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## Appeal Decision

Hearing held on 27 January 2015

Site visit made on 26 & 27 January 2015

**by A Banks BA(Hons) DipUD PGCM MRTPI**

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

**Decision date: 17 February 2015**

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**Appeal Ref: APP/F2415/A/14/2229077**

**Land South of Main Street, Illesthorne, Leicestershire**

- 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 Mulberry Property Developments Ltd against the decision of Harborough District Council.
  - The application Ref 14/00359/OUT, dated 11 March 2014, was refused by notice dated 4 June 2014.
  - The development proposed is the erection of 45 dwellings, open space and associated works.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The proposal is an outline application and except for access, details of appearance, landscaping, layout and scale are reserved for subsequent determination.
3. An indicative masterplan was, amongst other information, included with the planning application. It indicates that most of the development would take place in the eastern part of the site and an area of open space would be included for in the western part. The appellant states that a mix of dwellings would be provided with a predominance of detached family housing and it is envisaged that the proposed dwellings would be 2 storeys in height. I have taken this into account in my determination.

### Background and Main Issues

4. The appeal site is located immediately to the west of Illesthorne, outside of the limits to development defined by LP<sup>1</sup> Saved Policy HS/8. Both parties agree that the Council is unable to demonstrate a five-year housing land supply. Therefore policies that seek to restrict housing supply are out of date and the sustainable development tests in paragraph 14 of the Framework<sup>2</sup> apply.
5. Illesthorne has a range of facilities and reasonable public transport links. It is identified in the CS<sup>3</sup> as one of the rural centres where new housing is proposed as part of the overall strategy for the provision of housing. Furthermore CS Policy CS2 allows for housing development outside the limits to development

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<sup>1</sup> Harborough District Local Plan 2001

<sup>2</sup> The National Planning Policy Framework

<sup>3</sup> Harborough District Local Development Framework Core Strategy Adopted 2011

boundaries when there is *less than a five year supply of deliverable housing sites and the proposal is in keeping with the scale and character of the settlement concerned.*

6. However, the Council is concerned that the proposal would result in adverse impacts which would significantly and demonstrably outweigh the benefits of the proposed development. The concerns relate to the effect of the proposal on heritage assets; the character and appearance of the area; and highway safety. These therefore form the main issues which must be put into the balance of consideration in accordance with paragraph 14 of the Framework and the presumption in favour of sustainable development, also a main issue.

## Reasons

### *Heritage Assets*

7. The Framework states that *when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting.* In addition the Framework clarifies that the harm if substantial should be weighed against substantial public benefits, unless other criteria applies, and if less than substantial harm would result it should be weighed against the public benefits of the proposal. Paragraph 020 Reference ID: 18a-020-20140306 in the PPG<sup>4</sup> explains that public benefits *could be anything that delivers economic, social or environmental progress and they may include heritage benefits, such as: sustaining or enhancing the significance of a heritage asset and the contribution of its setting.* CS Policy CS11, amongst other things, seeks to protect, conserve and enhance heritage assets and their setting.
8. The appeal site lies within close proximity to a scheduled monument and the Ullesthorpe Conservation Area, within which there are a number of Grade II Listed Buildings. It is approximately 400m east of the Claybrooke Parva Conservation Area, within which there is the Grade 1 Listed Church of St Peter. North of the site and adjacent the tributary that runs between Ullesthorpe and Claybrooke Parva, there is Claybrooke Mill a Grade II Listed Building that functions as a commercial operation. Concerns have been raised in respect to the impact of the proposed development on all these heritage assets and I will give individual attention to each.

### *Scheduled Monument*

9. The appeal site is very close, about 100m, to the medieval moat, fishponds and shifted village earthworks at Ullesthorpe, a scheduled monument. My estimation sits between the figures of 80m provided in the appellant's LVIA<sup>5</sup> and 130m provided in the appellant's AD-BA<sup>6</sup>. As the AB-DA notes, *the significance of the scheduled monument largely derives from its archaeological interest and its historic interest.* The AB-DA continues that the *historical interest relates to its representation of the political and social organisation of this part of Leicestershire in the medieval period.* I consider that the evidence

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<sup>4</sup> The Planning Practice Guidance

