



---

## Appeal Decision

Inquiry held on 21, 22, 23 and 24 April 2015

Site visit made on 23 April 2015

**by Brendan Lyons BArch MA MRTPI IHBC**

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

**Decision date: 1 July 2015**

---

### **Appeal Ref: APP/P1045/A/14/2227116 Land at Asker Lane, Matlock, Derbyshire**

- 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 Richborough Estates Partnership LLP against the decision of Derbyshire Dales District Council.
  - The application Ref 14/00089/OUT, dated 11 February 2014, was refused by notice dated 15 May 2014.
  - The development proposed is described as: residential development of up to 110 dwellings and associated open space (outline).
- 

### **Decision**

1. The appeal is allowed and outline planning permission is granted for residential development of up to 110 dwellings and associated open space (outline) at Land at Asker Lane, Matlock, Derbyshire, in accordance with the terms of the application Ref 14/00089/OUT dated 11 February 2014, subject to the conditions set out in the schedule annexed to this decision.

### **Preliminary matters**

2. At the Inquiry an application for costs was made by the appellants against the Council. That application is to be the subject of a separate Decision.
3. The description of development in the heading above was amended by the Council from that shown on the planning application form. The appellants confirmed at the Inquiry that they agreed the revised description, and I have therefore adopted it for my decision on the appeal.
4. The planning application was submitted in outline form, with only the principle of development and the access to the site for full approval at that stage, and matters of layout, scale, appearance and landscaping reserved for later detailed approval. At the Inquiry, the appellants asked that the matter of access should also be reserved. Sufficient information was provided with the application documents to indicate the areas where access to the site would be situated<sup>1</sup>. I am satisfied that no other party's interests would be prejudiced by this change and have considered the appeal proposal on the basis that all matters are now reserved.

---

<sup>1</sup> Transport Assessment Figs 6.1, 6.2 RevA

5. A signed Statement of Common Ground ('SoCG') was submitted in advance of the Inquiry. This records the two main parties' agreement on the weight to be afforded to the adopted and emerging development plan, and the approach to decision making set out by the Government guidance of the National Planning Policy Framework ('NPPF') and the Planning Practice Guidance ('PPG'). The SoCG identifies a range of topics not in dispute or which the parties feel could be satisfactorily resolved by the use of planning conditions or obligations. Matters still in dispute are also set out. However, the Council subsequently submitted a Position Statement as an addendum to its main appeal statement, which clarifies that some of these issues could in fact be addressed by the use of conditions or obligations.
6. The SoCG sets out the Council's continuing reservations about the plans submitted with the appeal, arguing that the most recent revision of the Illustrative Landscape Masterplan<sup>2</sup> ('ILM') should not be considered as it was supplied after the application was refused. As all matters are now reserved for later approval, only the Site Location Plan, showing the red line site boundary, requires full formal approval at this stage. It is not disputed that the revision to the ILM was made to bring it into accord with the latest revision of the Illustrative Masterplan<sup>3</sup> ('IMP'), which had been properly considered by the Council, and that no other significant changes had been made from the earlier version. These plans are illustrative only, without binding effect. I find that no party's interests would be prejudiced by the consideration of the later ILM in support of the appeal. Further illustrative material was tabled during the course of the Inquiry.
7. The planning application was accompanied by draft Heads of Terms for a planning obligation under S106 of the Town and Country Planning Act 1990, but no agreement was concluded before the application was refused. A draft obligation, in the form of a unilateral undertaking ('UU') by the landowners, was submitted with the appeal, and an updated version at the opening of the Inquiry. By the close of the Inquiry a copy was provided of a completed UU framed in terms acceptable to the Council. The UU sets out covenants in respect of the provision and management of affordable housing and public open space on the site, and the payment of financial contributions towards the provision of off-site affordable housing, education, sports and play areas, and travel plan monitoring. The merits of the obligations are considered later in this decision.
8. The planning application was refused in May 2014. A similar application was re-submitted in August 2014<sup>4</sup>, and was recommended for approval, but was again refused by the Council. Some illustrative material from the second application was tabled during the Inquiry.
9. The appeal site is the subject of an application made by some local residents for registration as a Village Green under the Commons Act 2006. This application had been heard at a public inquiry held by an independent inspector appointed by Derbyshire County Council. At the time of the appeal Inquiry, the County Council's decision on the application was still awaited. In view of the implications for the proposed development, the appellants were offered the opportunity to defer the appeal Inquiry, but confirmed their wish to proceed.

---

<sup>2</sup> Plan Ref BIR.4029\_12 B

<sup>3</sup> Plan Ref BIR.4029\_07-1 E

<sup>4</sup> Application Ref 14/00527/OUT

## Appeal proposal

10. The appeal site lies on rising ground near the northern edge of the built-up area of Matlock. It comprises 7.25 ha of land divided by mature hedgerows and stone walls into a number of fields, some of which have been used for grazing and others left as unmanaged scrub. The north-eastern corner of the site forms a distinctive feature known as Bailey's Tump, which is a raised earthwork made up of spoil excavated for the Derwent Valley Aqueduct, which crosses the site. The level top of Bailey's Tump displays clear evidence of locally important World War II gun emplacements, and is managed by the Town Council as a public space. A small group of trees to the south of Bailey's Tump is protected along with other trees in the area by a Tree Preservation Order ('TPO').
11. The site has highway frontages to Asker Lane to the north, Bull Lane to the east and Chesterfield Road to the west. A private road along the southern boundary serves a primary school and the convent to which the land belongs. This road and its continuation as a footpath through the site are designated as a public right of way ('PROW') and link with other public paths to the east and west. The site is also crossed by a number of permissive paths.
12. A very small portion of the site adjoining the convent lies within the Matlock Bank Conservation Area ('CA'), but the bulk of the widely drawn CA comprises the older urban realm to the west of Chesterfield Road. On its other sides, the site is adjoined by modern housing areas.
13. Permission is sought to develop the site with up to 110 houses, 25% of which (28 units) would be provided as affordable housing, with funding for a further 20% (21 units) to be provided off-site. Access would be taken along the Asker Lane frontage and off the private road, which would be upgraded to adoptable standard. The IMP suggests a potential outline layout for the development, with houses fronting onto a network of roads concentrated in the centre and west of the site, with about half of the total area, including Bailey's Tump, left undeveloped as public open space or ecological mitigation. A 'Testing Layout' submitted in support of the appeal shows how the IMP might be realised, with a mix of detached, semi-detached and terraced houses, open spaces and a children's play area.

