
Appeal Decision

Hearing opened on 11 June 2014

Site visits made on 24 July 2014

by Richard Clegg BA(Hons) DMS MRTPI

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

Decision date: 4 December 2014

Appeal Ref: APP/M2460/A/14/2213689

Land rear of 44-78 Ashby Road, Hinckley, Leicestershire, LE10 1SL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr J Kent against the decision of Leicestershire County Council.
 - The application Ref 2013/0862/04, dated 3 September 2013, was refused by notice dated 22 January 2014.
 - The development proposed is described as 'residential development'.
 - The hearing was conducted over two days, 11 June and 24 July 2014.
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Decision

1. The appeal is allowed and planning permission is granted for residential development including the importation of material and infill engineering works to a former clay pit on land rear of 44-78 Ashby Road, Hinckley, Leicestershire, LE10 1SL, in accordance with the terms of the application, Ref 2013/0862/04, dated 3 September 2013, subject to the conditions in the attached schedule.

Application for costs

2. At the hearing applications for costs were made by the Appellant against the County Council and by the County Council against the Appellant. These applications are the subject of separate decisions.

Procedural matters

3. On the application form, the location of the site is given as land to the rear of No 42 Ashby Road. However No 42 has been demolished, and the site extends from this point to the north, behind the properties on this side of Ashby Road up to No 78. I have identified it accordingly in the appeal details above.
4. The main parties agreed that the proposal is more clearly described as residential development including the importation of material and infill engineering works to a former clay pit, and I have considered the appeal on this basis. The application was submitted in outline form, with approval sought for access at this stage.
5. The first reason for refusal refers to flood risk amongst other matters. In an email dated 7 May 2014, the County Council advised that it would not be pursuing this objection to the proposal.
6. A planning obligation in the form of a unilateral undertaking was submitted by the Appellant (Document 9). The obligation covers the provision of affordable

housing, the provision of on-site open space, the payment of contributions in respect of off-site open space, education, waste management, libraries, public transport, policing and health, and a commercial vehicle route.

Main Issues

7. I consider that the main issues in this appeal are:

- (i) The effect of the proposed development on the living conditions of nearby residents and future occupiers, having regard to noise, dust and vibration.
- (ii) The effect of the proposed development on nature conservation interests.
- (iii) Whether the planning obligation would make appropriate provision for matters sought in connection with the proposed development.
- (iv) The effect of other considerations, including housing land supply, on the overall planning balance.

Background

8. The appeal site comprises a former clay extraction pit, adjacent land which is predominantly to the south and west of the pit, and the site of the former house at No 42 Ashby Road. The pit, which at the date of my visit was filled with water, is known locally as The Big Pit. In 2007, outline planning permission was granted for residential development on that part of the appeal site to the south of The Big Pit and the curtilage of No 42 Ashby Road, together with parts of the back gardens of Nos 44-48¹. These garden areas do not form part of the present appeal site. The statement of common ground refers to that proposal being for up to 37 dwellings: however the appeal decision mentions an illustrative drawing showing 25 dwellings and it records a reference to 30 dwellings in the design statement². In any event, the number of dwellings was not specified in the formal decision. At the time of the inquiry into that appeal, the pit is described as having been pumped almost dry. A planning obligation provided that development would not commence until the level of water in the pit had reached between 117m and 119m AOD, with the water level being maintained thereafter to the satisfaction of the Borough Council. Condition No 17 referred to a scheme for diversion of a footpath and reinstatement of a watercourse being co-ordinated with the refilling of the pit with water.
9. Subsequently, in 2010 and 2013, fresh outline planning permissions were granted. The indicative site plan for the 2010 permission, which is referred to in condition No 18, shows 23 dwellings. Condition No 16 carries forward the provisions of condition No 17 of the 2007 permission. However no such condition is attached to the 2013 permission, which remains extant. The demolition of the house at No 42 Ashby Road was approved in 2012, and this work has been carried out.

The proposal

10. The first part of the proposal involves the infilling of The Big Pit. Approximately 75,000m³ of soils, subsoils and clay materials would be brought onto the site

¹ Plans showing the extent of the site in respect of which planning permission was granted in 2007 are at Document 4a

² Appeal decision reference APP/K2420/A/06/2008035, paragraph 3 and footnote 2.

for this purpose. Sunnyside Brook enters the site in its south-east corner and flows into the pit: the outflow is on the north side of the site by means of a culvert under the car park of the adjacent Asda supermarket. As part of the development of the site, the watercourse would be reinstated around the eastern side of the site, where it would flow through a flood plain corridor³.

11. Other than access, all matters of detail are reserved for subsequent consideration. An indicative site plan shows residential zones, separated by open space and access links⁴. It is intended that up to 60 dwellings could be accommodated on the site. A vehicular access would be constructed on the land formerly occupied by No 42 Ashby Road. This road would be used for access by vehicles bringing fill materials to the pit and it would subsequently serve the residential development.