<sup>5</sup> Landscape and Visual Impact Assessment by Pegasus Group March 2014

<sup>6</sup> Archaeological Desk-Based Assessment by CgMS August 2013

- of ridge and furrow in the wider landscape setting of the scheduled monument contributes positively to the understanding of the medieval historical context.
10. Within the southern fields of the appeal site there are the remains of ridge and furrow. They are easy to distinguish in aerial photographs of the area. I was also told that they are particularly visible in daylight conditions from a nearby footpath that traverses the small modern cultivated field between the scheduled monument and the appeal site. I have no reason to doubt this as I could clearly discern the features from another footpath to the west of the site. The AD-BA also states that the features are clearly visible.
  11. The features are described by English Heritage as more complex because of the way the remains of different strip orientations come together and I consider this adds to their interest. In addition I agree with English Heritage that the remains provide *a reference point to read how those areas now levelled by modern cultivation would once have looked and indicates that medieval settlement was not continuous through this area*. This does not conflict with the AD-BA which states that, in respect to the ridge and furrow, *its significance relates largely to its visual appearance and potential to understanding the historic landscape character of an area*. Therefore whilst the features may have been slightly damaged over time, I consider that their historic context and heritage interest remains apparent.
  12. I acknowledge the ridge and furrow features within the appeal site are not visible from the designated scheduled monument and they may contain little or nothing of archaeological interest. However, I consider their visibility within the nearby surrounding landscape and footpaths makes for a noteworthy contribution to the physical and visual experience of the historic environment associated with the scheduled monument. In this way the features make a positive contribution to the setting of the scheduled monument.
  13. The indicative masterplan shows an intention to develop the whole of the southern part of the site. Therefore the existing ridge and furrow features would be lost. In addition, although I acknowledge the hedge along the southern boundary would be retained and could through a landscaping condition be enhanced, most of the proposed two storey housing development would be quite visible from the scheduled monument. I consider the proximity, depth and modern estate type layout of the proposed development would result in a distinct and unacceptable intrusion into the historic landscape setting of the scheduled monument.
  14. I do not accept that existing development to the east and south east of the scheduled monument could be considered as having a greater impact on the setting. The buildings on Manor Road, east of the scheduled monument have a minor impact because they are low in density and more agricultural in character. I also consider that views of the wind turbine and Magna Park, to the south-east of the scheduled monument have a much reduced impact because of their distance and the intervening landscape. Therefore these features have little impact on the wider setting of scheduled monument and do not justify the harm that would result from the proposed development.
  15. I conclude on this matter that the proposed development would harm the setting of the scheduled monument contrary to CS Policy CS11 and the Framework. As it is a part of the wider setting, I consider the proposal would lead to less than substantial harm to the significance of a designated heritage

asset. But, because of the national importance of a scheduled monument, I give considerable importance and weight to the harm.

### *Conservation Areas*

16. The appeal site comprises part of a valley area which dips down from Ullesthorpe and gently rises to the small settlement of Claybrooke Parva, located about 400m west of the site. Whilst it is not immediately next to either of the designated Conservation Areas, I consider that its open and attractive countryside character is a prominent part of the landscape setting which enhances the historic rural settlement character of both Conservation Areas. Moreover it makes a positive contribution looking towards, or from, the eastern entrance to the Ullesthorpe Conservation Area. Added to this I consider the character and appearance of a significant part of the Ullesthorpe Conservation Area, which is located along Manor Road, is discernible in the skyline and views from the west, along Main Street and footpaths through the countryside. The spread out buildings on Manor Road and Manor Farm are recognizable features because of the high land they sit on.
17. The proposed development of a small estate of modern houses located on the upward sloping land to Ullesthorpe would be highly visible and discordant with the more sporadic and loose development character and appearance of the Conservation Area. I acknowledge the presence and visibility of modern houses along Frolesworth Road. However, at Main Street the appearance significantly changes on its south side. On the south side, the few modern houses that exist, east of the appeal site, are hardly visible and have little impact on the appearance of the Conservation Area.
18. The proposed development would I conclude significantly harm the rural setting of the Ullesthorpe Conservation Area. As the harm is to the setting, it would amount to less than substantial harm to the significance of the heritage asset. But I consider the setting in this instance to be important to the whole Conservation Area, both visually and historically. Therefore the proposal would fail to preserve the character and appearance of the Conservation Area. This would be contrary to CS Policy CS11 and the Framework, and the harm carries not inconsiderable importance and weight.
19. The Conservation Area of Claybrooke Parva has a spacious and well landscaped appearance which remains largely unaffected by modern development on the east side. I consider that the proposed development would be occasionally perceptible within the landscape background of Claybrooke Parva. But due to the distance in between the appeal site and Claybrooke Parva, such occasional views would not detract from the character and appearance of the Conservation Area. To this end I conclude that the proposal would have a neutral impact on the preservation or enhancement of the character or appearance of the Claybrooke Parva Conservation Area.