## Main Issue

14. It was agreed at the Inquiry that the main issue in the appeal, based on the Council's reason for refusal, is whether the proposal would provide a sustainable form of development in accordance with national and local policy, having particular regard to its effect on the character and appearance of the area, including that of the Matlock Bank Conservation Area.

## Reasons

### *Policy context*

15. For the purposes of this appeal, the development plan comprises the saved policies of the Derbyshire Dales Local Plan ('LP') adopted in 2005 to guide development up to 2011. Work was begun on the preparation of a new-style Local Plan to cover the period up to 2028, but the plan was withdrawn at the examination stage in October 2014. It is common ground that no weight can be attached to the draft policies of that plan, despite reference to them in the reason for refusal.

16. Although the appeal site is almost completely surrounded by existing development, the settlement boundary defined by LP Policy SF1 has been drawn to exclude the site. As a result, development of the site falls to be considered under LP Policy SF4, which is intended to protect the open countryside, and primarily envisages only essential development for agriculture and tourism. Rather confusingly, the north-east corner of the site, comprising Bailey's Tump and some of the land at its base is allocated as an Important Open Space under LP Policy SF2, which should as drafted relate only to land within settlement boundaries.
17. The reason for refusal of the planning application is based on conflict with LP Policy SF4 and with LP Policy NBE8, which seeks to protect the character, appearance and local distinctiveness of the landscape. No reference is made to LP Policy H4, which deals specifically with housing outside settlement boundaries, and seeks to restrict it to that for agricultural or affordable needs.
18. Since the withdrawal of the emerging LP, the Council now accepts that it cannot demonstrate a five-year supply of deliverable housing land in accordance with the requirements of NPPF policy. Therefore the confirmed need for additional housing to boost the supply becomes a matter of significant weight in the determination of the appeal.
19. In the absence of a five-year supply, the NPPF advises that the housing supply policies of the LP cannot be considered as up to date. The appeal proposal must therefore be assessed in the context of the presumption in favour of sustainable development set out in paragraph 14 of the NPPF. This means that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF taken as a whole, or unless specific policies of the NPPF indicate development should be restricted.
20. Because of the supply shortfall, the Council agreed in the SoCG that LP Policy H4 is out-of-date, but continued to assert the applicability of LP Policies SF4 and NBE8. The appellants argued that the tight restriction on development imposed by LP Policy SF4 is virtually identical in effect to that of LP Policy H4. The policy is clearly a general policy that restricts the supply of housing, and the settlement boundaries upon which it is based were drawn up for the period to 2011 and no longer reflect current housing need. It appears that the Council has accepted at two previous appeals<sup>5</sup> that the policy is out-of-date, and that this has been endorsed in those appeal decisions. I find no reason to take a different view.
21. The Council's initial position was that Policy SF4 had two strands, one of which could be accepted as out of date, while the other, the principle of countryside protection, could be sustained because of consistency with the core principles of the NPPF. Reference was made to an earlier decision of mine in an adjoining district<sup>6</sup>, which the Council, incorrectly in my view, interpreted as a precedent for this approach. However, a recent High Court judgement<sup>7</sup>, tabled at the Inquiry, has confirmed that a policy cannot be divided in this way by applying only part of it. I conclude that Policy SF4 must be regarded as out-of-date.

---

<sup>5</sup> Appeals Ref APP/P1045/A/13/2195546, APP/P1045/A/14/2226401

<sup>6</sup> Appeal Ref APP/H1033/A/13/2204114

<sup>7</sup> *Cheshire East Borough Council v Secretary of State for Communities and Local Government and Richborough Estates Partnership LLP* [2015] EWHC 410 (Admin)

22. The appellants argued at the Inquiry that Policy NBE8 did not apply to the appeal site as it only related to landscapes identified by the Derbyshire Landscape Character Assessment, which do not include the appeal site as it forms a virtual island within the urban area. Whilst this point was conceded on behalf of the Council, my own reading of the policy and its supporting text is less prescriptive. The supporting text endorses the use of Character Assessment in support of the objective of maintaining or enhancing the distinctive character of the whole of the countryside. But neither the policy itself nor the supporting text rules out application of the policy to any anomalous areas, such as the appeal site, that might not be covered by the formal Assessment. The site's contribution to the wider landscape or townscape is a matter of relevance in considering its sustainability as a location for the proposed development.
23. However, the need for additional housing, some of which will almost certainly have to be outside the currently identified settlement boundary, means that the tightly restrictive approach of Policy NBE8 can no longer be regarded as consistent with the up-to-date guidance of the NPPF, which promotes a more balanced approach to landscape protection. Greater weight must be given to the policies of the NPPF as a whole than to the narrow focus offered by the LP policy. This accords with the conclusions of the two earlier Inspectors.
24. By the close of the Inquiry, the Council had acknowledged that greatly reduced weight might be given to the LP policies, but contended that the reason for refusal already encompassed the testing of the proposal against NPPF policies as a whole, in accordance with paragraph 14 guidance.
25. I conclude that the weighted test outlined by paragraph 14 in support of the presumption in favour of sustainable development must be applied in determining the appeal.