Reasons

Living conditions

The engineering works

12. The appeal site is situated to the rear of the properties on the south-east side of Ashby Road. These are predominantly residential and there is also housing on the other side of the road. To the south of the site is Ashby Road Cemetery, and a more recent part of the cemetery lies beyond the public footpath which runs to the east of the site. On the north-east side of the site, and close to The Big Pit itself, is a large supermarket, with air handling units in the service yard on this side of the building. A car park for the supermarket lies to the north and north-west, between the site and housing on Ashby Road.
13. The engineering works would involve two main stages. Firstly prior to the importation of any material, cut to fill operations would remodel the inside of The Big Pit: the Appellant estimated that these preliminary works should be completed within 1-2 weeks. Filling activities, including earth moving and compaction would then take place. Having regard to the extent of building activity in the locality, the Appellant estimated that infilling could be completed within six months. For its part, and having regard to the supporting information for the application, the County Council calculated that 31, 50 or 75 deliveries per day would respectively result in the infilling operation taking 48, 30 or 20 weeks⁵. I note that the Appellant's estimate is close to the County Council's mid-range figure. However there cannot be certainty at the present time about the availability of fill material, and I prefer the approach of the County Council. Engineering works at The Big Pit could, therefore, last for up to about one year.
14. Work to fill The Big Pit would necessitate the use of a range of various items of plant, equipment and vehicles. The 2013 engineering methodology (Document 3) lists one hydraulic excavator, three dump trucks, one tracked bulldozer and one self-propelled compactor for use during the initial cut and fill operations, with the latter two items also being required for the re-engineering of the

³ The term flood plain corridor is used, in accordance with the Environment Agency's consultation response of 6 November 2013, to refer to the reinstated watercourse and its associated storage. The intended position of the flood plain corridor is shown on the A3 location plan.

⁴ The indicative site plan is on drawing ref 09935-PL10A.

⁵ The report to the County Council's Development Control & Regulatory Board put forward these timescales at para 14, but it also refers to a series of slightly shorter timescales at para 59. It is the timescales at para 14 which were included in the County Council's appeal statement.

imported material. In addition, use would be made of a roadsweeper and pump, and material would be brought to the site by heavy goods vehicles (HGVs).

15. The Appellant's acoustic consultant had calculated noise levels at the rear of four properties on Ashby Road (No 44, No 54, the Ashby Tavern, and No 82) resulting from the engineering works⁶. During the cut and fill works noise levels of 49.2-54dB_{L_{Aeq,1hour}} are predicted. The first part of the filling is expected to give rise to noise levels of 51-52.4dB_{L_{Aeq,1hour}}: as infilling rises towards the surrounding ground level the shielding effect provided by the pit would reduce and in consequence higher noise levels would be experienced. These are calculated as 53.6-62dB_{L_{Aeq,1hour}}. The predictions take account not only of the noise generated by activity within the pit, but also that arising from the movement of HGVs entering and leaving the site, and the mitigating effect of acoustic fencing on the north-west boundary and along the access road. The Borough Council's Environmental Health Officer explained at the hearing that he was satisfied with the accuracy of the noise levels given in the revised assessment, and no dispute on these figures was raised by the County Council⁷.
16. There was broad agreement between the Appellant and the Borough Council that *British Standard 5228-1+A1:2014 – Code of practice for noise and vibration control on construction and open sites* (BS5228) and the *Technical Guidance to the National Planning Policy Framework* (NPPF) were of relevance in assessing the effect of noise from the engineering works and the County Council agreed that it was appropriate to take the Technical Guidance into account. Paragraph E5 of BS5228 explains that where construction activities involve large scale and long term earth moving activities, this is more akin to surface mineral extraction than conventional construction and the Technical Guidance to the NPPF should be taken into account. That document was cancelled on the publication of Planning Practice Guidance (PPG), but the content of paragraphs 30 and 31, which were referred to at the hearing, has essentially been carried forward into paragraphs 27-021 and 27-022 of the PPG.
17. I agree that, given the nature of the engineering works involved in filling The Big Pit, it is appropriate to have regard to national guidance on noise emissions in respect of minerals workings. Paragraph 27-021 of the PPG advises that during normal working hours (0700-1900 hours) noise should not exceed 55dB(A)_{L_{Aeq,1h}} (free field) at noise sensitive property. The predicted noise levels would comply with this limitation except in the latter part of the filling operation (above, para 15). In accordance with paragraph 27-022, higher noise limits should be considered for shorter periods of time, subject to a maximum limit of 70dB(A)_{L_{Aeq,1h}} (free field) for periods of up to eight weeks in a year. The Appellant argued that in this case a noise limit of 67dB(A)_{L_{Aeq,1h}} would be appropriate for a 16 week period, representing a halving of acoustic energy, compared with a higher level over a shorter period as referred to in national guidance. However the higher noise limits referred to in paragraph 27-022 of the PPG are put forward in the context of works (such as restoration and construction of baffle mounds) which would bring long-term environmental

⁶ The predicted noise levels are set out in table 4 of Document 13.

⁷ The Appellant's acoustic consultant subsequently acknowledged that two figures had been transposed in table 8 of Document 13. A revised version of table 8 is included in Document 22.

benefits. Although the appeal site is unused with extensive vegetation growth around the pit, it is a parcel of open land which is appreciated by many local people in its existing condition, and the development would not represent an environmental benefit of the kind envisaged in the PPG. Moreover many mineral sites are not located within a built-up area, as is the case with the appeal site. I accept that there is an argument for an element of flexibility, to enable noisier activity which is an integral part of the overall operation to take place for a relatively short period of time. Bearing these points in mind, I agree with the County Council that the starting point for a higher limit should not be the maximum level of 70dB(A)_{L_{Aeq,1h}} (free field) specified in PPG, but the highest predicted noise level of 62dB_{L_{Aeq,1hour}}. The Borough and County Councils suggest that a limit of 65dB_{L_{Aeq,1hour}} should be imposed for the noisiest part of the infilling operation. I consider that such a limit would provide an appropriate balance between providing flexibility for the engineering works and avoiding undue disturbance to the living conditions of neighbours.

