
Appeal Decision

Inquiry held on 7, 8 & 9 January 2015

Site visit made on 9 January 2015

by Simon Hand MA

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

Decision date: 10 March 2015

Appeal Ref: APP/T3725/A/14/2221858

Land at Spring Lane, Radford Semele, Leamington Spa, CV31 1XD

- 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 A C Lloyd Homes Ltd against the decision of Warwick District Council.
 - The application Ref W/14/0433, dated 26 March 2014, was refused by notice dated 27 June 2014.
 - The development proposed is outline application for up to 65 residential dwellings together with associated access, open space and landscaping.
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Costs

1. An application for costs was made at the Inquiry and is the subject of a separate decision.

Decision

2. The appeal is allowed and planning permission is granted for an outline application for up to 65 residential dwellings together with associated access, open space and landscaping at Spring Lane, Radford Semele, Leamington Spa, CV31 1XD in accordance with the terms of the application, Ref W/14/0433, dated 26 March 2014, and the plans submitted with it, subject to the conditions contained in the attached annex.

Preliminary Matters

3. Despite the description of development, the application was in outline with only access to be considered. I have dealt with the appeal on that basis.

Main Issues

4. The main issues in this appeal are the weight to be assigned to policy DAP2, the impact of the proposal on the gap between Radford Semele and Sydenham and the specific requirements of a s106 obligation.

Reasons

5. The site lies on the western edge of the village of Radford Semele which stands about half a mile to the east of Sydenham. The village is on a plateau and the western edge lies on the ridge overlooking Sydenham. The land slopes gently down to a stream beyond which, as the land rises again, is a modern housing estate, part of Sydenham, which itself is a suburb of Leamington Spa. Most of

Radford Semele is contained south of the main A425 Southam Road. On the map, the north-western edge of the village appears to be linked to Sydenham by a group of large commercial buildings, although in reality these are set back from the main road and well landscaped so that as one drives from Sydenham along the A425, there is a clear sense of separation. This is reinforced by policy DAP2 which protects areas of restraint (AoR), and the open fields that remain between Radford Semele and Sydenham are all included within the AoR.

6. The pattern of the Radford Semele is simple, with two roads running south from the main road, School Lane and Lewis Road. They are interconnected by Hatherell Road. Most of the housing lies in small estates accessed off these three roads. Just to the north of School Lane a small estate bulges out into the AoR, leaving a gap of only 295m to the edge of Sydenham. Further south another estate bulges out, containing various roads of which Slade Meadow is the most relevant as the houses on the western edge of this road are clearly visible from Sydenham along the skyline. The gap between Slade Meadow and Sydenham is 503m. To the south of this bulge are open fields, the top two thirds of the one adjacent to Slade Meadow contain the appeal site, which also wraps around the western edge of the Slade Meadow housing.
7. Developing this site will extend housing south from Slade Meadow, but it will be no closer to Sydenham than 503m. Spring Lane is a southerly extension of School Lane which turns, at the beginning of the site, into a public footpath that leads to the southernmost part of the village from where the houses in Godfrey Close are also visible on the skyline, but about 150m further away from Sydenham than Slade Meadow. To the east of the site is a recreation ground and then Lewis Road with the village hall, several shops and a church. This is the modern heart of the village.
8. School and Spring Lanes are typical estate roads with cars parked along them at intervals which force traffic to weave in and out. This would not be a problem in the normal course of events except that School Lane, as its name suggests, provides access to a school, Radford Semele primary school, and at various times of the day the school run causes severe congestion.

DAP2 and the NPPF

9. The Council accepted at the Inquiry that landscape was not an issue; they were only opposed to the development on the grounds of the reduction of openness between the two settlements. Consequently, they rely on DAP2 as the only relevant local plan policy.
10. The local plan was adopted in 2007 and ran to 2011. A new local plan is in development and it is hoped will be signed off by the Council later this year, after which it will go forward to a local plan inquiry. It is thus at a very early stage and has yet to be tested at a public examination. It is agreed the Council cannot demonstrate a 5 year housing land supply figure, and in any event, their 5 year target is contained in the emerging local plan and many objectors to that plan argue it is too low. Little weight can be given to that figure at the moment and the council's policies for the supply of housing are out of date, as required by paragraph 49 of the NPPF.

