



Appeal Decision

Inquiry Held on 27 February to 1 March 2018 and 12-14 June 2018

Site visit made on 13 June 2018

by Michael J Hetherington BSc(Hons) MA MRTPI MCIEEM

an Inspector appointed by the Secretary of State

Decision date: 10 July 2018

Appeal Ref: APP/X2410/W/16/3152082

Land to the east of Seagrave Road, Sileby, Leicestershire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Hallam Land Management Limited and Trustees of the Skertchly Trust against Charnwood Borough Council.
 - The application, ref. P/15/0047/2, is dated 8 January 2015.
 - The development proposed is: residential development of up to 195 new dwellings, together with new areas of public open space, landscaping, access and surface water attenuation.
 - **This decision supersedes that issued on 27 March 2017. That decision on the appeal was quashed by order of the High Court.**
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Decision

1. The appeal is allowed and planning permission is granted for residential development of up to 195 new dwellings, together with new areas of public open space, landscaping, access and surface water attenuation on land to the east of Seagrave Road, Sileby, Leicestershire in accordance with the terms of the application, ref. P/15/0047/2, subject to the conditions set out in the schedule at the end of this decision.

Application for costs

2. At the inquiry an application for costs was made by Hallam Land Management Limited and Trustees of the Skertchly Trust against Charnwood Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. The application form indicates that all matters of detail are reserved for future determination apart from access. I have taken the submitted masterplan, and its suggested revisions, to be illustrative only.
4. The appeal is lodged against the Council's non-determination of the planning application. Two notional refusal reasons, relating to the development strategy and highway impact, were submitted by the Council in July 2016 although the second of these, relating to highway impact, was withdrawn in December 2016 prior to the opening of the initial inquiry in February 2017.
5. Following the quashing of the original appeal decision, there have been further changes to the Council's position. In December 2017, the Council resolved to

- pursue two notional refusal reasons, relating to the development strategy (the original notional refusal reason considered at the first inquiry) and to noise and odour in respect of Sunrise Poultry Farm. In January 2018, the Council resolved that a third notional refusal reason should be included relating to highway impact.
6. An updated statement of common ground, replacing that considered at the previous inquiry, was submitted by the two main parties before the opening of the present inquiry in February 2018.
 7. The application plans have been subject to some amendments since the original submission in 2015. It was agreed by both main parties at the inquiry that the appeal should be based upon the amended red-line location plan (no. EMS.2557_001C) and the amended access plan (no. 15251.SA.06.001 A05)¹. My decision takes these into account.
 8. Given that noise and odour concerns had not been considered in detail at the first inquiry, as they had not been raised as notional refusal reasons by the Council at that stage, I agreed to the appellants' request for an adjournment in order to respond to the Council's concerns on these matters and to undertake additional survey work. The second part of the inquiry sat in June 2018. In the event, additional work was also undertaken on behalf of the Council during the period of adjournment. It was confirmed at the resumed inquiry that the Council's new proof of evidence in respect of odour² wholly supersedes its earlier submissions in respect of that matter³.
 9. At the resumed inquiry (June 2018) it was also confirmed that, notwithstanding the case of its transport witness at the earlier sessions, the Council considers that weight should now not be placed upon the findings of the Sibley and Barrow-upon-Soar Transport Study (SBSTS) for the purposes of this appeal⁴. I have no reason to take a different view.
 10. A Section 106 agreement, dated 2 May 2018, has been submitted. This supersedes the agreement submitted in respect of the previous inquiry. I consider the relevant planning obligations below.
 11. With the agreement of the main parties, I undertook an unaccompanied visit to the appeal site. I also visited sections of the local highway and footpath network that were discussed at the inquiry, including roads within Sibley and routes linking Sibley to the A6 and A46.

Main Issues

12. Bearing the above in mind, the main issues in this appeal are:
 - (a) whether the appeal proposal would accord with the spatial strategy set out in the development plan;
 - (b) the effect of the proposal on the highway network and highway safety; and
 - (c) whether adequate living conditions would be achieved for the intended occupiers of the proposed development with regard to:

¹ Included in Appendix 1 of Mr Cheetham's proof of evidence to the original inquiry.

² Dr Bull's proof of evidence.

³ Proofs of evidence and supporting evidence of Mr Stigwood.

⁴ In response to my questions, Dr Bowes for the Council clarified that weight should not therefore be placed upon those parts of Mrs Wong's written and oral evidence that refer to the SBSTS.

- (i) odour; and
- (ii) noise.

13. It is common ground that the Council is unable to demonstrate a five year supply of land for housing, as is required by paragraph 47 of the National Planning Policy Framework (the Framework). This represents a material change in circumstances from the previous inquiry. Notwithstanding a more recent submission suggesting a 4.93 year supply⁵, the Council confirms that it considers that a housing land supply of 4.6 years exists for the purposes of this appeal, as set out in the statement of common ground. This figure is disputed by the appellants, who suggest that a supply of 3.57-3.77 years is more realistic. However, for the reasons set out below I consider that the degree of shortfall is not a determinative factor in this appeal.

