



Appeal Decision

Inquiry held on 19-22 June 2018

Site visit made on 22 June 2018

by Mike Hayden BSc DipTP MRTPI

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

Decision date: 18 July 2018

Appeal Ref: APP/P3040/W/18/3196537

Land off Lantern Lane, East Leake, Nottinghamshire

- 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 Gladman Developments Ltd against the decision of Rushcliffe Borough Council.
 - The application Ref 17/02292/OUT, dated 29 September 2017, was refused by notice dated 16 February 2018.
 - The development proposed is the erection of up to 195 dwellings, with public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point from Lantern Lane.
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 195 dwellings, with public open space, landscaping and a sustainable drainage system (SuDS) and vehicular access from Lantern Lane on land off Lantern Lane, East Leake, Nottinghamshire in accordance with the terms of the application, Ref 17/02292/OUT, dated 29 September 2017, subject to the conditions set out in the schedule at the end of this decision and the S106 undertaking referred to below.

Preliminary Matters

2. The application was submitted in outline with matters relating to layout, scale, appearance and landscaping reserved for subsequent approval. Access was the only detailed matter fixed for determination as part of the appeal. I have dealt with the appeal on this basis. A development framework plan was also submitted with the application, indicating the broad parameters of the proposed development. I have taken this plan into account in so far as it defines the extent of the proposed built development, public open space and structural landscaping and informs assessment of the visual and landscape impacts of the proposed development.
3. A unilateral undertaking under S106 of the 1990 Act was submitted by the appellant. The undertaking comprises planning obligations to secure 20% affordable housing, public open space and a sustainable urban drainage system on site, and to provide financial contributions for education, healthcare and outdoor sports facilities, bus services, a school crossing patrol, road safety measures and footways off site. The undertaking was signed as a deed by the landowner and the appellant, and certified by the Council's solicitor. I set out below the extent to which its provisions meet the tests set out in paragraph 204

of the National Planning Policy Framework (the Framework) and Regulations 122 and 123 of the Community Infrastructure Regulations 2010 (as amended) and the weight I have attached to them in reaching my decision.

Main Issues

4. The Statement of Common Ground (SoCG) between the appellant and the Borough Council establishes that the Council is currently unable to demonstrate a 5 year supply of deliverable housing sites in Rushcliffe, as required by paragraph 47 of the Framework. Accordingly, paragraph 49 of the Framework states that the relevant policies for the supply of housing should not be considered up to date. This includes relevant policies in the Rushcliffe Local Plan Part 1: Core Strategy (2014) (the CS) and the East Leake Neighbourhood Plan (2015) (the ELNP).
5. Under the Written Ministerial Statement (WMS) of December 2016, whilst the Council can demonstrate a 3.1 year supply of housing sites, the ELNP does not allocate sites for housing. Therefore, all of the circumstances set out in the WMS to enable the relevant policies for the supply of housing in the ELNP to be deemed up to date are not in place.
6. The fourth bullet point of paragraph 14 of the Framework makes clear that where relevant policies in the development plan are out-of-date, the presumption in favour of sustainable development means granting permission for the proposed development, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits or specific policies in the Framework indicate development should be restricted. There is no evidence to suggest there are specific policies in the Framework indicating the proposed development should be restricted.
7. In view of this, and having regard to everything else I have read, heard and seen, the main issues in this appeal are whether any adverse impacts of the proposal would significantly and demonstrably outweigh its benefits, with particular regard to:
 - The suitability of the site as a location for the proposed development, having regard to the spatial strategy in the development plan;
 - The effects of the proposed development on the character and appearance of the surrounding area including the rural setting of East Leake;
 - The distance of the site from East Leake village centre and its accessibility to local services and facilities;
 - The effects of the proposal on local community infrastructure, in particular education and healthcare facilities;
 - The effects of the proposed development on highway safety;
 - The steps being taken by the Council to meet the shortfall in the supply of market and affordable housing in the borough and the contribution the proposed development would make to this.

Reasons

Location and Spatial Strategy

8. Policy 3 of the CS sets out the spatial strategy for Rushcliffe to support a policy of urban concentration and regeneration across the Greater Nottingham sub-

- region. Within Rushcliffe the strategy is to focus development in or adjoining the main built up area of Nottingham (MBUA) and at a number of Key Settlements beyond the MBUA. A minimum of 13,150 dwellings are expected to be provided during the plan period from 2011-2028. Of these around 7,650 homes are to be in or adjoining Nottingham and 5,500 homes beyond the MBUA.
9. East Leake is identified in Policy 3 as one of the Key Settlements for growth beyond the MBUA. It is expected to provide for the development of a minimum of 400 homes in or adjoining the settlement in the period 2011-2028. The appeal site adjoins East Leake on its eastern edge, abutting a new residential development which is under construction and nearing completion. To this extent its location is consistent with the spatial strategy in Policy 3.
 10. However, the number of new homes built in East Leake since 2011 already exceeds the minimum of 400 dwellings envisaged in Policy 3. Whilst the policy does not set a ceiling on the number of additional homes that the village should accommodate, the appeal proposal would take the level of housing growth permitted at East Leake since the start of the plan period to over 1,200 dwellings, more than three times the 400 minimum in Policy 3.
 11. An analysis of the background evidence on which the spatial strategy and the 400 dwelling minimum target for East Leake were based¹, indicates that the current and proposed scale of development at East Leake represents a divergence from the spatial strategy for Rushcliffe set out in Policy 3. Its aim is to achieve sustainable development through a policy of urban concentration in and on the edge of Nottingham and settlements closest to it. Some growth away from the MBUA was envisaged to sustain settlements such as East Leake, but not at the scale now taking place. To that extent the proposed development would be at odds with the spatial distribution of housing set out in Policy 3.
 12. However, the weight to be attached to that policy conflict needs to be considered in the light of the current absence of a 5 year housing land supply in Rushcliffe. In such circumstances, the Framework is clear that relevant policies for the supply of housing cannot be considered up to date. Accordingly, Policy 3 is out of date as a policy for the supply of housing. Whilst this does not render the policy irrelevant, it is evident that the distribution of housing in Policy 3 is being altered, through the grant of planning permissions and the emerging Rushcliffe Local Plan Part 2 (2018)(LPP2), in response to the shortfall in housing delivery.
 13. Policy 3 identifies three sustainable urban extensions (SUEs) to provide 7,000 of the 7,560 dwellings to be delivered in or adjoining the MBUA up to 2028. However, despite the Council's efforts to bring them forward, these sites have not delivered as quickly as anticipated and the housing trajectory in the publication version of the LPP2 now estimates that the three SUEs will deliver around 5,400 dwellings by the end of the plan period.
 14. No further sites have been identified for allocation within or on the edge of the MBUA as part of the LPP2. Therefore, the Council proposes to make up the shortfall by increasing the amount of land allocated for housing at the Key Settlements in the LPP2, significantly above the minimum targets for these settlements set out in Policy 3. The resulting distribution would reduce the supply of additional homes in and adjoining the MBUA within the plan period

