



Appeal Decision

Inquiry held on 10 - 11 February 2015

Site visits made on 9, 10 and 11 February 2015

by **John Felgate BA(Hons) MA MRTPI**

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

Decision date: 12 March 2015

Appeal Ref: APP/C1055/A/14/2222939

Land formerly known as Brook Farm, off Oregon Way, Chaddesden, Derby

- 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 The Radleigh Group against the decision of Derby City Council.
 - The application Ref DER/11/13/01284/PRI, dated 6 November 2013, was refused by notice dated 6 February 2014.
 - The development proposed is "residential development of up to 215 dwellings, 60 extra care units, and associated infrastructure and public space".
-

DECISION

1. The appeal is allowed and planning permission is granted, for residential development of up to 215 dwellings, 60 extra care units, and associated infrastructure and public space, on land formerly known as Brook Farm, off Oregon Way, Chaddesden, Derby, in accordance with the terms of the application, Ref DER/11/13/01284/PRI, dated 6 November 2013, subject to the conditions set out in the attached Schedule.

PRELIMINARY MATTERS

2. The permission sought is outline planning permission with all detailed matters reserved except access. The accesses proposed are a single vehicular access from a proposed new mini-roundabout on Oregon Way, and a pedestrian/cycle link onto Tennessee Road. The application is accompanied by a 'Framework Plan', but in so far as this shows details relating to matters other than access, it is agreed that these are purely illustrative.
3. The planning application was initially refused by the Council in February 2014 for a single reason, relating to highway safety. Subsequently, in December 2014, the Council reviewed its position and withdrew its objection to the development. At the inquiry, the Council presented no evidence other than to assist with factual matters and matters relating to conditions and obligations.
4. A legal undertaking has been entered into by the appellants and relevant landowners. The undertaking requires that 60 of the proposed dwelling units be provided as affordable housing; that 10% of the total dwellings shall be designed to Lifetime homes Standards. It also requires that public open space and a 'local area for play' (LAP) be provided within the site, together with provisions for their future management and maintenance. The undertaking also contains provisions for financial contributions towards local health, education and sports facilities, and to community centres, and to highways and transportation; and a provision for works of public art.

5. The Council has entered into a reciprocal legal undertaking, under which it agrees to use the various contributions for their specified purposes, and to adopt areas of public open space transferred to it.
6. It was noted at the inquiry that the appellants have subsequently submitted a further planning application for a similar development, but with vehicular access from Acorn Way. The Council has yet to make any decision on this second application. For the avoidance of doubt, the second application is a completely separate matter, which is not before me in the present appeal.
7. On 27 February 2015, after the close of the inquiry, new 2012-based household projections were published. The Council and the appellants were given the opportunity to comment in writing, and their responses have been taken into account.

PLANNING BACKGROUND

The appeal site

8. The appeal site comprises just under 10ha of undeveloped former farmland alongside the Lees Brook, on the eastern outskirts of the Derby built-up area. To the south is a network of residential streets, including Oregon Way and Tennessee Road, leading to the A52 Derby Road. Just off Tennessee Road there is the Chaddesden Park Primary School. To the north of the appeal site is the Lees Brook Secondary School and further residential suburbs. To the west is Chapel Lane, a narrow cul-de-sac with a semi-rural character. To the east of the site is a further large field within the same landholding as the appeal site, leading to Acorn Way, and beyond this is open countryside.

The adopted Local Plan

9. For the purposes of the appeal, the adopted development plan comprises the saved policies of the adopted Local Plan¹ (the LP). In that plan, the site is allocated as proposed public open space, and also forms part of a larger area identified as a 'green wedge'. Beyond the green wedge is an area designated as green belt, but the appeal site is not included in this.
10. With regard to the green wedges, Policy E2 states that development in those areas will only be permitted for certain purposes, which do not include housing. In addition, any development should not endanger the green wedges' open and undeveloped character, especially where the wedge is particularly vulnerable due to its prominence or narrowness.
11. Regarding the open space proposal, Policy L4 states the Council's intention to establish a new neighbourhood park, linking the existing Oregon Way Recreation Ground to Windmill Hill, Chaddesden.
12. In addition, the LP indicates the route of a proposed cycleway/walkway running in an east-west direction through the site, alongside the Lees Brook and away to the east, across open countryside, towards Locko Park. Policy T15 states that, in considering planning applications, the Council will seek to protect and implement the identified routes.

¹ The City of Derby Local Plan, adopted in January 2006

The emerging draft Core Strategy

13. In October 2012, as part of its preparatory work for a new Core Strategy (CS), the Council published a 'Preferred Growth Strategy'², which identified a number of large sites for possible housing development. The present appeal site, together with the field to the east, was identified as one of these sites, for a minimum of 275 new homes, with access from Tennessee Road and Oregon Way. These proposals were the subject of public consultation in 2012.
14. At the same time, the Council published a Green Wedge Review report. In the case of the Lees Brook area, the report found that although the green wedge had some benefits, it was less important here than in some of other areas of the city, for two reasons. These were, firstly because the Lees Brook wedge did not serve the function of separating distinct neighbourhoods, and secondly because the Chaddesden area has good access to other areas of open countryside, including another nearby green wedge, known as the Spondon/Chaddesden wedge.
15. One year later, in October 2013, the Council published the first draft version of the Core Strategy³. The appeal site and the field to the east were identified as Site AC25, which was proposed for a 'sustainable urban extension' of up to 275 dwellings. Vehicular access was to be taken from Oregon Way only. A green corridor and buffer area was proposed alongside the Lees Brook, together with an unspecified amount of publicly accessible recreational green space. Further public consultation was carried out on these draft proposals.
16. In November 2014, the Council approved a 'pre-submission' version of the CS⁴. Site AC25, which includes the appeal site, is again proposed to be allocated for 275 dwellings, with access from Oregon Way, and the provision of a green corridor and publicly accessible green space, as in the 2013 version. The pre-submission plan is to be published in the near future.