### ***Character and appearance***

26. The planning application was supported by a Landscape and Visual Impact Assessment ('LVIA'), based on recognised good practice guidelines. The conclusions of the LVIA were subject to some re-assessment in further detailed evidence for the appellants, which I take to be their up-to-date view. The Council's evidence does not dispute the LVIA methodology and includes its own professional assessment of landscape and visual impacts. An earlier less comprehensive LVIA had been carried out by the Council in 2012 as part of the evaluation of sites for the replacement LP.

### ***Landscape/Townscape impact***

27. The Council places emphasis on its evaluation of the 'semi-rural' character of the site, a term that is used in the LVIA. This is not an inapt description, but there is an important distinction between 'semi-rural' and 'rural'. The appeal site displays a character which is relatively typical of land at the edge of the urban area, where agricultural use is difficult or impossible to sustain and pressures arise from the adjoining residential use. At least a substantial part of the site is no longer actively managed and some boundaries have been breached.
28. In my view the assessment of the site by the Inspector who conducted the Local Plan Inquiry in 1996 remains valid. He described it as 'a remnant piece of

former countryside' comprising 'half a dozen or so neglected fields... now entirely surrounded by suburban estates on three sides and an older mainly Victorian residential area to the west'. The site's virtual enclosure by development was critical to his judgement that it could no longer be regarded as part of the countryside, and that remains so today, even though the site may well retain some characteristics of surrounding Landscape Character Types, as well as some visual links to distant slopes.

29. Because of this definite urban context, I agree with the appellants that the core planning principle of the NPPF with regard to 'recognising the intrinsic character and beauty of the countryside'<sup>8</sup> is not directly relevant in this case. I also accept that it is more appropriate to define the character of the site in terms of townscape rather than 'pure' landscape. However, irrespective of the terminology used, there is not a great difference between the main parties on the assessment of impact likely to be caused by the development.
30. The Council concludes a Moderate/Major Adverse impact on landscape character of the site on completion of development, but a Moderate Adverse impact on the wider area. I agree with the appellants that the latter judgement is the more relevant. Any development of a greenfield site is likely to have a marked impact on the character of the site itself, but at landscape/townscape scale a more tempered judgement is possible. The appellants' assessment at this scale is effectively Minor/Moderate Adverse on completion, reducing to Minor Adverse after 15 years.
31. The minor difference in outcome appears to stem largely from the differing assessment of the sensitivity of the site, particularly in terms of its value. It is common ground that formal designation is not a prerequisite of value. Of the factors that influence value stressed by the Council, I find that too great a weight has been placed on the site's rarity. The survival of the fields in recognisable form within the urban area has been unusual, and Bailey's Tump provides a unique feature, but the site as a whole does not have the status of a rare landscape/townscape. The evidence also suggests that open space within the town is not rare, even in the immediate vicinity of the site.
32. The Council has also sought to put weight on the site's value to local people as a recreational resource. Although the Council has maintained a neutral stance on the Village Green application, evidence was quoted from that application of the claimed usage of the fields. Further evidence from the Village Green Inquiry was provided by local people and landowners' submissions by the appellants.
33. This planning appeal cannot duplicate the Village Green application process. It may well be the Village Green decision will validate the claims of prolonged extensive usage of the land. But in determining the value of the site for the purposes of landscape/townscape impact, I give greater weight to the known current position, where access to Bailey's Tump is freely available by licence, while access through the heart of the site is via the defined PROW and onto the fields only by permissive paths. I do not doubt that the site is appreciated by many for its open green nature, but as a recreational resource its usage appears to be considerably more limited. Compelling evidence was given on behalf of the landowners that the degree of active use of the fields on the day of the appeal site visit was not in any way typical.

---

<sup>8</sup> NPPF paragraph 17

34. The planning history of the site does not provide strong evidence of its recreation value. After being allocated in the 1998 LP, it appears that only a change in national guidance prevented an intended planning permission from being issued, and that the allocation lapsed in the subsequent plan only because other more suitable sites were available. The Council has not clearly explained why the site was downgraded from Priority 1 in the sift of sites for the recently abandoned replacement LP. Almost all the area now proposed for building would lie within the 'best landscape fit' zone identified by the Council's LVIA of potential housing sites.
35. In considering impact, it must be noted that access to Bailey's Tump and the PROW would be maintained by the appeal proposal, but that over half of the total site area would remain as undeveloped green space, and that public access onto or through that space, subject to ecological considerations, would be formally granted in perpetuity. This enhanced level of public access would provide a considerable degree of mitigation of the loss of some of the open fields.
36. Further mitigation would be provided by the implementation of ecological enhancement, including the strengthening of the existing landscape infrastructure, in the form of hedgerows and scrub habitat, and the creation of a properly managed hay meadow and pond habitats. There is no clear evidence to support a concern that 110 units could not be accommodated on the site without causing harm to other interests. The Testing Layout provides one potential solution, but further variation could arise at reserved matters stage.
37. For these reasons, I consider the appellants' conclusion of a Minor Adverse landscape/townscape impact after the site was fully established to be a reasonable assessment.

