



---

# Appeal Decision

Inquiry held on 30 and 31 October and 1 and 2 November 2012

Site visit made on 29 October and 1 and 2 November 2012

**by David Morgan BA MA MRTPI IHBC**

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

**Decision date: 20 December 2012**

---

**Appeal Ref: APP/X2410/A/12/2177036**

**Land to the South of Bramcote Road, Loughborough, Leicestershire LE11 2SA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Nigel Hainsworth, Charles Church (North Midlands) Ltd against the decision of Charnwood Borough Council.
  - The application Ref P/11/2842/2, dated 20 December 2011, was refused by notice dated 25 May 2012.
  - The development proposed is erection of 50 no. dwellings with associated garaging, parking, infrastructure, construction of new access off Bramcote Road and formation of open space, landscaping, balancing pond and re-grading of land for flood compensation.
- 

## Decision

1. The appeal is allowed and planning permission granted for erection of 50 no. dwellings with associated garaging, parking, infrastructure, construction of new access off Bramcote Road and formation of open space, landscaping, balancing pond and re-grading of land for flood compensation at Land to the South of Bramcote Road, Loughborough, Leicestershire LE11 2SA in accordance with the terms of the application, Ref P/11/2842/2, dated 20 December 2011, subject to the conditions set out in the schedule at the end of this decision.

## Main Issues

2. These are a) whether the proposed development would cause significant harm to the character and appearance of the area in terms of both its effect on landscape character and the quality of its design, b) if it does, in the context of the agreed inability of the Council to demonstrate a 5 year supply of housing land, would this harm significantly and demonstrably outweigh any benefits the scheme may offer, and c) whether the proposed development would be at risk of flooding and whether it would increase the risk of flooding to existing adjacent properties.

## Procedural matter

3. At the Inquiry the appellant submitted a Deed of Undertaking under Section 106 of the Act between the title holders, the Council of the Borough of Charnwood and Leicestershire County Council facilitating the provision of affordable housing and financial contributions towards local infrastructure, including healthcare facilities, open space, informal amenity area and woodland belt maintenance, balancing pond maintenance, local policing, local library

services, education, transport and transport measures and pedestrian links. The Deed also facilitates the transfer of the open space and informal amenity area, woodland belt and balancing pond within the red line area of land to the control of the Council. The affordable housing provision is considered against the criteria of paragraph 204 of National Planning Policy Framework (henceforth referred to as '*The Framework*') whilst the infrastructure contributions are considered against the tests of the Community Infrastructure Levy Regulations (CIL).

## Reasons

4. The appeal site lies at the southern end of Bramcote Road, one of a matrix of suburban roads serving an extensive area of 1960s and 70s housing development on the southern fringe of Loughborough. Bramcote Road is developed only on its eastern side, the western side being laid out to mature grass and treed open space forming an effective screen or filter to the urban edge of the town when viewed from the west. At the southern tip of Bramcote Road lies the small residential enclave of Bramcote Court, a collection of houses, apparently replacing a lesser group of former farm buildings, adjacent to the listed Moat Farm, thus forming a small nib of residential development to the south.
5. The appeal site itself, lying beyond the defined limits of development, is comprised of two fields laid out to unimproved pasture, the one immediately to the south of Bramcote Road (field 1) being enclosed by both hedge and semi-mature planting belt and that to the west (field 2), enclosed by more modest hedges with some specimen trees within. Field 3, identified as being within the control of the appellant (the blue land), lies to the west of field 2 and is more open, with thin hedges enclosing pasture. To the east of field 1, on rising ground, lie the playing fields of Woodbrook Vale School, to its south east lies informal public open space associated with the Fairmeadows development and to the south west lies the more open gently rising agricultural landscape of the Charnwood Forest, terminated by the Outwoods, dense, mature, deciduous woodland beyond.

### *National/local Policy context*

6. As set out in the Statement of Common Ground (SoCG), the site lies outwith the defined limits of development and thus technically within open countryside. As such, it is also agreed that the proposals stand contrary to policies ST/1, ST/2, CT1 and CT/7 of the Charnwood Borough Local Plan 2004 (CBLP). However, it is also common ground that the Council cannot demonstrate a five year supply of housing land, present supply being agreed as 1.98 years for the period 2013-18, a shortfall of 2,980 homes against the East Midlands Regional Plan (EMRP) target. Moreover, in recognition of a record of persistent under-delivery against the housing requirements of EMLP<sup>1</sup> the assessment of the five year supply includes a 20% buffer in accordance with paragraph 49 of The Framework.
7. The Rule Six Party questioned the sustainability of the site in relation to local services and public transport routes. However, the main parties agree<sup>2</sup> that the site represents a sustainable location adjoining the built-up limits of

---

<sup>1</sup> Still, notwithstanding the intention of the Secretary of State to abolish Region Spatial Strategies, part of the development plan, as again agreed in the SoCG.

<sup>2</sup> SoCG para 6.8.

Loughborough, a Sub-Regional Centre and a focus for development in the Borough outside the Leicester Principal Urban Area. Having walked from the site to a number of local services during my visits, I conclude that in both micro and macro respects, the site may be considered a sustainable one in these terms.

