



Appeal Decision

Inquiry opened on 14 May 2013

Site visit made on 16 May 2013

by C J Ball DArch DCons RIBA IHBC

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

Decision date: 30 May 2013

Appeal Ref: APP/G2435/A/13/2192131

Land south of Moira Road, Ashby-de-la-Zouch LE65 2NJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by J S Bloor (Measham) Ltd against the decision of North West Leicestershire District Council.
 - The application Ref 09/00620/FUL, dated 30 June 2009, was refused by notice dated 8 January 2013.
 - The development proposed in 2009 was described as the erection of 83 no. dwellings with associated garaging and formation of new access road to Moira Road.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 69 no. dwellings with associated garaging, parking, open space, landscaping and infrastructure on land to the east of 57 Moira Road, Ashby-de-la-Zouch in accordance with the terms of the application Ref 09/00620/FUL, dated 30 June 2009, as amended, subject to the conditions set out in Annex A.

Preliminary matters

2. The inquiry sat for 3 days on 14-16 May and I made an accompanied inspection of the site and its surroundings on 16 May.
3. The application, first submitted in 2009, was held in abeyance for several years while matters relating to the River Mease Special Area of Conservation (SAC) were considered. The application was subject to detailed negotiations, including a reduction in house numbers from 83 to 69. An amended scheme was submitted in April 2012 and, following further revision and the resolution of SAC and highway issues, was considered by the Council in January 2013. At the suggestion of the appellant the amended application was described as 'the erection of 69 no. dwellings with associated garaging, parking, open space, landscaping and infrastructure on land to the east of 57 Moira Road, Ashby-de-la-Zouch'. I have adopted that description for the purposes of this appeal.
4. On 12 April 2013, after the decision but before the appeal, the Order to revoke the East Midlands Regional Strategy (RS) in its entirety came into force. Directions preserving structure plan policies in the Region were also revoked so that the statutory development plan for the area now consists solely of the saved policies of the North West Leicestershire Local Plan (LP), dating from 2002. I have considered the effect of the revocation of the RS in this case but since, given the clear prospect of revocation, the parties placed no reliance on RS policies in evidence, the revocation has no real impact on my conclusions.

Agreed matters

5. Before the inquiry the main parties submitted a statement of common ground. This outlines the application and its accompanying documentation; gives a brief description of the site and its planning history; and describes the proposed scheme of development, including highway considerations. The statement sets out the planning policy background and itemizes detailed matters of agreement, including location and design approach, amenity space and neighbour impact, access and highway considerations, flood risk and drainage, archaeological impact, and affordable housing provision. Areas where developer contributions would be required towards mitigation of the impact of the development on local infrastructure are noted. There is agreement that, if the Council cannot demonstrate a 5 year supply of deliverable housing land, the relevant policies for the supply of housing are deemed to be out of date. The statement also helpfully sets out the matters in dispute and includes a list of suggested conditions to be imposed if the appeal succeeds and planning permission is granted.
6. At the inquiry, an addendum statement of common ground was submitted, updating the housing position to April 2013 and outlining the areas of agreement and disagreement.

Planning obligation

7. Before the inquiry the appellant submitted a draft Agreement as a deed of planning obligation under s106 of the Act. The draft was in agreed form between the parties to it - the joint owners of the site, the District Council and the County Council. A certified copy of the executed Agreement, unaltered from the draft, was submitted at the end of the inquiry. I consider its provisions in more detail later in this decision.

Application for costs

8. At the inquiry an application for costs was made by the appellant against the Council. That application is the subject of a separate Decision.

Main issues

9. From the reasons for refusal and the evidence given to the inquiry I consider there to be 4 main issues in this case:
 - whether the Council has a 5 year supply of deliverable housing land and the consequent policy implications
 - whether the site is in a sustainable location
 - the effect of the proposal on the character and appearance of the area
 - the impact of the proposed development on local infrastructure and whether any harm would be overcome by planning obligation.