#### *Visual impact*

38. The LVIA assessed the proposal's visual impact at a set of 11 representative short-range and long-range viewpoints. The Council has not questioned the selection of viewpoints, and its assessment of impacts does not differ greatly from the appellants'.
39. Of the viewpoints that are disputed, I agree with the appellants that the effect on long-distance views from the south would be so minor as to be virtually Negligible. The site appears in these views as a tiny part of the townscape mosaic and would not be significantly altered by the introduction of built development.
40. I also agree that the effect on receptors at Bull Lane would be no worse than Moderate Adverse. This view would continue to look onto open meadow, with enhanced habitat planting, while the proposed housing would be well set back behind the retained and strengthened hedgerow and the retained TPO trees.
41. The appellants acknowledge that the LVIA's forecasts of Major Adverse visual impacts from other close-range viewpoints would be largely borne out, at least on completion of the development. I accept their proposition that this is a virtually inevitable consequence of any major residential development of a greenfield site, surrounded by receptors of high sensitivity.
42. I also accept that these impacts would be mitigated to some degree by the proposed layout and design principles set out in the Parameters Plan. In

particular the retention of much of the northern field as open space and meadow, and the lower levels and restricted ridge heights of the proposed housing, would greatly reduce the impact on the open views to the south from Asker Lane. The submitted semi-verified visualisation sketch shows that the proposed houses would undoubtedly be prominent in the view, but that the visual links with the distant hilltops should be sustained. As the proposed landscape structure planting matured, the impacts, particularly on those using the PROW and secondary paths, should be considerably softened, and assessed as Moderate Adverse in most instances.

#### *Conservation area*

43. The small parts of the Matlock Bank CA to the east of Chesterfield Road form the fringe of the CA, and are described in the Council's published Conservation Area Appraisal ('CAA'). They comprise the small pocket of older housing at the junction of Asker Lane and Chesterfield Road and the convent buildings and grounds. In my view, their main contribution to the significance of the CA is to reinforce the character of Chesterfield Road, where there are buildings of some historic interest on both sides of the road, and to add the townscape value of those buildings and their surrounding spaces and mature trees.
44. The small triangle of space at the junction of the convent access road lies within the appeal site. The Parameters Plan and IMP indicate that this would remain as open space with existing trees and path retained. The access road would need to be slightly altered and its usage would increase but its character would not be affected. In accordance with the duty under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, I find that the character and appearance of the CA would be preserved by the appeal proposal.
45. The remainder of the appeal site lies outside the CA boundary. The fields, particularly the westernmost field, which adjoins Chesterfield Road, and the northern field next to Asker Lane, form part of the setting of the CA. The concept of the setting of a conservation area is not enshrined in the legislation and does not attract the weight of statutory protection. The NPPF advises that the setting of a heritage asset can contribute to its significance, and that opportunities should be sought for new development within conservation areas and within the setting of heritage assets that would enhance or better reveal the significance of the heritage asset.
46. In this case, the CAA notes that the stone boundary wall and fields help to give a semi-rural character to this stretch of Chesterfield Road, and records the availability of views to the east. However, it is notable that these factors were not considered important enough to require inclusion of the fields, or at least the roadside field, within the CA. The fields provide only a short element of the eastern edge of the CA. I consider that the open edge offered by the setting makes a very modest contribution to the character of the CA as an area of architectural or historic interest.
47. The notional layout indicated on the IMP for the Chesterfield Road field, with rows of houses at right angles to the road, would reflect a pattern of development noted by the CAA on the opposite side of the road and also evident just to the north of the appeal site. In response to the Council's concern about this possible form, as expressed in the original officer report, the Testing Layout and supporting evidence shows how a row of houses along the



road front, based on nearby recent precedent, could also provide a form of development in keeping with the area. The Parameters Plan and IMP notional layout show that the Asker Lane field would remain largely as green space, and that the potential new houses would not adversely affect the setting of the CA.

48. There are sufficient grounds to conclude that the effect on the significance of the CA owing to the change in setting would not be harmful. The Council acknowledges that harm to the character and appearance of the CA or its setting did not form part of the reason for refusal.

#### *Conclusion on character and appearance*

49. I conclude that once the proposed development was fully established, there would be a minor adverse long-term effect on landscape/townscape character, and that short-range visual impacts should be mitigated to produce for the most part no worse than moderate adverse effects, some of which would be a virtually inevitable consequence of major development.
50. There should be no harm to the significance of the Matlock Bank CA, either from development within the CA boundary or within its setting.

#### **Other matters**

##### *Highways*

51. Concern has been raised by some local residents, including some with highway engineering experience, about a potential safety risk of increased use of the Asker Lane/Chesterfield Road junction arising from the proposed access onto Asker Lane. I acknowledge the difficult geometry and gradients in the vicinity of the junction and have noted peak hour traffic volumes on my visits to the site. But the operation of the junction post-development, and of the other Chesterfield Road junction, have been professionally set out in the updated Transport Assessment, and I have no reason to believe that this has not been carefully assessed by the highway authority in accordance with recognised standards. In the absence of any objection by the highway authority it would be very difficult to justify rejection of the proposal on this ground, or the restriction of any permission to omit this intended access point.
52. The potential access points currently indicated are therefore sufficient to satisfy the requirements of an outline planning permission. But the matter of access is now reserved for later approval, which would allow detailed consideration of the precise arrangements proposed, including review of the need for two points of access and for enhanced pedestrian links outside the site. The Testing Layout has already suggested how the road layout and footpath links might vary from the IMP.

##### *Nature conservation*

53. The planning application was supported by specialist surveys and by an ecological mitigation strategy and a badger mitigation strategy, which was later updated for the appeal. The mitigation measures would include meadow planting and management, including the creation of a small hay meadow, enhancement and planting of hedgerows, scrub planting to enhance badger foraging habitat and creation of pond habitats.