8. The CBLP made provision until 2006, though key policies were 'saved' by the Secretary of State, with the usual caveats that they be replaced 'promptly' and that saved policies be 'read in context' of new regional and national policy. In respect of replacement, no such plan is in the near offing. Current projections suggest a draft Core Strategy (CS) will be presented to Cabinet in March 2013, with the prospect of formal adoption following in mid 2014. A Site Allocations Development Plan Document (SADPD) is further down the road still, not being anticipated until mid 2015 at the earliest.
9. More specifically, in relation to paragraph 49 of The Framework, there was debate at the Inquiry as to what extent the policies relevant to this case might or might not be considered out-of-date. ST1, certainly as far as critically relevant criterion (ix) goes, (dealing as it does with projected housing needs in the Borough up to 2006), is out of date.
10. Policies ST/2 and CT/1 must have a joint purpose of on the one hand serving to define the limits of development and on the other to define areas of countryside it presumes to safeguard. It is not right that the one confining development to specific sites may be considered out of date whilst the other be afforded more weight because of its wider generic countryside safeguarding function. CT/1 acts as a constraint on the supply of housing on the fringe of the Sub-Regional Centre identified as a growth centre in the saved policies of the CBLP and embryonic CS. As such it is a relevant policy for the supply of housing and may rightly be considered, in the context of paragraph 49, not up-to-date.
11. The same corollary may be applied to CT/7. Yes, the broad principle of its intent to safeguard the character of the landscape may accord with The Framework (in safeguarding the countryside for its own sake), but there can be little doubt that in the context of this case it *is* acting as an additional policy constraint on housing supply; it is cited as such in addition to CT/1 in the reasons for refusal. Whilst it might be right, as the Council assert, that CT/7 is 'not a policy for the supply of housing' per se, it is 'relevant' to that supply. Again, in the context of paragraph 49, it cannot be considered up-to-date.
12. Moreover, in closing the Council accept, in relation to ST/2 and CT/1, that 'Where the lines have been drawn on the Proposal Map reflects an assessment of development needs which is now outdated. To that extent only, the policies are out of date'<sup>3</sup>. This seems to me a candid acknowledgement of both policies' out-datedness, and indeed an axiom that may be equally applied to all the policies relevant to the supply of housing in this case.
13. In the context of the above therefore, the proposals need to be considered against the requirements of the fourth bullet point of paragraph 14 of The Framework, and that is 'where the development plan is absent, silent or relevant policies are out of date, granting planning permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the

---

<sup>3</sup> Council's closing submissions paragraph 8.

benefits, when assessed against the policies of this Framework as a whole'. It is to these *impacts*, and therefore the harm, if any, that would result, that lies at the heart of this case; it is to these matters that I now turn.

*Effect on landscape character and design*

14. The relationship of the proposal to landscape is covered by the evidence of three Landscape Architects, each with a view on the nature of the landscape character, the likely degree of impact of the proposal and the range of receptors likely to respond to it. These approaches differ in terms of methodology and the technical terms applied, though the Council and the Appellant both cite the 'Blue Book', the *Guidelines for Landscape and Visual Assessment* published by the Landscape Institute in support of their approach. The overarching aim of this document is to establish a set of principles that will help achieve consistency, credibility and effectiveness in landscape and visual impact assessment. But at the same time its introduction makes clear that the guidelines are not intended to be 'a prescriptive set of rules nor an exhaustive manual of techniques'. It seems to me therefore that the aim is to set out the principles by which the thorough assessment of landscape and any impacts upon it may be achieved, though allowing latitude as to how this is undertaken and presented. In this context, all approaches presented in evidence have a reasonably credible basis for interpreting the issues.
15. The matrix of evidence before me, though differing in details of approach, sets out a comprehensive analysis of local character (already underpinned by two landscape character studies of the area undertaken in 2008 and 2012), assesses impact of the development and the identification of those that will perceive it. As far as it can, this sets out (in terms of character assessment) an empirical platform for me, as the decision-maker, to form a subjective (as it must ultimately be) judgement on the impact of the development. This task is greatly assisted by the presentation of a series of agreed views of the site in the SoCG, from where the impact of the development can be gauged. These views, and my broader assessment of the landscape issues undertaken during my four visits to the site and its environs, are considered below.
16. View 1 considers the prospect of field 1 from the gate at the end of Bramcote Road, view 2 from properties above the site on Tiverton Road and view 3 from the footpath running down the eastern edge of field 1. All overlook the main site of the proposed housing and from each point the impact of the development will be significant, the grassland cover being lost to built development. Although in these views the very local impact would be acute and significant, this would be mitigated in the broader context: in longer views along Bramcote Road the development would be seen against the houses on the east of the road and framed by those of Bramcote Court, whilst the screen planting would rise above it to the rear. Glimpses of development along the footpath (View 3) could be mitigated through further planting. View 2, which essentially amounts to glimpses between private properties or views from them, cannot be considered significant in the context of the public domain. Overall I would judge the impact of the development from these views as adverse, though of moderate magnitude and of moderate significance.
17. In the wider landscape context it is from Views 15 and 16 where the impact of the development would be most apparent. Here the popular public footpaths of the elevated Outwoods offer broad prospects over the open farmland of the Charnwood Forest towards the southern fringes of Loughborough, land

(including the appeal site) almost completely covered by the local landscape designation of policy CT/7, the Area of Particularly Attractive Countryside (APAC). From these prospects the proposed development would be seen framed by the hedge boundary between field 1 and field 2 and the eastern boundary of field 1 where it abuts the footpath. This rear part of the site is the more elevated, and it is my judgement the dwellings on this boundary would conceal most of the existing hedge and would be seen in almost full elevation. Moreover, These and the roofs of other dwellings would be seen beneath the bright green sward of the Woodbrook Vale School playing fields and in effect be perceived as a slender finger of development extending from the nib of Bramcote Court into the greenness of the open countryside. This would be perceptible and represent a tangible encroachment of development into the countryside and designated APAC, causing a degree of harm to it.