¹ Including the Greater Nottingham Sustainable Locations for Growth paper (2010) (CD15.4) and the Updated Housing Background Paper (2014) (CD8.2)

and increase the reliance of the spatial strategy on the Key Settlements, in order to deliver a 5 year housing land supply and boost significantly the supply of housing in line with paragraph 47 of the Framework.

15. I acknowledge that at this stage the revised housing trajectory and distribution in the publication version of LPP2 remain subject to examination. I also recognise the importance of the overall strategy in Policy 3 to achieve sustainable development through urban concentration. However, the evidence points clearly in the direction of the need to significantly increase housing provision at the Key Settlements and beyond the MBUA, within the context of that strategy, in order to deliver sustainable housing growth in Rushcliffe. This is supported by the fact that the Council itself has granted planning permissions at East Leake well beyond the 400 dwelling minimum, even before the recent appeal decision for the site at Rempstone Road².
16. I have been referred to other appeal decisions on this issue, in particular the Ashlockton appeal decision³, which found a development of just 65 homes on an unallocated site beyond the MBUA fundamentally at odds with the spatial strategy in Policy 3. However, the circumstances of that appeal were different, in that Ashlockton has a limited range of services and is not identified as a settlement for growth. In this case, the appeal site is in East Leake, a Key Settlement with higher order services and good public transport links to larger centres of employment at Nottingham and Loughborough, and which the SoCG confirms is a sustainable location for growth in the CS.
17. Policy H1 of the ELNP is also relevant in considering the suitability of the site against the spatial strategy of the development plan. It supports a minimum of 400 new homes in East Leake and does not set a ceiling on the number of dwellings that should be permitted. Rather it states that further residential development above the 400 minimum will only be supported where improved infrastructure can be provided to support the development. I consider the effects of the proposed development on local infrastructure below. However, subject to this, there is nothing in Policy H1 to indicate that further housing development above the 400 minimum would be contrary to the spatial strategy.
18. Therefore, whilst the proposal would diverge from the current spatial distribution of housing set out in Policy 3, I am not persuaded that an additional 195 dwellings at East Leake would materially undermine the overall spatial strategy for the borough, either on its own or cumulatively with other recent permissions in the settlement. On this basis, I attach little weight to the proposal's conflict with Policy 3 of the CS.

Character and appearance

19. The appeal site comprises a number of open, grassed fields, subdivided by hedgerows. It is largely flat and is contained by a scarp slope to the north, known as Sharpley Hill, which forms one of the characteristic features in the landscape and countryside surrounding East Leake. The site is bounded by substantial, mature hedgerows on its eastern and southern boundaries along Lantern Lane. To the west is a recently constructed residential development. To the south are the playing fields belonging to East Leake Academy and

² APP/P3040/W/17/3178343

³ APP/P3040/W/16/3143126

- Leisure Centre, the buildings of which lie to the south-west of the site on the other side of Lantern Lane.
20. The site forms part of the open countryside which characterises the setting of East Leake. The proposal would result in the loss of a part of this countryside. Paragraph 17 of the Framework recognises the intrinsic character and beauty of the countryside. However, the site is not part of a 'valued landscape' which paragraph 109 of the Framework seeks to protect. And it is acknowledged by the Council that release of greenfield sites, including land in the countryside on the edges of existing settlements in the borough, will be necessary to meet the housing requirements of Rushcliffe.
 21. Therefore, the extent of any harm caused to the rural setting of East Leake through the loss of this area of countryside needs to be evaluated and weighed in the overall planning balance. I note that the Council's concerns do not relate to the impact of the development on the landscape. However, the rural setting of the village comprises its landscape. Therefore, reference to the landscape as well as the visual effects of the proposed development is necessary in order to arrive at a conclusion on its effect on the rural setting.
 22. Policy 10 of the CS states that outside of settlements new development should conserve or enhance landscape character, to be assessed with reference to the Greater Nottingham Landscape Character Assessment (2009) (the GNLCA). The site lies within the Gotham and West Leake Wooded Hills and Scarps draft policy zone (DPZ) defined in the GNLCA. The DPZ is described as having a strong landscape character, within which the distinctive features of relevance to the appeal site include the series of prominent hills and ridges of which Sharpley Hill is one, the Kingston Brook and floodplain, older field patterns particularly those sweeping down the hills and the presence of large commuter settlements, such as East Leake, nestled at the base of the hills.
 23. Policy E1 of the ELNP reinforces the importance of the ridges within the landscape surrounding East Leake, providing a visual connection with the countryside and containing the settlement within the natural bowl it sits in. Accordingly, it seeks protection of the slopes up to the ridges by limiting the heights of any buildings to ensure a green rim of ridges is clearly visible from the village.
 24. The development framework plan submitted with the appeal shows that the extent of built development proposed would be limited to areas of the site below a 60 metre contour. This would be consistent with the extent of the settlement to the west of the site and could be controlled by condition. It would ensure development did not encroach on the scarp slope and would preserve views of the ridge from within the village and surrounding viewpoints consistent with the guidelines in Policy E1. Viewed from Castle Hill and Rempstone Road to the south, due to its position on the lowest part of the site, the proposed development would be substantially screened from view by the buildings of East Leake Academy and residential development to the south of the school, conserving views of the slope and ridge of Sharpley Hill. Viewed from Fox Hill to the west the proposed dwellings would be largely screened by the residential development to the west of the site.
 25. The other key feature in the landscape on the eastern side of East Leake is Kingston Brook flowing through the settlement and its flood plain which draws the countryside into the village centre. However, the appeal site is situated well

to the north of the brook and would not encroach on the river valley or diminish the appreciation of the countryside approaching the heart of the village.