54. As consultant to the Council, Derbyshire Wildlife Trust had advised that, on the basis of the IMP and subject to implementation and later management of the identified mitigation measures, the proposal's impacts on wildlife and nature conservation would be acceptable and would comply where relevant with Natural England ('NE') guidance. Considerable weight must be given to this expert advice, which would not in my judgement be undermined by the later illustrative Testing Layout.
55. Although a constituent body of the DWT, the Mid Derbyshire Badger Group had maintained consistent opposition to the proposal, which was sustained at the Inquiry. I recognise the Group's specialist knowledge and the commitment of its volunteer members, and I accept that the introduction of new housing within the established badger territory would bring the risk of future conflicting demands of animals and residents, which would require ongoing management.
56. But the mitigation strategy presents a well reasoned approach to minimising adverse effects, both during construction and later. The appellants confirmed that the proposed 30m protection distance around the main badger sett would meet the NE recommendation and that movement routes would be maintained through the site and to the foraging grounds to the south of the convent. The Group's concern about the need to expand territory into the adjoining Lumsdale area might not be borne out. It was agreed that NE would be likely to license closure of outlier setts that were not in use. I find that the evidence does not support rejection of the appeal proposal because of adverse effect on this species.
57. I am also satisfied that the TPO trees would be protected and that the retention and enhancement of hedgerows and other vegetation on the site should be effective, subject to detailed design and management. This, combined with other direct enhancement measures, should adequately mitigate the effects of development on breeding birds that are found on the site, including some identified by local residents as Red and Amber List species.
58. The detailed implications for nature conservation would be subject to further review at submission of reserved matters, but at this stage the evidence suggests that suitable protection and mitigation could be secured by the use of planning conditions.

### *Heritage*

59. Bailey's Tump is a notable feature of the landform, whose origins already gave it some historic interest before its significant wartime role. Although not formally recognised by the Council in any published policy document, I consider that the feature readily meets the definition of a heritage asset set out in the NPPF.
60. In determining an application, the NPPF advises that the effect on the significance of a non-designated heritage asset should be taken into account and a balanced judgement made having regard to the scale of any harm or loss.
61. As outlined at the Inquiry on behalf of the Matlock Civic Association, the location of Bailey's Tump, with an open line of sight to the skies above the Derwent Valley, was key to its function in air defence. The feature's prominence in its setting therefore contributes to its heritage significance.

However, it is already flanked by modern housing on Bull Lane and Asker Lane, and so is not remote from development.

62. The proposed development, as governed by the Parameters Plan and potentially indicated by the IMP, would preserve the widening arc of open land to the south of Bailey's Tump. The key view from the remains towards the valley would not be interrupted, with the new housing kept to the side behind a mature hedgerow. The land to the west would form open space and the proposed hay meadow, allowing the three-dimensional form of the feature to be appreciated. For these reasons, I consider that there would be a very limited adverse effect on the significance of Bailey's Tump as a heritage asset.

### ***Balance of considerations***

63. The NPPF seeks to boost significantly the supply of housing. There is no dispute that the Council's five year supply is lacking. Evidence on the objective assessment of housing need leading to the withdrawal of the intended replacement LP suggests that the future housing requirement is likely to be considerably greater than previous estimates. The contribution to meeting the shortfall in supply lends substantial weight in support of the proposal.
64. The provision of some 49 units of affordable housing would also help to address an identified need, and is a consideration of positive weight, even if the level of proposed provision would not exceed the requirements of development plan policy.
65. There would thus be clear evidence of the social dimension of sustainable development. Further social benefits would be gained by permanent public access to a range of open spaces in the northern and eastern parts of the site.
66. The economic dimension would be illustrated by the employment generated during construction, by the addition to the local economy of the spending power of future residents and by the one-off financial gains of the New Homes Bonus. These economic factors add moderate weight in support of the proposal.
67. In environmental terms, the site would be well placed for future residents to avail of sustainable transport and access the facilities of the town centre, although less attractive for trips on foot or cycle owing to local topography.
68. The currently green and open character of the site at the urban edge would be partly replaced by development. This would result in minor harm to townscape character and moderate adverse visual impacts on close-range views. The Council officers' assessment of the second planning application confirmed that future housing requirements would require the use of greenfield sites. The adverse effects of development could be at least partly mitigated by successful landscape infrastructure and detailed design and layout, secured at the reserved matters stage. There would also be some enhancement of biodiversity by the introduction of water features and other improvements, while harm to protected species on the site should be minimised.
69. The character and appearance of the Matlock Bank CA would be preserved and there would be very limited harm to the heritage significance of Bailey's Tump through the development within its setting.

70. On balance, any remaining environmental harm would not significantly and demonstrably outweigh the benefits of development. In accordance with NPPF guidance, the proposal must be regarded as sustainable development to which the presumption in favour applies.