MAIN ISSUES

17. In the light of the matters raised by local residents and other objectors, both at the inquiry and in their written representations, it seems to me that the main issues in the appeal are now:
 - whether the proposed development is acceptable in principle, having regard for the relevant policies in the adopted LP, and other relevant considerations including the emerging CS and the supply of land for housing; and
 - the development's effects on local traffic conditions and highway safety.

INSPECTOR'S REASONING

The principle of the development

Policy considerations

18. As set out above, LP Policies E2 and L4 seek to protect the whole of the appeal site as a green wedge, and to include it all in a new neighbourhood park. The mainly housing development now proposed would conflict with the aims of these policies. This conflict weighs against the appeal. However, the LP was

² LDF Core Strategy: Preferred Growth Strategy, October 2012

³ 'Derby City Local Plan – Part 1: Draft Core Strategy', October 2013

⁴ 'Derby City Local Plan Part 1: Core Strategy – Pre-Submission Plan', approved by Council on 26 November 2014

adopted some 8 years ago, and was intended to cover the period only to March 2011. The plan was based on the circumstances that applied at that time, and since then, some of those circumstances have changed.

The planned neighbourhood park

19. Firstly, the situation has changed with regard to the planned neighbourhood park. Whatever may have been envisaged in 2006, in terms of how the proposed park was to be funded and implemented, quite clearly those plans were not realised within the LP's intended timescale, and still have not been realised now. As things stand now, the land remains in private ownership. Although public access is currently tolerated by the owners, this appears to be on a purely permissive basis, and could thus be withdrawn at any time⁵. Physically, the land remains as rough pasture and scrub. As far as I can tell, there appears no longer to be any delivery plan, either for the ownership to be transferred to the Council or another appropriate body, or for the carrying out of the necessary works to make the land suitable for use as a park.
20. Although the Council has declined to make any direct comment on these matters at the present inquiry, their intentions in respect of the neighbourhood park are clearly implicit in their stance towards the proposed housing development, which has now become one of tacit support. In the light of that position, there is evidently no continuing commitment or desire on the Council's part to look for ways of resurrecting the neighbourhood park scheme and taking it forward. Given the present restrictions on local authority finances, this is understandable, but as a consequence, it seems to me that there is now very little prospect of the park coming to fruition within any reasonable or foreseeable timescale. In these circumstances, LP Policy L4 must now be considered out of date, in so far as it relates to the appeal site.

Housing need

21. The second matter where circumstances have changed significantly since 2006 relates to housing needs. The adopted LP provided sufficient land only for the period up to 2011. Since then, no new land allocations have been adopted through the development plan process. Although the Council has tried to bring forward a number of sites through the emerging CS (including the appeal site), that process is still a long way from completion. As a result, the supply of sites ready for development has evidently dwindled, and the level of unmet housing need has grown.
22. Furthermore, since March 2012, the National Planning Policy Framework (NPPF) has required authorities to maintain a forward supply of deliverable sites for at least 5 years ahead, measured against objectively assessed housing needs. In Derby, according to the appellants' assessment, the current supply is between 2.7 - 4.0 years' worth, depending on the method of calculation and the size of the 'buffer' allowance⁶. In the light of the most recent 2012-based household projections, this position may have worsened. The Council offers no figures of its own, but agrees that the supply is less than 5 years, and does not dispute the appellants' assessment.

⁵ At the inquiry, it was said that local residents have applied to have some of the informal footpaths across the site registered as public rights of way. However, this would not change the ownership of the land.

⁶ As required by NPPF paragraph 47

23. Some of those who object to the appeal proposal refer to the potential for development on other sites, and in particular the former Celanese Acetates chemical works in Spondon. But from the evidence before me, it is clear that there are substantial issues to be resolved on that site, including contamination, flood risk, and access. And whilst the Council has not ruled out an element of housing there, it also sees the Celanese site as an important opportunity for new employment, possibly including heavier industries. On such a large and complex site, resolving these issues and formulating a viable and comprehensive master plan are unlikely to be achieved overnight. It would therefore be unwise for me to rely on the Celanese site as an alternative to the present appeal site for meeting the City's immediate housing needs.
24. Some objectors also refer in general terms to perceived opportunities on other brownfield sites. But in the absence of any further details, I can only assume that such sites have already been taken into account by the Council, in coming to their view that a 5-year deliverable supply cannot be identified.
25. The development now proposed would provide up to 275 units, and could thus potentially make a substantial contribution to the identified shortfall.

