
6. Although local residents - both from East Goscote and Rearsby - have raised additional matters (such as traffic generation and nature conservation) as grounds for objection, it seems to me that they too are primarily opposed to the principle of development on the ALS, and the possibility, as they see it, of that leading to further "losses" of the ALS which might close the existing open countryside gap between the 2 villages.

Main Issue

7. With the preceding points in mind, I find that the main issue, in the light of the relevant development plan and other (Framework) policies, is whether the proposed development of 60 houses would harm the purpose, integrity and landscape character of the Area of Local Separation (ALS) between East Goscote and Rearsby; and if so, whether that harm is outweighed by: a) pressing considerations of housing land supply, in particular the Council's acknowledged lack of a 5 year supply, and/or b) the national (Framework) policy presumption in favour of sustainable development.

Reasons

8. *Background - The site and its surroundings:* The appeal site, some 4.7 ha. in size and approximately rectangular in shape, lies on the east side of Melton Road, and adjacent to the north of an area of modern housing (at Lilac Way etc.) It is a greenfield site, currently grassed and used for horse grazing, but previously used for rose growing. It is flat and devoid of any significant topographical or other features, but is surrounded in part by hedges and intermittent small hedgerow trees. Its northern part contains a cluster of buildings and other structures associated with the former rose business; according to the application particulars, these would be demolished and removed, and this part of the site retained as open, grassed paddocks.
9. The site forms the south-eastern salient (my term) of an extensive designated¹ ALS between the 2 villages of East Goscote to the south and Rearsby to the north. The larger part of this ALS comprises farmland on the west side of Melton Road, between it and the railway line to Melton Mowbray. The smaller part lies east of Melton Road, but by virtue of the appeal site itself extends further to the south on this eastern side of the road, reflecting the southerly projection of Rearsby on this side. Thus the ALS boundary has a staggered form - it extends further to the north on the western side of the road, and further to the south on the eastern side. This means that the area proposed to be developed is already bounded and contained on 2 sides by modern housing - in Lilac Way to the south, and at The Meadows and The Headland to the west, up to the junction with Broome Lane.

¹ In the Charnwood Borough Local Plan 1991-2006

10. East of Melton Road, the ALS includes other open and undeveloped land between the appeal site and Grange Avenue, which marks the southernmost extent of built development in Rearsby. This is apparently unused, or used only for rough grazing, and is contained by boundary lines of mature trees.
11. East Goscote and Rearsby both lie north of the much larger settlement of Syston, beyond the northern-most fringes of Leicester, and within the valley of the River Wreake. While Rearsby is much the older of the two in origin, as reflected in its picturesque medieval bridge and the church and listed buildings in its central conservation area, East Goscote - somewhat larger - was built mainly in the 1960s, but with some more recent additions². Thus, as I saw during my site visit, the 2 villages are generally rather different in age, built form and character. Both however have a range of local services and facilities (more fully described in the appellants' statements), and bus services along Melton Road.
12. *Background - Development Plan and Framework policies:* At the date of the hearing, the development plan still comprised the East Midlands Regional Strategy (EMRS), adopted in 2009, and the saved policies of the Borough of Charnwood Local Plan (BCLP), adopted in 2004. The plan period for the EMRS was 2006-2026, and that of the BCLP 1991-2006. However, the EMRS was formally revoked before this decision was issued, as the revocation order came into force on 12 April 2013 (Doc 5). Therefore the only remaining part of the development plan is limited to the saved policies of the BCLP.
13. While the EMRS no longer forms part of the development plan and has no continuing status, the BCLP saved policies will remain in place until they are formally superseded by the borough's Core Strategy and other development plan documents (CS). However, CS preparation remains at a relatively early stage, and I was told that its adoption is not likely to occur until some time late in 2014. A site allocations DPD is likely to be adopted some time after that.
14. The Council acknowledges that the BCLP is time-expired, and that its housing strategy and allocations are out of date. However, it argues that the saved BCLP countryside policies, in particular policy CT/4 referring to ALSs, remain relevant and retain the full weight of development plan policy. For their part, the appellants maintain that there are no relevant and up to date development plan policies, and that in these circumstances greater weight should be given to the national policies in the Framework.
15. Para. 215 of the Framework advises that (from March 2013 onwards) due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework.
16. The Framework contains many references to the need to conserve and enhance the natural environment, and one of its core principles is that planning should recognise the intrinsic character and beauty of the countryside. It stresses the continuing need to protect valued parts of the countryside from development, including through plan-making, which may (para. 157) "indicate broad locations for strategic development on a key diagram and land use designations on a proposals map". Para. 157 goes on to say that Local Plans should also identify land where development would be inappropriate, for instance because