26. The proposed development would result in the loss of parts of a number of fields and therefore would cause harm to the field pattern on the site. However, importantly in terms of the guidance in the GNLCA, it would not affect field patterns and hedgerows on the slopes of Sharpley Hill, which would remain visible above the building line. The Landscape and Visual Impact Assessment⁴ (LVIA) submitted with the appeal acknowledges that within the development area of the site and on Lantern Lane to the south, the adverse impact of the proposed development on the landscape would be of medium magnitude and moderate significance. Although the proposal would result in a fundamental change in the character of the site from open fields to urban development, the significance of this impact is moderated by the presence and visibility of the adjacent residential development and the large scale buildings of East Leake Academy, which already have an urbanising influence on the landscape of the appeal site.
27. At a distance from the site, the LVIA concludes that the impacts of the proposal on the wider landscape reduce to slight-adverse and that the overall impact on the landscape within the DPZ would be minimal. I note that the County Council Landscape Team agree with the conclusions of the LVIA. These conclusions are consistent with my findings above that the appeal proposal would preserve and not cause harm to the key landscape features within the DPZ and the countryside surrounding East Leake.
28. In terms of visual impacts, the LVIA confirms that the proposal would have a major-moderate adverse effect on views of the site from Lantern Lane to the south of the site and a medium-moderate adverse effect on recreational users of Midshires Way to the east and public footpath FP27 where it crosses the site. However, for walkers or cyclists leaving East Leake along these routes the adverse impacts of development would be short lived as they would enter the countryside beyond to the east and north-east within a few minutes of leaving the existing built up edge of the village.
29. In views approaching East Leake along Midshires Way and FP27, such as from the slope and ridge of Sharpley Hill, the proposed development would be visible. However, current views towards East Leake from these receptors encompass the existing urban edge of the village formed by East Leake Academy and the residential development to the west of the appeal site. Whilst the proposal would bring houses closer to these receptors, their visual impact would be mitigated by the proposed buffer of public open space and landscaping along the north and east sides of the site. Indeed, this aspect of the appeal proposal offers the opportunity to improve and soften the visual impact of the eastern edge of East Leake on the adjoining countryside, compared to the somewhat hard urban edge of the existing residential development to the west of the site.
30. I note that the proposal would conflict with the terms of Policy EN20 and criteria c) and f) of Policy HOU2 of the Rushcliffe Borough Council Non-Statutory Replacement Local Plan (2006) (NSRLP), in that it would be development in the countryside not in accordance with the exceptions listed in Policy EN20 and would be an unallocated site extending the built-up area of the

⁴ CD1.6

settlement. However, these policies are not part of the statutory development plan and they pre-date the Framework. They are restrictive policies in respect of development in the countryside and the courts⁵ are clear that the Framework does not include a blanket protection of the countryside for its own sake. Accordingly, I attribute little weight to Policies HOU2 and EN20 in this regard and only in so far as they are consistent with the Framework's objective for planning to recognise the intrinsic character and beauty of the countryside.

31. In conclusion on this issue, whilst the proposed development would have adverse landscape and visual impacts on the appeal site itself, the key landscape characteristics, features and views in the Gotham and West Leake Wooded Hills and Scarps DPZ would be preserved, in particular the scarp slope and ridge of Sharpley Hill and the Kingston Brook Valley. The proposed open space and landscape buffer would also offer the potential to improve the appearance of the existing urban edge of East Leake where it meets the base of Sharpley Hill. Assessed against the GNLCA, therefore, it would conserve and potentially enhance landscape character and, accordingly, there would be no conflict with Policy 10 of the CS. It would also comply with the expectations of Policy E1 of the ELNP and with Policy EN19 of the NSRLP which expects there to be no significant adverse impact on the open nature of the countryside or important landscape features or views. On this basis, I find that the proposal would not cause significant harm to the rural setting of East Leake nor the character and appearance of the surrounding area. Consequently, notwithstanding the loss of open countryside that would result, I find no fundamental conflict with the Framework's objectives for the countryside.

Accessibility

32. East Leake benefits from an extensive range of services and facilities, including a secondary school, two primary schools, a nursery, leisure centre, playing fields and playground, a health centre comprising GP surgery and dentist, optician, library, village hall, place of worship, supermarket, post office, and a series of other shops and services. Most are clustered around the village centre, at the junction of Main Street and Gotham Road, except for the leisure centre, secondary school and Lantern Lane Primary School which are on Lantern Lane, close to the appeal site.
33. Policy H6 of the ELNP allows for housing development outside of the existing village built boundary subject to number of conditions, one of which is that most homes on the site are within 1.25 kilometres (km) walking distance of the village centre. This equates to a 15-20 minute walking distance and is based on distances used to select locations for development in the Greater Nottingham Sustainable Locations for Growth paper (2010) (CD15.4) and the distance to the furthest built up edges of East Leake. Paragraph 38 of the Framework also expects that key facilities such as primary schools and local shops should be within walking distance of most properties for larger scale developments.
34. The Highways SoCG lists the distances from the centre of the appeal site to each facility. These were based on an Ordinance Survey measure and agreed with the Highway Authority. Although disputed by the Borough Council as different from those presented by the appellant during the application process, the differences are mostly minor. The evidence shows that the schools, and

⁵ Telford and Wrekin v SSCLG & Anr [2016] EWHC 3073 (Admin)

leisure centre and a convenience store are all less than 800 metres (m) from the centre of the appeal site. Whilst the junction of Main Street and Gotham Road is just above 1.25km from the centre of the site on foot, the majority of facilities within the village centre would be less than 1.25km away, with a few at or slightly more than 1.25km. Moreover, there is a good quality footway along Lantern Lane and Gotham Road between the appeal site and the village centre, which the submitted plans and S106 undertaking propose to improve by widening. Based on this evidence and my observations on site the journey on foot into the village centre from the appeal site would be comfortably walkable.