18. Subject to the safeguard of conditions requiring the erection of acoustic fencing and specifying noise limits, I do not consider that the noise caused by the engineering works involved in filling The Big Pit would unacceptably harm living conditions in the locality.
19. Concern has also been expressed about the effects of vibration and dust. It is intended that the pit would be filled with soil, subsoil and clay materials (above, para 10), and such activity has the potential to release dust into the air. At the hearing, the County Council and the Borough Council both expressed the view that dust could be addressed by mitigation measures such as sweeping and damping. Such measures could form part of an environmental management scheme, which itself could be imposed by means of a condition.
20. The access road would run between Nos 40 and 44 Ashby Road. HGVs travelling to and from the site would pass close to the sides of these properties, but the prospect of vibration would be diminished by constructing this road and the haul roads on the site to an appropriate standard prior to the importation of any fill. Compaction of fill material would be a possible cause of vibration, but vibration monitoring and remedial action could be incorporated into an environmental management plan. Moreover, during much of the infilling compaction would occur within the pit, rather than at the surface. I note that, in the light of the updated noise impact assessment, the County Council now takes the view that the development could proceed without an unacceptable impact on the amenity of neighbours due to noise and vibration. Whilst I appreciate the concerns expressed by local residents and their representatives on this matter, there is no specific evidence which would lead me to a contrary conclusion.
21. The cemetery lies to the south and east of the appeal site. That part to the east is currently used for burials, and there is an enclosed garden of remembrance close to the southern boundary. I consider that measures imposed by condition to safeguard the living conditions of neighbours would also avoid undue disturbance to the environment of the cemetery.

The residential access road

22. The effect of traffic noise from use of the access to serve the proposed residential development has been assessed. Ambient noise levels in the former

rear garden of No 42 Ashby Road during the morning and evening peak periods were measured as 52.5dB(A)_{L_{Aeq,1h}} and 55.7dB(A)_{L_{Aeq,1h}} respectively. When the noise from traffic using the access road is taken into account, and allowing for partial attenuation by fencing, the overall noise levels are calculated by the Appellant's acoustic consultant as 52.8dB(A)_{L_{Aeq,1h}} and 55.9dB(A)_{L_{Aeq,1h}} in the morning and evening peaks⁸. The County Council and the Borough Council agreed with the Appellant that 3dB is the minimum perceptible increase in noise, and the increases of 0.3dB(A) and 0.2dB(A) are well within that increment. Moreover the extant planning permission for residential development on the southern part of the appeal site provides for access in this position, albeit for a lower number of dwellings (above, paras 8 and 9). I do not consider that traffic noise on the access road serving the proposed residential development would materially affect the living conditions of nearby residents.

The supermarket

23. The rear of the nearby supermarket is close to the north-east boundary of the appeal site. At this part of the building are air handling units which emit a constant noise, and noise is also generated by activities in the adjacent service yard. The effect of noise from these parts of the supermarket was assessed by the Appellant having regard to British Standards *BS8233* and *BS4142*, and at the hearing the Borough Council advised that it was satisfied that an appropriate exercise had taken place. The noise levels from the air handling units are lower during the night, and the store manager had advised the Borough Council that additional plant is in use between 0700 and 2000 hours. The lowest recorded background noise level at the appeal site was 25.8dBL_{A90} in the middle of the night. As this is below the parameters of *BS4142*, the acoustic report adopted the lowest rating level of *BS4142* of 35dB as a rating level noise limit outside dwellings.
24. The Appellant's noise survey included two locations at the northern end of the site (1A and 1B), about 2m from the air handling units. The highest night-time noise level recorded and attributed to the air handling unit was of 50.4dBL_{Aeq} at location 1B⁹. It is intended that the flood plain corridor would extend to this point, and housing would, therefore, be set back from the north-eastern boundary. Distance attenuation arising from a separation distance of 25m would reduce the night-time noise level to about 29dBL_{Aeq} outside the nearest dwellings, well below the target of 35dB. With a window open, the building envelope would reduce noise levels by about 15dB, and the recommended lower limit in *BS8233* of 30dB in bedrooms at night could therefore, be achieved. At 0700, with the air handling units operating in day-time mode, the Borough Council recorded a noise level of 64.5dBL_{A90} at 2m from the equipment, which it described as a worst case scenario. Distance attenuation would bring this down to about 42.6dB over 25m. Although the survey results show that background noise levels are generally somewhat higher during the daytime, mitigation would be required to achieve the stated target of 35dB. A solid acoustic fence on the northern boundary, which could reduce noise by a further 10dB, was suggested by the Appellant's acoustic consultant, and this measure could be secured by means of a condition.

⁸ The predicted noise levels of traffic noise on the access road and the comparisons with the ambient levels are given in table 7 of Document 13 and revised table 8 in Document 22.

⁹ A noise level of 52.3 dBL_{Aeq} was recorded at 0411, but at this time the recording was affected by loud birdsong.

25. Insofar as the service yard is concerned, survey results at location 1 show average noise levels of about 50dB_{L_{Aeq}} in the daytime and about 48dB_{L_{Aeq}} at night. These are similar to the night results from locations 1A and 1B, close to the air handling units, and somewhat lower than the daytime results from those positions. The highest peak of noise at night was 65.3dB_{L_{Amax}}. As with the air handling units, these noise levels could be reduced by separation and acoustic fencing.
26. The County Council and Borough Council agreed that, subject to the erection of acoustic fencing and a separation distance of about 25m between the proposed housing and the noise sources at the rear of the supermarket, there would be no unacceptable effect on the living conditions of future residents. I share this view and mitigation measures to achieve the required noise level could be the subject of a condition.