² Such as that around Lilac Way in the 1990s

of its environmental ... significance". Elsewhere, para. 76 refers to the scope for designating land as Local Green Space.

17. I conclude from all these references that local planning authorities may still identify areas (other than Green Belt) where various types of countryside protection policies may apply, whether those are the subject of saved policies or are new policies in local development frameworks. Therefore I agree with the Council that saved BCLP policy CT/4 does not clearly conflict with the Framework, and I give it some weight, even though the Framework does not specifically refer to ALSs. But that does not mean that all land within existing ALSs in the borough should be permanently sterilised from development; instead, I consider that each case for development within an ALS should be considered on its merits. Therefore I turn next to the planning merits of the appeal proposals.

Conclusions on the main issue

18. *Effects of proposed development on the purpose, integrity and character of the ALS between East Goscote and Rearsby:* BCLP policy CT/4, Areas of Local Separation, aims to keep such areas³ open, and substantially free of development. Thus the ALSs have a strategic role, and are intended to act as small, open, rural buffers whose main purpose is to prevent neighbouring settlements from merging or coalescing.
19. By building 60 houses on a greenfield site, the proposed development would clearly affect the existing ALS between East Goscote and Rearsby. It would significantly reduce its extent on the east side of Melton Road, and when seen from virtually any direction would replace open views of a large field with views of 2 storey housing, estate roads and footpaths, a play area and other ancillary development. Thus the character and appearance of the site itself would be changed radically.
20. However, in my opinion there are several reasons for thinking that the impact of the development on the ALS would be quite limited, and not very harmful - much less fatal - to its overall purpose, integrity, or character. In brief, these reasons are as follows.
21. First, the site is already contained on 2 sides by built development, which acts as a backdrop in views of it from various viewpoints and directions. Thus it is located on the northern edge of East Goscote, and not in the open countryside as such. Second, owing to the aforementioned "stagger" in the ALS's plan form, the minimum extent of the open and undeveloped gap between the two villages would not be reduced any further, although it would, of course, be reduced on the east side of Melton Road.
22. But (third), even on that eastern side there would still remain a substantial open gap - both actual and "perceived" - between the northern edge of built development on the appeal site and Grange Avenue in Rearsby, which is the nearest built development to the north. This retained gap would include both the northern part of the appeal site itself, which as mentioned above would be kept open and undeveloped, and the large, tree-fringed paddock between that and Grange Avenue. In my judgement, this gap would be sufficiently wide to prevent any demonstrable coalescence or merging between the villages, which could lead to the undesirable diminution of their separate identities.