### *Claybrooke Mill*

20. The operation of the listed mill is reliant on the water which runs from the tributary between Ullesthorpe and Claybrooke Parva. Historically the ridge and furrow features within the site and wider landscape have helped to drain water from higher land into the tributaries serving the mill. There is also a ditch that runs through the hedgerow which runs in part through the site and in part along its boundary. The ditch also drains water into the tributary west of the

site. Therefore whilst the mill is not noticeably close to the appeal site, I consider that its setting includes the water courses it relies on to operate. Any development that would impact on the flow of water to the tributaries consequently impacts on its setting.

21. The Flood Risk Assessment has found that the underlying ground conditions are not conducive to the disposal of surface water through infiltration. Furthermore a drainage system is suggested which would ensure *that surface water runoff from the site will mimic the natural runoff from the undeveloped site which would occur during various return periods; as such the development proposals will not alter the water flow within the Claybrooke Mill's catchment.* The evidence provided in the Flood Risk Assessment has not been contested by the Council, or the Environment Agency. Moreover no alternative evidence has been provided to make me doubt its findings and conclusions.
22. Subsequently I conclude that the proposed development would not have a detrimental impact on the water levels of the tributaries which are a part of the historic setting of the mill and necessary to its commercial function.

#### *Other Listed Buildings*

23. Concerns were also raised by parties about the impact of the proposal on the setting of listed buildings on Manor Road within Ullesthorpe Conservation Area and on the Grade 1 Listed Church of St Peter in Claybrooke Parva. The listed buildings on Manor Road face the road and I consider that their generous plots and mature soft landscape features, plus their siting on higher land than the appeal site, would prevent the proposed development from harming their settings. The Church of St Peter has a significant presence within the surrounding landscape, especially its tower which for the most part is distinctly visible above the surrounding trees. The proposed development would be visible within the landscape associated with the church in some instances. However, I consider the distance between the church and the appeal site and the intervening landscape would mean that any impact on its setting would be negligible.
24. I conclude that the proposed development would have a neutral impact on the preservation of the setting of the listed Church of St Peter and on any of the settings of the listed buildings in Manor Road within the Ullesthorpe Conservation Area.

#### *Character and Appearance*

25. In accordance with the LCA<sup>7</sup>, the appeal site is located within the local landscape character area of Upper Soar. As stated in the appellants LVIA<sup>8</sup>, the assessment states that villages within the Upper Soar area have some capacity for residential development on a smaller individual scale and that care should be taken in conserving remaining landscape features and elements which otherwise would be lost to inappropriate development. The latter point is stressed as most relevant to the appeal site by the Landscape Partnership statement which accompanied the appeal statement by the Council. Landscape Partnership has presented an appraisal of the LVIA and an alternative landscape assessment of the site. They refer to the Rural Centres LCA and Landscape Capacity Study (2014), which included a landscape capacity study

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<sup>7</sup> Harborough District Landscape Character Assessment 2007

<sup>8</sup> Landscape and Visual Impact Assessment 2014

for Ullesthorpe. The assessment considers a number of parcels around Ullesthorpe and the appeal site falls within Parcel 2. I find the commentary provided for the parcel to be a reasonable description, although I would add that there are also views of the parcel from Frolesworth Road.

26. The appeal site is part of the valley side that rises up to Ullesthorpe. It comprises small fields which are mostly defined by hedgerows. Despite the presence of buildings, including Wrights garage west of the site and on lower lying land, the overwhelming character is open countryside. I consider the site plays a positive role in this small countryside area of separation between Ullesthorpe and Claybrooke Parva. In addition it is part of an attractive prominent and historically rural edge and entranceway into the village, where development is not a strong feature. Hence I consider the value of the local landscape is greater than medium.
27. As most of the proposed development would occur on eastward rising land, its modern scale and form would be apparent within the surrounding area and especially on the approach to the village from this side. The retained and enhanced hedgerows would do little to soften the sense of development because they run in an east to west direction following the slope of the land. Similarly because of the sloping nature of the site, I am not convinced that additional landscaping would make a significant difference. Therefore, despite its low density, I consider the proposed development would be a prominent feature.
28. Added to this, the variance in levels and the strong landscape planting between the site and existing development to the east, would give the proposed development a standalone appearance in relation to the village. To my mind matters would be worsened by the indicative built form and cul-de-sac layout which would be at odds with the traditional linear character of the adjacent part of the village. Even the dwellings fronting onto Frolesworth Road, which form a linear definition to the edge of the village, are set back in spacious plots where soft landscape features significantly reduce the impact of the buildings.
29. For these reasons I consider that the proposed development would relate poorly with the built up area of the village. It would significantly compromise the landscape quality of this prominent location, where the site makes a positive contribution to a strong rural edge, entranceway to Ullesthorpe, and to an important countryside gap between settlements. Consequently I conclude that the proposal would unacceptably harm the character and appearance of the area. This would be contrary to the aims of CS Policies CS2, CS11 and CS17, and the Framework, insofar as these seek to protect local characteristics and landscape setting.