18. However, the development would be seen in the context of the sweep of the south Loughborough fringe with the changing form of extrusions of development and incursions of green into it. In this context, with the structural planting around field 1 and the maturing planting of fields 2 and 3 forming a continuation of the Bramcote Road open space, the enveloped enclave of proposed development would fit with this variegated pattern in the wider/medium distance agreed views (Views 4, 5, 6, 7, 8, 9, 10 and 11).
19. Moreover, whilst the school playing field serve to separate the development from the mass of the Fairmeadow estate beyond to the east, its bright manicured appearance differentiates it from the unimproved pasture of the countryside below the appeal site, and there is a sense of urban/countryside synthesis here that mitigates the intrusion of the proposed development to a degree. Finally, though the paths are very well used, the kinetic experience of walkers or runners viewing the appeal site is relatively brief; as they descent the path the site quite quickly becomes obscured by other landscape features. Taking all these factors into account I would judge the impact of the development from these views as adverse, though of moderate magnitude and of moderate significance.
20. The 2012 Landscape Character Assessment is of limited use in determining the more detailed impact this development. Zone 3 of the study, in which the appeal site is located, covers an area of approximately 174 hectares and the scoring mechanism for assessing capacity for change covers the whole of the zone: the brush here is necessarily broad. Furthermore, small differences to the scoring of assessment factors, such as the degree of site enclosure, result in an increase in the capacity of the landscape to accommodate change; indeed, the reverse may also be the case.
21. The 2008 study has a smaller-grain focus, concentrating on the Charnwood Forest Character Area, with further detailed focus on sub-areas, including those relating to *Swithland* (in which the appeal site lies) and The Loughborough Fringe, covering the urban/countryside interface. This document, perhaps acknowledging the time-expiry of the CBLP, accepts the Swithland area is 'likely to be under some urban expansion pressure', whilst recommendations for the urban fringe include 'where urban expansion is proposed, sites should be considered where visual containment can be best achieved without impacting on the wider landscape'.
22. With this guidance accounted, and the locally acute though restricted adverse impact and moderate adverse impact in the broader landscape context

aggregated, I conclude these impacts would be moderate in magnitude and significance; and I would quantify the harm overall to be of medium magnitude when weighed against the benefits of the proposals.

23. Criticism of the design of the proposals has been made by the Rule Six Party and the local ward Councillor. The basis of this is that the design is not of sufficient quality to reflect its context, and that it does not take its design cues from the Bramcote Court development, suggested as an exemplar here. The Bramcote Court development's claim to distinction is, in my view, based on the employment of reclaimed and natural materials and the expression of some notional attributes of vernacular agrarian detail, no doubt in an attempt to reflect the former agricultural buildings on the site. Using this as a basis for an approach to the design of the appeal development would be misconceived; it would not be appropriate to roll-out some mass-vernacular scheme to emulate the small enclave obviously focused on the context of Moat Farm.
24. Moreover, the more relevant design cue for the development has to be, in my view, the simple unself-conscious modern vernacular architecture of the Bramcote/Tiverton Road estate dwellings. Insofar as the proposed development would be seen in the context of these houses, their general pattern of layout and design will be compatible with them, and no harm to the character of the area and thus no conflict with the aims of The Framework in relation to design would result.

*Flood risk*

25. Local residents, especially those of Bramcote Court, are right to be concerned about the risk of flooding, and have provided ample evidence of the impact of past such events, both recent and historic. Indeed, renewed scrutiny of the flood risk issues resulted in the appellant submitting revised flood compensation proposals. These revised provisions, required to be implemented through condition 22, and with provision for agreed new ground datum levels, do make appropriate provision for a 1:1000 year flood event, and such an approach has not met with objection from the Environment Agency (subject to conditions) who were well apprised of the circumstances of the case. Moreover, this approach includes consideration of existing flood prevention measures, such as the flood wall separating Bramcote Court from the appeal site, and allows, through the provision of a land and surface water drainage system, for the attenuation of surface water discharge rates into the Moat Brook, a reduction in relation to existing greenfield rates, thus facilitating a degree of betterment over the existing situation.
26. Concerns remain about the extent of earth moving required and the effects of the re-profiling of the banks of the brook. However, these issues can be considered and properly addressed within the ambit of conditions attached to the planning permission. It is the case that the apparent source of flooding problems in the past, the arched brick culvert within Bramcote Court and interventions further down stream, are not explicitly addressed by the scheme. But this does not of itself make the scheme objectionable. Moreover, there may be scope, as was intimated at the Inquiry, for the provisions of the conditions to consider such other wider matters, and there may well be mutual interest in this being explored when the conditions are discharged.
27. Whilst local residents may be fully justified in their apprehension, on the basis of the evidence presented and the measures that can properly be secured

through condition, I am satisfied that the development would not be at risk of flooding and that it would not increase the risk of flooding to adjacent properties. Indeed, with the flood mitigation measures fully implemented, there is scope for a reduction in the probability of such events in the future.