Reasons

10. The site, currently 2 fields in agricultural use, lies on the western edge of Ashby, outside but adjoining the LP settlement boundary. It fronts onto Moira Road, a main route into the town from the west. Existing housing development lies along Moira Road and Abbey Drive, to the north-east of the site, while the south-eastern boundary of the site borders housing development in Beaumont Avenue and Woodside. The north-western boundary is partially enclosed by No.57 Moira

Road and its extensive range of outbuildings. The site adjoins open farmland to the west and south-west. It slopes gently down from Moira Road to a ditch at the south-western boundary, which lies within the catchment area of the River Mease. A public footpath, part of The Ivanhoe Way (a long distance circular route) crosses the site.

11. The scheme would provide 69 new dwellings in a range of types and sizes, including 18 affordable units. Vehicular access would be from Moira Road, and The Ivanhoe Way would be accommodated within the site layout. New areas of public open space would be provided within the scheme adjacent to the central hedgerow and the ditch. The Council acknowledges that the proposed development would have no adverse impact on the residential amenities of neighbours. Subject to appropriate conditions and planning obligations there are no design or technical objections to the proposal.
12. The proposed development clearly conflicts with saved LP policies S3 and H4/1 aimed at restricting residential development on land which lies outside the settlement boundary. However, ¶49 of the National Planning Policy Framework (the Framework) makes it clear that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a 5 year supply of deliverable housing sites.

Whether the Council has a 5 year supply of deliverable housing land and the consequent policy implications

13. The current LP, adopted in 2002, covered the period April 1991 to March 2006. It allocated no land for housing development beyond that time and is clearly dated. The evidence base for RS housing policies dates from 2004. The household projections from that time are out of date and it is no longer appropriate to draw on that evidence. The emerging Core Strategy (CS) is intended to cover the 25 year period from April 2006 to March 2031. Although the CS carries limited weight at this stage, its housing policies are supported by a 2011 SHLAA, which identifies 9 potential housing sites in Ashby, (including the appeal site), and by a 2011 Housing Requirements Study (the G L Hearn Study). These helped to set the CS housing requirement over the plan period at 9,700 dwellings, 388 per annum. Since it has a strong, up-to-date evidence base I give this figure substantial weight. The appellant considers that it may be an underestimate, but relies on this figure for the purposes of this appeal.
14. In emerging CS policy CS37, Ashby is allocated at least 1,400 dwellings over the plan period. Taking account of completions to March 2012 and outstanding permissions, the CS indicates that sufficient land needs to be found for at least 605 more homes to be built by 2031. While the CS does not allocate sites, it identifies the preferred direction of growth as to the north of Ashby (Money Hill).
15. In the seven years from the beginning of the plan period to April 2013, 1,887 dwellings were built in Ashby. At 388 per annum, the requirement was for 2,716. There is thus an agreed shortfall of 829 dwellings over this period.
16. Much of the evidence at the inquiry centred on how this shortfall should be recovered. The Council prefers to spread recovery over the remainder of the plan period (the residual or Liverpool method) and refers to a recent appeal decision in the locality where that approach has been taken, although I note that that decision has been challenged¹. That approach would add 46 to the CS figure

¹ APP/K2420/A/12/2181080 Groby Cemetery

of 388, giving a base figure of 434 dwellings per annum over each of the next 5 and following 13 years of the plan. The appellant points to ¶47 of the Framework which requires local planning authorities to boost significantly the supply of housing and argues that this requires the shortfall to be dealt with as quickly as possible by adding it to the next 5 years worth of housing provision (the Sedgefield method). Reference is made to a number of appeal decisions where this approach has been adopted, including by the Secretary of State².