11. The text of DAP2 says “*development will not be permitted within the Areas of Restraint, as defined on the Proposal Map, where it would harm or threaten the generally open nature of the area*”. The appellant argues that DAP2 has two parts, one that is still relevant, namely a commitment to the separation of settlements, but one that is out of date, the ban on housing development. I was led to various court cases and a Secretary of State decision to support this argument.
12. In my view DAP2 is clearly not a policy for the supply of housing in terms of paragraph 49 of the NPPF. It is designed to prevent development from closing a specifically defined gap. In the South Northamptonshire¹ case Mr Justice Ouseley made clear that “housing policies” in paragraph 49 of the NPPF should not be given a very narrow meaning, but can include the general countryside protection policies that seek to restrict housing and other development to within town and village envelopes. These are counterparts to the specific housing policies, and to conclude they were not out of date would effectively undermine the purpose of paragraph 49. However, he draws a clear distinction between these ‘counterpart’ policies and those “designed to protect specific areas or features, such as gaps between settlements”². DAP2 is obviously one such policy and so is not rendered out of date by virtue of paragraph 49 of the NPPF.
13. Secondly, it was argued the policy is not compliant with the NPPF because it does not contain a cost/benefit analysis. I was led to two conflicting court cases on this issue. Firstly, Colman³, where the court held that local plan policies that did not, within their wording, permit any countervailing economic or similar benefit to be weighed in the scales were likely to not be consistent with the NPPF. However, 9 months later in Bloor⁴, Lindblom J did not read Colman as saying that “*every development plan policy restricting development of one kind or another in a particular location will be incompatible with policy for sustainable development in the NPPF, and thus out of date, if it does not in its own terms qualify that restriction by saying it can be overcome by the benefits of a particular proposal. That is more than I can see in what Kenneth Parker J. said [in Colman], and more than I think one can take from the NPPF itself*”.⁵ I agree with the appellant that Bloor does not supersede Colman just because it is later, but Lindblom J clearly deals with Colman and comes in my view to a sensible conclusion. If Colman was to be read as the appellant preferred then virtually no local plan policies would be consistent with the NPPF, possibly not even those adopted subsequent to the publication of the NPPF. Consequently I consider that when read as a whole and in the context of the whole local plan then merely because DAP2 does not contain the mechanism for a cost/benefit analysis does not make it inconsistent with the NPPF. I consider that it is consistent with paragraph 17, 5th bulletpoint, the core principle of taking account of the different role and character of different areas, and paragraph 109, 1st bulletpoint, protecting and enhancing valued landscapes.

¹ South Northamptonshire Council v SSCLG [2014] EWHC 573 (Admin)

² South Northants paragraph 47

³ Anita Colman v SSCLG [2013] EWHC 1138 (Admin)

⁴ Bloor Homes v SSCLG [2014] EWHC 754 (Admin)

⁵ Bloor paragraph 186

14. Because I have reached this conclusion I do not need to consider the Mountsorrel⁶ case as that was decided in the light of Colman but not Bloor.
15. The appellant has a final argument concerning the NPPF paragraph 14 presumption in favour of sustainable development. In closings the appellant argued it was "agreed" this presumption applied. This "agreement" appeared to colour the subsequent submissions on the weight to be given to DAP2. In fact it was not agreed that the presumption applied in this case from the outset. It is clear to me there is no presumption in favour of sustainable development merely because there is no 5 year supply of housing land. When there is no such supply then this means only that the policies for the supply of housing are out of date. The presumption in favour of sustainable development can only apply where a development is "sustainable". It is agreed that Radford Semele is sustainable in a locational sense; it contains a primary school, shops and a good bus link to Leamington Spa, which is very close by. But the NPPF defines sustainability as having three elements, one of which is an environmental role⁷. The main issue in this case is the environmental role of the site, so I cannot take a view on sustainability in NPPF terms until concluding on the main issue. At that point paragraph 14 might will come into play, but it is irrelevant in determining the DAP2 issue.
16. The Council were accused of acting inconsistently as they allowed a large housing development at Myton Road in another AoR. The officer's report in that case was dated after the report on the current appeal and stated because the Council did not have a 5 year supply of housing land DAP2 was out of date. After much discussion as to what this meant, only during the evidence presented for the costs claim were the Council, through advice to their Counsel given by the head of planning, able to confirm their position was that DAP2 was not a housing policy and the report into the Myton development was incorrect on that count. Nevertheless that was the conclusion I had already come to.
17. In conclusion therefore I consider that DAP2 is a relevant policy for this appeal that is not affected by paragraph 49 of the NPPF and is consistent with the NPPF as a whole.

Impact on the AoR

18. The appellant pointed to a series of landscape studies that had been carried out either for the County or the District councils. The District's own Landscape Character Assessment prepared by Richard Morrish Associates (RMA) in 2009 when discussing the whole chunk of land between Radford Semele and Sydenham commented "*We feel that retention of this 'green wedge' is essential for the character of Radford — but that small-scale urban expansion on the Radford boundary could be achieved without harming the overall landscape setting. Sensitive design will be essential*".
19. Later RMA produced an "Options for Future Urban Expansion" document in November 2012 and concluded "*There is development pressure to expand Sydenham and Whitnash south and east into Greenfield areas of the Whitnash Brook valley, whilst there is also pressure to expand the village of Radford Semele. Both areas of expansion are likely to lead to the actual or perceived*

⁶ APP/X2410/A/13/2196928 & 2196929 (Secretary of State case)

⁷ NPPF paragraph 7

coalescence of the settlements. This study has concluded that the rural setting, which includes managed nature reserve areas and well used public footpaths, has important functions for existing residents that are likely to be greatly undermined by some of the larger proposals for development adjacent the valley. Smaller land parcels are suggested for possible development where there would seem to be potential to retain the separate identity of Radford, the wider landscape character, some specific and distinctive landscape features and the multi-functional green infrastructure purposes of the valley.” One of the “smaller land parcels” identified in the proposals map was the large field to the south of Slade Meadow containing the appeal site with the tongue of land to the west of the Slade Meadow houses.