### **Other matters**

28. Concerns were expressed at the Inquiry about the effect of increased traffic volumes along Bamcote Road, including the risk of collision on the approaches to the junction with Craven Close and Tiverton Road, the difficulties in passing service vehicles, the risk of increased parking on the road as a result of the enhancement to the footpath network and the risk to children playing on the forecourts and drives on the eastern side of Bramcote Road. It is acknowledged that the development will result in an increase in traffic movements along the road and, being a residential development, peak movements are likely to occur at the beginning and end of the day.
29. However, although anecdotal evidence of near misses was presented, this was not supported by evidence of significant existing risk, corroborated by accident reports. Nor are these concerns supported by the highway authority, which have raised no objection to the proposals. Whilst an understandable apprehension as to the effects of new development may locally prevail in respect of highway safety, there is no evidence before me that any such material risk would result from the development. As a consequence, I can afford such apprehension only limited weight in this case.
30. Concerns are also expressed over the level and format of off-street parking within the development and predictions that the likely outcome will be a level of on-street parking causing inconvenience and hazard to residents and road users alike. This hypothesis is based on the assumption of multiple car households and that the majority of garage space will be utilised for storage rather than the parking of vehicles. This is not a conclusion shared by the highway authority, who accepts the development is laid out to accepted parking standards and raise no objection subject to the application of conditions, which are set out below. Moreover, there is little evidence presented that the worst-case scenario anticipated by the Rule Six Party will come to pass. A tour of the newer estates each side of Haddon Way (exhibiting a broadly similar pattern of parking) a little to the east of the appeal site before 07.45 in the morning and in the evening did not confirm the chronic outcome forecast. Whilst it is not possible to compare like with like, these concerns seem more based on apprehension that a more systematic challenge to the appropriateness of adopted parking standards.
31. At the Inquiry the appellant presented a final version of the Deed of Undertaking that omitted the transfer of the land edged in blue (field 3) from the provisions of the deed, apparently following the failure to agree those terms with the Council. Concern was expressed by the Rule Six Party that this offered no assurance as to the future management and public access to this land, elements of the scheme that had long been sold as benefits by the appellant.
32. Such concerns are rightly justified in my view, as access to this land and its management to sustain that access and provide landscape enhancement are real benefits of the scheme. It is essential that these functions are secured and maintained if the visual impact of the development is to be effectively

mitigated and the public access benefits secured. Whilst the Council may not have direct control of the management of the land, their authority over the discharge of conditions 4-10 below relating to landscaping will ensure that all the land identified will be the subject of detailed landscape provisions. Moreover, condition 23, requiring the submission of a scheme for the management of field 3 will ensure provision is made for its future management and continued public access. In any event, The Deed of Undertaking secures the provision of the two-limbed path through the field as indicated on the illustrative landscape master plan drawing EMS.2192\_17. With these provisions in place both landscape and public access benefits can be effectively secured.

### **Deed of Undertaking**

#### *Affordable housing*

33. The BCLP is consistent with both the EMRP and the broad thrust of The Framework in seeking to secure affordable housing as part of its broader housing provision; policy ST/3 reflects this, whilst policy H5 (affordable housing on unallocated sites) requires, inter alia, that affordable housing be secured where 'the site is close to local services and facilities and easily accessible to public transport'. Detailed provision for affordable housing is also set out in the Council's adopted Affordable Housing Supplementary Planning Document (AHSPD), which identifies, again inter alia, that a minimum of 30% affordable housing will be sought as part of housing proposals.
34. The appellant proposes 15 affordable homes, of which 11 would be for social rent and 4 for shared ownership; the sum and tenure according with the AHSPD. It is on this basis that the Council accept in evidence that the affordable housing provision proposed would meet the criteria of paragraph 204 of The Framework, a conclusion I emphatically agree with. The SoCG also refers to the Leicester and Leicestershire Strategic Housing Market Assessment 2008, which identifies a district-wide need of 309 affordable homes per annum, whilst the Council's own strategy sets a target of 279 such homes per annum. Such targets underpin a significant need (the upper target equating to approximately 40% of the EMRP annual wider housing target for the Borough, and one which has been consistently unmet). Council member and constituency opinion suggested that this contribution would not best serve those in housing need within the borough, such provision being better provided elsewhere. However, such opinion contradicts the Council's evidence (indicating support for the proposals under policy H5 of the CBLP) and in any event, in the context of the very clear need for such housing, this scheme, in bringing forward 15 such homes now should, in my view, rightly be afforded significant weight in its favour.

#### *Healthcare facilities*

35. The proposed development would place increased demand on existing local medical services and the site would be within the catchment of the Outwoods Medical Centre, within approximately 1.6k of the site; the expectation is clearly that this facility would have to meet the increased demand. Healthcare contributions are sought under the auspice of EMRP, CBLP policy and criteria set out in adopted Developer Contributions Supplementary Planning Documents (DCSPD). A sum of £8,997.00 is presented by the undertaking and the intention is that the monies will be directed at increasing capacity at the



Outwoods centre. On this basis the contribution meets the regulatory tests and may rightly be taken into account.

*Open space, informal amenity area, woodland belt and balancing pond maintenance*

36. It is accepted that open space provision is a necessary component of the development provided for the use of its occupants. It is appropriate that with the anticipation that the local authority will take on the future management of that space contributions are sought to fund that management. Such an approach is supported by EMRP, CBLP policy and DCSPD. Within this framework a contribution of £180,000.00 is made. This contribution covers the provision and future maintenance of play facilities in field 1 and informal space in field 2 and the management of the additional land proposed for adoption. In all other respects the Council are content with the terms of the transfer and future management of the land, including the balancing pond, I am satisfied that the Undertaking is appropriately drafted in these respects. The Undertaking also makes provision for the public footpath through the site and on through the land edged in blue on the relevant plans, linked to the existing footpath network beyond. Again, I am satisfied that the drafting of the undertaking appropriately secures this provision.