Conclusions on living conditions

27. With the safeguard of conditions concerning acoustic mitigation, noise limits and an environmental management scheme, I conclude that the proposed development would not unacceptably worsen the living conditions of nearby residents and future occupiers. In this respect the development would not conflict with Policy BE1 of the Hinckley and Bosworth Local Plan, nor with Policies WDC8 and WCS10 of the Leicestershire and Leicester Waste Development Framework – Core Strategy and Development Control Policies.

Nature conservation

28. The water-filled pit is the main feature of the appeal site. To the south is an area of scrub and rough grass with tree cover along the boundaries. This is consistent with the condition of the site as described in the extended phase 1 survey report prepared for one of the owners in 2009. The report does not identify any habitats of value, and apart from several common pipistrelle bats feeding around the site, there is no record of the presence of any European protected species. In her consultation response to the planning application, the County Council's Principal Ecologist had suggested that the 2009 report was out-of-date. However in her written representation on the appeal, she refers to it as the only recent survey information available. Although local residents argue that the site has value as a wildlife habitat, there is no specific evidence before me that the findings of the 2009 report are no longer valid.
29. The Principal Ecologist considers that the site has ecological value as a standing water habitat, but she acknowledges that there is no evidence that it meets the criteria for sites of county-wide value¹⁰. She does venture the opinion that the site would have qualified as a local wildlife site on the basis of evidence in 2009 that the site was used and valued by the community. However the evidence from the 2009 ecological report is limited in this regard, referring to unofficial access points with evidence of frequent use by the public, and the proximity of the public footpath to the east, and unofficial fishing. The appeal site is private land with no public right of way across it. At the hearing, a local councillor and a number of local residents referred to use of the site being permitted until recently. I heard that a number of people had had keys for access, and that fishing and diving had taken place in The Big Pit. There is no evidence that

¹⁰ The Principal Ecologist did not appear at the hearing, but submitted a written note as an appendix to Mr Hunt's statement.

these arrangements continue, and, on the information before me, the appeal site is not available for the local community to use.

30. It is evident that the local community values the presence of the water body and the natural appearance of the adjacent land. This can be appreciated from the adjacent footpath in gaps and filtered views through trees and the hedgerow along the boundary, and photographs submitted at the hearing demonstrate that there are also views across the land from properties on Ashby Road. However there is no specific evidence before me to demonstrate that the site has any particular value which would clearly distinguish it from other overgrown parcels of unused land of a similar size.
31. The proposed development would include the reinstatement of the watercourse, which would flow across the site through a flood plain corridor. This part of the scheme would provide a water feature close to the public footpath. I note that the Principal Ecologist advises that to provide any habitat of value the corridor would need to include some permanently wet ground: this would be achieved by incorporating the watercourse within the flood plain corridor.
32. I conclude that the proposed development would not adversely affect nature conservation interests, and that it would not conflict with paragraph 118 of the National Planning Policy Framework (NPPF).

The planning obligation

Affordable housing

33. The findings of the Leicester and Leicestershire Housing Market Assessment inform Policy 15 of the Hinckley and Bosworth Core Strategy which is concerned with the provision of affordable housing. Within the urban areas, this policy seeks a minimum of 20% affordable housing on sites of 15 dwellings or more, or of 0.5ha or larger in size. A tenure split of 75% social rented and 25% intermediate housing should be provided on all sites. The planning obligation makes provision both for the overall amount of affordable housing and the apportionment sought in the Development Plan. This provision is necessary, and it also complies with the other statutory tests.

Open space

34. Arrangements for the provision of both on-site and off-site open space are covered in the obligation. Policies REC2 and REC3 of the Hinckley and Bosworth Local Plan require outdoor open space and children's play space respectively in connection with residential development. Given the size of the proposal, it would be appropriate for local open space to be provided within the site, and the requirements for provision and maintenance of this facility, together with a maintenance contribution if the open space is transferred to the Borough Council, would be appropriate. The development would also give rise to a demand for higher order open space, whereas there is a deficit of 1ha in this part of Hinckley. Contributions of £322.50 per dwelling towards the provision of open space at Richmond Park and £264 per dwelling towards its maintenance are, therefore, necessary.

Education

35. The Education Authority has calculated that the development would give rise to a shortfall of spaces at Holliers Walk Primary School and increase the shortfall at John Cleveland College, an upper school. Contributions of £4,839.60 and £110,130.96 were requested to improve facilities at these primary and upper schools respectively, and the inclusion of these sums in the planning obligation would be properly related in scale and kind to the development.

Civic amenity facilities

36. A contribution of £2,823 is included towards civic amenity facilities. The nearest civic amenity site is at Barwell. In the consultation response on the planning application, the Director of Environment and Transport explains that the development would place additional demands upon this facility, and at the hearing the County Council explained that the Barwell facility is operating above its capacity at peak times. Accordingly a contribution to mitigate the effect of increased usage would be necessary.

Libraries

37. A library services contribution of £3,260 is included in the planning obligation, as sought by the County Council. The County Council calculates that the development would generate at least an additional 86 users of Hinckley Library, requiring 210 items of lending stock together with reference, audio-visual and homework support material. However there is no specific evidence before me to demonstrate that the library is operating at capacity and is unable to absorb the additional demand from the proposed new housing. I heard that a library contribution had been accepted as compliant with the Community Infrastructure Levy (CIL) Regulations in a recent appeal decision. Full details of the information relating to the library service in that case are not before me, however, and each case must be judged on its own merits. On the evidence submitted in this case, I do not consider that a library contribution is needed to make the development acceptable in planning terms.