20. In November 2013 the County Council and various other organisations produced a Landscape Sensitivity Study. This included the site in landscape area RS07 which was considered unsuitable for development. The same organisations updated the study in April 2014 and now that part of RS07 which was the same parcel of land identified by RMA in 2012, was downgraded to medium-high sensitivity and it was noted there was scope for “limited development adjacent to the abrupt garden fence line/garage block that could potentially strengthen and enhance the landscape setting with a landscape buffer to the west that linked directly into both the field boundaries and the public footpath network”. The appellant argues this is exactly what they have set out to achieve.
21. Finally in May 2014 the District Council published its Strategic Housing Land Availability Assessment (SHLAA) which identified the appeal site as “potentially suitable subject to satisfactory master plan and phasing”.
22. Quite clearly there is a consistently maintained view that while the separation of Radford Semele from Sydenham is of paramount importance, there is room for some housing on the western side of Radford Semele, and the best location for that housing would be the appeal site. Although RMA’s 2012 “Options” document identified several sites on the western side of Radford Semele only the appeal site is included in the SHLAA and this would be consistent with the landscape advice provided by the County Council and the opportunity to provide a landscape buffer for the existing hard urban edge.
23. The Council sought to downplay this evidence as it was all landscape related and they accepted there was no landscape objection. However, it is wrong to rule out entire documents on the grounds that they deal only with landscaping. It is clear from the quotes above that coalescence and openness were prime considerations within the context of a landscape appraisal. Although these are landscape documents they make the valid point that some limited development is possible without compromising the AoR, which is central to this issue.
24. The Council’s landscape expert witness disagreed with the conclusions of RMA and the County Council. His evidence was largely based on his experience of the site on the ground and the role it played in maintaining the gap between Radford Semele and Sydenham, to which I shall now turn.
25. I visited Sydenham and the site several times on my own and once with the appeal parties. On the latter visit we also walked footpaths beside both western and eastern boundaries of the site and down into the valley bottom next to Sydenham. Sydenham extends down the valley side to the brook. This

has been left as a local nature reserve with a footpath all along it and is filled with trees.

26. From the bottom of the valley Radford Semele is not visible due to the contours of the hillside, but the roofs of the houses in Slade Meadow and Godfrey Close soon become visible as one moves up the valley. These same roofs are visible through the valley bottom tree screen from the lowest parts of the Sydenham estate. From higher up in the estate there are clear views of Radford Semele on the ridgeline opposite. In particular the Slade Meadow and Godfrey Close houses are dominant. It is also possible to see the houses that sit behind the recreation ground, despite a thin tree screen along the edge of the recreation ground where it meets Spring Lane. What stands out is that the map shows Slade Meadow to be closest to the viewer, Godfrey Close to be further away and the houses beyond the recreation ground much further away still, but from Sydenham these differences are not readily apparent. Development at Radford Semele appears to march along the ridge, more or less in line. Consequently, I agree with the appellant that in visual terms it would not be apparent that Radford Semele had come closer to Sydenham if the appeal site were to be developed.
27. This view is reinforced by the very important consideration of the proposed landscaping scheme. The appellant made much of the 'landscape led' proposal. They intend to create a 20m deep landscape buffer along the western edge of the site, including the tongue of land on the western edge of Slade Meadow. Views of the site would, at the very least be filtered through the trees, and the harsh outline of Slade Meadow would be similarly screened. The hard edge of the garage blocks on the southern edge of Slade Meadow would also be hidden by the development. At best, once mature, the landscaping would substantially hide both developments. This would help to visually protect the gap while improving the view from Sydenham, exactly as advised in the County Council's April 2014 study. There was disagreement as to how long the landscaping would take to mature, ranging from 10-20 years. Nevertheless, it would have some impact immediately and this would grow as the landscaping grew.
28. As I saw on my site visit the site does contribute to the appearance of the gap when viewed from Spring Lane, especially as from here the slope of the land means the gap appears to mainly consist of the appeal site. But this view would be lost entirely if the site were developed and so would the visual illusion created by the land slopes. As a consequence views across the gap would be taken from the footpath on the western edge of the site, from where the full extent of the valley can be appreciated and it is clear the fields on the slope between Radford Semele and Sydenham act as strong visual separators.
29. The Council's landscape expert argued that the view expressed by the County Council that there was limited scope for development was wrong. In his opinion the site was highly sensitive. He advanced a theory that edge of village sites were more sensitive than open countryside as they were more under pressure for development. I think, however, he was using 'sensitive' to mean vulnerable, whereas the landscape analysis documents were using it to describe the impact of change. It follows from the discussion above that I do not consider the County Council were wrong and I do not agree with the District Council that the site plays a valuable role in preventing coalescence.