Implications of the draft CS

26. Thirdly, there is the emerging CS itself, which proposes to allocate the appeal site mainly for housing. It is true that the draft plan has yet to be tested in a public examination. However, in the context of the present appeal, it is by no means insignificant that the Council has identified the appeal site as part of its preferred strategy for housing, and has done so consistently at each stage of the CS process, from 2012 through to the forthcoming pre-submission version. The 2012 and 2013 drafts were subject to public consultation, and whilst I do not have details of the responses to those consultations, it is salient that the Council has always continued to choose this site as one of its preferred options, even though this effectively means the final abandonment of its aspirations for a neighbourhood park.
27. It is not for me to prejudge the outcome of the CS process. However, the evidence before me does not suggest that there is a wide choice of alternatives to the appeal site. And in any event, even with the appeal site included, it appears that the draft CS proposals would still leave part of the City's housing needs to be met in neighbouring districts. So, even if some additional housing were to come forward at the Celanese site, or other windfall sites, that would not necessarily remove the probable need for the appeal site to be developed too.

Analysis and conclusions on matters relating to the principle of development

28. The law requires that planning decisions must be made in accordance with the development plan unless other material considerations indicate otherwise. Here, if there were no such other considerations, the adopted policies relating to the neighbourhood park and green wedge would require that permission for housing be refused. However, for the reasons explained above, there are other considerations that must be weighed in the balance.
29. Given its topography, dramatic views, and convenient location, the appeal site would have lent itself very well to a neighbourhood park, and it is easy to see why it was chosen as the location for such a facility. The scheme now proposed would include some public open space, and a children's play area,

sufficient to serve the proposed housing development, but this would not be a neighbourhood park of the kind envisaged in the LP. It is possible that there might have been an opportunity for a development that combined some housing with a smaller version of the neighbourhood park, possibly including the field to the east, but that option is not before me in this appeal. The only decision that I can make is whether or not to allow the development that is now proposed. Since the park as envisaged in Policy L4 is no longer likely to proceed, that policy is not now a tenable basis for refusing other forms of development.

30. The grounds for any policy objection therefore hang on Policy E2, the green wedge policy. As acknowledged in the Green Wedge Review, the Lees Brook wedge provides some benefits, in that it gives definition to the built-up area and provides links to the open countryside. But on the other hand, as the Review also notes, this particular wedge is less effective at performing the other functions envisaged for such areas. And, in any event, as paragraph 9.7 of the LP text states, the green wedges are not intended to be permanent; they were always seen as being subject to review, in order to meet future development requirements.
31. And in addition, as established above, the advantages of maintaining the green wedge policy in this area must now be weighed against the significant shortfall in the city's housing land supply, and the consequent urgent need to rectify that situation. Given the slow progress of the emerging CS so far, and the number of hurdles that are still to be surmounted, it is likely to be some considerable time before this is resolved through the development plan process. In terms of national policy, the NPPF makes it clear that there is an absolute requirement to boost the supply of housing significantly, and to meet objectively assessed needs. The unmet housing need in the area therefore carries very substantial weight.
32. Whereas, there is no equivalent national policy relating to green wedges. The NPPF does give strong protection to green belts, but here the appeal site is specifically excluded from that area. Outside green belts, the NPPF seeks to ensure that the countryside's intrinsic character and beauty are recognised, and that valued landscapes are protected, but the green wedge policy is not related to landscape value, and the appeal site has no other designation that is relevant in this context. When the site is considered in the light of these competing policies, it seems to me that although the protection of the green wedge may be desirable, it is not as compelling as the need for more housing.
33. On balance therefore, it seems to me that Policy E2 cannot now be an overriding consideration; despite the conflict with the development plan, the need for the housing outweighs the green wedge policy. In these circumstances, I conclude that the principle of the development now proposed is acceptable.

Traffic and highway safety

Traffic generation on local roads

34. The proposed development would require all vehicular traffic to access the site via a new mini-roundabout at the junction of Oregon Way and Ellendale Road. This would mean significant traffic increases on these two roads. It would also

- involve increases, albeit of a lesser scale, on several other local roads, including Lexington Road, Lime Grove and Sunny Grove.
35. I appreciate the concerns of local residents regarding this additional traffic. As I saw on my visit, the area is a long-established residential suburb. The roads were mainly designed in the 1950s and 60s, when car ownership was much lower. Further development beyond Oregon Way was never anticipated or allowed for. In Oregon Way itself, the existing traffic is very light, and residents there have got used to the relative peace and quiet, but this would change if the development went ahead. In some other local streets, such as Ellendale Road, the volume and speed of traffic is higher, and residents say they fear for the safety of children and the elderly. Many properties do not have their own parking space or garage, and there is perceived to be a problem with the amount of on-street parking, especially in the evenings. In this context, particular concerns were raised with regard to emergency vehicles.
36. I understand all these concerns. But nonetheless, I must also have regard to the technical evidence which is before the inquiry, not only from the appellants themselves but also from the Council's own Highways Officers. This includes the appellants' Transport Assessment (TA) report, the Independent Road Safety Audit, the agreed Statement of Common Ground on highway matters, and Ms Kerry's proof and oral evidence.
37. The TA predicts a daily traffic generation of around 1,500 vehicle movements, either departing from or arriving at the site, during a typical 12-hour day. Of these, around 160 movements would take place during each of the busiest periods, in the morning and afternoon peak hours. These figures exclude the evening and night time periods, but one would normally expect that the numbers of vehicles at these times would be lower than during the day. I appreciate that local residents feel some scepticism towards these forecasts. However, the TA seems to me to have been prepared in accordance with the relevant guidance, following recommended best practice. The traffic forecasts do not rely on any assumptions about future residents' working patterns or travel behaviour. Rather, they are statistically derived, from surveys of actual traffic flows at a large number of comparable housing developments. The 'TRICS' database, which is the source of this information, is generally regarded as highly reputable, and is very widely used in forecasting and modelling exercises of this nature. Consequently, I can see no reason to doubt that the forecasts adopted in the TA are a reasonable basis for testing the proposed development's likely impacts.
38. Having established these overall numbers, the TA then predicts the way in which they will be split between the available routes, according to the relative attraction of the most likely destinations, including the city centre, other main employment areas, schools, shops and other facilities. On this basis, just over half the traffic is expected to go south along Ellendale Road, with the remainder going east along Oregon Way, and then splitting again where further route choices become available, until vehicles reach their destinations, or join the main network at the A52. Again, this follows a methodology which is well established. It is true that this stage involves an element of judgement, as to the percentage split between the different routes. But in so far as the submissions before me relate to this stage of the process, the criticisms raised are generalised in nature. None of the objections identify any specific