³ As defined in the BCLP proposals map

23. Fourth, in terms of its intrinsic landscape character and value, no one at the hearing argued that the appeal site itself is particularly interesting or attractive. Like the rest of the ALS, it has not been designated for its *landscape* value, but only for its location and function as a small part of the ALS. Indeed, it both looks like, and is, rather a dull and featureless flat expanse of grass, overlooked by nearby houses and bordered by the busy Melton Road.
24. For all those reasons, I consider that the proposed development would not significantly harm the landscape character of the site, or undermine the planning purpose or overall integrity of the wider ALS. Nor would it necessarily lead (as assumed by some local residents) to any further loss or erosion of the ALS in this area.
25. Nevertheless, under this heading there would be some slight harm, to be weighed in the overall planning balance. The other side of the balance includes considerations of housing land supply, and the Framework presumption in favour of sustainable development. I now turn to these.
26. *Considerations of housing land supply:* Since there is no disagreement about this matter, I can be very brief. Housing land requirements in Charnwood have in recent years been based on the adopted figures in the EMRS, and there is as yet no new district-wide requirement to work to. As the SCG confirms, in June 2012 there was a district-wide housing supply of only 1.98 years for the period 2013-2018, a shortfall of 2980 dwellings. Even the Council's latest, informal estimate (at December 2012) only reduces that shortfall slightly, to 2168 dwellings. These figures allow for and include a "buffer" of 20%⁴ as described in para. 47 of the Framework.
27. The Framework advises at para. 49 that 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 sites.
28. It must be emphasised that one of the main purposes of the Framework is to stimulate the delivery of housing nationally, and particularly in those areas where there are demonstrable shortfalls. In my view, this significant shortfall in the borough's housing land supply is an important factor which counts strongly in favour of the appeal scheme.
29. *Presumption in favour of sustainable development:* The presumption is stated in para.14 of the Framework. This advises that where the development plan is absent, silent or relevant policies are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against Framework policies taken as a whole.
30. In this appeal, the Council acknowledges that the CBLP - the only remaining part of the development plan - is significantly out of date. But as noted above some of its saved policies, including policy CT/4 on ALSs, still merit due weight as development plan policies. Although there would be some conflict with this policy, this, for the reasons stated above, would be limited.
31. The proposed development itself would provide much-needed and well-designed new housing in an accessible location in a reasonably "sustainable" settlement (East Goscote), not far from Leicester. The village contains a

⁴ "where there has been a record of persistent under delivery of housing"

primary school, and a number of other facilities, shops and services of its own and is also accessible to and fairly well connected with other higher-level facilities and services in larger centres nearby, including Syston, Sileby and Leicester.

32. I therefore find, on balance, that the proposed development should benefit from the national policy presumption in favour of sustainable development.

Summary of conclusions

33. The proposed development would have a somewhat harmful effect on the purpose and integrity of the ALS. However, this harm would be limited, and would not be sufficient to undermine its continuing planning function, or to cause the coalescence (or even near-coalescence) of East Goscote and Rearsby. The larger part of the ALS would be unaffected, and even on the eastern side of Melton Road adequate physical and visual separation between the two villages would be maintained.
34. In line with Framework housing policies, the acknowledged absence of a 5 year land supply in Charnwood strongly supports the proposals, as does the provision of additional housing per se, including 18 affordable dwellings. There are no significant access, technical, environmental or design issues which cannot be addressed by planning conditions, and various necessary contributions to local infrastructure would be met by a planning obligation. On balance, the proposals represent sustainable development to which the Framework's presumption in favour should apply.

Deed of Undertaking

35. At the hearing the appellants tabled a signed and executed S106 unilateral planning obligation containing various clauses including: (in schedule 1) those relating to the provision of 18 units of affordable housing; (in schedule 2) the payment of monies to the Council comprising a health facilities contribution (approx. £14,000), a police contribution (approx. £25,000), and an open space contribution (approx. £42,000); and (in schedule 3) payments to Leicestershire County Council towards education (approx. £110,000) and transport (approx. £17,000); together with miscellaneous matters.
36. There was some discussion at the hearing as to the justification for some of the financial contributions sought. However, having regard to all the evidence to the hearing, and the criteria in para. 204 of the Framework, I am satisfied that all these provisions for infrastructure payments are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. They also meet the 3 statutory tests set out in regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

Conditions

37. All 20 planning conditions agreed by the main parties are necessary for the development to proceed, and they would also meet all the other tests for conditions in Circular 11/95 *The use of conditions in planning permissions*.
38. Conditions 1-3 are conventional reserved matters conditions, requiring details of the scheme's appearance, landscaping, layout and scale, and setting appropriate time limits. Condition 4 requires the submission of a design code,

and condition 5 an ecological management plan, including the details of a defined corridor allowing badger movements to and from a known sett near the site. Condition 18, also related to nature conservation, requires the provision of bird and bat boxes within the scheme.