Public transport

38. To encourage sustainable modes of transport, a contribution is sought, which it is envisaged would be used for travel packs bus passes, bus stop improvements, and a real time information system. A contribution of £7,726 is included in the obligation, together with separate amounts for travel packs and bus passes. Encouraging the use of sustainable modes of travel is an objective of the NPPF, and the measures outlined are similar to those often included in travel plans. I am satisfied that the public transport contribution would be CIL compliant.

Policing

39. A police contribution of £13,756 is included in the planning obligation. Detailed evidence in support of this level of contribution has been submitted by the Police and Crime Commissioner. It is clear that the increase in the local population from up to 60 dwellings on the appeal site would place additional demands on the police. Contributions are not sought across the board. The representations identify those areas where there is spare capacity and they have not been taken into account in calculating the overall level of contribution. A need has been identified in the following areas: start-up equipment, vehicles,

radio call capacity, database capacity, call-handling, automatic number plate recognition cameras, mobile CCTV, premises, and hub equipment. Details are provided of the purpose to which the funding would be put, and, in the case of each area where a need has been identified, the level of contribution has been calculated in relation to the size of the appeal proposal, even if this means that some expenditure is required from the police budget. The policing contribution is necessary to make the development acceptable in planning terms, and it also complies with the other statutory tests.

Health

40. There is no spare capacity at any of the five general practice surgeries in Hinckley: indeed at some existing demand is exceeding capacity. The health contribution of £30,546 is derived from the cost of providing additional accommodation in relation to the size of the proposed housing scheme. find that the obligation is fairly and reasonably related in scale and kind to the appeal proposal, and that the statutory tests are met.

Commercial vehicle routes

41. It is intended that commercial vehicles would use roads to the north of the appeal site: plan A in the obligation identifies Ashby Road (north of the site), the A47 and the A447. The agreement to be drawn up specifies that the owners would take all reasonable steps to ensure that the drivers of commercial vehicles travelled along these roads to and from the site. Even with the possible inclusion of sanctions in third party agreements, this form of words is insufficiently precise to ensure that the intentions of the routing plan would be delivered, and, in consequence, there could be difficulties in enforcing this part of the obligation. However the evidence before me does not indicate that it is necessary to restrict commercial vehicle movements to and from the appeal site to these routes.

Monitoring

42. The obligation provides for the payment of monitoring costs to the Borough and County Councils. The County Council has published *The Statement of Requirements for Developer Contributions in Leicestershire*. Whilst paragraph 6.15 states that local planning authorities might reasonably recover the costs of monitoring payment and implementation, I note that the preceding paragraph indicates that this could be appropriate where it can be demonstrated that such payments make a significant contribution to the speed and efficiency with which negotiations are completed. This would appear to apply more to the drafting of obligations rather than to subsequent monitoring, but in any event there is nothing before me to demonstrate that the payment of monitoring would assist efficiency in this case. Moreover, the arrangements for monitoring set out in section 8 do not specifically refer to cost recovery.
43. The Borough Council's Play and Open Space Guide Supplementary Planning Document does seek a monitoring fee. This is intended to cover administrative matters, maintenance and monitoring of databases, attendance at meetings, income collection, and additional requirements such as on-site advice and guidance. For the most part these appear to be matters of general recurrent expenditure, and I do not consider that such monitoring activity would impose an undue burden on the Council over and above its general duty to ensure

compliance with planning controls. Consequently, I do not consider that this element of the obligation is necessary to make the proposal acceptable.

Conclusions on the planning obligation

44. For the reasons given above, the library and monitoring contributions and the commercial vehicle route agreement would not be necessary to make the development acceptable in planning terms, and therefore I am unable to take them into account in determining the appeal. The other provisions would meet the statutory tests. I conclude that the planning obligation would make appropriate provision for affordable housing and infrastructure, and it would, therefore, comply with Policy 15 of the Core Strategy and Policy IMP1 of the Local Plan.

Other considerations

Housing land supply

45. Both the Appellant and the Borough Council take the view that there is not a five years supply of housing land in Hinckley and Bosworth. There has been a shortfall in provision of 630 dwellings since 2006. Addressing this shortfall within the five year period, and applying a 20% buffer relating to persistent under-delivery, the Borough Council has calculated a requirement of land for 3,330 dwellings for the period 2014-2019¹¹. To set against this requirement a total supply of 2,830 dwellings is put forward. The supply includes contributions of 440 and 285 dwellings respectively from the Barwell and Earl Shilton Sustainable Urban Extensions (SUEs). I heard that there are outstanding issues to resolve concerning the planning obligation for the Barwell SUE, and that at the date of the hearing a planning application had not yet been received for the Earl Shilton SUE. Inclusion of a limited contribution from the SUEs acknowledges their current status, and is realistic given the clear intention to progress with both these major developments during the five year period. On this basis, and including all the large and small site commitments, the available supply of housing land in the Borough would be sufficient for 4.25 years. Paragraph 47 of the NPPF refers to the importance of identifying a five years supply of sites to assist in significantly boosting the supply of housing. The contribution of the appeal site towards the provision of a five years supply of housing land carries significant weight in support of the appeal proposal.

