



Appeal Decision

Hearing held on 26 July and 24 October 2018

Site visits made on 26 July and 25 October 2018

by J J Evans BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 March 2019

Appeal Ref: APP/X2410/W/17/3186714

Land off Burton Lane, Wymeswold, Loughborough

- 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 Avant Homes against the decision of Charnwood Borough Council.
 - The application Ref P/16/1852/2, dated 11 August 2016, was refused by notice dated 12 April 2017.
 - The development proposed is outline planning application (with all matters other than means of access reserved) for residential development of up to 25 dwellings with associated car parking, landscaping, public open space and vehicular access from Burton Lane.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The original application was for outline planning permission, and the application form makes it clear that approval was sought at this stage for access matters only. Drawings submitted with the application show a proposed estate layout upon an illustrative masterplan (drawing reference AND0156 IM 500 A1), and I have had regard to such matters in my decision. Notwithstanding the illustrative information provided, with the agreement of the main parties I have determined the appeal on the basis that approval is sought at the outline stage only for access, with all other matters to be reserved for future consideration.
3. The Church of St Mary is a grade I listed building within the Wymeswold Conservation Area. As required by the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) I have paid special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses, and of preserving or enhancing the character or appearance of a conservation area.
4. The original application description stated that vehicular access was to derive from Burton Road, rather than Burton Lane. As the parties have confirmed that the access is to be from Burton Lane, I have referred to this above.
5. During the appeal process a signed and dated S106 Deed of Agreement was submitted to address one of the Council's reasons for refusal. The agreement

secures affordable housing provision and other contributions. I return to the agreement later in this decision.

6. The site can be seen from the public realm, with a public footpath going across the field. With the agreement of those present at the hearing I undertook unaccompanied site visits, both from within the site and around it.
7. The revised National Planning Policy Framework (the Framework) came into force on 24 July 2018. The hearing opened on 26 July 2018, and was adjourned that day to provide an opportunity for the parties to comment on the policies within the Framework, particularly as the Council state they now have a five year housing land supply (5YHLS). The hearing resumed on 24 October 2018. Following the discussions that took place, the Council were provided with an opportunity to provide comments on a number of matters, including the deliverability of some large sites. The appellant was provided with an opportunity to comment on this submission, and the hearing was closed on 18 January 2019.
8. A further revision to the Framework was published on 19 February 2019. The parties were given an opportunity to comment upon the policies within it, and I have had regard to those made in my decision.

Main Issues

9. The main issues are *firstly*, whether the proposed housing would be in a suitable location having regard to local and national policies for sustainable development; *secondly*, whether the proposal makes adequate provision for affordable housing and for mitigating any adverse impact the scheme would have upon local services and infrastructure; *thirdly*, the effect of the proposal on the character and appearance of the area, having particular regard to the desirability of preserving the setting of the listed church and that of the Wymeswold Conservation Area; and *fourthly*, whether there are any other material considerations which would justify the scheme being determined other than in accordance with the development plan.

Reasons

Location

10. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework is one such consideration, within which it is made clear that the development plan is the starting point for decision making.
11. Policy CS1 of the Charnwood Local Plan Core Strategy (2015) (CS) sets out the Council's development strategy. The thrust is one of urban concentration and regeneration, with a priority for growth in the city, main towns and named settlements, thereby reflecting objectives of the Framework. Within this policy Wymeswold has been identified as an "Other Settlement". Such villages have four or more key services and facilities, and are considered to be generally able to serve some day to day needs of the people who live there. The policy makes provision for at least 500 new homes in these other settlement villages through small-scale development opportunities within defined limits, with 780 new homes already provided in these villages.