*Local library services*

37. It is reasonable to assume that occupants of the development will avail themselves of local library services and this will place increased demands upon them. Given the relationship of the proposed development to the centre of Loughborough and the proximity of good public transport links, the central library in Loughborough is likely to be the provider. Library contributions are sought under the general auspice of EMRP, CBLP policy and specific criteria set out in DCSPD. A sum of £3,070.00 is presented by the undertaking and the intention is that the monies will be directed at increasing capacity at the central library in Loughborough. On this basis the contribution meets the regulatory tests and may rightly be taken into account.

*Education*

38. The development will necessarily give rise to greater demand on local educational facilities. Whilst there is capacity identified at High and Upper School level, such capacity is not available at Primary level and there is a calculated need (on a DCSPD basis) to fund an additional 12 pupil places here. Aside from the framework established by the DCSPD, such contributions are supported by EMRP and CBLP policy. A financial contribution of £142,786.32p is made and this will be directed at increasing flexible learning and special needs learning space at Outwoods Edge Primary School, Loughborough, approximately 2.8k distant from the site. On the basis of the above, the contribution meets the regulatory tests and may rightly be taken into account.

*Transport measures*

39. The development will necessarily give rise to greater use of the local transport network and it is appropriate that contributions are sought to both improve and expand existing transport capacity, and especially sustainable public transport capacity in the environs of the site. The pursuit of such contributions is supported by EMRP, CBLP policy and specific criteria set out in adopted DCSPD. Calculated on the basis of the latter, a contribution of £3,263.00 is made. This will be directed at the provision of individual travel packs and 6 month travel

passes for each dwelling. Provision is made also for the improvement of bus shelter facilities on Belvoir Drive, a town centre bus route, approximately 650m from the site. On this basis the contribution meets the regulatory tests and may rightly be taken into account.

#### *Policing*

40. A component of the evidence submitted by the police authority focuses on the handling by the Council of their contribution sought in respect of this case, and the presentation of evidence in relation to this appeal. Clearly such matters are beyond the scope of this appeal and I have instead focused on their written evidence, which was not supported by a witness appearing at the Inquiry. This evidence rehearses arguments over the relationship between population growth and its potential impacts on policing across the area. This includes an analysis of local crime figures with the extrapolation that at least 5 additional crimes will happen on the site. No relationship is made however between these conjectured figures, the specific context of the development, nor the existing capacity of local facilities (presumed to be one of the three such facilities identified in Loughborough). The schedule of equipment for which contributions are sought refers to a range of items and broader areas of expenditure but no specific linkage to the site is made.
41. Reference is made to a number of appeal decisions where Inspectors have supported such contributions. However, the details of the circumstances of these judgements are not before me (nor are those of decisions where Inspectors have found the reverse) and meaningful comparison with this case cannot reasonably be made. The identification of only the most generic effects of the development on crime in the area and failure of the police to firmly establish a specific relationship of the contributions sought with the development proposed determines the contribution fails the tests of Regulation 122 of the CIL. As a consequence I am unable to take this contribution into account.

#### **Planning balance**

42. The proposal has clear merits. It would deliver sustainable housing development in an authority which has very significantly underperformed in that task on a persistent basis. Furthermore, this is in a context of an absence of an adopted CS/ SADPD, until mid 2015 at the earliest. Modest though the numbers represented in this proposal are in relation to the long journey to achieve EMRP targets, as ever, any such journey starts with a first step. The delivery of market housing here merits very significant weight in the planning balance.
43. The proposals would also provide affordable housing in a sustainable location for which there is also very significant demand, an outcome also meriting significant weight. Both market and affordable housing could be delivered without harm to the character of the area in architectural design terms. Despite the incursion of the development into the landscape, there are also landscape benefits – the planting belts would be consolidated and managed, whilst fields 2/3 would also be enhanced, effectively extending the existing green space west of Bramccote Road down and around the site, helping to screen it in medium and longer views from the west and south. The footpaths through the site would enhance the existing network, both across the site from

Woodbrook Vale School to the countryside to the west and from Bramcote Road itself, broadening access to the countryside for residents in estates to the east.