#### *Highway Safety*

30. Although the appeal site is within close proximity of the main village facilities, reaching them on foot is jeopardised because parts of the route are missing footpaths. In particular there are no footpaths at the S bend by the junctions with Manor Road and College Street. I have been provided with photographic evidence of the issues involved with the use of this part of the road. This includes the space large vehicles take up, problems with the Manor Road and College Street junctions and damage incurred by vehicles hitting properties adjacent to the road. Having experienced how hazardous it was to walk along this short stretch of road and to try and cross it, I do not doubt that the

evidence presented represents regular incidents. Therefore despite the lack of accident records<sup>9</sup> I share the concerns of residents and the Highway Authority in respect to the sites poor and unsafe pedestrian accessibility to village services and facilities.

31. The appellant has sought to address concerns through the provision of a footpath on the northern side of the road. However this relies in part on reducing the width of the road for vehicles travelling through the S bend. The Highway Authority carried out an audit of the proposals and concluded that it would increase the risk of head on collisions. At the appeal an amended scheme was submitted, whereby part of the footpath was reduced in width. The Highway Authority felt that this would need to be the subject of a further audit which could not be carried out during the hearing process. As such I cannot take it into account. But I consider it is indicative of the safety concerns relating to this part of the highway.
32. The appellant also suggested that a safer pedestrian route could be provided based on the provision of a footpath along Froleswoth Road and linking into Mill Road. However the route would be much longer, it would be uphill from the site and it would seem to go in a direction moving away from the village facilities rather than towards them. Therefore it would be an unattractive and inconvenient pedestrian route.
33. I conclude that the proposed development does not provide a genuinely safe and accessible route for pedestrians to reach the nearby village facilities and services. This would risk highway safety and be contrary to the aims of the LLTP3<sup>10</sup>, 6CsDG<sup>11</sup> Sections IN4 and IN6, CS Policy CS11 and the Framework insofar as these seek to ensure safe and accessible environments.

#### *Sustainable Development*

34. Paragraph 7 of the Framework states *there are three dimensions to sustainable development: economic, social and environmental*. Moreover paragraph 8 states that *these roles should not be undertaken in isolation, because they are mutually dependent*.
35. In economic terms I accept that the delivery of new housing makes a contribution to the local economy in providing employment during construction and providing new homes to accommodate increases in the local workforce. The proposed development would also deliver extra customer support for local services and facilities which provide employment opportunities. Local benefits would also accrue via the New Homes Bonus and council tax payments.
36. Providing additional housing, of which 40% would be affordable has positive social implications. However, the housing would suffer from poor access to local services. This would include the village primary school. On this matter, the appellant claims the development would ensure its longer term viability. But I have been provided with no information to indicate that without the development this would be in jeopardy. The appellant also claims that social benefits would accrue from the S106 contributions. As such contributions are only necessary to mitigate the effect of the proposed development I give no weight to this argument. In addition the proposal would harm heritage

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<sup>9</sup> Notwithstanding the evidence provided pertaining to an accident in June 2014.

<sup>10</sup> Leicestershire Local Transport Plan 3 published 2014

<sup>11</sup> The 6Cs Design Guide adopted as Leicestershire County Council policy 2008

features which contribute towards present and future cultural well-being. I therefore consider that on balance the proposal would not result in social gains.

37. I acknowledge the appeal site is not located within a designated site, as listed within footnote 9 of the Framework. However I have found that the proposal would result in harm to the natural, built and historic environment. In addition pedestrian access to the village is poor and unsafe. Therefore the proposal would likely be more reliant on the private car for transport which would not help towards moving to a low carbon economy.
38. The appellant argues that the intention is to retain and enhance most of the hedgerows, which would provide wildlife corridors and improve biodiversity. However the indicative masterplan shows that a substantial part of the retained hedgerows would fall within private properties where their management and maintenance could not be guaranteed. I am not persuaded that there would be sufficient leeway within the site to alter the layout in a way that would satisfactorily ensure the long term protection of the hedgerows. Therefore the proposal would not contribute significantly to net gains for nature.
39. On balance I conclude that the development proposed would not result in economic, social and environmental gains.