destinations that have been missed, or that have been wrongly included. I can see no obvious flaws in this respect.

39. In the worst case, the morning peak hour, this suggests a net addition to the existing traffic flows of about 70 extra vehicles on the northern section of Ellendale Road, and 55 on Oregon Way. On this basis, both of these roads, and the relevant junctions with the A52, are shown to remain well within their capacities. Although some on-street parking does occur, as I saw on my visits, there is usually ample width for a vehicle to pass between. I accept that this may sometimes mean having to wait for a few seconds, but that is not unusual in any urban situation. And even if a more serious blockage were to occur for any reason, such as in bad weather, the intervening residential streets offer a range of options for switching between the two main routes, or onto other minor roads, so that vehicles would normally be able to find an alternative outlet to the main network. Consequently, on the basis of the TA and all the other supporting evidence, I am satisfied that the local road network is adequate for the proposed development.
40. In addition, the legal undertaking provides for a financial contribution to highways and transportation. Although this is stated to be for improvements to public transport, cycling and pedestrian facilities in the A52 corridor, it was agreed at the inquiry that this could include traffic management measures, where such measures would have benefits to these stated purposes. It was also clarified that the A52 corridor includes all of the streets between the A52 itself and the appeal site.
41. I note that although the Highway Authority initially had some concerns, none of these related to the traffic forecasting process or impacts on the surrounding network. This reinforces my view on the above matters.

Site access

42. With regard to the proposed new mini-roundabout on Oregon Way, full details of the proposed design have been submitted. The safety audit has identified some minor issues, but details of this kind can be resolved at a later stage, given that these works within the public highway will be subject to further approval under the relevant highways legislation. For planning purposes, the submitted details are sufficient to show that a mini-roundabout can be accommodated within the existing highway land, without any significant effects on adjoining properties. Although there would be some loss of the existing verge, hedge and trees in this area, these impacts would not be on such a scale as to be unacceptable. In addition, the introduction of a roundabout at this point would be likely to have some safety benefits, in terms of reducing speeds and accident risks, compared to the existing uncontrolled T-junction.
43. From the new roundabout, the proposed site access road would initially have to descend a steep slope into the site. I agree that this would need careful design, not only in terms of highway engineering and gradients, but also with regard to its visual design, landscaping and general aesthetics. But for the purposes of the present appeal, these are reserved matters which are not before me. I note that the Highway Authority has now withdrawn its original objections relating to these issues. From the evidence available, and taking account of my own observations on my visits, I see no reason why it should not be possible to design an access road, and indeed a road layout to serve the whole site, in a way that meets all of the relevant requirements.

44. In passing, I note that many of those who oppose the present appeal scheme would not oppose it if the vehicular access were from Acorn Way. As I have noted earlier, an alternative application for that option is awaiting determination by the Council. However, at the present inquiry, the Council expressed the view that an access from Acorn Way would be less safe, and would be isolated from the urban area, and would lengthen most journeys. I have no reason to disagree with these points. I also note that the original proposals for the site included a second vehicular access, from Tennessee Road. This might have had some benefits, not least in diluting the perceived impact on Oregon Way and Ellendale Road. However, for the reasons that I have already explained, it appears to me that these roads can cope without any clear need for a second access. The possible availability of vehicular access from either the Acorn Way or Tennessee Road is therefore not a persuasive argument against the present appeal proposal.

Conclusions on highway matters

45. For the reasons set out above, I conclude that the proposed development would not be likely to have any significant adverse effects on traffic flows, congestion, or highway safety. In these respects therefore, the scheme complies with the relevant policies relating to highway issues, including LP Policies GD5 and T4.

OTHER PLANNING CONSIDERATIONS

Surface water drainage and flooding

46. I appreciate the concerns of local residents regarding surface water drainage. The Lees Brook is fast flowing, and in heavy rainfall it fills rapidly. Although I was not able to see these particular weather conditions during my visits, I have no reason to doubt the oral and photographic evidence regarding such events. In addition, the land slopes steeply, and the run-off rate is bound to be relatively high. If it were developed with houses and roads, the rate would be likely to increase. This is a particular concern to residents of Chapel Lane, as they are directly downstream of the site.
47. However, the submitted Flood Risk Assessment (FRA) report contains proposals for a sustainable urban drainage (SUDS) system, involving a series of balancing ponds, and for the raising of the floor levels of the proposed dwellings. Although some further details are needed, it is not disputed by the Environment Agency or any other technical consultee body that the balancing ponds would be capable of attenuating the run-off rate, so as not to exceed the equivalent green field rate. Nor is it disputed that a raising of the floor levels by 600mm would be sufficient to protect the proposed dwellings from a 1-in-100-year flood event, including an allowance for future climate change. These techniques are well proven, and suitable measures can be secured by condition.