35. Whilst other evidence⁶ referred to suggests an acceptable walking distance of 400m to town centres, these are general guidelines set at a national level. Policy H6 of the ELNP establishes an acceptable walking distance of 1.25km in the context of East Leake. Moreover, the evidence of the National Travel Survey⁷ shows that 80% of journeys of less than 1 mile (1.6 km) are walked; suggesting that on average most journeys from the appeal site to facilities in the village would be made on foot.
36. In terms of journeys to work, East Leake has a limited range of employment opportunities and, therefore, the appeal proposals would generate commuting trips to places of work in the larger centres of Loughborough and Nottingham. However, East Leake benefits from good quality public transport links to Nottingham and Loughborough, with the Navyline 1 service running every 20 minutes in both directions, Mondays to Saturdays from early morning to late at night. Bus stops on Gotham Road at the end of Lantern Lane are within an 800m walk of the centre of the appeal site, which the highway authority's guidance⁸ indicates is an acceptable walking distance to bus stops in rural areas. They also provide a good standard of facility for waiting passengers with modern shelters and real time information. The S106 undertaking provides for a bus service contribution which could be used to improve the capacity of this service to support additional demand arising from the proposed development. Whilst I note that the overall walk/bus journey to the centre of Nottingham would be around 1 hour duration, this would still provide the option of a sustainable mode of travel for journeys to work in Nottingham.
37. There are also regular local bus services, including the no. 863 'hopper' service connecting East Leake with facilities in surrounding villages such as Keyworth and Ruddington. The S106 undertaking provides for a bus stop contribution to improve bus access within or close to the development to extend the range of sustainable travel choices. With the support of Travel Plan measures to encourage sustainable travel and planning obligations to provide for necessary capacity improvements in bus services, as proposed, there is no reason why future residents of the proposed development should become reliant on the use of private vehicles for both local and commuting journeys.
38. On this basis, I conclude that the appeal site would be accessible to local services and facilities, including employment opportunities, by a choice of sustainable modes of travel. The proposal would accord with Policy H6 of the ELNP in terms of walking distance to the centre of East Leake. It would also comply with Policy 14 of the CS, which gives priority to development that is or can be made accessible by walking, cycling and public transport. Consequently,

⁶ Manual for Streets (2007) and The IHT: Guidelines for providing Journeys on Foot (2000)

⁷ NTS 2014 (CD14.5) and NTS 2016 (Appendix E to Simon Helme Highways PoE)

⁸ The 6 C's Highway Design Guide (CD14.1 and Inquiry document 12)

the proposal would be consistent with paragraph 30 of the Framework, which supports a pattern of development that facilitates the use of sustainable transport. This conclusion is consistent with the agreed position in the SoCG that East Leake is a sustainable location for growth.

Community Infrastructure

39. Although East Leake has a good range of community infrastructure, there are concerns about the increasing pressure on village facilities from the recent growth in housing, which the proposed development would add to. In response the appellant proposes a series of planning obligations in the S106 undertaking to improve education, healthcare and recreation facilities in the village to mitigate the impacts of the proposal.
40. In terms of recreation, a play area for use by the general public would be included in the on-site open space provision, the location of which would be determined at reserved matters stage. An off-site financial contribution towards the improvement of the artificial grass pitch at East Leake Leisure Centre is also proposed. Based on the evidence in the CIL Compliance Statement⁹ I am satisfied that both of these obligations would be necessary to mitigate the impact of the development on recreational provision in the village and would be fairly and reasonably related in scale and kind to the proposed development. The off-site contribution would also satisfy the pooling restrictions under Regulation 123 of the CIL Regulations 2010.
41. The Parish Council also requested a contribution towards the play area in the centre of East Leake in line with Policy LI in the ELNP. However, this was not identified as a requirement from this scheme by the local planning authority and as such has not been included in the S106 undertaking. Although it remains a development plan requirement, it is not clear that such a contribution would be directly related to the proposed development. In addition, there is little evidence to suggest that the combination of on and off-site recreational provision proposed in the S106 undertaking would be insufficient to support the recreational needs of the proposed development.
42. With regard to education infrastructure, the S106 undertaking proposes a financial contribution towards the provision of 31 secondary school places at East Leake Academy. This would provide the necessary capacity to accommodate the additional pupils projected to arise from the proposed development in line with the funding formula and requirements of the Local Education Authority (LEA). In terms of primary education, the response from the LEA¹⁰ advises that primary schools in East Leake are at capacity and incapable of being further extended beyond current expansion schemes. However, the LEA confirmed that it is bringing forward a new 1 form entry (FE) primary school on land at Rempstone Road, which will be opened in 2022 and will have enough land to expand to 1.5 FE. The S106 undertaking proposes a financial contribution towards the new primary school, which the LEA confirmed would be sufficient in both amount and timing to mitigate the pupil need arising from the appeal scheme as and when it comes forward. Based on the evidence in the CIL Compliance Statement, the education contributions would satisfy the tests for planning obligations and the pooling restrictions set out in the Regulations 122 and 123 of the CIL Regulations.

⁹ Inquiry document 7

¹⁰ CD6.18

43. Turning to healthcare provision, the responses from the Rushcliffe Clinical Commissioning Group (CCG) in September 2013¹¹ and April 2018¹² advise that East Leake health centre is over capacity and no longer fit for purpose and that the CCG is considering options for a new building. The patient capacity at the GP practice is based on a guideline ratio of 1,800 patients per doctor. According to the data provided by the CCG there are 6 doctors at the practice, with 13,647 patients spread over 3 surgery buildings in East Leake, Ruddington and Sutton Bonnington. This equates to a ratio of 2,275 patients per doctor. I note the figures for the practice provided by the appellant¹³, but whilst the patient numbers from the NHS Choices website appear consistent with those provided by the CCG, the number of GPs is significantly different. I find the CCG data to be more reliable in this case. The ratio of 1 doctor/2,275 patients is significantly above the guideline figure. Whilst there may be capacity at other practices in nearby villages, such as in Gotham, the reality is that whilst the patient list in East Leake remains open, the practice cannot reasonably refuse to register new patients. As such further housing in East Leake would exacerbate the capacity problems at the health centre without improvement.
44. Policy 19 of the CS expects development to contribute to the cost of infrastructure required. Policy H1 of the ELNP is clear that residential development above the 400 minimum in East Leake should only be supported where the provision of improved infrastructure, including health centre provision, can be achieved. The S106 undertaking includes a financial contribution towards the provision of a new health facility. However, 5 such contributions have already been secured from obligations attached to other planning permissions in East Leake. In these circumstances under Regulation 123 of the CIL Regulations 2010 the proposed healthcare contribution may not constitute a reason for granting planning permission. Accordingly, I cannot attach any weight to it in mitigating the additional pressure on the health centre in East Leake which would result from the proposed development. The absence of mitigation for healthcare infrastructure therefore conflicts with the development plan and weighs against the proposal.