Highway safety and traffic movement

46. Concerns have been expressed by local residents and their representatives about vehicle movements, particularly of heavy goods vehicles. The calculations undertaken in respect of the filling operation indicate that there could be up to 75 deliveries of material to the site per day. If this level were maintained, it would shorten the filling period to about 20 weeks, whereas if filling continued for about a year, it is likely that there would be about 31 deliveries per day. The main parties suggested that if planning permission were granted hours of work should be restricted to 0800-1730 hours from Monday to Friday and 0800-1300 hours on Saturdays. Taking the higher level of 75 deliveries would result in about eight deliveries being made to the site per hour. The revised addendum to the transport assessment, prepared on behalf of the Appellant, has considered the effect of traffic generated by the

¹¹ The Borough Council's five year housing land calculation is set out in its position statement at part 7 of Document 11.

appeal proposal on the highway network, and it concludes that neither the additional trips from the proposed housing nor those from the infilling operation would have a detrimental effect on the free flow of traffic on Ashby Road. This assessment has not been disputed by the Highway Authority, which has indicated that the design of the proposed access would be sufficient for a development of up to 150 dwellings, and there is no specific evidence before me to suggest that the proposal would reduce highway safety. Subject to conditions concerning the provision of a link to the public footpath, the implementation of a construction traffic management plan, and the provision of parking space, the Highway Authority has raised no objection to the development. There is no specific evidence before me to justify a different view.

Drainage and flooding

47. There is considerable concern amongst the local community about the drainage implications of the infilling of The Big Pit. Reference was made at the hearing to surface water from the surrounding area making its way into the pit, and I also heard that residents in certain locations, such as Sunnyside, are anxious about the possibility of increased flood risk. At present Sunnyside Brook flows into The Big Pit and there is an outflow into a culvert below the supermarket car park. That flow of water through the site would not change. Whilst The Big Pit would be removed, the water course would continue through a flood plain corridor to the point of outflow from the site. The corridor of the reinstated watercourse would have the capacity to collect and hold surface water, with discharge downstream restricted. The Environment Agency seeks conditions to secure this approach, and also to specify floor levels, to establish a construction method statement, and to require approval of a surface water drainage scheme. With these safeguards I do not consider that the proposed development would increase the prospect of flood risk in the locality.

Conditions

48. I have already referred to conditions concerning acoustic mitigation, noise limits, an environmental management scheme, drainage, a link to the public footpath, the implementation of a construction traffic management plan, and the provision of parking space, all of which would be necessary for the development to proceed. To safeguard the living conditions of neighbours, hours of work and the number of HGV deliveries should be restricted, and it would be important for the access road to be provided in the interest of highway safety. Conditions should specify the scope of a landscaping scheme and provide for tree protection to ensure that the development would be in keeping with its surroundings. Ground clearance works should avoid the bird nesting season in the interest of nature conservation. Details of foul drainage works should be submitted for approval to ensure that the site would be satisfactorily drained, and given the history of the land as a brick works a contamination management scheme would be required. For the avoidance of doubt and in the interests of proper planning, details of the infill engineering works, levels and an alternative reclamation scheme should be submitted for approval. For the same reason, it is important that the development is carried out in accordance with the specified plans. Conditions were suggested concerning landscape maintenance and the code for sustainable homes, but these are matters which would be more appropriately addressed at reserved matters stage.

Overall conclusions

49. Subject to mitigation measures, which could be secured by conditions, the development would not unacceptably worsen the living conditions of neighbours or future residents, and it would not adversely affect nature conservation interests. There would be appropriate provision for affordable housing and infrastructure by means of the planning obligation, and the contribution of the proposed housing to the supply in Hinckley and Bosworth is a matter of significant weight.
50. For the reasons given above, and having regard to all matters raised including the objection from Mr D Tredinnick MP, I conclude that the appeal should be allowed.

Richard Clegg

INSPECTOR

Richborough Estates

Schedule of conditions

General

- 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. The layout of the housing development shall include the way in which building, routes and spaces are arranged to mitigate the noise impact from the adjacent supermarket on occupiers of the dwellings hereby permitted. The landscaping scheme shall include details of finished levels and contours, means of enclosure, hardsurfacing, planting plans, schedules of plants, and a programme for implementation.
- 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 begin 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: location plan on drawing ref 09935-PL10A, and the access details on drawing ref IP09_313_07_001A.

Living conditions

- 5) No development shall take place until a scheme for the protection of neighbouring dwellings from noise during the infill engineering works has been submitted to and approved in writing by the local planning authority. The scheme shall include details of all acoustic fences, and it shall be implemented in full before the engineering works, including the cut-to-fill phase, commence.
- 6) The level of noise arising from the cut-to-fill and infilling operations shall not exceed the following limits at 3.5m from the most exposed façade of any adjacent dwelling: 55dB(A)_{L_{Aeq},1h}, except for temporary operations limited to a total of 88 days in any 12 months period for which the limit shall be 65dB_{L_{Aeq},1hour}.
- 7) No development shall take place until a scheme for the protection of the proposed dwellings from noise from the air handling units and the service yard at the supermarket on the land to the north has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in full before any of the dwellings is occupied.
- 8) No development shall take place until an environmental management scheme, including an assessment of the impact of dust, vibration and lighting from the infill engineering works and the impact of dust, vibration, lighting and noise from the construction of the housing, has been submitted to and approved in writing by the local planning authority. The scheme shall include:
 - i) The organisation and layout of the site and the control of operations to minimise the generation of dust, noise, vibration and light emissions.