Foul sewerage

48. There is concern from residents about the capacity of the existing sewers in the area. However, this is not an unusual problem in urban areas. The responsibility for approving any connection to the sewerage network, and for identifying any necessary upgrading works, rests with the Severn-Trent Water Company. The Company does not appear to have objected to the proposed

development, and I have no reason to doubt that a satisfactory technical solution can be designed in accordance with the usual procedures.

49. I note the particular concerns of residents in Chapel Lane with regard to the possible need to carry out works on their land. However, such matters are governed by other legislation. For the purposes of my decision, I note that the Water Industries Act 1991 gives certain powers to the relevant bodies to carry out works on private land if necessary. I also note the appellants' evidence that another alternative is potentially available, which would involve pumping waste water in the opposite direction, to the existing sewer in Oregon Way. The question of which option should be preferred is not for me to say.

Wildlife

50. it is agreed that the Lees Brook is designated as a local wildlife site, but this designation does not appear in the LP, and its status is therefore informal. Residents refer to sightings of bats, badgers, water voles, barn owls, and many types of birds. However, it appears from the appellants' ecological report that the habitats most likely to be used by wildlife are concentrated along the Lees Brook and the field hedgerows. Some openings in the hedgerows would be needed for access roads and footpaths, but otherwise there is no reason why these identified areas could not be adequately protected, and indeed their habitat value enhanced, by means of conditions. Bats and nesting birds are also given legal protection under the Wildlife and Countryside Act 1981, and any grant of planning permission would not override the provisions of that legislation.

Archaeology

51. I note the matters raised by local residents with regard to the possible presence of mediaeval earthworks, ridge-and-furrow marks, and the former sites of a watermill and windmill. However, in the light of the trial trench investigation that has now been carried out, the Council's archaeological officer has accepted that the site's potential is low, and that no further requirement is justified. I see no reason to disagree.

Pressure on local services

52. A number of residents and other objectors raise concerns as to how local services, such as schools and medical facilities, would cope with the increased demand. Most of these services are said to be over-subscribed, and some local residents reported having to look outside the area, to be able to get doctors' appointments, or to get dental treatment on the NHS. However, the appellants' legal undertaking provides for the payment of financial contributions to cover the costs of the additional services or enhancements that would be needed. I appreciate that some objectors are unhappy with the actual amounts of money that the undertaking provides for. But those amounts are evidently derived from the formulae contained in the Council's current SPD guidance⁷, which was adopted after consultation with the relevant service providers. And in any event, the sums are not disputed by the Council.
53. Some of the objectors question whether the existing school and surgery sites can accommodate any meaningful improvements, irrespective of how much money is provided, and wonder whether the contributions might end up being

⁷ Supplementary Planning Document: Planning Obligations, adopted December 2008

diverted to other areas of the city. The precise details of how the payments would be used would be a matter for the service providers. However, the undertaking does specify that the health and education contributions are for facilities within the same catchment area as the development, or located where they could serve it. And the Council in return has covenanted to use any monies received in the manner stated.

54. It was also noted at the inquiry that these contributions, for health facilities and schools, are contingent on the situation at the reserved matters stage; and in particular whether the education contribution is considered to be needed at that time, and whether a request for the health contribution is received from the relevant body. I have some sympathy with local people who would have preferred to see more certainty on these matters. But I note that the Council is content with the provisions of the undertaking as they stand.
55. In respect of all these matters, it may assist those reading this decision if I make it clear again, as I did at the inquiry, that neither I nor anyone else has any powers to alter the terms of the appellants' legal undertaking, either with regard to the amounts of the contributions or in any other way. The question I must consider is simply whether the undertaking would adequately mitigate the effects on local services of this proposed development. In the absence of any disagreement from the Council, or from any other bodies with responsibility for providing the relevant services, I can come to no other conclusion than that it would.

Accessibility to local facilities

56. I note the views expressed by some objectors, that the appeal site is unsuitable for housing, because of its distances from some local facilities. I agree that the distances given in the appellants' evidence may be somewhat misleading, as they are measured from the site boundary. They also take no account of the gradients. But even so, most parts of the development would be within reasonable walking distance from a wide range of local facilities, including a good choice of infant and junior schools, the Lees Brook secondary school, several local shopping parades, two larger supermarkets, two doctors' surgeries, various pubs, a social club, Chaddesden Park, and the No 20 bus service to Derby city centre. The Springwood Leisure Centre and Spondon railway station are also within easy cycling distance. I can therefore find no fault with the location in terms of its general accessibility.

