



Appeal Decision

Inquiry Held on 27, 28, 29 & 30 June 2017

Site visit made on 29 & 30 June 2017

by R W Allen B.Sc PGDip MRTPI

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

Decision date: 25 August 2017

Appeal Ref: APP/T2405/W/16/3164730

Land Adjacent to Leicester Road and Foston Road, Countesthorpe

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Ed Barrett (Catesby Estates Limited) against the decision of Blaby District Council.
 - The application Ref 16/0843/OUT, dated 30 June 2016, was refused by notice dated 11 November 2016.
 - The proposal is for development of up to 170 dwellings (Use Class C3) and associated works including means of access, with other matters (relating to appearance, landscaping, scale and layout) reserved.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Prior to the Inquiry, the appellant submitted amended drawings to the proposed highway layout, making minor modifications to the junction between Foston Road and Leicester Road. The Council stated that these changes addressed its concerns on the matter, and it advised that subject to those drawings being accepted at the Inquiry, it no longer wished to defend its third reason for refusal. I ruled at the Inquiry that I am content to determine the appeal on those amendments, on the basis that it is not significantly altered from that considered by the Council at application stage, and that adequate consultation on those changes have been undertaken with appropriate persons. Thus the *Wheatcroft Principle*¹ test has been met.
3. Notwithstanding the application form, the main parties agreed at the Inquiry that the appeal proposal is made in outline form with all matters reserved for subsequent approval with the exception of access. Any other details shown which would be a reserved matter, such as the layout, I shall treat as being indicative only.
4. An obligation is before me under Section 106 of the Planning Act dated 29 June 2017, as well as an undated Deed of Variation to it which the parties provided after the close of the Inquiry, which makes provisions for local facilities and infrastructure. However, as I am dismissing the appeal on the main issue it is not necessary for me to consider its adequacy any further in my decision.

¹ Bernard Wheatcroft Ltd vs. Secretary of State for the Environment [JPL 1982]

Main Issue

5. The main issue is whether the Council can demonstrate a five years supply of housing land, and whether other circumstances exist to justify the proposed development.

Reasons

Policy context

6. The development plan for the area comprises the Blaby District Local Plan Development Plan Document 2006-2029 (2013) (Core Strategy) and the saved policies of the Blaby Local Plan 1999 (Local Plan).
7. Paragraph 47 of the National Planning Policy Framework (the Framework) states that to boost significantly the supply of housing, local planning authorities should ensure that their local plans meet the full objectively assessed need for market and affordable housing in their housing market area.
8. Core Strategy policy CS1 is the overarching policy for housing growth in the district. Common ground exists between the main parties that the policy's requirement of a total provision of 8740 dwellings for the plan period, at an annualised rate of 380 dwellings per annum (dpa) remains correct. The policy requires the majority of housing growth, some 5750 dwellings or approximately 65%, to be provided within or adjacent to the Principal Urban Area (PUA) which lies adjacent to the outskirts of the city of Leicester. Of these, 4250 dwellings will be provided on a single site known as the Lubbethorpe Sustainable Urban Extension (LSUE). The remaining 2990 dwellings or approximately 35% will be found in the non-PUA areas, which comprise smaller villages and settlements in and around the district.
9. Appendix F to Core Strategy policy CS1 illustrates, amongst other things, that notwithstanding the annualised requirement, housing growth in the Core Strategy is not planned on regularised and consistent growth model. This is because the LSUE, which equates to just under half of the total housing requirement for the district, is planned to commence and be delivered in its entirety towards the middle and end of the plan period. As a result, the Core Strategy accepts an inevitable shortfall in housing delivery will occur and accumulate during the early years of the plan period, but that the shortfall will reduce and be eradicated towards its end as housing delivery accelerates in the PUA, and as the LSUE comes forward. This approach is expressed in the form of a projected provision trajectory.
10. Irrespective of whether a five year housing land supply can be demonstrated, the appellant argues that Core Strategy policy CS1 is out-of-date because the housing requirement in the PUA area is unachievable, owing principally to the late commencement of the LSUE. However, overall housing completions to date are not substantially adrift of requirement owing to the non-PUA having substantially exceeded its target, which has significantly compensated for the late commencement of the LSUE. Furthermore, the main parties agree that the Council is bringing forward a development plan document (DPD) to identify sites in order to address the undersupply in the plan period caused by the late commencement to the LSUE. While I note that the preparation of this document is in its early stages, I find no obvious reason on the evidence before

me why the DPD could not be adopted, and the sites identified be developed, before the end of the plan period.