- ii) The control of dust emissions to prevent fugitive emissions leaving the site.
 - iii) The control of construction noise.
 - iv) The control of site lighting to prevent light spillage on adjacent dwellings.
- 9) The infill engineering works, including the cut-to-fill phase, and the construction of the dwellings hereby permitted shall not be take place outside the following times: 0800 to 1730 hours from Monday to Friday and 0800 to 1300 hours on Saturdays. No infill engineering works, including the cut-to-fill phase, or construction work shall take place at any time on Sundays and public holidays.

Highways

- 10) No other development shall take place until the vehicular access has been constructed in accordance with the access details on drawing ref IP09_313_07_001A.
- 11) No development shall take place until a construction traffic management plan has been submitted to, and approved in writing by, the local planning authority. The approved plan shall be adhered to throughout the period of the infill engineering works and construction. The plan shall include provision for:
- i) the parking of delivery vehicles and vehicles of site operatives and visitors
 - ii) turning space
 - iii) wheel washing facilities
 - iv) the cleaning of Ashby Road adjacent to the site access.
- 12) The total number of deliveries of material for the infill engineering works shall not exceed a weekly limit of 275 over a 5.5 day working week, subject to a daily maximum of 75 from Monday to Friday and 37 on Saturdays. Records of all such deliveries shall be maintained on a daily basis and shall be made available to the local planning authority within five working days of a request being made.
- 13) No dwelling shall be occupied until space has been laid out for the parking of vehicles for that dwelling on the basis of two spaces for a dwelling with up to three bedrooms and three spaces for a dwelling with four or more bedrooms. Any garage which is provided as a parking space must have a minimum internal floorspace of 6m by 3m. Parking space shall be retained for the passage and parking of vehicles.
- 14) No development shall take place until a scheme for a footpath link between Ashby Road and public footpath No U76 has been submitted to and approved in writing by the local planning authority. None of the dwellings shall be occupied until the footpath link has been constructed in accordance with the approved scheme.

Trees and wildlife

- 15) No development or site clearance shall take place until a tree protection plan has been submitted to and approved in writing by the local planning authority. The approved tree protection measures shall be retained for the duration of the infill engineering works and the construction period.

- 16) No tree felling or vegetation clearance works shall take place during the bird nesting season (1 March – 31 August inclusive) unless a survey confirming the absence of nesting birds has been approved in writing beforehand by the local planning authority.

The watercourse and drainage

- 17) No development shall take place until a detailed scheme for the reinstatement of Sunnyside Brook and its flood plain corridor within the site has been submitted to and approved in writing by the local planning authority. The scheme shall be prepared in accordance with the indicative site plan on drawing ref 09935-PL10A and paragraphs 4.1.6 and 4.1.7 of the flood risk assessment ref IP09_313_07C dated January 2010, provide a minimum of 4,000m³ compensatory flood storage, and include a programme for its implementation during the infilling engineering works and a management plan for its future maintenance. The watercourse shall be reinstated in accordance with the approved programme, and maintained thereafter in accordance with the approved management plan.
- 18) No development shall take place until the culverted watercourse through the easement in the land to the north of the site has been upgraded in accordance with a scheme which has been submitted to and approved in writing by the local planning authority. The scheme shall be prepared in accordance with paragraph 4.1.5 of the flood risk assessment ref IP09_313_07C dated January 2010,
- 19) No development shall take place until a construction method statement to cover channel and bank works has been submitted to and approved in writing by the local planning authority. The approved statement shall be adhered to throughout the construction period. The statement shall include:
- i) Details of temporary works, including the diversion of Sunnyside Brook, and fencing within the flood plain.
 - ii) Methods to be used for all permanent and temporary channel and bankside water margin works.
 - iii) Details of the location and storage of plant, materials and fuel, access routes and access to the banks.
 - iv) Measures for the enhancement of the biodiversity potential of the reinstated watercourse.
 - v) Details of site supervision.
- 20) The finished floor levels of all dwellings shall be set no lower than 600mm above the design 100 year plus climate change flood level for the reinstated watercourse (450mm freeboard within the channel and 150mm above the proposed external ground levels).
- 21) No residential development shall take place until a surface water drainage scheme, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall include:
- i) Arrangements to limit the discharge rate and to store the surface water run-off generated by all rainfall events up to the

100 year plus 30% (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site.

- ii) Design details, including plans, sections and calculations.
- iii) A management plan for the future maintenance of the surface water drainage system.

None of the dwellings shall be occupied until the surface water drainage has been provided in accordance with the approved scheme. The drainage system shall be maintained thereafter in accordance with the approved management plan.

- 22) No residential development shall take place until a scheme for the disposal of foul sewage has been submitted to and approved in writing by the local planning authority. The scheme shall include a programme for implementation. The foul drainage works shall be implemented in accordance with the approved scheme and programme.

Contamination

- 23) No development shall take place until a contamination management scheme has been submitted to and approved in writing by the local planning authority. The scheme shall address the recommendations in sections 7, 8 and 9 of the Tier 1 Assessment Report ref J-D0643_R1_SLR dated 31 March 2010. Any remediation measures included in the contamination management scheme shall be implemented before development begins. Upon completion of remediation, a validation report shall be submitted to and approved by the local planning authority confirming that the site has been remediated in accordance with the approved measures and that the site is suitable for the development hereby permitted.