Connectivity and integration

57. The development, as currently proposed, would provide two pedestrian and cycle accesses to the south, but no similar links to the north, nor to the west or east. This lack of connectivity is a matter of some concern. It is true that for the purpose of gaining access to the various facilities referred to above, the site is not dependent on any additional links. But without any direct or convenient links in the other three directions, the proposed development would not be well integrated with its surroundings.
58. The NPPF, at paragraph 64, makes it clear that, where the opportunity arises, developments should seek to improve the character and quality of the area and the way it functions; indeed, a failure to do so may justify refusal. Here, the potential exists, in physical terms at least, for pedestrian and cycle links to the west via Chapel Lane, and for access to the Lees Brook School site to the

north. Such connections would greatly facilitate journeys on foot or by cycle, not only from the development itself, but also across the site, from and between other parts of the surrounding area. That potential would not be realised by the current proposals. In addition the scheme proposes, through the legal undertaking, to create a significant area of public open space and a children's play area, but without any additional links, access to these facilities for some existing residents would be circuitous. And furthermore, the east-west pedestrian/cycle route sought by LP Policy T15, leading out towards Locko Park, would not be created.

59. This lack of connectivity and integration weighs against the development as currently proposed. However I appreciate that the creation of additional links, to the north and west at least, would be likely to require the agreement or co-operation of other owners. Such agreement and co-operation cannot be taken for granted, and indeed from the evidence presented at the inquiry, there may yet be significant hurdles to any such arrangements. And although the ultimate provision of these off-site links cannot presently be guaranteed, the development now proposed need not preclude their provision at some later date.
60. In the circumstances, it seems to me that the site's lack of connectivity could be adequately mitigated by a condition to safeguard the possibility of creating improved links in the future.

The legal undertakings

61. At the inquiry, it was confirmed that none of the obligations or other provisions within either of the legal undertakings is now disputed by the appellants or the Council. For the reasons given in the Council's 'CIL Compliance Statement', I agree that all of the obligations meet the relevant legal and policy tests, in that they are necessary to make the development acceptable, and are directly related to the proposed development, and are fairly and reasonably related in scale and kind. I have therefore taken the undertakings into account in my decision.
62. In addition, in the case of the obligations relating to affordable housing and Lifetime Homes, and the provision of the open space, the play area and the public art, these provisions would not only mitigate the impacts of the development itself, but would also have some residual benefits for the existing community in the area. I have therefore given some additional weight to these matters.

CONCLUSIONS ON THE APPEAL

63. The proposed development would conflict with Policies E2 and L4 of the adopted Local Plan, which allocate the site as part of a green wedge and for a future neighbourhood park. However, the neighbourhood park appears no longer to have any reasonable prospect of implementation. And in any event, the benefits of continuing to protect the site, either for this purpose or as a green wedge, must be weighed against the need for housing, in the light of the substantial shortfall in the city's 5-year housing land supply.
64. The development would involve the loss of about 10 ha of open countryside. But apart from this, no other significant adverse impacts have been identified. The local highway network is capable of handling the traffic that would be

generated. The effects in relation to drainage, flood risk and wildlife can all be overcome by conditions, and the effects on local services would be adequately mitigated by the legal undertakings. The scheme as currently proposed would lack something in terms of connectivity and integration with the surrounding area, but provision can be safeguarded for additional pedestrian and cycle connections to be added later, if opportunities arise.

65. The scheme would provide substantial benefits to the community, in terms of housing to meet the identified need, particularly including the proposed affordable housing and extra-care accommodation. The provision of new public open space and play facilities would also be of some benefit. On balance, these benefits outweigh the limited harm that has been identified. Consequently, it seems to me that the development would contribute to the NPPF's aims for sustainable development.
66. I have taken into account all the other matters raised, but none alters these conclusions. The appeal is therefore allowed, subject to the conditions set out in the attached Schedule and discussed below.

REASONS FOR CONDITIONS

67. I have considered the conditions proposed by the Council, and the others discussed at the inquiry, in the light of the relevant advice in the NPPF and Planning Practice Guidance. Those that I consider to meet the relevant tests for planning conditions are set out in the Schedule that follows. I have edited and rationalised the Council's suggestions somewhat, in the interests of precision and enforceability, and to avoid duplication.
68. Conditions 1–3 set out the statutory requirements as to reserved matters, and the time limits for their submission, and for the commencement of development.
69. Condition 4 secures the implementation of a landscaping scheme, and its future maintenance. Condition 5 provides for the protection of the existing trees and hedges, except where necessary for the carrying out of the development. These are needed to secure a high quality of development.
70. Conditions 8–12 secure the provision of the necessary on- and off-site road infrastructure, and control the details and timing of its provision. These are needed in the interests of highway safety. However, it is not necessary for these conditions specifically to require compliance with 'Manual for Streets' or the local '6Cs' design guidance, since my amended wording allows the Council to retain adequate control whilst avoiding over-prescriptiveness.
71. Conditions 13 and 14 secure the provision of the proposed pedestrian/cycle access from Tennessee Road, and safeguard the potential for additional links in the future. These are necessary to ensure that the development is well integrated with the existing urban area, and to provide for ease of movement by non-motorised modes of transport.
72. Conditions 15–18 relate to surface water drainage and flood risk management. These provide for a 'SUDS' drainage scheme, a restriction on development in the floodplain, flood resilience measures, and access to maintain the river and its banks. All of these are necessary to minimise on- and off-site flood risks.

However, there is no need for the contents of the surface water drainage scheme to be prescribed in any further detail at this stage.