12. The appeal site would be outside the settlement boundary identified for the village in the Council's Local Plan (2004) (LP) under LP Policy ST/2. Both the main parties were in agreement that only limited weight could be attributed to LP Policy ST/2, as it identifies settlement boundaries that have not been reviewed since 2004, and is therefore considered to be out-of-date.
13. The main parties are also in agreement that the village has a variety of services and facilities. Future occupiers of the dwellings would have the benefit of being very close to the village's sports fields and buildings, and a number of other facilities would be within walking distance, including the church, community hall, convenience store and primary school. It may be the case that the additional new households would make a small contribution to sustaining the existing services in the village, although given the number of new households such a benefit would be modest.
14. The proximity of a nearby business park that accommodates a mix of uses would provide possible employment opportunities for future residents. From the evidence provided by those at the hearing there are few current vacant premises within the business park and the existing uses include offices, storage and distribution, as well as leisure. As such a range of job opportunities would be available nearby, and this would be another positive aspect of the scheme, although I appreciate that not all future residents would or could find local employment.
15. Thus, with regard to the development hierarchy of CS Policy CS1, the existing village services would meet some day-to-day needs of future residents. Notwithstanding this, there would be a reliance for both existing and future occupiers to travel out to the main settlements to access health services, secondary education provision, main food and comparison shops. These journeys could occur by use of the Monday to Saturday bus service, but what is more likely given the level of service available during the evenings and on Sundays, by use of the private car. This increased use of the private car would therefore be an unsustainable outcome that weighs against the scheme.

Contributions

16. A reason for refusal cited by the Council was the absence of a signed planning obligation to deliver an appropriate level of affordable housing and the contributions necessary to make the development acceptable in planning terms. Since the refusal of the original application the main parties have completed an agreement. I have considered this agreement in light of the statutory tests contained in the Community Infrastructure Levy Regulations (2010 as amended) and with regard to the requirements of the Framework.
17. The provision of affordable housing would be in accordance with the requirements of CS Policy CS3. This policy requires amongst other things the delivery of essential infrastructure and an appropriate mix of types, tenures and sizes of homes, having regard to identified housing needs and the character of the area. The obligation to provide these affordable homes would be fairly and reasonably related to the development, and the provision of affordable homes would be a benefit of the proposal.
18. The agreement also provides for a number of other contributions. However, the education contribution is no longer required, although it remains in the agreement. The village already benefits from extensive playing fields,

community land and associated sports/community halls, and it has not been demonstrated that the provision of additional public open space complies with the statutory tests. The provision of a travel plan, sustainable transport pack, and a management plan would be matters that could be dealt with by conditions, whilst payments for the costs of monitoring are not justified as part of the general statutory duty of planning control. Consequently, there are a number of contributions that are not proven to be either directly related to the proposed development or necessary to make the development acceptable in planning terms.

19. Moreover, I have some concerns about the agreement itself, and whether it could be relied on to secure the contributions as it contains a number of hand-written alterations that none of the parties at the hearing could attribute to an author. There was also a missing date within one of the schedules. As I am dismissing the appeal for other reasons I have not pursued these matters further with the main parties.
20. As it stands a number of the obligations do not meet the statutory tests. Of those that do, I am unable to give them weight in my consideration of the appeal as the agreement could not be relied upon to secure the contributions and affordable housing.

Character and Appearance

21. Positioned to the southern side of the River Mantle, the appeal site is part of a large sloping field that is farmed for arable. Along much of both sides of the river bank are lines of mixed trees, and these form part of the northern boundary to the field. In addition to these trees there are also mature hedgerows to the other boundaries of the site.
22. As recognised within the Wymeswold Conservation Area Character Appraisal (2009), the Village Design Statement (2002) and the Council's Landscape Character Assessment (2012), a distinct feature of the village is that it lies in a low bowl, with sweeping views into the settlement from the surrounding high land. One such panorama is on the approach to the village from the south, of which the appeal site comprises part. From this aspect, the river and the buildings along Hoton Road and Brook Street create a defined edge to the settlement, with there being a clear transition between the village and the countryside.
23. Given the topography, a key landmark feature of the area is the tower of the Church of St Mary. A feature of the church is its position upon a mound within the village. Not only does this mound enhance the physical presence of the church within the settlement, but it enables the tower to break the skyline from a number of public vantage points, both within the village and the surrounding countryside. The deliberate dominance of the church within the area is part of the special interest of this listed building, reflecting its social and community importance. When the village is viewed from the south, it is the tower that draws the eye, with no other buildings having such a focal prominence. This wide-ranging prominence of the church in the surrounding landscape is part of the significance of this listed building.
24. Furthermore, the importance of the church is reflected in the concentration of the high quality historic houses and buildings around it, with the street pattern having a compact rectangular form with the church on its mound at its centre.