### **Conditions**

71. A schedule of suggested conditions was presented at the Inquiry, and was later amended following further discussion between the main parties. Most of the proposed conditions were agreed but some remained in dispute. It was agreed that details of floor levels could be left for later approval as part of the reserved matters. I have adapted the other proposed conditions, subject to some amalgamation to avoid duplication and to some amendment in the interests of precision and enforceability, for the schedule attached to this decision. I consider that the amended conditions would all be reasonable and necessary and would comply with the requirements of the NPPF and the advice of the PPG.
72. In addition to standard conditions on the submission of reserved matters and the commencement of development, a specific condition is required to ensure that the final form of development is controlled by adherence to the parameters of layout and landscaping set out on the Parameters Plan, in order to protect the landscape infrastructure and ecological value of the site. For the same reason, specific details are required on the protection of trees and the implementation of landscaping.
73. Approval of surface water drainage is required to minimise the risk of flooding and ensure the implementation of sustainable means of drainage. Further archaeological investigation is necessary, based on the results of the earlier desk-based study, in order to protect the heritage significance of the site.
74. A set of conditions on wildlife and biodiversity is necessary to ensure mitigation of the effects on the ecological interest of the site and delivery of a programme of enhancement measures. These would include approval of updated mitigation strategies for the effect on badgers and on general ecological interest, which would inform specific plans to mitigate effects at construction stage and in the long term management of the site. I have sought to combine and simplify several overlapping proposed conditions on this topic.
75. The limitation of working hours is justified by the need to protect the living conditions of adjoining residents. The approval and implementation of play and amenity areas is required to ensure an adequate standard of leisure provision for future residents.
76. The conditions on access are appropriate to the level of detail at this stage, when access has now been reserved for future detailed approval. The conditions sought by the highway authority on the design of junctions would not therefore be justified. Approval and implementation of a Travel Plan and the improvement of the PROW are justified in the interests of promoting sustainable modes of travel.

### **Unilateral undertaking**

77. Following submission of the revised draft UU, the Council provided a Section 106 Justification Statement which sets out the background to each of the

- obligations sought, and which formed the basis of discussion of the UU at the Inquiry.
78. The UU as finally completed by the landowners allows for 25% of the dwellings on the site to be provided as affordable housing, for the timing of their provision and transfer to a registered provider, and for definition of the numbers, type and location of the affordable units and the control of their future occupation. A financial contribution would fund provision off-site of the equivalent of a further 20% of units. The Council has confirmed that these provisions would accord with its normal requirement, based on LP and NPPF policy and the level of unmet need in the district. No concern has been raised about effect on viability.
79. The appellants accept that the proposed on-site provision for open space and play space would not accord with the provisions of LP policy L6. A financial contribution would be directed towards the improvement of young children's play at Hazel Grove, Matlock and older children's play and sports provision at Hurst Farm Park, Matlock. The Council has confirmed that the proposed provision would address policy requirements and that fewer than five planning obligations have been entered into in respect of these facilities since the operative date of 6 April 2010 set by the Community Infrastructure Levy ('CIL') Regulations 2010<sup>9</sup>.
80. A contribution towards the highway authority's monitoring of the Travel Plan was agreed to be justified to ensure the promotion of sustainable transport, in accordance with NPPF policy. It was confirmed that this was a specific project that had not attracted any previous contributions through planning obligations.
81. I am satisfied that each of these obligations would comply with the requirements of the CIL Regulations and with the tests set out in paragraph 204 of the NPPF and with the advice of the PPG. The obligations can be fully taken into account in support of the appeal proposal.
82. The UU also includes an obligation to pay a contribution of £113,990.01 to Derbyshire County Council towards the provision of places at Castle View Primary School. The appellants have made clear that although the obligation has been given they do not consider it to be justified. The provisions of the UU allow that any obligation will cease to have effect if found by the Inspector not to be a material consideration or not to attract weight or to fail to comply with the CIL Regulations.
83. There is no dispute over the estimated demand of 22 primary school places likely to be generated by the development. The County Council has confirmed that the local school currently has capacity for 40 places, but anticipates 28 of these to be taken by projected demand over the next five years, leaving only 12 available for children from the appeal proposal. The request for funding is based on a shortfall of 10 places, using a set multiplier.
84. I do not endorse the appellants' argument that the issue must be decided solely on the availability of places at this moment. Were there firm commitments that already had a call on currently available capacity, the County Council's reasoning could perhaps be upheld. But there is no evidence of the nature of the projections relied upon by the County Council, whose

---

<sup>9</sup> The Community Infrastructure Levy Regulations 2010 (SI 2010 No. 948)

methodology has not been fully transparent and is not set out in an adopted policy document before the Inquiry. The District Council referred to several potential housing developments within the school catchment, but the majority of these appeared to be awaiting completion of planning obligations. Therefore, it is not clear why they should have a prior call on any available capacity for school places.

85. I conclude that it has not been shown that the appeal proposal would place an unacceptable demand on education provision, such that this obligation would be necessary to make the development acceptable in planning terms. The obligation would not comply with the CIL Regulations or meet the tests of the NPPF, and cannot be given weight as a material consideration in support of the grant of planning permission.

### **Conclusion**

86. For the reasons set out above, and having taken careful account of the submissions made in writing and at the Inquiry and of the allowable obligations of the submitted UU, I conclude that the appeal should be allowed and outline planning permission granted subject to conditions.

*Brendan Lyons*

INSPECTOR

Richborough Estates

## **Annex**

### **Appeal Ref: APP/P1045/A/14/2227116**

#### **Land at Asker Lane, Matlock, Derbyshire**

#### **Schedule of conditions Nos. 1-19**

1. Details of the access, layout, scale, appearance and landscaping (hereafter referred to as the reserved matters) shall be submitted to and approved in writing by the Local Planning Authority before any works commence. The development shall be carried out in accordance with the approved details.
2. Application for approval of all reserved matters shall be made not later than three years from the date of this permission. The development hereby permitted shall commence not later than two years from the final approval of the reserved matters, or in the case of approval of such matters on different dates, the date of the final approval of the last such matter approved.
3. Any application for the reserved matters approval of the layout or landscaping of the site shall accord with the general parameters shown on the submitted Parameters Plan Ref BIR.4029\_12D.
4. Any application for the reserved matters approval of the layout of the site shall include an accurate survey showing all trees on and adjacent to the site within falling distance of areas where building/engineering works are proposed. Each tree on the plan shall be numbered. The site survey should show the following details:
  - a) the positions of the trees and their crown spreads;
  - b) the species of each tree;
  - c) which trees are to be retained and which removed;
  - d) the position of all hard surfaces and the siting of the works compound;
  - e) the position and depth of all existing and proposed services.
5. No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the prior written approval of the Local Planning Authority.