Highway Safety

45. Access to the site would be provided at two points off an upgraded section of Lantern Lane, taken from the junction with Redwing Close. The new section of road would have a 6.75m wide carriageway and 2m wide footways on either side, designed in accordance with the 6Cs Design Guide. However, the width of Lantern Lane falls below the 6.75m minimum guideline over a 30m stretch between Falcon Way and Sharpley Drive outside the entrance to East Leake Academy. The application the subject of the appeal was refused in part on grounds related to highway safety, due to this substandard road width.
46. However, a series of mitigation measures are proposed to improve the safety of this section of Lantern Lane, including two speed reduction plateaux, an extension of the school keep clear markings and a financial contribution in the S106 undertaking to fund a school crossing patrol. Traffic modelling undertaken as part of the Transport Assessment also demonstrates that the junctions likely to be affected by traffic from the proposed development would all be able to operate safely without the need for further mitigation.

¹¹ Appendix 1 to PoE of Helen White

¹² CD6.20

¹³ Inquiry document 5

47. The SoCG confirms that the main parties now agree a safe and suitable access to the development can be achieved off Lantern Lane. This is supported by the Highways SoCG between the appellant and the Local Highway Authority (LHA), which states in addition that traffic generated by the proposed development can be safely accommodated by the highway network and that the LHA does not object to the proposal, subject to the package of mitigation measures proposed.
48. I have carefully considered the concerns raised by local residents, the Parish Council and Lantern Lane Primary School, particularly about highway safety along Lantern Lane at school opening and closing times. I observed the school opening period during my site visit. Whilst I noted the high volume of traffic and pedestrian movements along Lantern Lane during the school opening period, the speed reduction measures, extended no waiting and school crossing patrol would noticeably improve the current situation. The raised plateaux should improve the safety for school pupils crossing Lantern Lane between the primary school and its annexe, albeit the crossing movements I observed were already safely marshalled by school staff. The widening of the footway on the north side of Lantern Lane would also improve the safety of routes to and from the schools and the bus stops on Gotham Road.
49. I note the requests by the Parish Council for S106 contributions towards the improvement of the Main Street/Gotham Road T-junction and parking facilities in the centre of the village and towards the improvement of Sheep Plank Lane. However, these are not justified by the transport evidence which was before me nor required by the LHA to mitigate the highway impacts of the proposal. Accordingly, there would be no conflict with Policy V2 of the ELNP.
50. Subject to the highway design and mitigation measures proposed, I conclude that the proposal would not result in unacceptable harm to highway safety or to the efficient operation of road network. Therefore, it would accord with Policy 14 of the CS and be consistent with paragraph 32 of the Framework.

Housing supply

51. It is common ground that the Council can only demonstrate a 3.1 year supply of deliverable housing sites. This amounts to a substantial shortfall of 2,709 dwellings against the housing target for Rushcliffe for the period 2017-2022. There is also a significant need for affordable housing in the borough of 463 dwellings/annum (dpa). Not all of this it likely to be viably deliverable across the plan period and the monitoring targets for Policy 3 of the CS set out what is expected to be delivered. However, it is evident that without a deliverable 5 year housing land supply, even the monitoring target of 1,850 affordable housing units for the next 5 year period of 2018-2023 is unlikely to be met.
52. The Council is taking steps to address the shortfall in the delivery of housing by allocating a range of additional sites at the Key Settlements and other villages in the LPP2. Once adopted, along with the strategic sites, these are intended to ensure a rolling 5 year supply of deliverable housing over the plan period. However, at this stage the LPP2 has not yet been submitted for examination. A large number of the sites proposed in the LPP2 are located within the Green Belt where exceptional circumstances must be demonstrated for them to be released for housing and included in the adopted Plan. Furthermore the timescale for the delivery of these sites will need to be established at the local plan examination to understand their contribution to the 5 year supply. There

was limited information before me on this point, but most of the sites are projected to start delivering dwellings in April 2020¹⁴. It was agreed by the Council at the inquiry that the LPP2 is unlikely to be adopted before April 2019, allowing only a 12 month period for full planning permission, discharging of conditions, site preparation and securing housebuilders on the proposed sites, which is at best optimistic. Therefore, whilst I recognise the Council's progress in addressing the delivery shortfall and the importance of a plan-led process for identifying new sites, a significant improvement in the deliverable supply appears unlikely in the short term.

53. The appeal proposal would provide up to 195 dwellings of which 39 units (20%) would be affordable housing to be secured through the S106 undertaking. Not all of these would be built within the next 5 years allowing for the time required to secure a detailed planning permission. Nevertheless, the scheme would make a useful and timely contribution to addressing the shortfall in the supply of both market and affordable housing in Rushcliffe. Given the size of the shortfall and the imperative in paragraph 47 of the Framework to boost significantly the supply of housing, I attach significant weight to the contribution the proposed development would make to the provision of new housing.