44. The development would be neutral in terms of its impact on highway safety, parking provision, biodiversity and its impact on local services, which will be fully mitigated through the provisions of the Deep of Undertaking. Whilst flooding must remain a concern for local residents, I am confident that with the latest configuration of the balancing pond and the measures proposed in evidence, the development would be at least neutral and probably beneficial in its impact on flood risk. There is also scope, within the provisions of condition 22, to consider the inclusion of measures relating to the Moat Brook which may be to the mutual advantage of both appellant and local residents, and which may so be considered an element of betterment. These elements too may be apportioned a medium degree of weight in favour of the scheme.
45. However, the harm to the landscape, characterised as medium in magnitude and extent, has to be weighed against the identified benefits. These impacts, undoubtedly adverse in nature, would be acute in the immediate context of the site, and there can be no doubt that local people's experience of field 1 in particular (a cherished green enclave) will be changed forever.
46. It must also be remembered that the site is no stranger to development proposals, and previous schemes, first in 1988 in the form of a planning application and then appeal, and subsequently as an objection site in the 1998 CBLP Inspector's Report, have both been considered and then rejected by Inspectors. The significantly different physical and planning context between then and now reasonably diminishes the weight afforded to the 1988 decision, and this accepted by the parties. But I was rightly reminded by the Council that were I to disagree with the conclusions of the Inspector in respect of the 1998 decision, where the relationship of the site to the settlement remains substantially unchanged, I should give good reason for doing so.
47. It is the case that the essential relationship of settlement and countryside has not substantially changed, albeit the Fairmeadows estate has become now fully extant, but it is not the case that *everything* remains unchanged. The most significant difference is the maturation of the planting belts and the hedgerows, which the aerial photographs indisputably demonstrate over the intervening period. So has the open green space to the west of Bramcote Road matured and thickened, demonstrating the capacity of such transitional spaces to significantly soften the urban edge of the settlement. Both factors do enhance the wider sense of the green enclosure of this site in a way that simply was not evident at the time of the Inspector's judgement. Nevertheless, I have found the development would detract from the landscape setting of Loughborough, and in this regard I do not find myself in fundamental disagreement with his conclusions.
48. But in rejecting the proposals the Inspector drew a passing qualification, he stated 'Accordingly, I conclude that in the context of the housing land provision I have recommended under policy H/1, I have not seen any justification for allocating the objection site for residential purposes'. The Framework, under the direction of paragraph 14, requires that we consider, other than the physical relationship of town and country, what else may have changed.
49. The Council accepts that it cannot demonstrate a five year supply of housing land. That supply, standing at less than two years, incorporates a 20% buffer

reflecting a record of persistent under-delivery. Aside from the Framework's mechanism for gauging the up-to-datedness or otherwise of relevant development plan policies, the CBLP time-expired in 2006, and by most indicators is at least showing its age. Although some policies are saved, the expectation that they be replaced promptly has not been fulfilled. More worryingly, there is still no prospect of a CS before midway through 2014, with the further prospect of a SADPD, which would identify the long overdue and even now much needed new housing sites, even further off, it not being expected until mid 2015. Moreover, the undersupply of market housing is matched by that for affordable homes, for which there is considerable demand in the borough which is not being met. To delay addressing this shortfall pending the adoption of the CS and SADPD at some as yet only speculative future date risks worsening the shortfall in delivery, and so a failure to respond to one of the key objectives of the Framework: to boost significantly the supply of housing.

### **Conclusion**

50. Although this proposal would cause harm to the character of the countryside and the APAC, this harm would not significantly or demonstrably outweigh the clear benefits, specifically the provision of new homes, affordable homes, improvements to countryside access and local improvements to landscape, of granting planning permission; it is on this basis the appeal should succeed.

### **Conditions**

51. The SoCG presents a condition indicating a commencement date of one year from the date of planning permission being granted as intent to bring the site forward for development soon. However, there were discussions at the Inquiry over the scope and extent of other pre-commencement conditions and any contingency that may be necessary if the discharge of these conditions could not be achieved within this narrow time-frame. Having considered such a contingency, it seems to me more straightforward to extend the commencement date to two years which allows sufficient time for the discharge of the major pre-commencement conditions and at the same time allow the development to be brought forward at a date sooner than the standard commencement period would anticipate.
52. A condition is also attached requiring that the development be carried out in accordance with the plans, documents and details submitted with it, all in the interests of sound planning and for the avoidance of doubt.
53. Conditions are also attached requiring the submission of samples of materials, a detailed landscaping scheme (including its implementation and management), the retention of existing hedges, trees and structural planting and their protection during construction, all in order to ensure a satisfactory appearance to the development and to ensure it integrates with its surroundings. A condition is also attached requiring the submission of details of the open space and play area are to be laid out and landscaped, again to ensure a satisfactory appearance to the area.
54. Conditions are attached requiring the submission of details of foul water disposal, the provision of incremental drainage provision on the completion of each dwelling, and the submission of a comprehensive flood mitigation scheme, including the provision of a Sustainable Urban Drainage scheme, to ensure the

effective management of the drainage of the site and to fully mitigate the risk of flooding to the site and that of existing development. A further condition is attached requiring the submission of a management scheme to safeguard the water quality of the Moat Brook during the entire duration of the development to safeguard water quality, so mitigating the risk to the biodiversity of the brook during construction.

55. Further conditions are attached requiring that roads and footways are finished to standards for adoption, that no walls, or fences are erected or grow on the highway to a height greater than 0.6m, that garage doors be set back a minimum distance from the highway, that access drives are graded so as not to exceed specified grades and that prior to first occupation of the dwellings, drainage is provided to prevent surface water run-off onto the highway, all in the interests of highway safety. Two further conditions are added requiring the prior provision of garaging and turning areas and that the private drives of dwellings 24, 25, 49 and 50 have appropriate widths and margins at the junction of the development with the adopted road carriageway, the first to ensure adequate off street parking and the second to ensure adequate passing space for vehicles entering and leaving the site.
56. A condition is attached requiring that a Construction Method Statement be submitted to and approved in writing by the local planning authority, to ensure that any negative impacts of the works are fully mitigated, so safeguarding the living conditions of residents through the course of construction. A condition is also attached requiring the provision of a scheme for public art within the built fabric of the development to invest it with an element aesthetic and cultural value whilst a further condition is attached requiring that the at least 10% of the energy supply to the development be secured from decentralised sources to help mitigate the adverse impacts of climate change.
57. Lastly a condition is attached requiring that before any development takes place a scheme is submitted showing the provision of the public footpath, the layout, use, management and future maintenance of the area of open space edged in blue on the relevant plans. The scheme will provide for the public use of the land and the means by which public access will be maintained and to an agreed timetable. Such a condition would appropriately safeguard the future and ongoing public access of this land in the absence of any such comparable deed of undertaking in a section 106 document. This condition, in conjunction with those requiring the appropriate landscaping to this area, will ensure public access and its ongoing function as a green filter when the development is viewed from within the wider landscape to the south west.
58. For the reasons given above, having considered all matters raised in written evidence and at the Inquiry, and having listened the views of local people and their elected representatives, I conclude that the appeal should be allowed.