Reasons

Spatial Strategy

14. The development plan comprises the Charnwood Local Plan 2011 to 2028 Core Strategy (adopted 2015) (CS) and saved policies within the Borough of Charnwood Local Plan 1991-2006 (adopted 2004) (LP). The CS was prepared and examined in the context of the Framework. At the time, it was intended that the CS would be followed by the preparation of a Site Allocations and Development Management Policies Development Plan Document. However, this is no longer being progressed. Instead, a new Local Plan for the Borough is being prepared that will consider development needs to 2036. This is scheduled for submission to the Secretary of State in 2019⁶.
15. CS policy CS1 seeks to provide for at least 13,940 new homes between 2011 and 2028. It identifies the Leicester Principal Urban Area as the priority location for growth and states that the majority of the remaining growth will be met at Loughborough and Shepshed, where provision for at least 5,000 new homes will be made during the above-noted period. The policy also seeks to plan positively for the role of seven Service Centres, including Sileby. Provision will be made (amongst other matters) for at least 3,000 new homes within and adjoining the Service Centres.
16. The supporting text to policy CS1⁷ explains that there were (at that stage) commitments for around 3,500 homes in the Service Centres. It adds that this is sufficient to meet the levels of planned provision and that only small scale windfall developments within the settlement boundaries of Service Centres are expected between 2014 and 2028. It states that the priority is for any new development that takes place at Service Centres to be within their existing built-up areas. However, it comments that greenfield locations may be appropriate where there is a recognised local housing need and insufficient capacity within built-up areas to meet that need.
17. The Council's evidence is that in excess of 3,600 homes have so far been provided at Service Centres⁸. This has not been substantively disputed. While there is clearly a Borough-wide housing shortfall as a result of the failure to

⁵ Paragraph 3.6 of Mr Reid's proof of evidence. This was submitted at a late stage in the inquiry, after the housing land supply evidence had been heard.

⁶ Local Development Scheme (April 2018) – core document (CD) 6.25.

⁷ Notably at CS paragraphs 4.45 and 4.46 – CD 6.4.

⁸ Paragraph 6.10 of Mr Stray's proof of evidence.

demonstrate a five year land supply (a matter that I return to below), this does not necessarily equate to a recognised local need within Sileby itself. Indeed, I have seen no substantive evidence that the appeal scheme is required to meet a specific local need of that nature. While I note that work is underway on the preparation of a Neighbourhood Plan for Sileby, this is at an early stage; I am therefore unable to afford it weight.

18. I accept that policy CS1 does not seek to impose a cap on housing numbers within the Service Centres. However, when the policy is read in the context of its supporting text – as summarised above – it seems to me that although the appeal site adjoins the settlement, the scale and nature of the present proposal do not accord with the type and amount of additional development that the CS, taken as a whole, envisages for Service Centres. The plan’s spatial strategy is clear that the priority locations for growth lie elsewhere in the Borough. For the above reasons, I consider that the appeal proposal conflicts with CS policy CS1 – a view that does not differ materially from the assessment of the previous Inspector.
19. The relevant notional refusal reason refers to conflict with LP policies CT/1 and CT/2, while the Council’s submissions to the inquiry also cite conflict with LP policy ST/2. In short, I agree with these assessments. Indeed, such conflicts are accepted by the appellants⁹. LP policy ST/2 seeks to confine built development to allocated sites and other land within the identified Limits to Development, subject to specific exemptions set out in the LP. The appeal site lies outside Sileby’s development limits and the proposal is not subject to any of the specific exceptions – such as those in LP policy CT/1 relating to small scale new built development in the countryside. Given these conflicts, and notwithstanding an acknowledged lack of harm in respect of the area’s character and appearance, the appeal proposal would not therefore be supported by LP policy CT/2. Taking all of these matters together, I therefore conclude that the appeal proposal would not accord with the spatial strategy set out in the development plan.
20. As already noted, it is common ground that the Council cannot demonstrate a five year supply of land for housing. In such circumstances, paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered up-to-date. The Council accepts that CS policy CS1 and LP policy ST/2 are relevant policies for the supply of housing in this context and that they are therefore out-of-date¹⁰. I have no reason to disagree. This reduces the weight that I can give to the proposal’s conflict with these policies.
21. In respect of LP policies CT/1, and by extension CT/2, the LP is not fully consistent with the more nuanced approach to development in the countryside that is set out in the Framework. Furthermore, the Limits to Development to which they relate date from the time of the LP, which proposed a markedly lower rate of housing provision than that required by the subsequent CS. However, they have not been reassessed in the light of the CS’s adoption.
22. In that context, the Council has granted planning permission for a number of housing schemes outside Sileby’s development limits, including a development on land immediately to the south-west of the appeal site which is now nearing completion. Housing delivery from that site (Bellway Homes) is included by the

⁹ Accepted by Mr Bateman in cross-examination.

¹⁰ Paragraph 6.4 of Mr Stray’s proof of evidence.

Council in its five year housing land supply calculations¹¹. As such, the Council is relying upon land outside Sileby's Limits to Development to contribute towards the Borough's housing requirement. I therefore consider that these limits cannot be considered to be up-to-date.

23. For these reasons, and notwithstanding the view of the previous Inspector in respect of this matter, I consider that LP policies CT/1 and, by extension, CT/2, are therefore also out-of-date in terms of the Framework. This reduces the weight that I can afford to the proposal's conflicts with these policies. I return to this matter in the planning balance.

Highway Network and Highway Safety

24. As already noted, the highways notional refusal reason was withdrawn before the previous inquiry but was reinstated prior to the present inquiry. As also described above, the Council's position changed during the present inquiry, with the abandonment of part of its evidence base – the Sileby and Barrow-upon-Soar Transport Study (SBSTS). The reasons for this change were not explained.
25. The Council's concerns in respect of this main issue, which rely upon evidence provided by Leicestershire County Council (LCC) as the local highway authority, relate to one arm of the Barrow Road/Mountsorrel Lane junction in the centre of Sileby. It is contended that as a result of the appeal proposal, there would be an increase in the number of vehicles queuing on the approach to the junction along Mountsorrel Lane in the afternoon peak period. This route is an important approach to Sileby from the A6. The Council considers that alternative routes into Sileby also have potential constraints, notably Slash Lane which can be subject to flooding, and that as a result there would be an adverse effect on the resilience of the local highway network.
26. Neither the Council nor LCC has provided detailed survey or modelling evidence in respect of this matter. They rely upon that provided by the appellants. In summary, the appellants' modelling data show that the effect of the appeal scheme would be, at worst, an increase in vehicle waiting time on Mountsorrel Lane of less than one minute. This effect would only be likely to be apparent during a limited period of some 30-45 minutes during the afternoon peak period. While the Council disputes the trip generation and trip distribution assumptions presented by the appellants, its recalculation of these waiting times suggests, at most, only an additional 30 seconds waiting time. Even if alternative routes are not available, for example if Slash Lane is blocked by flooding, then in my view even the somewhat longer delays suggested by the Council would not be so significant as to materially change driver behaviour at this junction.
27. It is accepted that this part of Mountsorrel Lane is operating above its theoretical operating capacity during the evening peak hour (at 107% for the right turn manoeuvre) and that this would rise somewhat as a result of the appeal scheme (to 111% for the same manoeuvre)¹². However, this would not amount to a substantial change. In view of the limited nature of the changes that would result from the appeal scheme, the limited scale of the impacts

¹¹ ID11.