39. Conditions 6-8 concern landscaping details and works, in the interests of providing an attractive green setting for the housing areas. Likewise, conditions 19 and 20 require the retention of a number of identified boundary trees, and measures for their protection during building works. Conditions 9, 10 and 11 require further details of the scheme's drainage and sewage disposal, and a programme of archaeological investigation. Condition 13 requires a further investigation of potential ground contamination and remediation.
40. In the interests of highways safety and ease of movement, conditions 14 and 15 relate to the provision of the new site access, and the closure of the existing access from Melton Road. Owing to the scale of the development, and the need to encourage sustainable travel modes, condition 16 requires the submission and implementation of a residential travel plan. To minimise inconvenience to local residents and road users during the construction period, condition 12 sets out the matters and measures to be covered by a construction method statement, and requires their implementation.
41. I have considered all the other matters raised in the evidence and at the hearing, including both main parties' references to other recent appeal decisions on greenfield housing proposals in Charnwood and elsewhere in Leicestershire. Whatever the outcome, all of these cases exhibit some features in common with this appeal, but in other respects they are quite different. Neither this, nor any other matter alters or outweighs my conclusions on the main issue in this appeal.

Paul Dobsen

INSPECTOR

Schedule of conditions

1) Details of the appearance, landscaping, layout, scale, and proposed ground levels and finished floor levels of all buildings (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

2) Application for approval of the reserved matters shall be made to the local planning authority not later than two years from the date of this permission.

3) The development hereby permitted shall begin not later than one year from the date of approval of the last of the reserved matters to be approved.

4) No development shall commence until a Design Code for the site has been submitted to and approved in writing by the local planning authority. This shall follow principles established within the Design and Access Statement

dated July 2012. Any amendment to the code shall be submitted to and approved in writing by the local planning authority.

The Design Code shall address the following:-

- Architectural and sustainable construction principles
- Lifetime home standards
- Car parking principles
- Street types and street materials
- Boundary treatment
- Building heights as indicated in the Design and Access Statement
- Building materials
- Provision of open space (including timetable for implementation and any availability for public use)
- Design of the site to accord with Secure By Design principles
- A lighting scheme designed to minimise impact on wildlife

5) The areas of open space shown on the plans shall be managed in accordance with an Ecological Management Plan which shall be agreed in writing prior to the occupation of the first dwelling and implemented in accordance with the agreed details. In addition, the badger corridor on the Southern and Eastern boundaries shall be approximately 3.5m in width and be provided in accordance with the measures identified in the submitted Ecological Assessment.

6) No development, including site works, shall begin until a landscaping scheme, to accord with the Influence landscape design strategy (July 2012), has been submitted to and agreed in writing by the local planning authority. The scheme shall set out the following:

- i) the treatment proposed for all ground surfaces, including hard areas;
 - ii) full details of tree planting;
 - iii) planting schedules, noting the species, sizes, numbers and densities of plants;
 - iv) finished levels or contours;
 - v) any structures to be erected or constructed;
 - vi) functional services above and below ground; and
 - vii) all existing trees, hedges and other landscape features, indicating clearly those to be removed.
- viii) the new wildlife pond including cross section, depth, and profile.

7) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

8) The hedge located along the eastern boundary of the application site shall be retained and maintained at a height no lower than 3 metres. The hedges along the southern and western boundaries of the site shall be retained and maintained at a height no lower than two metres. Any part of the hedge which is removed, dying, severely damaged or becoming seriously diseased shall be replaced with hedge plants of such size and species as previously agreed in writing by the local planning authority, within one year of the date of any such loss.

9) No development shall commence until the applicant or developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been previously submitted to and agreed in writing by the local planning authority, and no development shall take place except in accordance with the approved details.

10) No development shall commence until details of a sustainable drainage system for the site have been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed. The scheme shall ensure that flood risk is not increased and that water quality is not reduced as a result of the development.

11) No development shall take place until details of the disposal of foul sewage have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details before the development is brought into use.

12) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:-

- i) the routing of construction traffic
- ii) the times of construction work which shall not take place outside 08.00 hours to 19.00 hours Mondays to Fridays and 08.30 hours to 13.00 hours on Saturdays and not at any time on Sundays and Public Holidays
- iii) the parking of vehicles of site operatives and visitors
- iv) loading and unloading of plant and materials
- v) storage of plant and materials used in constructing the development
- vi) measures to control the emission of dust and dirt during construction including measures to ensure that the highway is kept free of mud, water, stones etc.
- vii) a scheme for recycling/disposing of waste resulting from demolition and construction works
- viii) measures to protect the hedges located along the eastern, southern and western boundaries of the application site during the duration of the construction works.