If, during the course of development, any contamination is found which has not been identified in the site investigation, then additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

Infill engineering works

- 24) No development shall take place until a scheme and programme for the infill engineering works has been submitted to and approved in writing by the local planning authority. Only inert material shall be used for the purpose of the infill engineering works. The development shall be carried out in accordance with the approved scheme and programme.
- 25) Upon completion of the infill engineering works, a final levels plan shall be submitted to the local planning authority. No residential development shall take place until the final levels plan has been approved in writing by the local planning authority.
- 26) Should the infill engineering works not be completed within two years of the commencement of development, or if no fill material has been brought onto the site for a period of 12 months, a scheme shall be submitted to the local planning authority for the restoration and after-care of the site. Following the approval in writing of the scheme, it shall be implemented in full and after-care carried out for the duration of the prescribed period.

APPEARANCES

FOR THE APPELLANT:

Mr S Cheshire BA(Hons) DipTP MRTPI	Planning consultant.
Mr D Quinn BSC MIOA Dr S Bodnar	Chief Consultant, Hepworth Acoustics Ltd.

FOR THE LOCAL PLANNING AUTHORITY:

Mr B Hunt BSc(Hons) MA MRTPI	Ben Hunt Planning Ltd.
Mr A Tyrer	Development Contributions Officer, Leicestershire CC.
Mr S Marriott	Principal Planning Officer, Leicestershire CC.

FOR THE APPELLANT:

Mr S Cheshire BA(Hons) DipTP MRTPI	Planning consultant.
Mr D Quinn BSC MIOA Dr S Bodnar	Chief Consultant, Hepworth Acoustics Ltd.

FOR HINCKLEY AND BOSWORTH BC:

Mrs C Horton	Principal Planning Officer, Hinckley & Bosworth BC.
Mr G Rawdon	Environmental Health Officer, Hinckley & Bosworth BC.

FOR LEICESTERSHIRE POLICE AND CRIME COMMISSIONER:

Miss T Osmund-Smith of Counsel	Principal Planning Officer, Hinckley & Bosworth BC.
Mr M Lambert	Growth and Design Officer, Leicestershire Police.

INTERESTED PERSONS:

Councillor J Bannister	Member of the Borough Council for De Montfort Ward.
Councillor D C Bill	Member of the County Council for Hinckley Division, and of the Borough Council for De Montfort Ward.
Councillor L Hodgkins	Member of the Borough Council for De Montfort Ward.
Councillor M T Mullaney	Member of the County Council for Hinckley Division, and of the Borough Council for Trinity Ward.
Councillor B M Witherford	Member of the Borough Council for Hinckley Castle Ward.
Mr V Bailey	Local resident.
Mr J Barron	Local resident.

Mr F B Baxter	Local resident.
Mr K Draper	Funeral director.
Mr A Goadby	Local resident.
Mr A Hurt	Local resident.
Mr J Ingham	Local resident.
Mrs J Kirby	Local resident.
Mr D Lord	Local resident.
Mrs S Mason	Local resident.
Mr S Pemberton	Local resident.
Mrs A Pendlebury	Local resident.
Mrs A M E Riordan	Local resident.
Mrs J Williams	Local resident.
Mr Woodward	Local resident.
Mrs R Wright	Local resident.

DOCUMENTS

- 1 Appendices 12 & 13 to Mr Lambert's statement.
- 2 Hinckley Void Methodology, July 2009. Submitted by Mr Cheshire.
- 3 Hinckley Engineering Methodology, November 2013. Submitted by Mr Cheshire.
- 4a Plans relating to planning permission ref 05/00684/OUT for residential development on the southern part of the appeal site. Submitted by Mrs Horton.
- 4b-c Planning permissions refs 09/00778/EXT and 12/00950/EXT for extension of time for planning permission ref 05/00684/OUT. Submitted by Mrs Horton.
- 5 Plan of extension to Asda car park. Submitted by Mr Hunt.
- 6 Email dated 22 November 2013 from Mr Cheshire to Mr Marriott concerning the County Council's request for further information. Submitted by Mr Hunt.
- 7 Email dated 16 January 2014 from the County Council to Mr Cheshire concerning the provision for contributions in a planning obligation. Submitted by Mr Hunt.
- 8 Photographs of The Big Pit. Submitted by Councillor Bill.
- 9a Planning obligation relating to the appeal proposal. Submitted by Mr Cheshire.
- 9b Copies of registers of title relating to the appeal site. Submitted by Mr Cheshire.
- 10 Notification of resumption of the hearing.
- 11 Bundle of additional information from the Borough Council.
- 12 Appendices to the note from the County Ecologist (Appendix C to Mr Hunt's statement).
- 13 Updated Noise Impact Assessment (ref 22248.01v2). Submitted by Mr Cheshire.
- 14 Schedule of suggested conditions.
- 15 List of appeal documents agreed by the Appellant and the County Council.
- 16 Representation from R Papiewski¹².
- 17 Traffic and access design report accompanying planning application. Submitted by Mr Cheshire.
- 18 Cross sections for volume analysis. Submitted by Mr Cheshire.
- 19 Email dated 18 December 2013 from Napthens LLP to the County Council

¹² This written representation refers to an attached report, but this was not submitted.

- concerning the planning obligation. Submitted by Mr Cheshire.
- 20 Covering letter accompanying the planning application. Submitted by Mr Hunt.
- 21 Emails dated October 2013 concerning pit volumes. Submitted by Mr Hunt.
- 22 Letter dated 20 October 2014 from Mr Quinn to Mr Cheshire concerning a revised version of table 8 of Document 13.

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