30. There will clearly be a loss of openness within the AoR as a field would become a housing estate. But DAP2 does not seek to preserve openness as if it were a Green Belt construct. It seeks to protect the "generally open nature of the area". By use of the word "area" I do not take it mean the AoR as a whole, as that would be too wide a test, but the immediate area surrounding any particular proposed development site, and then that should be considered within the context of the purpose of the AoR itself. In my view the loss of the appeal site to the AoR would not affect the "generally open nature of the area" around it, and would not lead to any perceived or actual coalescence with Sydenham. The principle of the AoR is clearly important and any coalescence would be seriously harmful to the character and identity of Radford Semele as well as to the landscape quality of the valley, but that is not the case here. Consequently I do not consider the proposal is contrary to DAP2.
31. An appeal at Bishop's Tachbrook⁸ was put before me to support the Council's case, but in that appeal the Inspector found there would be a 36% increase in the size of the village, which would erode the identity of the village, whilst also seriously harming the character and appearance of the area. This is quite different to the proposal before me.

The s106 Obligation

32. The appellant and the Council had reached agreement over a proposed s106 obligation. Two outstanding matters related to education and hospital payments. Because education was a County matter and the County Council were not prepared to be a party to an agreement drafted so as to leave it up to the Inspector to determine whether a contribution was required or not, the s106 agreement was abandoned and a unilateral undertaking was presented.
33. This undertaking covered affordable housing, amenity open space, bio-diversity offsetting, SUDS, employment, health, sports facilities, off-site play area, cycling strategy, footpaths, a sustainable travel pack and various education contributions. Paragraph 4 of the obligation enables the Inspector to determine if any part of the obligation is not consistent with the CIL regulations. I was asked to specifically advise on the hospital contribution part of the health contribution in part 8 of schedule 3 and the Early Years, Primary, Secondary and 6th Form contributions in schedule 4 of the obligation. There was no suggestion that the other parts of the s106 obligation were not CIL compliant and I have no evidence to reach a different view.
34. Regulation 122 requires that any payment must pass three tests, namely they must be (i) necessary to make the development acceptable in planning terms and; (ii) directly related to the development and; (iii) fairly and reasonably related in scale and kind to the development.

Hospital payments

35. The appellant opposed the hospital contribution on three grounds, firstly that the hospital service was funded by the NHS, itself funded by the taxpayer which would include the new residents of the estate, leading to double counting. Secondly, the SW Trust has planned for an 11% growth and is not seeking any s106 contribution for the capital element of this, but funding it

⁸ APP/T3725/A/14/2216200

itself, why should they not do the same for running costs? Thirdly the costs generated by occupiers of the new houses will not fall in the next year, as the houses are not likely to be built and occupied for at least 18 months after the date of the decision. Two appeal decisions were provided where Inspectors had agreed that NHS contributions were not required in areas covered by the same NHS trust as this appeal.

36. I do not pretend to be an expert in NHS funding, but it was explained at the Inquiry that the running costs of the service were funded on the basis of current costs. So next year's budget will be based on this year's population figures. Even if a trust is well aware of population growth that will effect next year that cannot be built into the budget. That may be illogical, as the appellant argued, but unfortunately it is how the system appears to operate. The year after, the budget will catch up, so there is always a shortfall of one year in the funding arrangements. It seems from the evidence before me that the local trust is already fully stretched financially. Therefore, insofar as any shortfall is attributable to the housing development subject to this appeal, and there is no dispute about the calculation of the actual sums involved, it would seem to me to be directly related to the development and so compliant with the CIL tests.
37. The fact that the occupiers of the houses may pay taxes is irrelevant, as they will pay taxes that would contribute, in some small way, to most of the elements of the s106 obligation, and indeed of all s106 obligations. The obligation is also worded so that the payments are triggered by 50% and 90% occupation of the houses, so there is no question of the developer paying up front for a cost that will not fall to the SW Trust for several years.
38. I do not know how the case was presented at the Inquiries where my colleagues decided against the SW Trust, but from the contents of the decision letters it seems that neither had the matter explained in the same clear way that was presented to me.

Education payments

39. It is estimated the appeal development will create a need for 17 primary school places. There is a very popular primary school in Radford Semele, which currently has only a few spaces and population growth forecasts suggest there will be no vacancies at all in the reception class for the next few years. This will quickly work through school leaving at most 2 vacancies by 2017, when, if all goes well, the development should be fully occupied.
40. The appellant pointed out that because Radford Semele was a popular school it took nearly half its intake from outside the catchment area. Their argument was quite simply that other primary schools within a 1 mile radius did have vacancies, so there were actually enough places to go round, even with the new development. All that would happen is that if parents living in the new development in Radford Semele chose to send their children to their local school, this would displace children from the other less popular schools' catchments. I take the point that the new entrants would be scattered across the year groups, and existing children could not be required to change schools in the middle of their education, but all that would mean is a temporary bulge as those over-subscribed year groups subsumed the extra pupils. There is no bar on class sizes exceeding 30, as the figures show currently happens.