17. The Framework is silent on this matter and there is no firm guidance elsewhere but having regard to the decisions referred to above, and to the Ministerial statement *Planning for Growth*, I take the view that 'to boost significantly' implies a substantial and immediate effect, above and beyond the normal provision. For that reason I consider the Sedgefield method of recovering the shortfall to be the most effective way of meeting the Framework objective.
18. The Council refers to larger sites in the district allocated for future development as providing an available reservoir of developable land, but I consider that it cannot realistically be assumed that sites allocated to a future date will be brought forward by market demand or that such early take-up would cancel out the shortfall within 5 years. I therefore consider that, over the next 5 years, the shortfall of 829 must be added to the CS provision of 388 x 5, 1,940, to give a base figure of 2,769 or 554 dwellings per year.
19. The second bullet point at ¶47 of the Framework explains that local planning authorities should not only be able to identify sufficient sites to provide 5 years worth of housing against their housing requirements, but should also add a buffer of 5%, to ensure choice and competition in the market for land. It goes on to say that where there has been a record of persistent under delivery of housing, this buffer should be increased to 20% to provide a realistic prospect of achieving the planned supply.
20. 'Persistent under delivery' is not further defined in the Framework or elsewhere but, since the Framework requires the assessment of future housing delivery to look forward 5 years, looking back 5 years to assess the record of past delivery seems to me a reasonable approach. In fact, the provision of 388 dwellings has been achieved in none of the past 7 years, from the start of the CS plan period. The annual average provision over these years was about 70%, leading to the cumulative shortfall of 829. Furthermore, taken against the RS requirement of 510 dwellings per annum, arguably more applicable to these years before its revocation in April 2013, the annual average was little more than 50%. That is by any standard a record of persistent under delivery.
21. The Council argues that over 1991-2006, the LP plan period, there was a cumulative record of over provision and that delivery should be averaged over the years 1991-2013. However the LP, in force before the current CS plan period, was subject to very different planning circumstances, and I do not consider that the suggested approach would be a reliable pointer to future performance. The Council also argues that there are specific local reasons for the shortfall, including a moratorium on development pending the resolution of the River Mease SAC problems. However, that only applied to a part of the district and in any event, taken on its face, the Framework looks at the plain fact of under delivery and takes no account of why that may be.

² APP/J3720/A/11/2163206 Shottery (SoS), APP/H1840/A/12/2171339 Honeybourne, APP/Y2810/A/12/2174386 Long Buckby.

22. I therefore consider that a buffer of 20% should be applied to the next 5 years housing requirement. 20% of the base figure of 2,769 is 554 so this increases the 5 year housing requirement figure at 1 April 2013 to 3,323, an annual requirement of 665.
23. I now go on to consider housing land supply, having regard to the Framework requirement for the identification of specific deliverable sites sufficient to provide 5 years worth of housing against the housing requirement. Against the requirement of 3,323, the parties agree that, over the 5 year period from April 2013, there should be a windfall allowance of 235 dwellings, large sites under construction will provide 859 dwellings and sites allocated in an adopted Local Plan will deliver 230 dwellings.
24. With regard to sites with planning permission but not yet started, there is a measure of agreement although the appellant considers that the Brookes Machine Tools site in Kegworth is not deliverable within the 5 year period. He argues that, although planning permission for 16 dwellings is extant, the owner has no immediate plans to sell and has yet to find premises to which to relocate. The Framework makes it clear that sites with planning permission should be considered deliverable unless there is clear evidence that schemes will not be implemented within 5 years. There is no such evidence before me so I consider that the Council's projected total of 174 dwellings in this category is deliverable.
25. The deliverability of unallocated sites without planning permission is less certain. The appellant accepts that 327 houses are deliverable but argues that the further 875 claimed by the Council relate to proposals which have either been refused planning permission or for other reasons are not deliverable within the current 5 year projection. The position is unclear but what is clear is that, even if all the sites nominated by the Council are included, that would still only amount to 4.06 year's worth of supply ($235 + 859 + 230 + 174 + 1202 = 2,700$; $2,700 \div 665 = 4.06$). On the other hand, if the appellant's figures are relied on, there would only be 2.74 years worth of supply ($235 + 859 + 230 + 174 + 327 = 1,825$; $1,825 \div 665 = 2.74$). The actual figure may lie somewhere in between but it is evident that, however the calculation is made, as at April 2013 the Council cannot identify specific deliverable sites sufficient to provide 5 years worth of housing against the housing requirement.
26. As a result, as indicated in ¶49 of the Framework, relevant policies for the supply of housing cannot be considered to be up-to-date. That applies not just to housing supply policies but also to policies which direct or restrict the location of housing, such as policies S3 and H4/1. In that respect I note the recent legal advice to the Council which points out that the LP is out of date and the limits to development it sets will need to be breached if the Council is to meet the existing and future need for housing land; that means that planning permission will need to be granted for land which the LP currently defines as countryside. For these reasons I give little weight to the CS replacement countryside policy CS8.
27. At the heart of the Framework is a presumption in favour of sustainable development and ¶14 of the Framework requires that, where development plan policies are out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework policies taken as a whole. I therefore go on to consider the other matters raised by the Council.