*David Morgan*

**Inspector**

### **Schedule of Conditions**

- 1) The development, hereby permitted, shall be begun not later than 2 years from the date of this permission.
- 2) The development shall be carried out only in accordance with the details and specifications included in the submitted application and as set out in the Statement of Common Ground (SoCG), including: site location plan EMS.2192 08-1 rev A, Illustrative layout plan EMS.2192\_05 3 B, adoption Plan Ref 1607-101, site section drawing EMS.2192\_10-1, EMS.2192 11B Illustrative Landscape Masterplan and as amended by drawing no: EMS.2054-25-2 Rev C dated 11 May 2012 and the supplementary material submitted to the Council prior to determination also as set out in the SoCG.
- 3) No development shall take place until such time as samples of the facing bricks and any other materials to be used on the external walls and of the roofing slates, tiles and any other materials have been submitted for the agreement of the local planning authority. Only materials agreed in writing by the local planning authority shall be used in carrying out the development.
- 4) No development, including site works, shall begin on the land demarked as both red and blue on the relevant plans, until a landscaping scheme, to include those details specified below, has been submitted to and agreed in writing by the local planning authority:
  - 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) all ground finished levels or contours;
  - v) any structures to be erected or constructed, including boundary treatments and footbridges;
  - vi) functional services above and below ground, including the feeder pipe to the moat at Moat Farm; and
  - vii) all existing trees, hedges and other landscape features, indicating clearly those to be removed.
- 5) The landscaping scheme shall be fully completed, in accordance with the details agreed under the terms of the above condition, in the first planting and seeding seasons following the first occupation of any part of the development or in accordance with a programme previously agreed in writing by the local planning authority. Any trees or plants removed, dying, being severely damaged or becoming seriously diseased, within 5 years of planting shall be replaced in the following planting season by trees or plants of a size and species similar to those originally required to be planted.
- 6) No development shall commence until a landscape and biodiversity management plan relating to both the land marked red and blue on the relevant plans, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than domestic gardens, has been submitted to and agreed in writing by the local planning authority. The agreed landscape and biodiversity management plan shall then be fully implemented.

- 7) The hedges located on the site shall be retained and maintained in accordance with the plan approved pursuant to condition 6 above. Any part of the hedges removed, dying, being 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.
- 8) No development, including any site works, shall begin until the hedges located application site have been protected, in a manner previously agreed in writing by the local planning authority. The hedge shall be protected in the agreed manner for the duration of building operations on the application site.
- 9) The existing trees on the site as indicated on the approved plan 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.
- 10) No development, including site works, shall begin 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.
- 11) No development, including site works, shall begin on site until such time as full details of the way in which foul sewage water is to be disposed of from the site have been submitted to and agreed in writing by the local planning authority. The works shall be carried out in accordance with the approved details.
- 12) No ground works shall commence on the site, including all earth movements, until a management plan for the comprehensive safeguarding of the water quality of the Moat Brook has been submitted to and approved in writing by the local planning authority. The safeguarding programme shall be implemented in full accordance with the agreed details to and agreed timetable covering the whole period of the development of the site.
- 13) No dwelling or building shall be occupied or used until such drainage works as are needed for that dwelling or building have been completed, in accordance with the details agreed under the above condition.
- 14) No dwelling shall be occupied until such time as details of the way in which the open space, recreational and children's play areas are to be

laid out and landscaped, including details of play equipment and any other structures to be erected, have been submitted to and agreed in writing by the local planning authority. The laying out of the open spaces, recreational areas and plays area shall be implemented in accordance with a timetable to be submitted for approved with the details of the works.

- 15) The proposed roads (including footways, service margins, visibility splays etc) shown serving the site shall be designed and constructed in accordance with highway authority standards for adoption, and shall be provided before any dwelling hereby permitted is first occupied and shall thereafter be permanently so maintained.
- 16) No walls, planting or fences shall be erected or allowed to grow on the highway boundary exceeding 0.6 metres in height above the level of adjacent carriageways.
- 17) Any garage doors shall be set back from the highway boundary a minimum distance of 5.5 metres for sliding or roller/shutter doors, 6.1 metres for up-and over doors or 6.5 metres for doors opening outwards and thereafter shall be so maintained.
- 18) The gradients of the access drives shall not exceed 1:12 for the first 5 metres behind the proposed highway boundary.
- 19) Before first occupation of any dwelling on the site, drainage shall be provided within the site such that surface water does not drain into the proposed public highway. The drainage shall thereafter be so retained.
- 20) The car parking and any turning facilities shown serving each dwelling shall be provided, hard surfaced and made available for use before the dwelling is occupied and shall thereafter be permanently so maintained.
- 21) The private drives serving plots 24, 25, 49 and 50 shall be a minimum of 4.25 metres wide with 0.5 metre wide clear margins on each side, for at least the first 5 metres behind the highway boundary and have minimum 2 metres control radii at its junction with the adopted road carriageway.
- 22) The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment, incorporating the Hydraulic Modelling Technical Note NTW/2098/TN1 prepared by BWB consultancy (external issue date: 28/ix/12) and the following mitigation measures detailed within the FRA including:
  1. Provision of a comprehensive level for level compensatory flood storage on /or within the vicinity of the site outline as detailed in section 5 and shown upon the Masterplan;
  2. A scheme for the provision and implementation of surface water run-off limitation to greenfield run-off rates to be fully implemented and subsequently maintained, in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period