73. Conditions 19-21 provide for the protection and enhancement of wildlife, both during and after development, in the interests of nature conservation and biodiversity. However, it is not necessary in this context to require any further bat surveys, since the measures required take full account of the possible presence of bats on the site; and in any event they are protected by other legislation.
74. I note the various other conditions suggested. However, the proposed conditions relating to ground contamination seem to me to be excessively onerous, given that there is no reason to suspect any likelihood of existing contamination here. I appreciate that the Council has in mind the precautionary principle, but that does not override the requirement that conditions must be necessary and reasonable, and in this case the suggested conditions would not pass these tests. A construction management plan would serve little purpose on the appeal site, given that there is no lack of space for all construction activities to be contained within the site, and most of the site is sufficiently far away from existing properties. The routing of construction vehicles on the public highway, and the deposit of mud, can be controlled under other legislation. A separate requirement for a green infrastructure plan is unnecessary, since all of the relevant details are covered by other conditions, or by the appellants' legal undertaking. For these reasons, I have not imposed these additional conditions.

John Felgate

INSPECTOR

Richborough Estates

SCHEDULE OF CONDITIONS

The planning permission to which this decision relates is granted subject to the following conditions (numbered 1 - 21):

Reserved matters and time limits

- 1) No development shall be commenced until details of the layout, scale, appearance, and landscaping of the proposed development (the 'reserved matters') have been submitted to the local planning authority and approved in writing. The development shall be carried out in accordance with the details thus 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 shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

Landscaping

- 4) The landscaping details to be approved under Condition 1 shall include details of all proposed tree and shrub planting and seeding, the surfacing of all hard surfaced areas and pathways, all boundary treatments, all re-grading or re-contouring of the land, all retaining structures and earthworks, and all signage and street furniture. The landscaping details shall also include a programme for their implementation, phased in relation to the completion and occupation of the proposed dwellings. The landscaping works shall be implemented in accordance with the details and programme thus approved.
- 5) The landscaping details to be approved under Condition 1 shall also include a landscape management plan. Following the implementation of the landscaping works, the landscaped areas shall be maintained thereafter in accordance with the details thus approved. Any tree or plant forming part of the approved landscaping scheme which dies, or becomes seriously damaged or diseased, or is removed for any reason, within a period of 5 years after planting, shall be replaced during the next planting season with others of similar size and species.

Existing trees and hedgerows

- 6) No development shall take place until a tree and hedgerow protection scheme has been submitted to the local planning authority and approved in writing. The scheme shall contain details of proposed measures for the protection and retention of all of the existing trees and hedgerows on and adjacent to the site during construction. These measures shall include protective fencing, and such fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought on to the site, and shall remain in place until the latter have been removed from the site and the development has been completed. Nothing shall be stored or placed in any area fenced in accordance with this condition, and the ground levels within these areas shall not be altered, nor shall any excavation be made, except with the written consent of the local planning authority.
- 7) No tree or hedgerow on the site shall at any time be cut down, uprooted or destroyed, nor be topped, lopped or pruned, other than in accordance with details approved within either the tree and hedgerow protection scheme (under Condition 6) or the landscape management plan (under Condition 5). Notwithstanding this requirement, in the event that any existing tree or hedgerow dies or is lost for any reason, within a period of 5 years from the date of final completion of the development, replacement planting shall be carried out in accordance with details to be approved in writing by the local planning authority.

Access and off-site highway works

- 8) The proposed new access to the site, and related off-site highway works in Oregon Way, shall be laid out in accordance with the details shown on Plan No. 9Y1212-GA-003, revision A. These works shall include a new mini-roundabout, traffic islands, footways and crossing points, all as shown on this approved plan.
- 9) No development (other than that required to comply with this condition) shall be carried out until the site access itself has been constructed to at least binder course level, including the first 10m of the access road.
- 10) No new dwelling shall be occupied until the mini-roundabout and related off-site works have been completed to at least binder course level.
- 11) No development or works of any kind (including those specified in Condition 9), shall be carried out until a timetable for the full completion of all the access and off-site highway works required under Condition 8 has been submitted to the local planning authority and approved in writing. These works shall thereafter be carried out and completed in accordance with the timetable thus approved.

On-site highway works

- 12) The details to be submitted under Condition 1 above shall include details of all necessary on-site highway infrastructure, including access roads, turning areas, footways, street lighting and highway drainage, together with a timetable for the implementation of these works in relation to the completion and occupation of the proposed dwellings. No dwelling shall be occupied until the on-site highway infrastructure serving that unit has been provided, in accordance with the approved details, and the relevant roads and footways finished to at least binder course level. These on-site highway works shall thereafter be fully completed in accordance with the approved timetable.

Pedestrian and cycleway links

- 13) No development shall take place until full details of the proposed pedestrian and cycleway connection to Tennessee Road, and the timing of its provision, have been submitted to the local planning authority and approved in writing. The link to Tennessee Road shall thereafter be provided in accordance with the details and timing thus approved.
- 14) No development shall take place until a scheme has been submitted to the local planning authority and approved in writing, for the safeguarding of land within the site for possible additional future pedestrian and cycleway connections, to improve access between the site and the surrounding area. The layout details to be submitted under Condition 1 shall include provision for safeguarding such future connections, in accordance with these approved details. Thereafter, no development shall be carried out which would prevent or hinder the completion of any of the future connections thus identified.