Whether the site is in a sustainable location

28. Ashby is the second largest settlement in the district and has a wide range of services and facilities, including shops, post office, library, employment and leisure facilities; the town is served by primary and secondary schools and by a district hospital and health centre. A major employment site and an edge-of-town superstore lie on its eastern edge, close to the A42 link. The site lies on Moira Road, a main road into the town and a principal public transport route. Located on the western edge of the built-up area, the site is partially enclosed by existing housing and its development would not give rise to any further westward extension of the overall built form of Ashby into the countryside.
29. The site is classified as grade 3 agricultural land. As such it is of an equivalent or lower agricultural value than the much larger area of preferred development land at Money Hill. It cannot therefore be argued with any conviction that it is unsuitable for development on grounds of agricultural quality. It is a relatively small area, some 2.5 Ha, and even if it were of the higher grade 3a argued by objectors, its loss would have a very minor impact on the national stock of best and most versatile land. I do not consider that the development of this site would represent an unsustainable loss of good quality farmland. In that respect I note that as long ago as 1998, in assessing suitable housing sites, the LP Inspector considered that this was one of the better candidate sites and could, if need dictated, make a useful contribution to the District's housing land supply. It was not considered necessary at that time. I also note that the site was included in the Council's 2011 SHLAA, which indicated its good accessibility.
30. Local facilities include a small convenience store, about 120 m from the site, a recreation ground at 170 m and Ashby Hill Top Primary School about 290 m away. These are all within 5 minutes walk from the site. It is about 1 km to the town centre, a walk of 10-15 minutes, and most of the urban area of Ashby, including the secondary schools, lies within 2 km. All the employment areas, and the superstore, are within about 3 km of the site. DoT statistics show that the average trip length regularly undertaken by the population of Great Britain is, on average, walking about 1 km, cycling about 4.5 km and by bus about 8 km. It can be concluded from this that the site is within easy walking or cycling distance of all the town's facilities.
31. There are 2 bus stops close to the site, well within the distances set out in the Council's 6C's Design Guide, with 3 buses an hour to the town centre and 2 buses an hour from it. Journey time to the town centre is about 5 minutes. Service 2 operates a one-way town centre loop while Services 9 and 9A operate in both directions, linking the town to Coalville and Burton on Trent. There are opportunities for interchange with other bus services in the town centre, including a town service to the superstore.
32. From this I consider that residents of the site would have good access to the town centre and would have a realistic option of travelling to all the facilities the town has to offer by walking, cycling or using public transport. The Council asserts that local knowledge shows that the DoT statistics cannot be applied to the people of Ashby and that residents of the site would be unlikely to walk or use the bus. I find that a surprising line to take, particularly when the promotion of sustainable means of travel is a key Framework objective. It may be so – future residents of the site may choose to use a private car – but it cannot be said that they would have to rely on it. Alternative means of travel would be readily available, and I consider the site to be in a sustainable location.