41. I find this argument quite convincing. It is up to the appellant to deal with specific costs arising from their development, not to maintain the status quo for parents and schools in the area. It would seem there is spare capacity in the system at primary level and so no primary payments are required. If that means that some parents in the future cannot send their children to Radford Semele when they do not live there then that is unfortunate, but not the responsibility of the appellant.
42. The County Council argued that places for secondary education were also tightly squeezed. Due to population growth and the likelihood of numerous new housing developments being allowed they had taken the decision to expand two secondary schools in the area, Campion and Myton. It is estimated by 2021 there will be 500 too many pupils for these schools if they are not enlarged.
43. Campion is the closest school to the site but Myton is nearly 3 miles away. There are two other secondary schools closer to the site than Myton, and the combined number of surplus spaces at all four schools is currently 914, or nearly 18% of total capacity. I agree with the appellant that counting pupils from future developments that do not yet have planning permission is unfair. If there is a demonstrable shortfall when they are granted planning permission then they may be required to contribute, but at present there does not seem to be a shortfall, and no figures were provided to suggest there would be a problem in the next few years.
44. The same argument was made for 6th form payments and no evidence was provided to demonstrate a need for an early years' contribution. The County Council argued that it stood to reason there would be demand for places as it was well understood there would be population growth in the County in the next few years.
45. I have considerable sympathy with the County Council who are trying to plan for a population that is growing naturally and also through in-migration as Warwickshire would seem to be a popular place to live. However, it is not the role of a s106 obligation to help fund possible future growth but to mitigate specific problems directly related to the development.

Conclusions

46. In conclusion I consider the proposed hospital payments are CIL compliant and should be paid, but the evidence for the education payments is lacking. On the basis of the evidence put before me, I am not satisfied that there will be shortfall in spaces for early years, primary, secondary or sixth form and so the proposed education payments in Schedule 4 of the obligation are not CIL compliant and should not be made.
47. I understand that the NHS Trust's position has been evolving over time and the fact that other developers or Inspectors may have had different views on whether to make these payments or not does not affect my conclusions above, which are based on the evidence put before me.

Other Matters

48. A large number of third parties attended the Inquiry or wrote in opposing the development. Apart from the loss of part of the AoR their concerns mostly

related to traffic, the loss of views and quality of life issues and a general concern about uncontrolled growth in Radford Semele.

Traffic

49. Almost everyone was opposed to the proposal on traffic grounds. As I saw myself, School Lane became very congested at school pick-up time, and would undoubtedly be worse at the morning dropping-off time when commuter traffic would be added into the mix. The junction with Southam Road is also narrow, and I had to wait to turn into School Lane while various cars sorted themselves out that had become jammed into the access. The development will obviously add more cars to the problem.
50. The appellant has offered to widen the junction, although not by much as there is little spare land at either side. Nevertheless as I saw on the site visit there is room to provide a wider junction and still retain footpaths on both sides. This will improve the actual use of the junction, but do nothing to help with congestion. However, as I also saw, outside of school times very little traffic at all used School Lane, and, despite the fact that other groups use the school at different times, the appellant's own traffic generation figures show the problem is very much restricted to the peak drop-off and pick-up times.
51. Although various figures for car ownership were mentioned, even if every householder owned 3 cars they would not all use School Lane at peak times. The appellant used the standard figures from the TRICS database which are used for all housing developments to determine traffic movements that are likely rather than worse-case scenarios. These suggested there would be 330 vehicle movements to and from the site between 07:00 and 19:00 per day, with 31 of those being in the morning peak and 35 in the evening peak (17:00-18:00). The afternoon school slot generated less traffic. These figures do not suggest there is going to be a significant worsening of the situation. The appellant argued that while a little more congestion was "tiresome" it is not harmful, there is no accident record in the area, partly because the difficult traffic situation reduces speeds to very slow and most significantly, the Highway Authority did not oppose the development.
52. I agree with the appellant that while I can understand local residents desire not to see the current situation get any worse, it simply is not sufficiently bad to count against the development. Paragraph 32 of the NPPF specifically states that development should only be refused where the cumulative traffic impacts are severe. The concerns over a third lane on Southam Road related to another proposed development and were nothing to do with this appeal.

Views and quality of life

53. Currently there are attractive views across the valley towards Leamington Spa, and the spires of various churches and the town hall can clearly be seen. These are obtained from Spring Lane as it runs past the site and would be blocked by houses and landscaping. By the time the footpath is sufficiently beyond the appeal site so that the view would not be blocked by houses it is hidden by the slope in the ground, so it is clear that view would be lost. However, another footpath runs along the western edge of the site and that would not be affected. From other footpaths views into Radford Semele across

the field would be terminated at the landscaping barrier, with the houses beyond.