Surface water and control of flood risks

- 15) No development shall take place until a surface water drainage scheme has been submitted to the local planning authority and approved in writing. The scheme shall be based on 'Sustainable Urban Drainage' (SUDS) principles, and shall ensure that surface water run-off to the Lees Brook shall not exceed the existing greenfield run-off rate. The scheme shall also contain details of the timing and programming of provision, so as to ensure that no dwelling shall be occupied until the surface water drainage infrastructure serving that dwelling, and serving the relevant roads and footpaths to it, has been installed and brought into operation. The scheme shall also contain details of the arrangements for the long-term management and maintenance of the surface water drainage system. The scheme shall thereafter be implemented, managed and maintained in full accordance with the details thus approved.

- 16) No development shall take place until a floodplain compensation scheme has been submitted to the local planning authority and approved in writing. The purpose of the floodplain compensation scheme shall be to ensure that the development does not cause any increase in off-site flood risks. The scheme shall include detailed plans defining the '1-in-100-year plus climate change' flood level, and details of any proposed building, engineering or other works within that area. Within the area so defined, no building or enclosure shall be constructed, no ground levels shall be raised, and no obstruction shall be created to flood water flows or flood water storage, other than in accordance with the scheme thus approved.
- 17) No development shall take place anywhere on the site until details have been submitted to the local planning authority, and approved in writing, showing all existing and proposed ground levels across the site, relative to the '1-in-100-year plus climate change' flood level defined in accordance with Condition 16. No new dwelling or residential accommodation anywhere on the site shall be constructed with a finished floor level less than 600mm above that level, nor less than 150mm above the proposed finished external ground level.
- 18) No development or works of any kind shall take place within 8m from the top of the banks of the Lees Brook, until a scheme has been submitted to the local planning authority and approved in writing, providing for future access to the river bank for the purposes of river maintenance.

Ecological mitigation and enhancement

- 19) No development shall take place until a detailed scheme of ecological mitigation and enhancement has been submitted to the local planning authority and approved in writing. The scheme shall be implemented as approved.
- 20) For the construction period, the scheme required under Condition 19 shall include measures for the protection of existing wildlife habitats, including the Lees Brook local wildlife site, plus a 5m wide buffer zone around that area, and measures for avoiding disturbance to protected species and nesting birds anywhere on the site.
- 21) For the completed development, the scheme required under Condition 19 shall define areas to be retained and managed as wildlife areas, including the Lees Brook local wildlife site and all retained hedgerows. The scheme shall contain detailed proposals for the treatment and enhancement of these areas, including details of any landscaping, lighting and public access, together with a timetable for carrying out the necessary works, and proposed arrangements for their long-term management.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Hugh Richards, of Counsel	Instructed by the Head of Legal Services
He called:	
Ms Sara Booty	Principal Planning Officer
(in relation to conditions only)	

FOR THE APPELLANT:

Mr Jeremy Cahill QC	Instructed by Turley Associates
He called:	
Mr Matthew Jones	Turley Associates
BSC(Hons) DipTP MRTPI	
Ms Joanne Kerry	Royal Haskoning DHV
MCIHT MILT MTPS	
Mr Martyn Pask	The Radleigh Group
(in relation to conditions only)	

OTHER INTERESTED PERSONS:

Cllr Paul Campbell	Ward Councillor for Chaddesden
Mr Colin Eccles	Local resident
Mr Jonathan Smale	Derby Conservative Party
Mr Stephen Peat	Former resident
Mr Peter Barnett	Local resident
Ms Linda Winter	Support worker for local councillors
Ms Karen Walsh	Local resident
Mrs Jane Lamb	Local resident
Mrs Elaine O’Gorman	Local resident
Mr David Smitherd	Local resident
Mr Deryck Morley	Local resident
Mrs Jenny Butler	Local resident
Mr William Lamb	Local resident
Mr Stephen O’Gorman	Local resident
Mr Bob Taylor	Local resident
Ms Marjorie Holmes	Local resident
Mrs Pamela Melnyk	Local resident

DOCUMENTS TABLED AT THE INQUIRY

- 1 List of plans and reports submitted with the original application
- 2 Core Documents list
- 3 Agreed Draft Statement of Common Ground, dated September 2014
- 4 Addendum Statement of Common Ground, dated 13 January 2015
- 5 Statement of Common Ground on Highway Matters, dated 16 January 2015
- 6 Position Statement by the Local Planning Authority
- 7 Executed unilateral undertaking entered into by the appellants and landowners
- 8 Executed unilateral undertaking entered into by the Council
- 9 Planning obligations justification and CIL compliance statement, by the Council
- 10 Financial contributions matrix for S.106 obligations
- 11 List of proposed conditions
- 12 Extracts from the Core Strategy Pre-Submission Plan, approved for public consultation on 26 Nov 2014: sites AC13 (former Celanese site), and site AC25 (Brook Farm)
- 13 National Travel Survey - England 2013: DfT statistical release, July 2014
- 14 Bus service No 20 route diagram and timetable
- 15 Extract from 'Manual for Streets' – re road widths
- 16 Guide to Sewer Requisitions: United Utilities
- 17 'Commissioning Housing based Models for Care' by the Housing learning & improvement Network (tabled by the appellants)
- 18 The appellants' housing land supply calculations
- 19 'An Introductory guide to Valuing Ecosystem Services': DEFRA, 2007 (tabled by Mr Peat)
- 20 Mr Cahill's closing submissions

Richborough Estates