The effect of the proposal on the character and appearance of the area

33. The area currently has the character of 'urban edge', where the built-up area of the town meets the countryside, and there are attractive views across fields and hedgerows to the west. The site is partially enclosed by existing housing development. Development of this site will clearly change the nature of the land from countryside to residential. The loss of rural outlook across the 2 fields, and the re-routing of the footpath through a housing area, would be keenly felt by local residents.
34. However, the site's southern boundary would align with the existing extent of development at Woodside, so there would be no significant expansion of the town into open countryside. An extensive area of similar countryside would remain to the west and south of the site, and wider views would remain largely unaltered. As the LP Inspector noted, the site is well related to the existing built form of this end of Ashby and appropriate landscaping could bring about some visual improvement in the current western approach to the town. I concur with his view that little significant harm would arise from the loss of countryside resulting from this development.
35. Existing hedgerows would be retained, public space would be fully landscaped and new trees would be planted, ensuring that the site harmonises with and reflects both its urban and rural surroundings. The proposal would in effect retain the 'urban edge' character of the area. I do not consider that development of the site would significantly change the distinctive character of The Ivanhoe Way, which already takes in the urban area of Ashby. Overall I consider that the proposal would have no unacceptably harmful effect on the character and appearance of the area.

The impact of the proposed development on local infrastructure and whether any harm would be overcome by planning obligation.

36. The site lies within the National Forest where guidelines require either 20% of the site to be woodland planting or a contribution towards equivalent offsite planting. It also lies within the catchment area of the River Mease, where mitigation of development and remediation of pollution of the river is required in accordance with the River Mease SAC Water Quality Management Plan (WQMP). The development would increase the local population of adults and children and this would substantially increase the existing pressure on local infrastructure and the current provision of local services. To cater for increased usage, expansion or improvement would be required at the health centre, leisure centre and library. To accommodate additional children, significant expansion and improvement would be required at the nearby Ashby Top Hill Primary School. The additional population would also bring additional policing requirements, which would need to be addressed.
37. The s106 Agreement would effectively bind the appellant to providing 18 affordable dwellings as part of the development. It would also require the appellant to make, and the District Council and County Council to disburse, contributions of:
- £40,000 towards the programme of tree planting in the National Forest
 - £19,350 towards projects identified in the River Mease SAC WQMP Contributions Strategy

- £25,258.56 towards the expansion and improvement of Ashby Health Centre
 - £75,900 towards the expansion and improvement of Hood Park Leisure Centre
 - £24,903 towards the capital costs of policing the development
 - £184,025.94 towards the expansion and improvement of Ashby Hill Top Primary School
 - £4,130 towards the improvement of Ashby Library
 - £120 to provide an information display at the eastbound bus stop on Moira Road
 - £10,000 towards making and implementing the Traffic Regulation Order necessary to introduce 'no waiting' restrictions along the site's frontage to Moira Road
38. Parking on the site road frontage would be prevented, thereby eliminating hazardous conditions, and in addition the appellant would provide Travel Packs and bus passes to the occupiers of each dwelling in order to encourage walking, cycling and the use of public transport. The appellant would also contribute towards both Councils' costs of monitoring compliance with the obligations.
39. Evidence submitted to the inquiry showed that, without these contributions, the development would not be acceptable in planning terms because of its harmful impact on local infrastructure. These measures are therefore necessary to mitigate that impact. The need for additional facilities arises directly from the development of the site so the contributions are directly related to it. The extent of additional provision in each case has been carefully considered and is proportionate, appropriate and no more than is necessary to meet the additional demands, so the provisions of the Agreement are fairly and reasonably related in scale and kind to the development. The provisions of the Agreement therefore comply with ¶203 of the Framework and meet the tests of Regulation 122 of the CIL Regulations 2010. I therefore consider that the harmful impact of the proposal on local infrastructure would be satisfactorily overcome by the binding planning obligations.

Conclusions

40. I have found that the Council cannot demonstrate a 5 year supply of deliverable housing sites. As a result, relevant development plan policies for the supply of housing cannot be considered to be up-to-date. In these circumstances, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
41. As the Council has to acknowledge, future development will have to take place on land which the LP currently defines as countryside. This is such a site. I consider it to be in a sustainable location. Subject to appropriate conditions and the planning obligations there are no design or technical objections to the proposed development and nor would it have an unacceptably harmful effect on the character and appearance of the area. The harmful impact it would have on local infrastructure would be overcome by planning obligation.
42. The draft CS is currently at pre-publication stage. There are unresolved objections so it could potentially be amended. At present it carries limited weight but, bearing in mind that the CS calls for at least 605 new dwellings in Ashby

over the plan period, this development of 69 houses is not so substantial that it would significantly undermine the Council's preferred location for growth or prejudice strategic decisions by predetermining the scale and location of new housing currently being considered as part of the CS process. There is no justification for considering the application to be premature.