11. I therefore find that Core Strategy policy CS1 is capable of meeting its housing requirements. However notwithstanding, doubts over the ability of a housing policy to deliver its specified requirement over a plan period is not cited within paragraph 49 of the Framework as a reason for being out-of-date separate to the matter of five year housing land supply. No evidence has been advanced of this being otherwise supported elsewhere. I therefore find no sound basis for the appellant's assertion in this regard, and Core Strategy policy CS1 is not out-of-date for this reason.
12. Core Strategy policy CS5 sets out where housing growth will be delivered both within the PUA and non-PUA areas of the district. Countesthorpe is a non-PUA area, identified as a 'Larger Central Village', with a minimum of 520 dwellings to be delivered within the plan period. It is common ground between the main parties that this figure has already been surpassed. While the policy does not prevent further growth above this figure, it is equally not a blanket invitation for Countesthorpe to be immeasurably expanded. Further growth above the 520 must be considered alongside the overall strategic settlement hierarchy approach to sustainable development as set out by Core Strategy policy CS1, and not in isolation from it.
13. Local Plan policy C2 is cited in the Council's second reason for refusal in respect to development in the countryside and the effect on character and appearance. However, both parties agreed at the Inquiry that the policy as worded is inconsistent with the Framework's approach to sustainable development and balance, and that it is out-of-date. I have no reason to disagree, and I afford the policy little weight in my decision.

Five year housing land supply

14. Common ground exists between the parties that up to 2016/17, housing completions stand at 3879. This is split between 1325 dwellings completed within the PUA area, and 2554 for the non-PUA area. Against the annualised requirement, there is a considerable shortfall in the PUA area of 1425 dwellings, but a considerable excess of 1124 dwellings in the non-PUA area. Overall, the shortfall stands at 301 dwellings against the annualised requirement. I was initially invited by the Council to measure shortfall against the projected provision trajectory, in which shortfall would be lower. However, I find that the projected trajectory case is merely a forecast and management tool to justify the longer-term housing approach. It is not the policy, and an assessment against these forecasts is not the correct basis on which housing performance should be judged.
15. The main parties' disagreement in respect to five year housing land supply is threefold. Firstly, whether the annualised shortfall in housing should be applied within the next five years (the Sedgefield method), or across the remaining 12 years of the plan period (the Liverpool method). Secondly, what the appropriate buffer should be. Thirdly, whether the LSUE, and two other sites, will deliver the quantum of dwellings and in the time set out by the Council within its latest Annual Monitoring Review (AMR) for 2016/17.
16. The Framework does not direct the decision maker to use either the Liverpool or Sedgefield methods when apportioning shortfall into housing need

calculations. However, the Planning Practice Guidance ² (the Guidance) advises that normally, local planning authorities should aim to deal with any undersupply within the first five years of the plan period where possible. However, I draw from the Guidance's use of the words '*should aim*' and '*where possible*' is that it is permissible for shortfall to be met over a longer period where circumstances exist to justify this, such as when the development plan is formulated on longer-term housing growth.

17. The Council says, without prejudice to its case, that it sees no barrier to the shortfall being met within the next five years. Thus the requirements contained in the Guidance would be capable of being met. However, it does not follow that it necessarily should, indeed to do so would undermine the foundations on which the Core Strategy is based. As the current shortfall is not so significantly adrift of the annualised requirement, I see no obvious reason to depart from the Core Strategy's approach to dealing with shortfall within the plan period. Therefore for the reasons given above, I am content to deal with shortfall via the Liverpool method.
18. As was pointed out to me at the Inquiry, I made a finding on another site in Countesthorpe³ that shortfall should be addressed using the Sedgefield method. However, I draw a number of distinctions between the evidence before me then and now. Firstly, shortfall at the mentioned appeal was considerably higher than it is now. Secondly, AMR data at that time showed that the Council could only demonstrate one year, 2014/15, in which housing completions had exceeded the annualised rate. In this appeal, I have the benefit of two further years of housing data, and housing delivery is now not only surpassing the annualised rate, but it is doing so by some considerable margin. Furthermore, little significant evidence is before me which casts doubt on this upward delivery trend continuing. The evidence now is sufficient for me to draw a different conclusion.
19. Paragraph 47 of the Framework also states that local authorities, in identifying a supply of specific deliverable sites to provide five years' worth of housing, should apply an additional 5% or 20% buffer depending on whether the Council is a persistent under-deliverer of housing. Until recently, the Council accepted that for the purposes of the Framework, it was a persistent under-deliverer and as such it applied a 20% buffer to housing requirement, notwithstanding that for 2014/15 and 2015/16 housing completions exceeded the annualised requirement.
20. I acknowledge that a further year of overprovision is encouraging. However, I do not find that the housing completions data for the previous eight years, where the Council under-delivered against the annualised housing requirement, can or should be ignored so lightly. In my judgement, three concurrent years of oversupply is not sufficient to constitute the tipping point on which the numerous previous years of persistent under-delivery can be set aside, particularly given that a shortfall still currently exists. Put simply, I find it too early to conclude that anything other than a 20% buffer should be applied. That the Council met housing requirements from previous plan periods does not alter my judgement.