¹² Table 7 of Appendix 16 of Mr Cheetham's supplementary proof of evidence. It is this turning manoeuvre that generates the longest vehicle queues.

(which relate to one arm of the junction), the limited time period during which these effects would be experienced and the availability, in most normal conditions, of acceptable alternative traffic routes into Sileby. I consider that it has not therefore been shown that the appeal proposal would create a severe adverse effect in the terms of paragraph 32 of the Framework. Neither has it been shown that it would result in material harm to highway safety.

28. I am aware that other parties raise general concerns about the effects of traffic arising from the appeal scheme within Sileby. Some of these relate to the SBSTS to which, as already discussed, weight cannot now be attached. In respect of other concerns I share the view of the previous Inspector that the Transport Assessment submitted by the appellants has adopted a robustly cautious approach which has not sought to underestimate relevant traffic impacts. The updated evidence that has been provided in respect of the second inquiry remains in my view consistent with that assessment.
29. Updated accident data show that the overall number of collisions within the study area as a whole has decreased somewhat in the most recent five year period. While three collisions have been recorded on Barrow Road, none has occurred at its junction with Mountsorrel Lane (or indeed on Mountsorrel Lane). No collisions have been recorded on Seagrave Road in the vicinity of the proposed site access in the past five years. Traffic calming on Seagrave Road has been a requirement of the neighbouring development. Neither the Council nor LCC raise any concerns about the detailed access arrangements that are proposed for the appeal scheme.
30. For the above reasons, I conclude that the proposed development would not have a materially adverse effect on the highway network and would not materially harm highway safety. It would therefore accord with CS policy CS18. This conclusion is broadly consistent with that of the previous Inspector.

Odour

31. Sunrise Poultry Farm lies to the north-east of the appeal site, with a number of intervening fields. It is largely separated from built development, although there are several isolated dwellings in the farm's vicinity. The farm operates under an environmental permit issued by the Environment Agency (EA). From the evidence before me, it is a well-managed operation that undertakes a number of management measures to control the release of odours and adhere to its permit requirements.
32. Nevertheless, it is common ground that, as with any poultry farm, Sunrise Farm has the potential to release odours. It has been the subject of a number of odour assessments to which reference has been made in the present appeal. These have included the preparation of dispersion models, as well as the carrying out of sniff tests.
33. It is common ground that, in the present case, the relevant threshold for the acceptability of residential development in respect of dispersion modelling is the $3.00\text{OU}_E/\text{m}^3$ contour¹³. This derives from EA guidance¹⁴ which identifies odours associated with poultry farming as being 'moderately offensive'. The effect of living with that odour level is that 20% of the general public not expecting odours would be annoyed by that degree of exposure.

¹³ European Odour Units per cubic metre.

¹⁴ Additional Guidance for H4 Odour Management – CD11.32.

34. The EA advises that placing residential development in a location at or beyond (i.e. in excess of) the $3.00\text{OU}_E/\text{m}^3$ benchmark indicates the likelihood of unacceptable odour pollution. I have no reason to depart from that view. It is the Council's case that housing development located outside the $3.00\text{OU}_E/\text{m}^3$ contour (i.e. experiencing lower odour levels) is likely to be acceptable in principle¹⁵. The Council confirmed at the inquiry that it no longer intends to rely upon the evidence of its previous odour witness¹⁶ which made reference to the $1.50\text{OU}_E/\text{m}^3$ contour in that context.
35. However, the main parties disagree about the methodology by which the $3.00\text{OU}_E/\text{m}^3$ contour should be calculated. The appellants rely upon an odour assessment prepared by ADAS in 2014¹⁷. This shows¹⁸ the relevant contour as extending over a small section of the north-eastern part of the appeal site. It is the appellants' view that, given the outline nature of the appeal proposal and the illustrative nature of the suggested layout, there is sufficient flexibility to accommodate an 'exclusion zone' within this part of the site¹⁹.
36. The Council does not accept this approach, noting that the output of the 2014 ADAS model relates to the five year mean annual 98th percentile hourly average odour concentrations. While this appears consistent with the EA guidance referred to above, it does not accord with more recent guidance prepared by the IAQM²⁰ – which was contributed to by both main parties' odour witnesses. Among other matters, this advises that assessment conclusions should be based on the worse case (*sic*) results selected from each of the model runs²¹.
37. I accept that this advice is not contained in the EA guidance. However, I share the Council's view that, in the present appeal, the IAQM guidance should be preferred on this matter. This is because, first, it relates specifically to planning decisions rather than environmental permitting cases, and, second, it post-dates (and explicitly refers to a lack of clarity within) the EA guidance. No substantive challenge to the underlying justification of the IAQM guidance has been made by the appellants.
38. Given that it does not take account of the five year maximum modelling outputs, I therefore consider that the odour assessment prepared by ADAS in 2014 is likely to under-estimate the likely effects of odour in respect of the appeal site.
39. In that context, the Council points to an addendum report prepared by ADAS in 2018 in the light of the IAQM guidance. The modelled odour concentrations in this report²², which derive from earlier modelling carried out in 2014, take account of the five year maximum values. They show that the $3.0\text{OU}_E/\text{m}^3$ contour extends over a substantial part of the appeal site. To my mind, this would amount to a very serious constraint upon the site's potential for the development of new housing.