- These features are part of the significance of the conservation area. This and the presence of the river and Brook Street have given the village a distinct form that includes the provision of a defined southern edge, an edge that has been maintained despite the presence of modern estates and infill.
25. The red site line follows the field boundaries and although scale and layout are reserved matters, the appellant's intention would be to concentrate the development upon the lower land near to the river, so as to minimise interruption of the skyline. Notwithstanding this, the proposal would harmfully intrude residential development into the expansive agricultural landscape that is such an attractive feature of the area. The rectilinear form of the village would be eroded, and this intrusion would be exaggerated, if as the appellant indicates, there would be strong frontages to Burton Lane. Whilst the scheme would include the enhancement of the river corridor and retain existing trees and hedges to mitigate visual impact, the presence of additional landscaping along the river would serve to separate the estate from the village. As such the houses would not be infill development but would appear incongruously disassociated from the settlement.
 26. Despite the retention and enhancement of the site's green boundaries, how the visual impact of the dwellings upon a sloping site would be mitigated has not been demonstrated in detail. Whilst this would be a reserved matters concern, whether it would be houses or bungalows, the rising topography of the site would be such that the dwellings would have to step up the hillside away from the low land. This and the possible use of landscape modification would exaggerate the discordant relationship of the development with the village.
 27. For these reasons the development would significantly harm the character and appearance of the area. The projection of the dwellings beyond and above the river, into the surrounding field would be a discordant addition that would have little harmony with the form of the village or its relationship with the surrounding countryside. The scheme would not erode the isolated location of the village in the landscape, but the new estate would form an incongruous cluster of development.
 28. I appreciate there have been twentieth century houses and bungalows erected along Hoton Road and within Swifts Close, including further modern infill at Mantle Croft. These developments separate the appeal site from the conservation area, and consequently there is a setting of modern development to the historic core of the village. As such the scheme would not significantly harm the setting of the conservation area.
 29. Notwithstanding this, these modern developments have respected the essential form of the village, as well as maintaining the prominence of the church tower's projection above the skyline and the focal point that it creates on approaching the village from the higher ground to the south. Given the position of the housing on rising land and the poor relationship of the site to the surrounding development, the estate would harmfully draw the eye. The development would form a prominent and anomalous extension to the village that would harmfully detract and erode the dominance of the church within the landscape.
 30. The Framework requires that when considering the impact of proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, irrespective of whether the harm would be substantial or less than substantial to its significance. Any harm or

loss to the significance requires clear and convincing justification. The sweeping rural setting to the church and the dominance of the tower within it would be eroded. Given the extent of the scheme relative to the size of the setting of the listed church this harm would be less than substantial. Notwithstanding this, less than substantial harm does not necessarily equate with less than substantial planning objection, especially where the statutory expectations of the Act have not been met.

31. The scheme would provide a mix of housing, including affordable homes, and this would be a significant public benefit. However, given my concerns regarding the legal agreement, the provision of this housing and public open space could not be assured. There would be an economic benefit from the construction of the scheme and from the presence of future residents, and wildlife enhancements to the river would have an environmental benefit. These would be public benefits of the scheme. However, these public benefits would be limited and would not outweigh the harm I have found.
32. Thus the proposed housing would fail to preserve the character and appearance of the area, nor preserve the setting of a listed church. This would be contrary to CS Policies CS1, CS2, CS11, CS12, CS14 and CS25, and LP Policy EV/1. These policies seek amongst other things sustainable and high quality development that respects and enhances the character of an area, including that of the landscape, and the conservation and enhancement of historic assets and their settings, thereby reflecting objectives of the Framework.