If any retained tree is removed, uprooted, destroyed or dies, another tree shall be planted in the same location and that tree shall be of such size and species and shall be planted at such time as may be specified in writing by the Local Planning Authority.

No equipment, machinery or materials shall be brought onto the site for the purpose of development until a scheme showing the exact position of protective fencing to enclose all retained trees beyond the outer edge of the overhang of their branches in accordance with British Standard 5837: 2012 Trees in Relation to Design, Demolition and Construction -Recommendations has been submitted to and approved in writing by the Local Planning Authority. The protective fencing shall be erected in accordance with the approved details. This fencing shall be maintained until all equipment, machinery and

surplus materials required for the purpose of the development have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those fenced areas shall not be altered, nor shall any excavations be made, without the prior written consent of the Local Planning Authority.

In this condition 'retained tree' means an existing tree which is to be retained in accordance with the approved plans and particulars, and the first and second paragraphs above shall have effect until the expiration of five years from the first occupation or the completion of the development, whichever is the later.

6. No development shall commence until a Landscape Management Plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscaped areas (except privately owned domestic gardens), has been submitted to and approved in writing by the Local Planning Authority. The Landscape Management Plan shall be carried out as approved. The Management Plan shall include the following elements:

- a) details, extent and type of new planting, which shall be of native species;
- b) details of maintenance regimes;
- c) details of treatment of site boundaries and buffers around water bodies;
- d) details of management responsibilities.

7. All soft landscaping comprised in the approved landscaping details shall be carried out in the first planting and seeding season following the first occupation of the dwellings or the completion of the development, whichever is the sooner. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species unless otherwise agreed in writing by the Local Planning Authority. All hard landscaping shall be carried out in accordance with a programme to be agreed in writing with the Local Planning Authority, and shall be in accordance with the approved details.

8. No development shall commence until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to, and approved in writing by, the Local Planning Authority in consultation with the Environment Agency and LLFA. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed. The scheme shall demonstrate:

- a) surface water drainage system(s) designed in accordance with CIRIA C697 and C687 or the National SuDS Standards, should the latter be in force when the detailed design of the surface water drainage system is undertaken;
- b) details to show the outflow from the site is limited to Greenfield QBAR rate for all events including the 100 year return period plus 30% (for climate change)



- c) provision of surface water run-off attenuation storage in accordance with the requirements specified in '*Science Report SC030219 Rainfall Management for Developments*';
- d) detailed design (plans, network details and calculations) in support of any surface water drainage scheme, including details of any attenuation system, and the outfall arrangements. Calculations should demonstrate the performance of the designed system for a range of return periods and storm durations inclusive of the 1 in 1 year, 1 in 2 year, 1 in 30 year, 1 in 100 year and 1 in 100 year plus climate change return periods;
- e) details about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters to include a timetable for its implementation;
- f) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

9. No development shall commence until a Written Scheme of Investigation for archaeological work has been submitted to, and approved in writing by, the Local Planning Authority; and until any pre-start element of the approved scheme has been completed to the written satisfaction of the Local Planning Authority. The scheme shall include:

- a) an assessment of significance and research questions;
- b) a programme and methodology of site investigation and recording;
- c) a programme for post investigation assessment;
- d) provision to be made for analysis of the site investigation and recording;
- e) provision to be made for publication and dissemination of the analysis and records of the site investigation;
- f) provision to be made for archive deposition of the analysis and records of the site investigation;
- g) nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

No development shall take place other than in accordance with the archaeological Written Scheme of Investigation and the development shall not be occupied until the site investigation and post-investigation assessment have been completed in accordance with the programme set out in the archaeological Written Scheme of Investigation, and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

10. No development shall commence until a further badger survey is undertaken and an updated Badger Mitigation Strategy based on the further survey has been submitted to and approved in writing by the Local Planning Authority. The

development shall be implemented in accordance with the approved Badger Mitigation Strategy.

11. No development shall commence until an updated Ecological Mitigation Strategy has been submitted to and approved in writing by the Local Planning Authority. The Strategy shall include a habitat mitigation and enhancement/creation/management plan setting out in detail how the areas of land to the north (northern hay meadow) and east of the site will be enhanced.

12. No development shall take place (including demolition, ground works, vegetation clearance) until a Construction Environmental Management Plan (CEMP: Biodiversity) based on the Ecological Mitigation Strategy has been submitted to and approved in writing by the Local Planning Authority. The CEMP (Biodiversity) shall include measures and work practices to ensure the protection of important features, including badger setts and hedgerows, and the location and timing of works to avoid harm to biodiversity, in particular breeding birds. The approved CEMP shall be adhered to and implemented throughout the construction period in accordance with the approved details.

13. No development shall commence until an Ecological Management Plan (EMP) for the site based on the Ecological Mitigation Strategy has been submitted to and approved in writing by the Local Planning Authority. The approved EMP shall include aims and objectives of management and options for implementation of actions and work schedules, together with details of the legal and funding mechanisms by which the long-term implementation of the plan will be secured and the management body responsible for its delivery, monitoring mechanisms and contingency/remedial actions. The EMP shall be implemented and monitored as approved.

14. No works of construction shall take place on the site outside of the hours of 08.00 to 20.00 on Mondays to Fridays, 09.00 to 13.00 on Saturdays and not at any time on Sundays or Bank Holidays.