¹⁵ Dr Bull in response to Inspector's questions.

¹⁶ Mr Stigwood of MAS Environmental.

¹⁷ Appendix 1 to Mr Caird's main proof of evidence.

¹⁸ At figure 5.

¹⁹ Appendix 2 to Mr Caird's main proof of evidence.

²⁰ Guidance on the assessment of odour for planning – Appendix A to Dr Bull's proof of evidence.

²¹ Page 32 of the IAQM guidance – Appendix A to Dr Bull's proof of evidence.

²² Figure 1 of the 2018 ADAS Ltd Addendum Report – Appendix F to Dr Bull's proof of evidence.

40. Irrespective of their other objections as already discussed, the appellants contend that the ADAS assessments do not take appropriate account of seasonal and diurnal variations. These relate to the reductions in ventilation rates that occur overnight and in winter as well as variations in emission rates when fans are used in warmer, summer conditions. The reviewer of both ADAS reports stated in a letter dated 9 April 2015²³ that 'in reality ADAS applies seasonal and diurnal reductions within all of our modelling assessments' to take account of these factors. However, the Council's odour witness accepted at the inquiry that this letter did not explain what methodology ADAS had used in this regard; he went on to concede that he was not able to prove that the ADAS model had indeed made an adjustment for seasonal variation²⁴.
41. In my view, it is important that modelling exercises of this nature contain a sufficient degree of transparency in order to allow their assumptions to be made clearly explicit and subject to testing. On the evidence before me, that is not the case with the ADAS modelling outputs in respect of seasonal and diurnal variation. The appellants have sought to test this matter by undertaking a technical review of the ADAS outputs²⁵. This shows that there appears to be no material difference between the outputs of the modelling undertaken by the appellants' odour consultant (which did not account for seasonal or diurnal variation) and that of the ADAS assessment. Taking these matters together, and notwithstanding the written comments in the ADAS letter, the evidence before me does not demonstrate satisfactorily that the ADAS study took appropriate account of seasonal and diurnal variation.
42. It is common ground that the effect of taking such variation into account is to reduce the extent of the relevant odour concentration contours. The appellants' odour consultant has undertaken this assessment, admittedly as a 'basic' exercise, by applying such variation to the worst case meteorological data. The resulting contour map²⁶ shows an intermediate output between those advocated by the main parties. Part of the north-eastern section of the appeal site falls within the 3.00U_E/m³ contour. However, a developable area remains outside the contour line. At the inquiry, the appellants stated that taking into account other development constraints such an area could in principle accommodate some 150 dwellings, although the detailed basis for this assessment was not provided.
43. Drawing these matters together, I consider that while the appellants' base case is likely to underestimate the likely odour effects on the site (because in summary it does not take into account maximum values), the Council's suggested approach is likely to represent an over-estimate of such effects (because in summary it does not explicitly take account of seasonal or diurnal variation). Given that the 'basic' assessment submitted by the appellants during the inquiry takes explicit account of all of these factors, it seems to me that this represents the best available dispersal modelling evidence that is before the inquiry. I afford it weight accordingly.
44. While the Council does not seek to rely upon the sniff test submitted by its witness²⁷, the results of a number of other sniff tests are before the inquiry.

²³ Appendix I to Dr Bull's proof of evidence.

²⁴ Dr Bull in cross-examination.

²⁵ Appendix 3 to Mr Caird's proof of evidence – figures 1 and 2.

²⁶ '2010 with Seasonal Variation' - ID21.

²⁷ Appendix J of Dr Bull. Dr Bull stated in cross-examination that very little weight should be placed on this test.

However, I share some of the Council's concerns in respect of these data. While all of the sniff tests demonstrate that there are indeed odours associated with the poultry farm, none of the tests took place at times of the day when atmospheric conditions are likely to be most stable (which are sunrise, sunset or during the night). As such, they are unlikely to have captured the worst case odour emissions. In addition, few of the tests took place in low wind speeds: these are generally the worst case for odour dispersion. Taking these factors into account, the submitted sniff test results do not lead me to depart from my comments above about the results of the dispersion modelling.

45. The appellants point to the low number of complaints that have been received in association with odours arising from Sunrise Farm. While I agree that this is consistent with the operation of good odour management practice at the farm, it is clear from the above-noted dispersion modelling that there are only a limited number of residential properties within the $3.00\text{OU}_E/\text{m}^3$ contour set out in the '2010 with Seasonal Variation' contour map referred to above. I can therefore attach only limited weight to the complaints evidence.
46. Drawing the above matters together, I consider that the '2010 with Seasonal Variation' contour plan presents the best available evidence on the likely effect of odours from Sunrise Farm in respect of the appeal proposal. Accordingly, if satisfactory odour conditions are to be established for the scheme's residents, it is necessary to exclude the part of the appeal site that lies within the $3.00\text{OU}_E/\text{m}^3$ contour from accommodating residential development. This can be achieved by the imposition of a planning condition. Subject to this, I conclude that adequate living conditions would be achieved for the intended occupiers of the development with regard to odour. In this regard, the appeal proposal would accord with CS policy CS2, which seeks among other matters to protect the amenity of the people who will live in new developments.
47. It is implicit from the above that the application of a condition along the lines discussed would reduce the number of houses that the appeal site could accommodate from the maximum figure of 195 contained in the description of development. However, I have seen no evidence that an acceptable scheme containing a lower number of houses could not come forward on the remaining part of the site. I return to this matter in the planning balance below.

Noise

48. It is accepted by both main parties that there is sufficient evidence upon which to assess the noise environment of the appeal site. As with odour, the Council's key concerns in respect of this matter relate to the operations of the Sunrise Poultry Farm. There is broad agreement about the noise rating levels at the appeal site boundary that would arise from the various sources of noise that the Council has identified. In summary, these noise sources relate mainly to the following operations: 'birds out' (the removal of hens from the laying sheds); shotgun blasts arising from fox control; lorry movements in the yard; lorries waiting to depart; use of the emergency generator (including regular tests); noise arising from refrigerated vehicles; blowing of feed; and the use of fork lift trucks associated with 'birds in' (bringing in replacement hens).