Other Matters

54. I acknowledge the concerns expressed in representations about potential risks to flooding from surface water run-off and note the photographic evidence of previous flooding events in the village. However, the appeal site is located within Flood Zone 1 where there is a low probability of flooding. Neither the Environment Agency (EA) nor the Lead Local Flood Authority have raised objection to the proposal. A sustainable drainage scheme (SuDS) is proposed to manage surface water run-off on site and avoid flooding from this source, the details of which could be secured by condition. The S106 undertaking also proposes to establish a management company to oversee the future maintenance of the SuDS as part of the proposed open space on site. Accordingly, the proposal includes measures to ensure flood risk is not increased elsewhere, in line with paragraph 103 of the Framework.
55. Whilst there is a history of gypsum mining in the vicinity of the site and evidence of gypsum beneath the southern part of the site, the response from British Gypsum confirms no intention to mine these reserves or that they would be sterilised by the proposed development. There would therefore be no conflict with criterion (d) of Policy H6 of the ELNP. Previous mine workings appear to be outside the area proposed for built development. On this basis, I am satisfied that further detailed survey work to establish a suitable buffer zone could be undertaken at reserved matters stage without risk to the deliverability of the proposed scheme.
56. Representations refer to the potential impact of the proposal on protected species and habitats. The SoCG confirms that there are no statutory ecological designations on site or potential to impact such sites elsewhere in the borough due to their distance from the appeal site. Whilst the proposal would result in the loss of semi-improved grassland, the main parties agree that the large area of public open space proposed offers the potential for biodiversity gains. The Ecological Impact Assessment submitted with the application found no firm evidence of protected species on the site, but recommended preservation of

¹⁴ Appendix B: Housing Trajectory to LPP2 (CD8.8)

features such as hedgerows, ditches and ponds where possible to enhance biodiversity on site and updated surveys prior to any development commencing.

Planning Balance and Conclusion

57. Paragraph 49 of the Framework provides that housing applications should be considered in the context of the presumption in favour of sustainable development. At this appeal the Council is unable to demonstrate a 5 year supply of deliverable housing sites. Therefore, relevant policies for the supply of housing are out of date and, accordingly, the fourth bullet point of paragraph 14 of the Framework of the presumption in favour of sustainable development is engaged as the basis for the decision in this case. There are two indents to consider under the fourth bullet point of paragraph 14. Under the second indent, there are no specific policies in the Framework which indicate the development should be restricted in this appeal. Accordingly, the 'tilted balance' in the first indent applies, under which it is necessary to consider whether the adverse impacts of allowing the appeal would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole.
58. I have concluded that the appeal proposal would make a useful and timely contribution to addressing the shortfall in market and affordable housing in Rushcliffe over the next 5 years and beyond. I attach significant weight to this as a social benefit, given the need for housing, the scale of the current shortfall in delivery and the uncertainty over how soon it might be addressed through the LPP2. The proposed development would also bring economic benefits to the area, including 154 construction jobs, increased spending to support services in East Leake and a boost to Council Tax. These are quantified in the SoCG and I attach at least moderate weight to these as a benefit, given their scale and potential impact. The main parties also agree that the proposal would offer environmental benefits in the form of the amount of public open space proposed and the biodiversity enhancements which would flow from ecological management of the SuDS and open space. Again these should attract moderate weight in the planning balance.
59. In terms of adverse impacts, whilst the proposal would diverge from the spatial distribution of housing set out in Policy 3 of the CS, it would not materially undermine the overall spatial strategy for Rushcliffe. East Leake is a Key Settlement for growth and there are plans to increase housing provision in the Key Settlements and beyond the MBUA as part of the LPP2 to meet the housing requirements of the borough. In the absence of a 5 year housing land supply, Policy 3 is out of date as a policy for the supply of housing and in order to address the shortfall the housing distribution set out in it is changing. Accordingly, I attach little weight to the proposal's conflict with Policy 3 for the purposes of this appeal.
60. The development would result in the loss of countryside on the appeal site with moderate adverse visual and landscape impacts, to which I attach moderate weight in the planning balance. In addition, the inability of the scheme to mitigate its impacts on health infrastructure, due to pooling restrictions on further financial contributions, conflicts with Policy H1 of the ELNP and would place additional pressure on local health facilities, in particular the East Leake health centre. Although there may be capacity at other nearby surgeries, I attach moderate weight to the harm which would be caused in East Leake.

61. The impacts of the proposal on transport and highway safety, education and outdoor recreation infrastructure, flood risk and drainage would be mitigated by the proposed off-site highway works and SuDs, and the contributions to improve bus services and bus stops, outdoor recreation and education infrastructure. Accordingly, these are all neutral factors in the tilted balance.
62. Taking everything into account including all other material considerations, I conclude that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits of the proposed development when assessed against the policies in the Framework as a whole. Therefore, the proposal would constitute sustainable development.
63. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Although the proposed development would fail to comply with certain aspects of the spatial strategy set out in Policy 3 of the CS and of Policy H1 of the ELNP, I have concluded that it would not materially undermine the overall spatial strategy for the borough. In the absence of a 5 year supply of deliverable housing sites in Rushcliffe, the presumption in favour of sustainable development in paragraph 14 of the Framework is a material consideration, which in this case warrants a decision other than in accordance with the development plan.
64. For the reasons given above I conclude that the appeal should be allowed, subject to the conditions specified below and the S106 undertaking.

Conditions and Planning Obligation

65. The Council and the appellant submitted a set of planning conditions which were discussed at the inquiry. I have considered which conditions are required having regard to the tests contained in the Framework and the Planning Practice Guidance. I have revised some of the wording, either as discussed at the inquiry or in the interests of clarity and enforceability.
66. I have attached conditions setting out the limits for the development and to relate the development to the submitted plans in the interests of certainty and good planning. This includes reference to the development framework plan and the 60 metre contour line, which define the limits of built development and are necessary to control landscape and visual impact. It is also necessary to set time limits for the submission of reserved matters and implementation of the permission in accordance with the requirements of the Act.
67. Conditions specifying the details of the reserved matters to be submitted for approval are necessary to ensure control over the impact of the development on the character and appearance of the surrounding area in terms of its appearance, landscaping, layout and scale, including external materials. A condition specifying the completion of the site access and off-site highway works to Lantern Lane and Gotham Road in accordance with the submitted plans is also necessary for highway safety and to encourage walking and cycling.
68. Conditions to ensure trees and hedgerows on site are protected during construction and ensure the ongoing maintenance of the landscaping scheme, are necessary to conserve and enhance landscape character and biodiversity. I