#### *Other Matters*

40. In reality the proposal would provide informal open space, rather than a village green. The Council acknowledges that it would comply with policy requirements and I consider it neither adds nor detracts weight in favour of the proposal.
41. The appellant has brought to my attention a number of appeals: one on land off Fairway Meadows in Ullesthorpe, reference APP/F2415/A/14/2217536; one at Broughton Astley, reference APP/F2415/A/12/2183653; and one at Launceston, reference APP/D0840/A/13/2209757. These all found in favour of housing schemes which would result in extending settlement boundaries. I visited the Fairway Meadows site and I am satisfied that the circumstances of that site are very different to this case. Based on the limited information provided in respect of the others, I consider that these too represent quite different conditions.
42. A completed unilateral undertaking was submitted by the appellant at the hearing. The Council provided evidence that the obligations would be necessary, directly related to the development and fairly and reasonably related in scale and kind to the development. However, whilst I take it into account, it would not mitigate the harm I have identified. Since the proposal is to be dismissed for reasons beyond the planning obligation, it is not necessary to apply the tests in the Framework and Regulation 122.
43. I have had regard to the concerns raised by local residents and the Parish Council, many of which I have considered in the main issues. Other matters include drainage issues, capacity of local services and a previous refusal for planning permission for a surgery on the site. The surgery application was made some time ago, since when there has been substantial changes to planning policy. However, I accept that one of the items of concern at that time was the sites poor pedestrian accessibility with the village and this is



unchanged. The other concerns would be adequately mitigated for through the S106 contributions and planning conditions.

### **Conclusion**

44. I have taken into account the local circumstances and I have found that the proposal is unacceptable in terms of its effect on the setting of a scheduled monument, the setting of the Ullesthorpe Conservation Area, the character and appearance of the area and highway safety. These adverse impacts significantly and demonstrably outweigh the benefits of additional housing and the proposal would not be the sustainable development for which there is a presumption in favour.
45. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*A Banks*

INSPECTOR

Richborough Estates

## APPEARANCES

### FOR THE APPELLANT:

Steve Mitchell	Mulberry Property Developments Appellant
Georgina Wilkinson	Mulberry Property Developments
Geraint Jones	Pegasus Group
Stephen Wadsworth	Pegasus Group
Casey Parsons	Pegasus Group
Chris Brackley	Woods Hardwick
Gary Surkitt	Woods Hardwick
Simon Mortimer	CgMS
Tom Staton	Aspect Ecology

### FOR THE COUNCILS:

Louise Finch MRTPI BA(hons)	Planning & Case Officer HDC <sup>12</sup>
Andrew Tyrer	Development Contributions Officer LCC <sup>13</sup>
Sharon Townsend	Education Officer LCC
Matt Lennon	Highway Officer LCC
Graham Farrier	Landscape Partnership
Christopher Brown	Planning Policy Officer HDC
Emma Harrison	Conservation Officer HDC
Raj Patel	Housing Enabling Officer HDC
Richard Clark	Principle Planning Archaeologist LCC
Tim Allen MA	English Heritage

### INTERESED PERSONS:

Rachael Edgley	Local resident
Spencer Craven	Claybrooke Mill
Kay Lewis	Local resident
Simon Smith	Local resident
Robert Ogden	Local resident
Susan Tebby	Local resident
Bob Siwecki	Local resident
Philip Kind	Local resident

## DOCUMENTS SUBMITTED AT THE HEARING:

1. Copy of the Councils hearing notification letter and list of those notified.
2. LCC Highways Appendices
3. 6Cs Design Guide Section IN6
4. Email sent from Richard Clark to PINs 8 Jan 2015 Archaeological comments
5. List Entry Summary for Claybrooke Mill
6. Signed Unilateral Undertaking.
7. Committee Report S106 Contribution Template
8. Statement & flooding photos Claybrooke Mill
9. Landscape photographs
10. Photographs of traffic and use of S bend in Main Street by Manor Road junction
11. Proposed footpath improvements drawing No 17097/2011

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<sup>12</sup> Harborough District Council

<sup>13</sup> Leicestershire County Council