43. The proposed development would provide a number of economic, social and environmental benefits, not least a significant boost to the town's supply of houses, including a range of affordable dwellings. It would lead to substantial tree planting in the National Forest and would help to clean up the River Mease. I find no adverse impacts sufficient to outweigh these benefits or the presumption in favour of sustainable development. It is therefore my intention to grant planning permission subject to appropriate conditions.
44. The parties agreed a list of conditions at the inquiry. Compliance with the submitted plans is necessary to ensure the scheme is built as approved. Some minor design features need further approval to control the appearance of the scheme and to ensure pedestrian safety, and permitted development rights should be withdrawn to safeguard the amenities of neighbours. The submission of boundary treatment details and a full landscaping scheme is necessary, together with a maintenance plan to ensure its long term survival. Conditions are necessary to ensure the site is properly drained and to reduce the risk of flooding. A Grampian-type condition is necessary for the provision of off-site highways works to improve access and highway safety. There is some potential for archaeological remains so a programme of archaeological work is necessary to ensure proper investigation and recording. A Construction Method Statement is necessary to prevent encroachment onto the highway and to safeguard the interests of neighbours during the construction period.
45. I consider that all these conditions are a necessary and reasonable means of controlling the development. I have adjusted some of the suggested wording in the interests of clarity and to conform more with Circular 11/95. On that basis, for the reasons given above, I conclude that the appeal should be allowed.

Colin Ball

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Timothy Leader, of Counsel	Instructed by the Principal Solicitor to the Council.
He called: Andrew Murphy BA(Hons) MSc MRTPI	Director, Stansgate Planning.

FOR THE APPELLANT:

Thomas Hill QC	Instructed by Max Whitehead of J S Bloor (Measham) Ltd.
He called: Andrew Kirby BSc MICE Felicity Jane Gardner BA(Hons) MRTPI	Director, Northern Transport Planning Ltd Director of Planning, Marrons.

FOR THE POLICE AND CRIME COMMISSIONER FOR LEICESTERSHIRE:

Thea Osmund-Smith of Counsel	Instructed by the Police and Crime Commissioner for Leicestershire.
She called: Michael Lambert MRTPI	Growth and Design Officer, Leicestershire Police.

FOR LEICESTERSHIRE COUNTY COUNCIL:

Andrew James	Leicestershire County Council.
He called: Andrew Tyrer BA(Hons) MSocSci MRTPI	Developer Contributions Officer, Leicestershire County Council.

INTERESTED PERSONS:

Lisa Hvidsten-Birtwistle	Local resident.
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ADDITIONAL DOCUMENTS SUBMITTED AT THE INQUIRY

Joint documents

- 1 Addendum statement of common ground May 2013.
- 2 Amended list of agreed conditions.
- 3 Certified copy of the deed of planning obligation.

Council documents

- 4 Addendum proof of evidence of Andrew Murphy May 2013.
- 5 Addendum 5b to appendix 5 of Mr Murphy's proof of evidence – housing calculations residual method.
- 6 Addendum 5c to appendix 5 of Mr Murphy's proof of evidence – housing calculations Sedgfield method.
- 7 Copy of PINS Good Practice Advice Note 07, highlighting precedent.

- 8 Copy of letter to the Council dated 15 May 2013 from LCC regarding archaeological considerations for the site.
- 9 Copy of Council's Building Regulation record relating to the Brookes Machine Tools site confirming start of work on site.
- 10 Copy of outline planning permission 12/00323/OUTM for 110 houses on land adjoining 90 Ashby Road, Kegworth.
- 11 Copy of email to the Council dated 9 May 2013 from Blaby District Council confirming withdrawal of their objection to draft Core Strategy policy CS1.
- 12 Copy of responses to Core Strategy pre-submission consultation and suggested changes.