- have also specified conditions for precautionary ecological mitigation measures and a scheme of archaeological investigation to ensure there is no net loss of biodiversity and that the site's archaeological interest is recorded.
69. A construction method statement including controls over hours of site operation and construction traffic routing is necessary and reasonable to safeguard the amenities of the occupiers of surrounding properties and ensure highway safety. A condition specifying the details of surface water drainage to be agreed with the LPA is necessary to ensure proper drainage of the site and prevent flooding from surface water run-off. A Travel Plan is also both necessary and reasonable to encourage occupiers of the development to use sustainable modes of travel and reduce car journeys.
70. A condition is necessary to ensure the housing mix of the scheme meets the needs of the local housing market. A noise condition is required to ensure dwellings are insulated from aircraft noise from flights into the East Midlands airport. Finally a condition to ensure a buffer zone from nearby mineral workings is required to avoid subsidence and protect residential amenity.
71. The permission is also subject to the signed S106 undertaking, dated 22 June 2018, to secure the provision of affordable housing, public open space and a SuDS on site and contributions to primary and secondary school places, outdoor sports facilities, bus services, a school crossing patrol, road safety measures and footpaths off site. The obligations are in agreement with the related requirements of the development plan and are required to mitigate impacts. As such they are justified as necessary to make the development acceptable in planning terms. They are also directly related to the development and fairly and reasonably related in scale and kind to it. Accordingly, the deed meets the tests set out in paragraph 204 of the Framework and in regulation 122 of the CIL Regulations 2010. There is also no conflict with CIL Regulation 123(3) in respect of pooled contributions, other than the contribution towards healthcare facilities. Although the healthcare obligation remains within the signed and certified undertaking, as it is not compliant with Regulation 123 I have not given weight to it in reaching my decision on this appeal.

M Hayden

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall comprise no more than 195 dwellings.
- 2) Save as varied by other conditions the development hereby permitted shall accord generally with the parameters set in the Development Framework Plan (dwg. no. a 5409_202_A) and shall not extend building beyond the 60 metre contour line. The development hereby permitted shall accord with the Proposed Site Access Arrangements (drg. no. 1499/16 F).
- 3) 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 takes place and the development shall be carried out as approved.
- 4) Application for approval of the reserved matters, within the application site boundary as set out in plan ref. 5409_200, shall be made to the local planning authority not later than 3 years from the date of this permission.
- 5) The development hereby permitted shall begin not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 6) No dwelling shall be occupied until the following works have been completed in accordance with the following plans:
 - i. Site access arrangements as shown on drawing no. 1499/16 F;
 - ii. Traffic calming and other Highway Improvements to Lantern Lane as shown on drawing no. 1499/18/B,
 - iii. Footway improvement works on Lantern Lane as shown on drawing no. 1499/20;
 - iv. Provision of a new combined cycle/footway between Lantern Lane and East Leake Village Centre as shown on drawing no. 1499/22.
- 6) The details required to be submitted as part of the reserved matters in compliance with condition 1) shall include:
 - i. A detailed layout plan of the whole site;
 - ii. The siting, design and external appearance of the proposed buildings;
 - iii. A detailed landscaping scheme, including for the proposed public open space;
 - iv. Cycle and bin storage facilities;
 - v. Sections and cross sections of the site showing the relationship of the proposed development to adjoining land and premises;
 - vi. The means of enclosure to be erected on the site;
 - vii. The finishes for the hard-surfaced areas of the site;
 - viii. The layout and marking of car parking, servicing and maneuvering areas;
 - ix. Plans, sections and cross sections of any roads or access/service roads or pedestrian routes within the application site, and this shall include details of drainage, sewerage and lighting; and
 - x. The means of access within the site.

The development shall be carried out only in accordance with the approved details.
- 7) Prior to construction of the buildings hereby permitted reaching damp proof course level, details of the facing and roofing materials to be used on all

external elevations shall be submitted to and approved in writing by the Local Planning Authority, and the development shall only be undertaken in accordance with the materials so approved.

- 8) All planting, seeding or turfing comprised in the detailed landscaping scheme submitted and approved in compliance with condition 6) shall be carried out in the first planting season following the substantial completion of the development. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 9) No site clearance, preparatory work or development shall take place until the existing trees and/or hedges which are to be retained (*as detailed in the Haydens Arboricultural Impact Assessment September 2017*) have been protected in accordance with the measures detailed in that report, and that protection shall be retained for the duration of the construction period. No materials, machinery or vehicles shall be stored or temporary buildings erected within the perimeter of the fence, nor shall any excavation work be undertaken within the confines of the fence without the written approval of the Local Planning Authority. No changes of ground level shall be made within the protected area without the written approval of the Local Planning Authority.
- 10) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The Statement shall provide for;
 - i. Routing agreements for construction and delivery vehicles;
 - ii. Access and parking of vehicles of site operatives and visitors;
 - iii. Loading and unloading of plant and materials;
 - iv. Storage of plant and materials used on constructing the development;
 - v. The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - vi. Wheel washing facilities and/or other measures to prevent mud and other material migrating onto the highway;
 - vii. Measures to control the emission of dust and dirt during construction;
 - viii. Measures for the reduction of noise and vibration during construction;
 - ix. A scheme for recycling/disposing of waste resulting from demolition and construction works;
 - x. Hours of operation, including for deliveries, demolition and construction works; and
 - xi. A scheme to treat and remove suspended solids from surface water run-off during construction.

The approved Statement shall be adhered to throughout the construction period.

- 11) Prior to the commencement of development, a detailed surface water design and management plan shall be submitted and approved by the Local Planning Authority in writing. This plan must:
 - i. Follow the principles in Flood Risk Assessment (LK Consult Limited, September 2017);
 - ii. Neither increase flood risk to the surrounding areas nor introduce flood risk to the proposed development;

- iii. Ensure an 8m easement remains to allow future access and maintenance to the ordinary watercourses that cross the site;
- iv. Provide evidence in the form of BRE 365 compliant infiltration tests to determine whether or not infiltration can form part of the proposals;
- v. Follow the guidance and principles of CIRIA C687 and C897;
- vi. Provide a detailed proposal for the ownership and maintenance of all and any sustainable drainage system features that will ensure the effective operation of such features for the lifetime of the development;
- vii. Provide details of exceedance flow paths to ensure these do not affect properties;
- viii. Provision to prevent the unregulated discharge of surface water from the driveways and parking areas to the public highway, such provision to be retained for the lifetime of the development.