- as may subsequently be agreed, in writing, by the local planning authority;
3. Provision, implementation and maintenance of a Sustainable Drainage (SuDs) system with storage provided up to the 100 year plus 30% climate change allowance;
  4. Finished floor levels are set no lower than 150mm above existing and proposed ground levels.
- 23) There shall be no development until a scheme is submitted to and approved in writing by the local planning authority showing the laying out, use, management and future maintenance of the area shown as open space and edged in blue on the submitted plans. The details to be submitted shall show the provisions for the footpath across the land linking the application site to footpath K57, as shown on the submitted plans. The details shall provide for the public use of that land and the means by which that public access will be maintained to an agreed timetable. The agreed scheme shall be implemented in accordance with the approved programme and timetable.
  - 24) 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.
  - 25) Before the development begins a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of the development from decentralised and renewable or low carbon energy sources shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented and retained as operational thereafter, unless otherwise agreed in writing by the local planning authority.
  - 26) 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. a scheme for the on-site management of surface water run-off generated during the construction phase including the treatment, removal of suspended solids and the maintenance of identified highways clear of mud and stones at all times;
    - ii. the routing of construction traffic;
    - iii. 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;
    - iv. the parking of vehicles of site operatives and visitors within the site;
    - v. loading and unloading of plant and materials;
    - vi. storage of plant and materials used in constructing the development;
    - vii. the erection and maintenance of security hoarding including (pto)

- decorative displays and facilities for public viewing, where appropriate;
- viii. wheel washing facilities;
- ix. measures to control the emission of dust and dirt during construction;
- x. a scheme for recycling/disposing of waste resulting from demolition and construction works
- xi. measures to protect; the hedge located along the eastern boundary of the application site during the duration of the construction works.

Richborough Estates

**APPEARANCES**

FOR THE LOCAL PLANNING AUTHORITY:

Miss Melisa Murphy of Counsel      Cornerstone Barristers

She called

Mr Iain McDonald Reid      Ian Reid Landscape Planning Ltd  
 Dip T&RP Dip LD MRTPI  
 MLI

FOR THE APPELLANT:	
Mr Jeremy Cahill QC	No5 Chambers, Birmingham
He called	
Mr Iqbal Rassool BEng (Hons) MCIWEM	BWB Consulting
Dr Suzanne Mary Mansfield PhD MIEEM CMLI	FPCR Environment and Design Ltd
Mr Jonathan Golby BA (Hons) Dip LA MA CMLI	Pegasus Planning Group
Mr Nigel Harris BA (Hons) UPS Dip UPS MRTPI	Pegasus Planning Group

FOR THE RULE SIX PARTY:	
Mr Keogh	Loughborough South West Action Group
He called	
Mr Andrew Roberts BA Dip LA CMLI	Loughborough South West Action Group
Dr John Strodachs PhD MCInst CES BSc	Loughborough South West Action Group
INTERESTED PERSONS:	
Mr John Prendergrast	Leicestershire County Council
Mr Andrew Tyrer	Leicestershire County Council
Ms Sharon Townsend	Leicestershire County Council
Mr Stephen Kettle	Leicestershire County Council
Councillor Mr Andrew Morgan RIBA	
Mrs Nicky Morgan MP	

### **Documents presented at the Inquiry**

1. Appearances on behalf of the Council
2. Appearances on behalf of the Appellant
3. List of Core Documents – Appellant
4. Aerial photographs X3 (Core Documents 57a, 57b and 57c) - Appellant
5. Opening Submissions – Appellant
6. Opening Submissions – Council
7. Opening Submissions – Rule Six Party
8. Aims and Guidelines for the Guidelines for Landscape and Visual Impact Assessment – Council
9. Environmental Impact Assessment Submissions – Rule Six Party
10. Car parking layout plan – Rule Six Party
11. Landscape impression of appeal site in relation to countryside – Rule Six Party
12. Comments on local ecology – Third Party
13. X2 Letters of objection – Third Parties
14. Submissions for Objection Site 1998 Local Plan - Appellant
15. Planning Magazine article – Appellant
16. Map illustrating abutment with existing development – Rule Six Party
17. 2012 Assessment Field Survey points – Appellant
18. Revised cross section drawing of the site - Appellant
19. Map showing relationship of site to central library – Council
20. Honeybourne Appeal Decision (APP/H1840/A/12/2171339) – Appellant
21. Statement by Councillor Mr A Morgan
22. Statement by Mrs Nicky Morgan MP
23. CBC Annual Monitoring Report 2011 – Council
24. Revised assessment on annual housing supply figures - Appellant
25. Completed Deed of Undertaking
26. Closing Submissions – Rule Six Party
27. Closing Submissions – Council
28. Closing Submissions – Appellant