49. It is common ground that the starting point for noise assessment in the context of this appeal is the application of BS 4142: 2014²⁸. This requires that an initial estimate of the impact of specific sounds is made by subtracting the measured background sound level from the rating level. The standard states that a difference of around +10dB or more is likely to be an indication of a significant adverse impact. It is common ground that, on this measure, noise from the farm (specifically in relation to 'birds out', generator tests and food lorry deliveries) would exceed the +10dB threshold. From the evidence before me, these are not unusual activities. The appellants accept that, subject to context, the noise impact within unscreened gardens and at unscreened façades could be considered as an indication of a significant adverse impact²⁹ during the night in terms of this guidance.
50. The main parties differ as to whether such assessments should be adjusted in the light of the site's context. In the appellants' view further adjustment is needed in line with advice in BS 4142:2014. Notably, under section 11 of that guidance, note (3) states that it is necessary to take into consideration the sensitivity of the receptor and whether dwellings will already incorporate design measures that secure good internal and/or outdoor acoustic conditions. Examples stated are façade insulation treatment, ventilation and/or cooling that will reduce the need to have windows open so as to provide rapid or purge ventilation and acoustic screening. I agree with the appellants that these are relevant factors in the present appeal.
51. The appellants' noise assessment states that it is proposed to provide façade insulation treatment in the form of acoustic glazing and provide background ventilation using acoustic vents to reduce the need to open windows. With these measures in place, the noise assessment shows that the noise rating levels (taking account of the character of the noise source) would be below the internal noise criteria set out in table 4 of BS 8233: 2014³⁰. Indeed, as set out below, the appellants have subsequently proposed additional insulation treatment in respect of low frequency noise. I deal with the parties' differences in respect of mitigation below.
52. In respect of whether further adjustment is needed to the BS 4142:2014 assessments, I can comment as follows. BS 4142:2014 is not intended to be applied to the derivation of indoor sound levels arising from sound levels outside, or to the assessment of indoor sound levels. Thresholds for internal ambient noise for dwellings are not contained in BS 4142:2014. Instead, they are set out in BS 8233:2014. The latter guidance is explicit that where industrial noise affects residential areas, the methods for rating the noise in BS 4142 should be applied. This is what the appellants' noise assessment has done. While the indoor ambient noise thresholds set out in BS 8233:2014 apply to external noise without specific character, I am satisfied that the appellants' approach is sufficient to take the character of the specific noise sources discussed into appropriate account. As discussed below, this also includes specific account being taken of the effects of low frequency noise.

²⁸ BS 4142: 2014 Methods for rating and assessing industrial and commercial sound – Appendix 7 of Mr Polden's proof of evidence.

²⁹ Paragraph 7.4.6 of Cole Jarman Planning Noise Assessment – Appendix A of Mr Heyes' supplementary proof of evidence.

³⁰ BS 8233:2014 Guidance on sound insulation and noise reduction for buildings – Appendix 6 of Mr Polden's proof of evidence.

53. Despite the differences in assessment methodology, both main parties accept in any event that adequate thresholds could not in practice be achieved without mitigation. Furthermore, there is no dispute between the main parties that, in respect of general farm noise, internal noise levels could in principle be reduced to the thresholds set out in BS 8233:2014. There is however, disagreement about the acceptability of such mitigation.
54. As already noted, the appeal scheme is submitted in outline. While particular mitigation measures have been suggested, the full details of such a scheme are yet to be finalised. As a matter of principle, national Planning Practice Guidance (PPG)³¹ requires consideration to be given to whether adverse internal effects can be completely removed by closing windows and, in the case of new residential development, if the proposed mitigation relies on windows being kept closed most of the time. In both cases a suitable alternative means of ventilation is considered likely to be necessary.
55. Bearing that in mind, I see no reason why a mitigation scheme based upon windows being closed would not be acceptable in this case. (For the avoidance of doubt however I share the Council's view (which was not disputed by the appellants) that such windows should remain *capable* of being opened.) It is common ground that such mitigation measures would only be required for bedroom windows in those elevations facing Sunrise Farm. In principle, the number of such rooms could be minimised by appropriate detailed design of buildings. The majority of the development would be unaffected. Indeed, given the implications of the above-noted odour issue for the scheme's layout, it is likely that the nearest new houses would be sited some distance further away from noise sources than was previously envisaged.
56. The fact that the dwellings concerned would lie on the edge of the built-up area does not seem to me to affect the likely desire to open windows, which is more likely to relate to factors such as thermal comfort. While the Council raises concern about the efficacy of 'background' ventilation in that regard, I note that the suggested condition refers to an 'alternative' means of ventilation. This is in line with the PPG and would enable a suitable mitigation scheme to be finalised at the appropriate time.
57. Two of the noise sources identified by the Council have a particular character that merits specific consideration. In respect of noise from shotguns, which has the potential to range between 60 and 73 dBA, it seems to me that the Council's view that this is likely to occur three times a week at night (amounting to a total of 20 shotgun blasts per night) overstates the likely frequency of such events taking place. For example this noise source was not picked up during the original two week noise survey undertaken by MAS Environmental and was not measured during the appellants' seven day noise monitoring survey. To my mind, it does not therefore amount to a typical noise associated with the poultry farm. As such, this noise source is unlikely to breach the WHO Guidelines for Community Noise which relate to short term typical noise events occurring more than 10-15 times per night. I do not therefore consider that specific mitigation is required in respect of this matter.
58. The Council has also identified the potential for low frequency noise to be generated by refrigerated vehicles and the blowing of feed. Assessment of such a noise source is not addressed by BS 4142:2014. The Council has

³¹ PPG Reference ID: 30-006-20141224.

referred to guidance by Downey and Parnell (2017), which has also been reviewed by the appellants' noise consultant. In his view, the potential for serious adverse effects arising from low frequency noise can be mitigated against by the introduction of glazing and acoustic vents to an appropriate standard. Bearing in mind my comments above, I have no reason to take a different view. This can be secured by the imposition of a planning condition along the lines of that discussed at the inquiry³².