54. The site currently abuts the recreation ground so that there is a green wedge that thrusts into the centre of Radford Semele. This would also be lost because of the development, but even now, the hedgerows alongside the recreation ground and the eastern edge of the site do not allow for uninterrupted views and there is no general sense of open land running from the eastern edge of the recreation ground out into the open country.
55. Many people argued that they walked their dogs along the lanes and footpaths, but this would still be possible. In effect a relatively short stretch of Spring Lane would have a housing estate one side, and as one approached Radford Semele the houses would be marginally closer than they are now. So although there would be a loss of some views and a reduction in quality of the experience of some rights of way these would be minor. There is no reason why the wildlife that several people mentioned should not continue to thrive; indeed, the proposed landscaping should be sufficiently extensive to actually improve the bio-diversity of the area compared to an intensively farmed agricultural field.
56. It was also argued there would be an increase in light pollution, and from Sydenham, the new street lights would shine through the landscaping, appearing to draw the development closer. I saw the site at night from Sydenham, and the street lights in Slade Meadow were very bright, which did make it appear closer than during day light. However, lighting is conditioned so that there is no reason why the standard bright sodium lights should shine out as in the older developments. The proposed landscaping would also diminish the impact and would reduce the effect of the existing Slade Meadow lighting as well.

Uncontrolled development

57. Following extensive consultation within the parish, the villagers thought they had settled on growth limits for Radford Semele. The draft local plan has gone forward with a suggestion that 50 dwellings would be reasonable, and recently the preferred site to the east of the village was granted planning permission for 60 dwellings. As far as the locals were concerned they had done their bit.
58. However, the Council cannot find enough land to meet even its preferred target in the draft local plan. Even though the local plan suggested only 50 dwellings as a rough guide for the village it was always likely this would have to be increased as Radford Semele is a sustainable location and is one of the most likely candidates for extra housing outside of the four main conurbations in the District. If the preferred housing figure is found wanting in the forthcoming local plan inquiry there will be even more pressure on places such as Radford Semele to find more land for housing.
59. In addition to this appeal there is another also before the Secretary of State for over 100 dwellings to the north of Southam Road, plus several other possible applications on village edge sites in the pipeline and I can fully understand the locals' fears at being overwhelmed. However, each case must be looked at on its merits. Housing should not be allowed regardless of the harm it might cause and the incremental growth of Radford Semele would be an issue in any

future housing cases. But for this case the 60 already approved and the 65 proposed here are not excessive and would not cause a problem for Radford Semele. I consider that fears of a loss of identity are unfounded, as was accepted by the District Council itself.

Other matters

60. One resident was concerned about sewage issues, but there had been no objection from the water authority. It seems that one pipe in one part of the village was not functioning properly, but that is not the responsibility of the appellant.
61. Construction traffic would be conditioned to avoid school peak times. Contractors serving the site would be delivering large amounts of plant or material and could be programmed by the site foreman to ensure this was adhered to.

Benefits

62. The benefits of the scheme fall into three categories. Firstly housing; the provision of market housing, which because there is no 5 year supply identified, is an important material consideration as is the supply of 40% affordable housing. Secondly the landscape and bio-diversity benefits, which I also give considerable weight to; the landscape buffer extending along the edge of the Slade Meadow houses should significantly reduce the visual impact of those houses and the whole development would hide the harsh line of garages on the southern side of Slade Meadow. Thirdly there are less tangible benefits in terms of job creation and consumer spending. There will undoubtedly be some benefit to be gained in these areas, although the construction phase is more likely to ensure existing jobs are retained than new ones created, nevertheless, they should be given some weight.

Conclusions

63. Policy DAP2 is up to date and relevant to the appeal, but the proposal is not contrary to that policy. I do not find that it would close the gap between Radford Semele and Sydenham, nor would it harm the general open appearance of the AoR. There are no significant traffic or environmental issues and the proposal is sustainable in terms of the NPPF. The presumption in favour of sustainable development thus applies along with the benefits I have identified above. There would be minor harms caused by the loss of views and reduction in quality of a short stretch of two rights of way, and by the increase in congestion at certain times of the day on Spring Lane, but these are clearly insufficient to warrant withholding approval. I shall allow the appeal subject to the conditions in the attached annex.

Conditions

64. The only condition in dispute was part of one requiring 10% of the predicted energy requirements of the development should be produced by renewable resources. The appellant wanted the option of achieving the same end wholly or partly by reducing energy requirements through design of the buildings themselves. However, I am not clear how this will work in practice, especially as there is no benchmark against which to establish a measure for the 'first fabric design' as suggested. I shall attach the condition suggested by the

Council. The other conditions which dealt with reserved matters, landscaping, access, street lighting, secured by design, wildlife and tree protection during construction, fire hydrants, archaeology, surface and foul water drainage, a construction method statement and housing mix are all necessary and were all agreed by the parties.

Simon Hand

Inspector

Richborough Estates

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

| | |
|---------------------|--------------------------|
| Tim Leader | Of Counsel |
| He called | |
| Liam D'Onofrio | Warwick District Council |
| BA(Hons), Dip.TCP, | |
| MRTPI | |
| Dr David Hickie | David Hickie Associates |
| BSc(Hons), MA, PhD, | |
| CMLI, CEnv, MIEMA, | |
| IHBC | |

FOR THE APPELLANT:

| | |
|-------------------------|-------------------------|
| Jeremy Cahill QC | |
| He called | |
| John Francis Baly CMLI, | JB Landscape Associates |
| Dip Con Pol, Dip | |
| LA(Glos) | |
| David Green BSc(Hons), | Delta Planning |
| MRICS, MRTPI | |
| Simon Tucker CIHT, | David Tucker Associates |
| ICE, BSc Eng(Hons) | |
| Oliver Nicholson | EPDS Consultants |