15. No dwelling shall be first occupied until a scheme for the laying out and equipping of amenity spaces and a children's natural play area, to include landscaping, boundary treatment and provision for future maintenance and safety checks of the areas and equipment together with the triggers for the laying out of this area, have been submitted to and approved in writing by the Local Planning Authority. The amenity areas and natural play area shall thereafter be laid out, and in the case of the play area, equipped with natural play facilities, in accordance with the approved scheme.

16. The sole means of vehicular access to the site shall be from Asker Lane and Chesterfield Road only in accordance with the Parameters Plan. No more than 35 no. dwellings shall be occupied off each access point unless an internal estate street link linking the two access points together has been provided and made available to two-way traffic and retained thereafter.

17. No dwelling shall be occupied until a pedestrian route audit has been undertaken to establish the need for a pedestrian crossing facility across the A632 Chesterfield Road in the vicinity of the site. If the conclusions of this audit require a pedestrian crossing facility then details of its location and construction shall be submitted to and approved in writing by the Local Planning Authority and it shall be constructed in accordance with the approved details prior to the occupation of the 50<sup>th</sup> dwelling.

18. No dwelling shall be occupied until details of improvements to the existing public right of way (FP8), in terms of construction quality and lighting, has been submitted to and approved in writing by the Local Planning Authority. The improvements shall be implemented in accordance with the approved details prior to the occupation of the 50<sup>th</sup> dwelling.

19. No dwelling shall be occupied until a Travel Plan has been submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall set out measures to promote travel by sustainable modes and shall be implemented in accordance with the timetable set out therein. Reports demonstrating progress in promoting sustainable transport measures shall be submitted annually to the Local Planning Authority for approval, on each anniversary of the date of the planning permission, for a period of five years from first occupation of the development.

---

Richborough Estates

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Paul Cairnes of Counsel	Instructed by Head of Legal Services, Derbyshire Dales District Council
He called:	
Carl Taylor BA(Hons) DipLA CMLI	Director, TPM Landscape
Susan Crowley BA(Hons) DipTP MRTPI	Principal, Crowley Associates
With discussion of conditions and obligations by:	
Gareth Griffiths	Planning Officer, Derbyshire Dales DC
Paul Wilson	Corporate Director, Derbyshire Dales DC

### FOR THE APPELLANT:

Satnam Choongh of Counsel	Instructed by David Stentiford, Pegasus Group
He called:	
Jeffrey Kirby BSc MSc PhD CEnv FCIEEM	Director, Just Ecology Limited
Andrew Williams BA(Hons) DipLA DipUD CMLI	Director, Define
David Stentiford BA(Hons) BTP MRTPI	Director, Pegasus Group
With written evidence by:	
Michael Carr BA(Hons) DipLA DipUD RIBA	Director, Pegasus Group

### INTERESTED PERSONS:

Peter Wigglesworth	Local resident
Michael Betteridge	Local resident
Bernice Williams	Local resident
Ken Parker	Secretary, Matlock Civic Association
John Winnard	Local resident
David Whyman	Local resident
Irene Brierton	Chair, Mid Derbyshire Badger Group
Christopher Judd	Local resident, volunteer badger monitor
Sister Magdalen	Presentation Sisters of the BVM, site owners

## DOCUMENTS

1. Request to speak at Inquiry: Peter Wigglesworth
2. Request to speak at Inquiry: Michael Betteridge
3. Draft Unilateral Undertaking
4. Derbyshire Dales Local Plan 2005
5. Proof of Evidence of Jeffrey Kirby: Plan, Appendix 3
6. Local Plan extracts

7. High Court Judgement: *South Northamptonshire Council v Secretary of State for Communities and Local Government and Barwood Land and Estates Limited* [2014] EWHC 573 (Admin)
8. High Court Judgement: *Cheshire East Borough Council v Secretary of State for Communities and Local Government and Richborough Estates Partnership LLP* [2015] EWHC 410 (Admin)
9. LVIA Comparison Schedules: Townscape and Visual Receptors
10. Opening Submissions on behalf of the Appellant
11. Opening Statement on behalf of Derbyshire Dales District Council
12. Schedule of Saved LP Policies
13. Village Green Application Inquiry: Closing Submissions on behalf of the Objector
14. Matlock Bank Conservation Area Appraisal extract
15. Draft Schedule of Conditions
16. Costs Application on behalf of the Appellant
17. Illustrative Master Plan Ref BIR.4029\_07-1G
18. Derbyshire Wildlife Trust letter to Council dated 21 October 2014
19. Badger Survey plans
20. Minister of State letter
21. Bird Survey summary tables
22. Statement: Michael Betteridge
23. Statement: Bernice Williams
24. Village Green Application Inquiry: File of Evidence
25. Statement: Ken Parker
26. Statement: John Winnard
27. Costs Decision: Appeal Ref APP/A0665/A/13/2193956
28. Village Green Application Inquiry: Closing Submissions of the Applicant
29. The Landscape Character of the Derbyshire Dales: Extracts
30. Statement: David Whyman
31. Plan of proposed Site Visit route
32. Section 106 Justification Statement
33. Council's Analysis of Open Space Assessment
34. Council's Response to Costs Application
35. Village Green Application Inquiry: John Winnard letter and Witness Statement
36. Unilateral Undertaking: Completed copy
37. Draft Schedule of Conditions: Amended
38. Parameters Plan Ref BIR.4029\_12D
39. Closing Statement on behalf of Derbyshire Dales District Council
40. Closing Submissions on behalf of the Appellant
41. Guidelines for Landscape and Visual Impact Assessment Third Edition: Extracts