59. I agree with the Council that the lack of noise complaints in respect of the activities of Sunrise Farm is of little weight; as already noted there are relatively few dwellings in the farm's close proximity, while the recent development on the opposite side of Seagrave Road is masked or screened by buildings within the farm complex. Nevertheless, drawing the above matters together, I see no substantive reason why the potential noise impacts arising from Sunrise Farm could not be adequately mitigated against. This would avoid a significant adverse impact in the terms of paragraph 123 of the Framework. Subject to such mitigation, which could be secured by the imposition of conditions along the lines discussed above, I conclude that adequate living conditions would be achieved for the intended occupiers of the development with regard to noise. In this regard, the appeal development would also accord with CS policy CS2.
60. Notwithstanding that additional evidence has now been presented by the main parties, my conclusion on this main issue is broadly consistent with the view of the Council's Environmental Protection Officer, who recommended that planning permission should be granted for the scheme subject to conditions³³. It is also noted that a report by MAS Environmental (the consultants acting for the Council in the present appeal) in respect of a housing proposal on land lying between the appeal site and Sunrise Farm did not raise an in-principle objection in respect of noise concerns – instead recommending 'substantial mitigation measures' in the event of the application being considered for approval.

Other Matters

61. Although not specifically referred to in the Council's notional refusal reasons, concerns have also been raised about the effect of the appeal scheme on the operation of the Sunrise Poultry Farm – which is a significant local employer and contributor to the local economy. However, given my conclusions above in respect of noise and odour, and bearing in mind the restrictions on the extent of development that I have outlined in respect of odour, I am satisfied that the degree of separation between the proposed residential development and the poultry farm would be sufficient to ensure that the presence of the new houses would not unduly constrain the farm's operations.

Planning Balance and Conclusion

62. As already noted, the Council is unable to demonstrate a five year supply of land for housing and relevant policies for the supply of housing should not therefore be considered up-to-date. In such circumstances, paragraph 14 of the Framework states that (unless material considerations indicate otherwise) planning permission should be granted unless: any adverse impacts of doing so

³² Included within ID25.

³³ Appendix B of Mr Heyes' supplementary proof of evidence.

would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted. Given my conclusion that the proposed development would not have a materially adverse effect on the highway network and would not materially harm highway safety, I do not share the Council's view that paragraph 32 of the Framework restricts development in the present case. As such, the 'tilted balance' set out in the first limb of the last bullet point of paragraph 14 applies. This represents a material difference from the previously quashed appeal decision.

63. I have concluded above that, subject to the imposition of appropriate conditions, adequate living conditions would be achieved for the intended occupiers of the development with regard to odour and noise. Along with my conclusion in respect of the highway network and highway safety, these are neutral factors in the planning balance. While I have concluded that the appeal proposal would not accord with the spatial strategy set out in the development plan, the weight that I can attach to that conflict is reduced by the out-of-date nature of the relevant policies as described above.
64. The appeal scheme's benefits were not rehearsed in detail at the second inquiry. Nevertheless, they are considerable. I share the view of the first Inspector that the appeal scheme would be sustainably located. The provision of affordable housing, to be secured by the submitted Section 106 agreement, would in my view amount to a significant benefit. Given that the Council is unable to demonstrate a five year supply of land for housing, and bearing in mind that the Framework seeks to boost significantly the supply of housing, the provision of additional general market housing – even at the lower number that is likely to result from the restrictions arising in respect of odour – would also amount to a significant benefit. Benefits would accrue to the local economy through construction and increased local spending. Some benefits would also result in respect of the proposed biodiversity enhancement measures³⁴.
65. Accordingly, I conclude that the scheme's conflict with the spatial strategy set out in the development plan is not sufficient to significantly and demonstrably outweigh the scheme's benefits when assessed against the policies in the Framework taken as a whole. The proposal would therefore amount to sustainable development in terms of the Framework. It would also accord with CS policy CS25 which contains similar provisions to paragraph 14 of the Framework. While I accept that the scheme is the subject of local opposition, I consider that the particular circumstances set out above are sufficient to over-ride the conflicts with relevant development plan policies in this instance.
66. Clearly, if the shortfall in housing land supply were to be on the greater scale that the appellants allege, then the weight to be given to the scheme's benefits in respect of the provision of market housing would increase. However, this would not alter the outcome of the above-noted balancing exercise, which is already resolved in the appeal scheme's favour.

Planning Obligations

67. The submitted Section 106 agreement contains planning obligations in respect of a number of matters: affordable housing; National Health Service (NHS) England; open space; civic amenities; education; sustainable transport (bus

³⁴ CD1.10.

stop improvements, travel packs, bus passes and a residential travel plan); and library services. As already noted, this agreement explicitly supersedes that submitted in respect of the first inquiry. A number of provisions have changed: notably an education contribution is now sought, while a police force contribution is no longer included.

68. The Council clarified at the inquiry that none of the matters for which funding is provided would lead to the pooling of more than five contributions and I have no reason to take a different view. With regard to the submitted compliance statement, along with the evidence of LCC³⁵, I am satisfied that with one exception (discussed below) all meet the requirements of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended).
69. The exception relates to the NHS England contribution. In this respect, I share the assessment of the Inspector at the first inquiry who considered that while the position regarding physical capacity constraints for the Banks surgery is clearly evidenced, this could not be said for the Highgate Surgery, for which funding is also required. I have no reason to take a different view and, as such, I share his view that it is not certain that the demands arising from the appeal scheme could not be satisfactorily accommodated chiefly at the latter surgery. As such, it has not been demonstrated that the NHS England contribution is necessary to make the development acceptable in planning terms. I have not therefore taken it into account in granting planning permission for the appeal scheme.