INTERESTED PERSONS:

| | |
|--------------------|---|
| David Chater | Chairman - Parish Council |
| Michael Doody | Sometime County and District Councillor |
| Narinder Dhillon | Local Residents |
| Anthony Hitchcox | |
| Nicola Fleuty | |
| Stephanie Sedgwick | |
| Edwin Coombs | |
| Mel Duffy | NHS SW Trust |
| Peter Speers | County Council Education Department |

DOCUMENTS

1. Appeal Decision APP/T3725/A/14/2216200, Bishop's Tachbrook
2. Written statement from the Parish Council
3. Draft Settlement Hierarchy Report
4. Local planning authority opening statement
5. Appellant's opening statement
6. Warwick District Council decision - Myton Road
7. Aerial photograph showing location of photographs in Dr Hickies' evidence
8. Laying the Foundations
9. Appeal Decision APP/C3105/A/13/2203995
10. Numbered map of footpaths
11. Transcript of South Northamptonshire v SSCLG
12. Transcript of Bloor Homes v SSCLG
13. Simon Tucker – personal details
14. Extracts from appeal decision APP/J3720/A/13/2205108
15. E-mail concerning education contribution
16. Education statements from both parties
17. Hospitals contribution statement from SW Trust
18. List of conditions
19. Appellant's cost application
20. Local planning authority closings
21. Appellant's closings
22. Signed s106 unilateral undertaking
23. Late representation from local resident

Richborough Estates

Conditions Annex (18 Conditions)

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development shall not be occupied until the access to the site has been laid out in accordance with drawing no.13967-0103 Rev H and the junction improvements have been implemented in general accordance with drawing no. 15168-01 Rev B.
- 5) No lighting shall be installed within any relevant phase of development until a detailed lighting scheme for that phase has been submitted to and agreed in writing by the local planning authority. In discharging this condition the local planning authority expects lighting to be restricted around the boundary edges, particularly along hedgerows, where protected species are likely to be found, and to be kept to a minimum at night across the whole site in order to minimise impact on emerging and foraging bats and other nocturnal wildlife. This could be achieved in the following ways: (i) low pressure sodium lamps should be used in preference to high pressure sodium or mercury lamps; (ii) the brightness of lights should be as low as legally possible; (iii) lighting should be timed to provide some dark periods; and (iv) connections to areas important for foraging should contain unlit stretches. Such works, and use of the lighting and/or illumination, shall be carried out and operated only in full accordance with those approved details.
- 6) No phase of the development shall take place under any reserved matters consent until a scheme for that reserved matters consent and phase of development showing how 10% of the predicted energy requirement of this development will be produced on or near to the site, from renewable energy resources has been submitted to and approved in writing by the local planning authority. That phase of development shall not be first occupied until all the works within this scheme have been completed and thereafter the works shall be retained at all times and shall be maintained strictly in accordance with manufacturer's specifications. Microgeneration equipment no longer needed for microgeneration shall be removed as soon as reasonably practicable.
- 7) No development shall take place until a scheme indicating how and when the 'Secured by Design' standards will be incorporated into the development. The scheme shall be implemented in accordance with the approved details and shall be retained at all times thereafter.

- 8) No part of the development hereby permitted shall be commenced and nor shall any equipment, machinery or materials be brought onto the site until a scheme for the protection of all existing trees and hedges to be retained on site has been submitted to and approved in writing by the local planning authority and has been put in place. The scheme must include details of the erection of stout protective fencing and be in accordance with British Standard BS5837: 2012, a Guide for Trees in relation to construction. Nothing shall be stored or placed in those areas fenced in accordance with this condition and nor shall the ground levels be altered or any excavation take place without the prior consent in writing of the local planning authority. The approved scheme shall be kept in place until all parts of the development have been completed and all equipment, machinery and surplus materials have been removed.
- 9) The development hereby permitted shall not commence until a construction and Environmental Management Plan (CEMP) in accordance with BS 42020:2013 has been submitted to and approved in writing by the local planning authority. In discharging this condition the LPA expect to see details concerning pre-commencement checks for protected and notable species with subsequent mitigation and monitoring as deemed appropriate. In addition appropriate working practices and safeguards for other wildlife dependent of further survey work, that are to be employed whilst works are taking place on site. The agreed Construction and environmental Management Plan shall thereafter be implemented in full.
- 10) The development hereby permitted shall not commence until a detailed landscape and Ecological Management Plan has been submitted to and approved in writing by the local planning authority. The plan should include details of planting and maintenance of all new planting. Details of species used and sourcing of plants should be included. The plan should also include details of habitat enhancement/creation measures and management, such as native species planting, wildflower grassland creation, woodland and hedgerow creation/enhancement, and provision of habitat for protected and notable species (including location, number and type of bat and bird boxes, location of log piles). Such approved measures shall thereafter be implemented in full.
- 11) The development hereby permitted shall not be commenced until a scheme for the provision of adequate water supplies and fire hydrants, necessary for fire fighting purposes at the site, has been submitted to and approved in writing by the Local Planning Authority. The development shall not then be occupied until the scheme has been implemented.
- 12) No development shall commence until a Written Scheme of Investigation (WSI) for a programme of archaeological evaluative work across the site shall be submitted to and approved in writing by the LPA. The programme of archaeological evaluative work and associated post-excavation analysis, report production and archive deposition detailed within the approved WSI is to be undertaken. A report detailing the results of this fieldwork shall be submitted to the planning authority. An Archaeological Mitigation Strategy document shall be submitted to and approved in writing by the LPA. This shall detail a strategy to mitigate the archaeological impact of the proposed development. Dependent upon the results of the trial trenching, this may include further archaeological fieldwork and/or the preservation