² Paragraph 035 of the housing and economic land availability assessment section of (*Reference ID: 3-035-20140306*)

³ Appeal Decision APP/T2405/W/15/3133922 concerning Land at Land at Wolloughby Road, Countesthorpe.

21. In reaching my decision, I have had regard to the Council's assertions in respect to support of its position within the Housing White Paper. However, this is only at a discussion stage at the current time and may well be subject to alterations. I therefore find it has little consequence or bearing in my decision.
22. Appendix F to Core Strategy policy CS1 envisages that the LSUE would commence in 2014/15 and deliver 100 dwellings by that year end. A further 300 dwellings would come forward in each of the following two years so that 700 dwellings should have been completed by 2016/17, 1315 dwellings by 2018/19, and 2260 by 2021/22. In reality, the LSUE only commenced about twelve months ago, and by the end of this monitoring year it had delivered only two dwellings. The main parties agree that the LSUE is essentially running four years later than planned.
23. Notwithstanding previous years AMRs which forecast different delivery rates, the Council's latest AMR states that for the coming year 2017/18, housing delivery will be 100 dwellings. This is not disputed by the appellant⁴. However, for the remaining four years, the parties diverge in forecasts. The key area of disagreement is whether the LSUE will have six or seven separate developers on the site by 2021/22. The Council says that it will, and forecasts a delivery of 1015 dwellings by 2021/22. The appellant says realistically no more than three developers will be on site at any one time and that delivery of 580 dwellings to 2021/22 represents a more realistic and credible target in this period, with annual delivery rates of 120 dwellings per annum.
24. The appellant draws his assertion both from evidence in the form of a report from Savills⁵, which casts doubt on such sites ever supporting more than three developers at any one time; and from data from other large PUA sites in neighbouring authorities which the appellant says are not delivering at the rate advanced by the Council for the LSUE. While I have little alternative marketing evidence before me to contradict the appellant's claim, I note that the Core Strategy Inspector found annual delivery rates of up to 315 dwellings per annum to be achievable and sound. That the site is late commencing does not undermine its ability to accommodate the quantum of developers envisaged by the Core Strategy.
25. The Council also identifies that the LSUE has characteristics that set it apart from other PUA sites identified by the appellant. Firstly, the remaining land parcels are within ownership of the original landowner(s); thus is not in the control of housebuilders who may have interests in slowing delivery rates for commercial reasons. Secondly, the site's main infrastructure, which comprises its east/west spine road and a connecting bridge over the M1 motorway, is already constructed, and at the time of my site visit, close to being opened, thus removing a significant restriction for other land parcels coming forward. The appellant acknowledged at the Inquiry that neither of these points was made known to Savills.
26. I am persuaded from what I have seen and read that the site could accommodate and be attractive for multiple house builders. While the doubts expressed by the appellant are not without some foundation, it seems to me

⁴ At the Inquiry, the appellant amended his evidence to increase the forecast of dwellings to be delivered at the LSUE from 80 to 100 dwellings in 2017/18.

⁵ Appendix JR28 of Mr Richards' evidence - Leicestershire Housing Market Report, an Assessment of Housing Delivery and Sales Rates May 2017 produced by Savills on behalf of the appellant.

that the Council deserves the benefit of the doubt now that the LSUE is up and running. Thus I see no reason to depart from the judgement of the Core Strategy Inspector, and I therefore accept the Council's delivery rate expectations of 1015 dwellings as credible.