Conditions

70. I have had regard to the most recent schedule of agreed conditions³⁶, which supersedes earlier versions, together with additional conditions (not all of which were agreed between the main parties) in respect of odour and noise. I have considered (and, where necessary, reworded or deleted) conditions from these lists in the light of the Framework and PPG. Some have been edited for brevity and to remove unnecessary duplication.
71. Otherwise than as set out in this decision and conditions, it is necessary that the development should be carried out in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning. However, given my conclusion with respect to the odour main issue it would no longer be appropriate to require the development to be in broad accordance with the submitted illustrative masterplan. Also given my conclusion on that matter, and in the light of comments made at the inquiry, it is necessary to replace the suggested odour conditions with one preventing residential development within the 3.00U_E/m³ contour on the '2010 with Seasonal Variation' contour plan tabled at the inquiry³⁷.
72. For the reasons set out above, it is necessary to impose conditions in respect of general noise and low frequency noise in respect of the Sunrise Poultry Farm. However, as also discussed, a condition in respect of shotgun noise would fail the test of necessity. While the Council suggests conditions listing matters (including housing mix, building heights, boundary treatments and design principles) to be included within a reserved matters submission, these fail the

³⁵ Proof of evidence by Mr Tyrer.

³⁶ ID16.

³⁷ ID21.

test of necessity given that such reserved matters would be subject to Council approval in any event. An exception to this is lighting and I consider that in the interests of nature conservation it is necessary for a detailed lighting scheme to be submitted, approved and implemented.

73. In the interests of promoting alternatives to the private car it is necessary that details of a new section of footway along Seagrave Road and improvements to the public footpath running through the site are submitted, approved and implemented. The reasons for the suggested time trigger (completion of the 100th dwelling) in the latter suggested condition are not fully explained: as such, and bearing in mind that the total number of dwellings that can be accommodated in the light of the restrictions due to the odour constraint remains uncertain, I have amended this condition to require submission of, and adherence to, an implementation timetable for the footpath works.
74. Implementation of the approved access arrangements is needed for reasons of highway safety. For the same reasons it is necessary to secure and retain adequate visibility splays at the junction and to submit, approve and implement a construction traffic management plan, including traffic routing details. Submission, approval and implementation of a travel plan are needed in order to promote sustainable travel. To prevent an increased risk of flooding, it is necessary that the development is carried out in accordance with the submitted flood risk assessment and that details of surface water drainage (in respect of both the proposed development and its construction phase) are submitted, approved and implemented. Given the latter requirement, the suggested additional condition in respect of surface water drainage fails the test of necessity. Details of foul water drainage are required in order to safeguard water bodies in line with the Humber River Basin Management Plan.

Overall Conclusion

75. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

M J Hetherington

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout and scale (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 three years from the date of this permission.
- 3) The development hereby permitted shall commence not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: nos. EMS.2557_001C and 15251.SA.06.001 A05.
- 5) The development hereby permitted shall be carried out in accordance with the Rodgers Leask Flood Risk Assessment dated January 2015 (REV:B D14/206) and the mitigation measures contained therein.
- 6) No dwellings shall be built within that part of the site that is identified as being affected by odour concentrations of $3.00\text{OU}_E/\text{m}^3$ or above on the '2010 with Seasonal Variation' contour map (inquiry document 21).
- 7) The development hereby permitted shall not commence until a detailed scheme has been submitted to and approved in writing by the local planning authority in order to mitigate the impact of noise from Sunrise Poultry Farm upon noise levels within the dwellings hereby permitted. The scheme of mitigation shall demonstrate that noise rating levels from Sunrise Poultry Farm will not exceed $35\text{dB}_{\text{Ar}, 1\text{hr}}$ during the day (0700-2300 hours) and $30\text{dB}_{\text{Ar}, 15\text{min}}$ during the night (2300-0700 hours) within habitable rooms on the development site with windows closed and an alternative means of ventilation provided. The development shall be carried out in accordance with the approved mitigation scheme and shall be retained thereafter.
- 8) The development hereby permitted shall not commence until a detailed scheme has been submitted to and approved in writing by the local planning authority in order to mitigate the impact of low frequency noise from Sunrise Poultry Farm upon noise levels within the dwellings hereby permitted. The scheme of mitigation shall:
 - a) demonstrate that internal noise levels at the 50Hz one-third octave band centre frequency shall not exceed an unweighted $48\text{dB}_{\text{Leq}, 5\text{min}}$ during the day (0700-2300 hours) and $43\text{dB}_{\text{Leq}, 5\text{min}}$ at night (2300-0700 hours) respectively within the dwellings; and
 - b) shall include specifications for the installed performance of external building fabric such as windows and include the provision of alternative means of background ventilation in order to achieve the noise levels set out in a) above.

The development shall be carried out in accordance with the approved mitigation scheme and shall be retained thereafter.