in situ of any archaeological deposits worthy of conservation. Unless otherwise agreed with the Planning Authority, no development shall take place until any fieldwork detailed in the approved Archaeological Mitigation Strategy document has been completed. The post excavation analysis, publication of results and archive deposition shall be undertaken in accordance with the approved Mitigation Strategy document.

- 13) The development shall proceed only in strict accordance with a construction method statement which has been submitted to and approved in writing by the local planning authority. The approved statement shall be strictly adhered to throughout the construction period and shall provide for: the parking of vehicles of site operatives and visitors; the loading and unloading of plant and materials; the storage of plant and materials used in constructing the development; wheel washing facilities and other measures to ensure that any vehicle, plant or equipment leaving the application site does not carry mud or deposit other materials onto the public highway; measures to control the emission of dust and dirt during construction; and a schedule for the movement of construction plant, associated equipment and deliveries to avoid the start and finish of the school day (15 minutes either side).
- 14) The development hereby permitted shall be carried out in strict accordance with the details of surface and foul water drainage works that shall have been submitted to and approved in writing by the local planning authority.
- 15) The development hereby permitted shall be carried out in strict accordance with details of a scheme to be submitted to and approved in writing by the local planning authority showing (i) the existing and proposed drainage systems for the site, showing the location of yard and road gullies, manholes, storage tanks, soak ways, septic tanks, cess pits and pipes including size, shape, material, fall and level in relation to ground and building levels to ordinance survey datum. This should include a manhole schedule and construction details; (ii) The applicant is to provide calculations/models of pipe flows, discharge rates from the site and flood storage volume and design water levels reducing the off-site discharge rates to mimic existing greenfield run off rates. This should include calculations for 1 in 1 year, 1 in 30 and 1 in 100 year + 30% climate change allowance; (iii) The applicant is to provide plans showing the existing and proposed internal property drainage systems for the site including rain water down pipes, showers, sinks, toilets, WCSs, wet rooms, wash basins, wash machines, dish washers and pipes showing how they link up with the external drainage systems; (iv) The applicant is to undertake and provide percolation test results for the site where infiltration of water is proposed (if used), this is to be in accordance with British building regulations part H. The applicant is to provide a report showing photos of the tests being carried out and details of the test results along with soakaway design calculations in accordance with BRE 365. If infiltration is not suitable on site then another drainage strategy will need to be submitted; and (v) The applicant is to obtain discharge consent from Severn Trent Water to prove that there is suitable capacity within the sewer to accommodate additional flows. The scheme shall be completed prior to first occupation of the housing scheme and thereafter

be retained and shall be managed and maintained in strict accordance with the approved details.

- 16) Any landscaping (other than the planting of trees and shrubs) approved under condition 1 above including boundary treatment, paving and footpaths, shall be completed in all respects for that phase of development, with the exception of tree(s) and shrub(s) planting, within the first planting season following the first occupation of the dwellings within that phase and the tree(s) and shrub(s) shall be planted within six months of that first use. Any tree(s) or shrub(s) removed, dying, or becoming in the opinion of the local planning authority seriously damaged, defective or diseased within five years from the substantial completion of the scheme shall be replaced within the next planting season by tree(s) or shrub(s) of similar size and species to those originally required to be planted. All hedging, tree(s) and shrub(s) shall be planted in accordance with British Standard BS4043 — Transplanting Root-balled Trees and BS4428 — Code of Practice for General Landscape Operations.
- 17) The existing tree(s) and shrub(s) indicated on the approved plans to be retained shall not be cut down, grubbed out, topped, lopped or uprooted without the written consent of the local planning authority. Any tree(s) or shrub(s) removed without such consent or dying, or being severely damaged or diseased or becoming, in the opinion of the local planning authority, seriously damaged or defective, within five years from the substantial completion of development shall be replaced, as soon as practicable with tree(s) and shrub(s) of such size and species details of which must be submitted to and approved by the local planning authority. All tree(s) and shrub(s) shall be planted in accordance with British Standard BS4043 — Transplanting Root-balled Trees and BS4428 — Code of Practice for General Landscape Operations (excluding hard surfaces).
- 18) The mix of type and size of market dwellings submitted as part of any reserved matters application shall accord with the recommendations contained within the most up to date version of the Council's "Development Management Policy Guidance : Achieving Mix of Market Housing on new Development Sites".