Housing Land Supply and Planning Balance

33. There is no agreement between the main parties with regard to the 5YHLS, with a significant discrepancy existing that hinges primarily upon the deliverability of large sites with outline planning permission.
34. The Council have provided evidence of the progress being made towards the deliverability of housing sites, including details of applications and decisions, site assessment work, constraints and infrastructure provision. However, the information provided regarding the deliverability of the Peashill Farm site (planning ref: P/17/1578/2) shows that the site has only recently come under the control of a house builder.
35. Having regard to the disagreement of the parties concerning the 5YHLS, given the requirements of paragraph 11 of the Framework, I need to ascertain whether the absence of supply would be determinative in my decision. This paragraph sets out the presumption in favour of sustainable development, and the requirements for decision making are set out in sections (c) and (d). As referred to above, LP Policy ST/2 is out-of-date, and so the requirements of section (d) and its sub-sections (i) and (ii) need to be considered. I shall undertake this assessment in my overall planning balance.

Other Matters

36. The main parties have provided several appeal decisions in support of their cases. Some of these are for many more houses than are the subject of this appeal, others are in different Council areas, whilst others were determined before the revised Framework. Of those schemes that were within the Council's area I do not have the full planning history of these appeals to ascertain if they form a direct comparison to the proposal. With regard to the

appeal decision within Wymeswold (ref: APP/X2410/A/13/2194622), the site and its relationship to the village is very different to the proposal before me. Whilst I have had regard to the other developments referred to, I have based my decision on the merits of this particular case, in accordance with the requirements of the current development plan and all other material considerations.

37. Local residents have raised a number of other matters, including loss of biodiversity and agricultural land, traffic and parking, health and well-being impacts, loss of views, and increased noise. Some of these concerns are not directly connected with the planning considerations of the proposal before me, and of those that are, following my findings on the main issues I have no need to consider them further.
38. Finally, the appellant has raised a number of issues regarding the Council's handling of the application and appeal. I appreciate such matters would be of concern but they have to be pursued by other means separate from the appeal process and are not for me to consider with regard to the planning considerations of this case.

Planning Balance and Conclusion

39. Given my findings regarding the legal agreement, the public benefits of the scheme would derive from the provision and retention of landscaping and enhancement to the river, as well as economic benefits from the construction of the dwellings and from the presence of additional future residents. These residents would also benefit from the services and facilities in the village that could provide for some day-to-day needs, and there could be the opportunity for some to find local employment.
40. However, in this case the proposal would result in significant harm to the character and appearance of the area and to the setting of a designated heritage asset. Whilst acknowledging the benefits arising from the development, even if I were to conclude there is a shortfall in the 5YHLS, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.
41. Thus, for the reasons given above and having considered all other matters raised, the appeal is dismissed.

J J Evans

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Matthew Pearce	Avant Homes
G Armstrong	Agent
Alex Munro	Agent
Joanna Burton	Agent

FOR THE LOCAL PLANNING AUTHORITY:

Ms Doyle	Planning Officer
Reddy Nallamilli	Principal Planning Officer
Richard Brown	Principal Planning Officer
Donella Wood	
Andrew Tyrer	Development Contributions Officer

INTERESTED PERSONS:

Maria McKean
John Hill
R Jane
Maria Jane
Philip Hutchinson
Dave Clarke
Gill Clarke
Norman Bryan-Peach
John Howgate
Tiffany Fontenla
Sonia Bate
Robert Shields
Cynthia Hallam
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Mrs J James

Susan Crinage

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Sandi Lowell

Michael Windsor

Marilyn Rowley

Stephen Mair

Grant Stevenson

Jonathan Protheroe

Helen Pragley

Greg Hutton

Andy Gore

David Clarke

Harry Jackson

Richborough Estates

DOCUMENTS RECEIVED AT THE HEARING

Day 1	
1	Charnwood Borough Housing Supply as at 31 st March 2018
2	5 Year Land Supply 2018-2023
Day 2	
3	Appeal decision ref APP/X0360/W/15/3097721
4	Charnwood Local Plan Core Strategy (2015)
5	Target and actual completions table
6	Leicestershire County Council statement dated 13 th July 2018 and associated emails (last date 4 th October 2018).
7	Parish Council statement
8	Cllr Bokor's statement
9	Land off Burton Lane photos

DOCUMENTS RECEIVED AFTER THE HEARING

1	Supplementary Evidence by Charnwood Borough Council dated 9 th November 2018
2	Appellant's review of Council's Further Evidence received 16 th November 2018
3	Letter dated 5 March 2019 from Charnwood Borough Council
4	Email dated 4 March 2019 from Alex Munro