The development shall be carried out only in accordance with the approved plan.

- 12) No development shall commence until details of a scheme of archaeological investigation shall have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a programme for a watching brief to be carried out during construction of excavation work on site, by a professional archaeologist or archaeological organisation. The development shall be implemented in accordance with the approved scheme.
- 13) No dwelling hereby permitted shall be occupied until a residential travel plan has been submitted to and approved in writing by the local planning authority. The residential travel plan shall include details of:
 - i. Predicted travel to and from the site and targets to reduce car use;
 - ii. Details of existing and proposed transport links, to include links to pedestrian, cycle and public transport networks;
 - iii. Proposals and measures to minimise private car use and facilitate walking, cycling and use of public transport;
 - iv. Timetable for implementation of measures designed to promote travel choice;
 - v. Plans for annual monitoring and review for a period of 5 years at which time the obligation will be reviewed by the local planning authority;
 - vi. Details of marketing and publicity for sustainable modes of transport to include site-specific welcome packs to include walking, cycling, public transport and rights of way information.
 - vii. Details of the appointment of a travel plan coordinator.

The travel plan shall be implemented in accordance with the approved details and timetable.

- 14) The development shall be carried out in accordance with the precautionary recommendations detailed in the Ecological Impact Assessment dated September 2017 and, in the event that the planning permission is not implemented within 2 years of the date of the planning permission being granted a further protected species survey shall be carried out and submitted to the Local Planning Authority. Any mitigation measures required shall be implemented in accordance with the recommended details to the satisfaction of the Local Planning Authority.

- 15) Before any work is carried out to any of the trees and hedgerows on the site, a survey shall be carried out and submitted to the Local Planning Authority to establish the existence of nesting birds. In the event of evidence of nesting birds being found, no works to the trees shall be carried out between the beginning of March and the end of August.
- 16) The mix of market housing within the site shall comply with the housing mix set out in East Leake Neighbourhood Plan Policy H3 'Types of Market Homes' unless evidence can be provided to demonstrate that this would not meet the needs of the local housing market.
- 17) Prior to the commencement of the development hereby approved, a scheme to demonstrate that the internal noise levels within the residential units will conform to the guideline values for indoor ambient noise levels identified by BS 8233 2014 - Guidance on Sound Insulation and Noise Reduction for Buildings, shall be submitted to and approved in writing by the Local Planning Authority. The work specified in the approved scheme shall then be carried out in accordance with the approved details and be retained thereafter.
- 18) Prior to the commencement of the development hereby approved a detailed geotechnical and mining study shall be carried out and an acceptable "buffer zone" to the former mine workings shall be submitted to and approved by the Local Planning Authority. The "buffer zone" specified in the approved scheme shall be implemented in accordance with the approved details and retained thereafter.

Richborough Estates

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

| | |
|---------------------------|--|
| Jonathan Mitchell | of Counsel, instructed by Helen White, Rushcliffe Borough Council (RBC) |
| He called: | |
| John King MRTPI | Planning Policy Officer, RBC |
| Helen White BA (Hons) MSc | Area Planning Officer, RBC |

FOR THE APPELLANT:

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| Sarah Reid | of Counsel, instructed by Stuart Carvel, Gladman Developments Ltd. |
| She called: | |
| Charles Crawford MA (Cantab) DipLA CMLI | Director, LDA Design |
| Simon Helme BEng (Hons) MSc MCIHT | Director, Ashley Helme Associates |
| Stuart Carvel MTCP (Hone) MRTPI | Planning Manager, Gladman Developments Ltd. |

INTERESTED PERSONS:

| | |
|---------------|--|
| Conrad Oatey | Chairman, East Leake Parish Council (ELPC) |
| Carys Thomas | Chair of Planning Committee, ELPC |
| Bev Cameron | Admissions Officer, Education, Nottinghamshire County Council (NCC) |
| Andrew Norton | Development Contributions Officer, NCC |

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 List of appearances for Gladman Developments Ltd.
- 2 List of appearances on behalf of Rushcliffe Borough Council.
- 3 Opening Submission on behalf of the Appellant, 19 June 2018.
- 4 Opening Statement of Rushcliffe Borough Council (RBC), 19 June 2018.
- 5 Note from appellant regarding Doctor's Surgeries in or near East Leake.
- 6 Email correspondence between Turley and Nottinghamshire County Council (NCC) regarding education contributions, dated 12 and 15 June 2018.
- 7 Planning Obligations and CIL Compliance Statement, dated 14 June 2018.
- 8a Email from Gladman Developments Ltd (GDL) to NCC regarding education contribution, dated 19 June 2018.
- 8b Email from NCC to GDL regarding education contribution, dated 20 June 2018.
- 9 Summary of timescales for delivery of allocated sites in Local Plan Part 2, from RBC.
- 10 Extract from RBC Housing Site selection report with calculation of anticipated 5 year housing land supply at 1 April 2019, dated April 2018.
- 11 Extract from Aecom report with landscape and visual sensitivity assessment for land north of Lantern Lane.
- 12 Extract from 6Cs Design Guide (addition to CD14.1).
- 13 Appellant's calculation of 5 year housing land supply against Policy 3 requirement 2019-2024.
- 14 Extract from NHS Choices website regarding GP patient registers.
- 15 No. 863 Ruddington-East Leake-Keyworth bus timetable, 15 June 2018.
- 16 Draft list of conditions.
- 17a Closing statement of Rushcliffe Borough Council, 22 June 2018.
- 17b Extract from Part 3 of National Health Service (General Medical Services Contracts) Regulations 2015.
- 18 Court of Appeal judgement Cherkley Campaign Limited v Mole Valley District Council v Longshop Cherkley Court Limited [2014] EWCA Civ 567.
- 19 Closing submissions on behalf of appellant, 22 June 2018.
- 20 Certified copy of signed S106 unilateral undertaking, dated 22 June 2018.