27. Turning to two other sites advanced by the appellant. The first is at Cambridge Road, Cosby, which is currently in commercial use but where resolution to grant outline planning for 160 dwellings exists subject to the signing of a legal agreement. The Council says 140 dwellings will be delivered by 2021/22, with the site coming forward by year 3. The appellant says that more realistically, the quantum will be 60 dwellings, coming forward in year 4.
28. The appellant's reasoning stems from the fact the current occupier has not sourced alternative premises; that the site has not been actively marketed and no housing developer is on board; and that there are a number of buildings on site that will need to be demolished before development can commence. I do not see these issues as lengthy or insurmountable barriers, and I find little evidence is before me to suggest that they could not be realistically overcome in order for the dwellings to come forward in year 3 as the Council suggests. Again, I am prepared to give the Council the benefit of the doubt on this site.
29. However, I share the appellant's concerns in respect to the site known as Land off Cork Lane. I heard at the Inquiry that the site is beset with contamination; and that it has been marketed by a housing developer for over a year without success. The Council is not able to persuade me that its target of 100 dwellings is realistic; indeed on the evidence I heard I have some doubts that any will be delivered in the next five years. However, I will take the appellant's forecast of 60 dwellings as the more realistic.
30. Therefore taking all matters into consideration and on the evidence before me, I find that the Council's five year housing requirement, calculated by adding buffer to shortfall, equates to 2430 dwellings, annualised at 486 dpa. Deducting the 40 units above from the Council's AMR forecast of 2604 dwellings for the next five years, supply equates to 2564 units. I find therefore that 5.3 years of housing supply can be demonstrated.

Whether other material circumstances exist to justify the proposal

31. The presumption in favour of sustainable development can only exist within the circumstances set out within paragraph 14 of the Framework. It does not apply to a proposal which is in conflict with an up-to-date local plan and where a five years' supply of housing can be demonstrated.
32. It is implicit within paragraph 14 of the Framework from the third bullet point (approving development that accords with an up to date development plan without delay) that a proposal which is inconsistent with a relevant and up-to-date plan should be refused. This accords with paragraph 12 of the Framework; which says that proposals which accord with an up-to-date plan should be approved and proposals that conflict should be refused unless other material circumstances indicate otherwise.
33. It follows that the presumption in favour of sustainable development will already permeate an up-to-date development plan, and likewise an up-to-date development plan will already accord with the requirements to significantly boost the supply of housing as advocated by paragraph 47 of the Framework.

These elements can therefore not be material considerations where a development plan is up-to-date.

34. I agree with the main parties that the proposed development would be conveniently located to local services and facilities, would have social and economic benefits in respect of providing new dwellings to meet the needs of present and future generation and would provide local construction employment opportunities. The proposed development would also make a worthwhile contribution to the supply of housing and help boost the Council's five year housing supply, particularly if some slippage were to occur to jeopardise the current favourable housing supply, although equally I acknowledge the Council makes no allowance for windfall sites in its AMR which could cushion any slippage.
35. I particularly note the quantum of affordable housing the proposed development would bring, which would eradicate the current need for such accommodation in Countesthorpe, and where there is no other scheme, planned or proposed which aims to deal with this need. I also note the provision of a revised junction between Foston Road and Leicester Road would ease current capacity issues as well as considerably improving egress for vehicles from Judith Drive and Buckingham Road. These are material considerations which I have taken into account in my Decision.
36. I also find that the proposed development would not have a significantly harmful effect on the character and appearance of the area. I acknowledge that the Council's Landscape Character Assessment⁶ identifies the importance of continued retention of hard edged boundaries between the urban edge of the village and the surrounding countryside. Layout is not a matter before me, nevertheless I see no obvious reason why a suitable scheme submitted at reserved matters stage would not be capable of successfully integrating with, and reinforcing the hard boundaries between the village and the open countryside.
37. The proposed development would be highly visible when viewed immediately from Foston Road and Leicester Road as well as from a public footpath to the north of the site, and less so from other identified viewpoint locations. However, the main parties agree that an effective landscaping and tree planting scheme would, in the fullness of time, successfully integrate the development with its urban and rural surroundings, and I have no reason to disagree.
38. Nevertheless, the benefits of the scheme, and the absence of significant harm I have identified above, should be viewed in the context of my findings that the council can demonstrate a five year supply of housing land, and that the development plan is up-to-date and in accordance with the Framework. The material considerations advanced by the appellant are not sufficient to indicate that the proposal should be determined other than in accordance with the development plan.
39. The proposed development would not accord with the approach to sustainable growth as set out by Core Strategy policy CS1, and the plan-led approach is a core principle set out in paragraph 17 of the Framework. While specific

⁶ Appendix IG3 of Mr Grimshaw's evidence – extracts of the Blaby, Countesthorpe and Whetstone Fringe, and Countesthorpe Settlement Landscape Character Assessment 2008.

evidence was not presented before me on the matter, the appellant confirmed at the Inquiry that there would be considerable levels of out-commuting from the development similar to other villages. This I find does not represent sustainable development particularly where the Council can demonstrate a five year housing land supply.