Appellant documents

- 13 Addendum proof of evidence of Jane Gardner May 2013.
- 14 Note of planning committee 7 May 2013 and summary of associated legal advice.
- 15 Agricultural assessment, Money Hill site.
- 16 Copy of Local Plan policies T9 and T10.
- 17 Extract from the Council's 6C's design guide.
- 18 Copy of draft Core Strategy policy CS23: Transport.
- 19 Plan of the appeal site in relation to the Ashby Broad Locations for Growth.

Police documents

- 20 Copies of 2 appeal decision notices highlighting s106 police contributions.

County Council documents

- 21 Corrected proof of evidence of Andrew Tyrer.

Interested person's documents

- 22 Mrs Hvidsten-Birtwistle's statement.
- 23 Miss C J Bryant's written submission.
- 24 Campaign poster

Closing statements

- 25 Mr Leader's closing statement for the Council.
- 26 Copy of Fox v SoS [2012] EWCA Civ 1198 [2013] 1 P & CR 6.
- 27 Mr James's closing statement for the County Council (written submission).
- 28 Ms Osmund-Smith's closing statement for the Police Commissioner.
- 29 Mr Hill's closing statement for the Appellant.

ANNEX A

Planning permission is granted for the erection of 69 no. dwellings with associated garaging, parking, open space, landscaping and infrastructure on land to the east of 57 Moira Road, Ashby-de-la-Zouch in accordance with the terms of the application Ref 09/00620/FUL, dated 30 June 2009, as amended, subject to the following conditions:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

ME_0013_11PL1	Revision M	Site Plan
M110-100		FRA Plan
NTP 12006.02	Revision O	Highways Plan
ME-0013-11-Dur.02	Revision A	Plots 1, 2, 64, 65
ME-0013-11-Dur.03	Revision A	Plot 3
ME-0013-11-Bel.01	Revision B	Plot 4
ME-0013-11-Fen.01	Revision B	Plots 5, 31
ME-0013-11-Dur.01	Revision A	Plots 6, 7
ME-0013-11-Han.05	Revision B	Plot 8
ME-0013-11-Han.03	Revision C	Plots 9, 14, 32
ME-0013-11-Som.SP.01	Revision A	Plot 10
ME-0013-11-Som.SP.04	Revision B	Plot 11
ME-0013-11-Ard.01	Revision A	Plots 12, 30, 35, 37
ME-0013-11-Ham.02	Revision B	Plot 13
ME-0013-11-Han.02	Revision B	Plot 15
ME-0013-11-Ham.01	Revision B	Plot 16, 46
ME-0013-11-Ard.02	Revision B	Plot 17, 36, 38, 39
ME-0013-11-Ard.05	Revision C	Plot 18
ME-0013-11-Han.01	Revision B	Plot 19
ME-0013-11-Fen.02	Revision B	Plot 20
ME-0013-11-Som.SP.02	Revision A	Plots 21 & 22 Floor Plans
ME-0013-11-Som.SP.03	Revision A	Plots 21 & 22 Elevations
ME-0013-011-1BF01/1BF02/3B5P.01		Plots 23-27 Floor Plans
ME-0013-011-1BF01/1BF02/3B5P.02	Rev B	Plots 23-27 Elevations
ME-0013-011-Bam/Lan.01	Revision A	Plots 28 & 29
ME-0013-11-Som.SP.05	Revision B	Plot 33
ME-0013-11-Ham.03		Plot 34
ME-0013-11-Ard.04	Revision B	Plots 40 & 41 Elevations
ME-0013-11-Ard.03	Revision A	Plots 40 & 41 Floor Plans
ME-0013-11-Ard/Lan.01	Revision A	Plots 42 & 43 Floor Plans
ME-0013-11-Ard/Lan.02	Revision B	Plots 42 & 43 Elevations
ME-0013-11-Ard/Lan.03	Revision B	Plots 42 & 43 Elevations
ME-0013-11-3B4P.01	Revision B	Plots 44 & 45
ME-0013-11-Fai/Oxb/Lev.01	Revision A	Plots 47-50 Floor Plans
ME-0013-11-Fai/Oxb/Lev.02	Revision A	Plots 47-50 Floor Plans
ME-0013-11-Fai/Oxb/Lev.03	Revision A	Plots 47-50 Floor Plans
ME-0013-11-Fai/Oxb/Lev.04	Revision B	Plots 47-50 Elevations
ME-0013-11-Fai/Oxb/Lev.05	Revision A	Plots 47-50 Elevations
ME-0013-11-Fai/Oxb/Lev.06	Revision B	Plots 47-50 Elevations
ME-0013-11-Lan/Sed.01	Revision A	Plots 51 & 52 Floor Plans
ME-0013-11-Lan/Sed.02	Revision B	Plots 51 & 52 Elevations