13) No development shall take place until a Phase II ground investigation has been undertaken to establish the full nature and extent of any contamination of the site and the results of the investigation together with details of any remediation strategy necessary to render the site safe shall be submitted to the local planning authority for their assessment and written approval. Any remediation work required by the approved strategy shall be carried out prior to the occupation of the first dwelling.

14) Prior to the occupation of the first dwelling on the site, the applicants shall construct, complete and open for use the access works shown on White Young Green drawing numbered A072719/35/18/007.

15) The existing vehicular access that becomes redundant as a result of this proposal shall be closed permanently and the existing vehicular crossing reinstated in accordance with a scheme that shall first have been submitted to and approved by the local planning authority in consultation with the highway authority within one month of the new access being brought into use.

16) No part of the development shall be occupied until details of a Residential Travel Plan for the development as a whole has been submitted to and agreed in writing by the local planning authority. The travel plan shall be implemented in accordance with the agreed details.

17) No dwelling shall be occupied until a scheme of public art within the built fabric of the development, including its future management and a timetable for its implementation, has been submitted to and agreed in writing by the local planning authority. The agreed scheme shall be fully implemented in accordance with the agreed timetable.

18) Details of a scheme to incorporate bird and bat boxes within the proposed building fabric shall be submitted to and agreed by the local planning authority prior to the commencement of the development. The scheme shall be implemented in accordance with the agreed details.

19) The existing trees on the south west boundary, the north east boundary and the eastern boundary of the site, named as trees T1, T2, T6, T7, T8, T9 and T10, and W1 as indicated on the drawing 4876-A-02 and within the Arboricultural Assessment dated December 2011, shall be retained and shall not be felled, lopped, topped or uprooted without the previous written agreement of the local planning authority. Any trees removed, dying, being severely damaged or becoming seriously diseased shall be replaced with trees of such size and species as previously agreed in writing by the local planning authority within one year of the date of any such loss, for a period of 5 years from the date development begins.

20) No development, including site works, shall commence until each tree shown to be retained on the approved plan has been protected, in a manner which shall have first been submitted to and agreed in writing by the local planning authority. Each tree shall be protected in the agreed manner for the duration of building operations on the application site. Within the areas agreed to be protected, the existing ground level shall be neither raised nor lowered, and no materials or temporary building or surplus soil of any kind shall be placed or stored thereon. If any trenches for services are required in the protected areas, they shall be excavated and back-filled by hand and any tree roots encountered with a diameter of 5cm or more shall be left un-severed.

APPEARANCES

FOR THE APPELLANTS:

Mr. G. Longley BSc DipTP MRTPI	Pegasus Planning
Mr. J. Golby BA DipLA MA CMLI	Pegasus Landscape Design
Mr. J. Deakin	David Wilson Homes (prospective developer)

FOR THE LOCAL PLANNING AUTHORITY:

Mr. N. Thompson BA DipTP	Principal Planning Officer
--------------------------	----------------------------

INTERESTED PERSONS:

Mr. M. Lambert (represented by Ms. T. Osmund-Smith)	For Police and Crime Commissioner for Leicestershire (re S106 contributions)
Mr. J. Prendergrast	Principal Solicitor, Leicestershire County Council
Mr. A. Tyrer	Leics CC (re S106 contributions)

Local residents:

Mr. J. Lambert	For Parish Councils of East Goscote and Rearsby
Ms. S. Johnson	Rearsby Lodge Farm
Ms. W. Sutton	1 The Headland
Mr. R. Pocock	1664 Melton Road
Ms. B. Gaylard	1664 Melton Road
Mr. K. Holme	1764 Melton Road

DOCUMENTS (tabled at the hearing)

- 1 List of persons present at hearing
- 2 Letter of notification of hearing
- 3 Written responses to Doc 2
- 4 S106 unilateral planning obligation, put in by the appellant
- 5 Revocation Order (SI 2013 No. 269) re East Midlands Regional Strategy and
Written Ministerial Statement dated 14 March 2013
- 6 List of agreed planning conditions, in the event of a successful appeal

PLANS

- A The application plans (as listed in Statement of Common Ground)