- 9) The development hereby permitted shall not commence until a lighting scheme has been submitted to and approved in writing by the local planning authority. Development shall accord with the approved details.
- 10) The development hereby permitted shall not commence until details of a new section of pedestrian footway in accordance with drawing no. 15251.SA.06.001 A05, including street lighting, have been submitted to and approved in writing by the local planning authority. No dwelling in the development hereby approved shall be occupied until the pedestrian footway and lighting have been completed in accordance with the approved details.
- 11) The development hereby permitted shall not commence until details of improvements to the public footpath passing through the site, including a timetable for implementation, have been submitted to and approved in writing by the local planning authority. The improvements shall be completed in accordance with the approved details and timetable.
- 12) The development hereby permitted shall not commence until a construction traffic management plan, including details of wheel cleaning facilities, vehicle parking and construction traffic routeing, along with a timetable for implementation, has been submitted to and approved in writing by the local planning authority. The development shall be in accordance with the approved details and timetable.
- 13) The development hereby permitted shall not commence until details of foul water drainage have been submitted to and approved in writing by the local planning authority. No dwelling hereby permitted shall be occupied until foul water drainage works for the dwelling concerned have been implemented in accordance with the approved details.
- 14) The development hereby permitted shall not commence until details of a scheme to treat and remove suspended solids from surface water run-off during construction works has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved.
- 15) No dwelling hereby permitted shall be occupied until the access arrangements have been put in place in accordance with approved drawing no. 15251.SA.06.001 A05.
- 16) No dwelling hereby permitted shall be occupied until vehicular visibility splays of 2.4 metres by 65 metres to the left of the site access and 2.4 metres by 54 metres to the right of the site access have been put in place at the junction with Seagrave Road. These shall thereafter be permanently maintained with nothing exceeding 0.6 metres above the height of the carriageway and adjoining footway.
- 17) No dwelling hereby permitted shall be occupied until an updated residential travel plan has been submitted to and approved in writing by the local planning authority. The travel plan shall be put into practice in accordance with approved details.
- 18) No dwelling hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for

disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- a) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- b) include a timetable for its implementation; and
- c) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

Richborough Estates

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Dr Ashley Bowes	of Counsel Instructed by Ms Kathryn Harrison, Solicitor Charnwood Borough Council (CBC)
He called:	
Mrs Eri Wong BEng(Hons) MCIHT	Senior Transport Engineer Leicestershire County Council
Mr Stephen Stray BSc MSc MRTPI	Group Leader, Development Management, CBC
Dr Michael Bull PhD DIC BSc CEnv CEng CSaj FIQAM MChemE MIEnvSci	Director, Ove Arup & Partners Ltd
Mr Neil Polden BSc IOADip	MAS Environmental
Mr Patrick Reid BA(Hons) MRTPI	Principal Planning Officer, CBC (Resumed conditions session only)

FOR THE APPELLANTS:

Mr Andrew Williamson	Consultant, Walker Morris LLP Instructed by Mr Robert Moore, Walker Morris
He called:	
Mr Tony Bateman BA(Hons)TP MRICS MRTPI MCMi MIOd FRSA	Managing Director, Pegasus Group
Mr Guy Longley BSc(Hons) DipTP DipUD MRTPI	Executive Director, Pegasus Group (Housing Round Table session only)
Mr David Cheetham BA(Hons) MSc	Consultant to Waterman Infrastructure and Environment
Mr Laurence Caird MEarthSci CSci MIEnvSci MIAQM	Associate Director, Air Quality Consultants
Mr Matthew Heyes BSc(Hons) MIOA	Associate, Cole Jarman.
Mr Robert Moore LLB Hons	Solicitor, Walker Morris (Conditions session only)

FOR LEICESTERSHIRE COUNTY COUNCIL (RULE 6 PARTY):

Mr Andrew Tyrer
BA(Hons) MRTPI

Development Contributions Officer
(Planning Obligations session only)

INTERESTED PERSONS:

Mrs Elizabeth Astill

Sileby Parish Council

Mr Richard Burton

Local resident

Mr Phillip Crawley

Director, Sunrise Poultry Farms Ltd

Ms Julie Jones

Chairman, Sileby Parish Council

Cllr Andrew Paling

Borough Councillor and Parish Councillor

Cllr Richard Shepherd

Borough Councillor and Parish Councillor

Mr James Smith

Local resident

List of Documents tabled during the Inquiry

- Document 1: Amended Housing Land Availability tables (Feb 2018).
Document 2: Appellants' opening submissions.
Document 3: Opening statement on behalf of CBC.
Document 4: Statement of Common Ground: Transport & Highway Matters.
Document 5: Initial draft Section 106 agreement.
Document 6: Summary of Section 106 agreement (Walker Morris).
Document 7: PPG extract: Housing and economic development needs assessments.
Document 8: PPG extract: Housing and economic land availability assessment.
Document 9: Annotated extract from CBC Annual Monitoring Report (AMR).
Document 10: CBC Local Development Scheme (June 2017).
Document 11: Housing land supply tables: extract from CBC AMR.
Document 12: Agreed statement on distances to bus stops.
Document 13: Errata sheet in respect of Mr Cheetham's supplementary proof of evidence.
Document 14: Agreed list of suggested planning conditions.
Document 15: Letter from Minister of State for Housing and Planning dated 19 December 2014.
Document 16: Amended list of suggested planning conditions.
Document 17: Planning obligations compliance statement.
Document 18: Amended draft Section 106 agreement.
Document 19: Signed Section 106 agreement, dated 2 May 2018.
Document 20: Housing land supply tables at 2017 and 2018.
Document 21: Plot of odour contours: 2010 with seasonal variation, tabled by Mr Caird.
Document 22: Wind speed data collected during noise surveys, tabled by Mr Heyes.
Document 23: Summary of wind speed data collated by Dr Bull and corrections to Dr Bull's proof of evidence.
Document 24: Proposed odour condition – suggested options.
Document 25: Suggested noise conditions.
Document 26: Costs application on behalf of the appellants.
Document 27: Amended draft odour condition.

- Document 28: Outline closing submissions on behalf of CBC.
Document 29: Response to costs application by CBC.
Document 30: Copy of e-mail exchange between CBC and PINS in respect of inquiry adjournment.
Document 31: ***Bloor Homes East Midlands Ltd v SSCLG*** [2014] EWHC 754 (Admin).
Document 32: ***Daventry DC v SSCLG*** [2016] EWCA Civ 1146.
Document 33: ***Baroness Cumberledge of Newick v SSCLG*** [2017] EWHC 2057 (Admin).
Document 34: Appellants' Closing Submissions.
Document 35: ***Hallam Land Management v SSCLG*** [2017] EWHC 2865 (Admin).

Richborough Estates