40. It would for the same reason, not accord with Core Strategy policy CS5, which I have stated above cannot be read in isolation from Core Strategy policy CS1. In my judgement a further 170 dwellings in Countesthorpe over and above provision that has already exceeded the minimum policy target, and the Council says would amount to a 49% increase, would significantly unbalance the strategic approach to sustainable development. By association with Core Strategy policies CS1 and CS5, the proposed development would also not accord with Core Strategy policy CS21, which is concerned with climate change and requires development to be focused on the most sustainable location.
41. The proposed development would also not accord with Core Strategy policy CS18, which seeks to protect countryside. As the policy allows a balance between protectionism and new development, I am satisfied that it accords with the Framework and can be afforded full weight in my decision. The policy also states that the detailed boundaries of the countryside will be determined through a DPD. However, because of the Core Strategy's PUA focused approach to sustainable development, and the fact that both Countesthorpe and the non-PUA areas have considerably exceeded annualised housing requirements to 2016/17, I find it unlikely that the current development boundary for Countesthorpe, albeit some years old, would significantly change in the forthcoming DPD. Little evidence is before me to demonstrate conflict against Core Strategy policy CS10 as the Council suggests, which is concerned with transport infrastructure.
42. Having regard to the strategic nature of the development plan policies breached, I find that the proposed development would not accord with the development plan overall, and in accordance with paragraph 12 of the Framework, development should be refused.
43. In reaching my decision above, I have had regard to a scheme referred to by both parties at Cambridge Road, Cosby⁷ in which the Council granted a resolution for outline planning permission for some 160 dwellings, citing accordance with the same policies as before me in this appeal. While I do not have the specifics of this scheme to make a direct comparison to the appeal proposal before me, the Council cite specific circumstances as to why this scheme was allowed, and I have little alternative evidence before me not to accept the Council's reasoning.
44. I have also noted the considerable level of representations made both to the application and the appeal on a number of issues, particularly in relation to traffic and effect on existing services and infrastructure. However, because I have found the proposed development would conflict with the development plan as a whole, it is not necessary for me to find on the other matters raised.

⁷ Council reference 16/0216/OUT

Conclusion

45. I find that the Council can demonstrate a five years supply of housing. The development plan policies except for Local Plan policy C2 are up-to-date and in accordance with the Framework. The proposed development would not accord with the development plan as a whole. The material considerations advanced by the appellant are not sufficient to persuade me that the proposal should be determined other than in accordance with the development plan.
46. Therefore for the reasons given above I conclude that the appeal should be dismissed.

R Allen

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Jack Smythe of Counsel Instructed by Alana Diffey

He called:

Mr Ian Grimshaw Landscape Consultant
BA (Hons) MA MSc

Miss Lucy O'Doherty Planning Officer
BA (Hons) MCD

Mr Daniel Ingram Planning Officer
MA (Hons) MRTPI

FOR THE APPELLANT:

Mr Paul Tucker of Queen's Instructed by Mr Mathew Jones
Counsel, assisted by Ms Sarah
Reid

He called:

Mr Dave Neale MIHE Transport Consultant

Mr Colin Goodrum Landscape Consultant
BSc (Hons) DipLA FLI

Mr Jeff Richards Housing Land Supply Consultant
BA (Hons) MTP

Mr Mathew Jones Planning Consultant
BSc (Hons) DipTP MRTPI

RULE 6 PARTY:

Mr Andrew Tyrer Leicestershire County Council

INTERESTED PERSONS:

Councillor David Finlay Local Councillor Blaby District Council

Mr Alan Bulpin Local Resident

Mrs Deborah Freer Local Resident

Mrs Ella Meah Local Resident

DOCUMENTS SUBMITTED:

1. Draft copy of the s106 Legal Agreement submitted by the appellant.
2. Opening statement submitted by the appellant.
3. Opening statement submitted by the Council.

4. Appeal decision reference APP/T2405/A/09/2118414 Land at Leicester Road, Countesthorpe submitted by the appellant.
5. Corrected visualisation drawings to Appendix 7 to Mr Goodrum's Proof of Evidence submitted by the appellant.
6. Proof of Evidence of Mr Tyrer in respect to developer contributions submitted by him.
7. Appeal decision reference APP/T2405/W/15/3135801 Land Denman Lane, Huncote submitted by Mr Tyrer.
8. Statement on s106 Agreement submitted by the appellant on behalf of all main parties.
9. Closing statement submitted by the Council.
10. Closing statement submitted by the appellant.