ME-0013-11-Bun.01	Revision B	Plot 53
ME-0013-11-2B3P/Far.01	Revision C	Plots 54-56 Floor Plans
ME-0013-11-2B3P/Far.02	Revision C	Plots 54-56 Elevations
ME-0013-11-2B4P.01		Plots 57-59 Floor Plans
ME-0013-11-2B4P.02	Revision A	Plots 57-59 Elevations
ME-0013-11-3B4P/Far/Bun.01	Revision B	Plots 60-63 Floor Plans
ME-0013-11-3B4P/Far/Bun.02	Revision B	Plots 60-63 Plans & Elev's
ME-0013-11-3B4P/Far/Bun.03	Revision B	Plots 60-63 Elevations
ME-0013-11-Dur.04	Revision A	Plots 66 Floor Plans
ME-0013-11-Dur.05	Revision B	Plots 66 Elevations
ME-0013-11-Dur.06	Revision A	Plots 67 Floor Plans
ME-0013-11-Dur.07	Revision B	Plots 67 Elevations
ME-0013-11-Han.04	Revision B	Plots 68
ME-0013-11-Han.06	Revision B	Plots 69
ME-0013-11-Gar.01	Revision A	Garages
ME-0013-11-Gar.02	Revision A	Garages
ME-0013-11-Gar.03		Garages
ME-0013-11-Car.01	Revision A	Carport
ME-0012-11-Car.02	Revision A	Carport
M110_BD_01		Boundary Details
M110_GD_01		Gate Details

- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until samples of the materials to be used in the construction of the external paved surfaces hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) No development shall take place until details, including location and treatment, of utility boxes, chimneys, verges and barn gate features have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) No development shall take place until details of waste storage for units within the site have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order) no development relating to Classes A to E of Part 1 Schedule 2 Article 3 shall be undertaken.
- 8) No development shall take place until full details of both hard and soft landscape works, including details of the landscaping for the balancing pond, have been submitted to and approved in writing by the local planning authority. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme agreed with the local planning authority.

- 9) If within a period of 5 years from the date of planting any tree or plant is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted at the same place, in the next planting season, unless the local planning authority gives its written approval to any variation.
- 10) A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small, privately owned, domestic gardens, shall be submitted to and approved by the local planning authority prior to the occupation of the development or any phase of the development, whichever is the sooner, for its permitted use. The landscape management plan shall be carried out as approved.
- 11) No development shall take place until a detailed scheme for the boundary treatment of the site has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details before the first occupation of any dwelling on the site.
- 12) No development shall take place until detailed plans for the disposal of foul sewage have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details before the first occupation of any dwelling on the site.
- 13) The development hereby permitted shall be carried out in full accordance with the approved Flood Risk Assessment (FRA) Revision 2, dated 3 April 2012, Ref: 10172/FRA/01 and the following mitigation measures detailed within the FRA:
 1. Limiting the surface water run-off generated by all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site (Section 4).
 2. Provision of surface water attenuation storage in the form of an open water balancing pond (Section 4).
 3. Finished floor levels are set a minimum of 300mm above the banks of the adjacent ordinary watercourse (Paragraph 3.37)The mitigation measures shall be fully implemented before the first occupation of any dwelling on the site.
- 14) No development shall take place until details of the implementation, maintenance and management of a sustainable surface water drainage scheme have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented before the first occupation of any dwelling on the site and thereafter managed and maintained in accordance with the approved details. Those details shall include:
 - i) a timetable for its implementation
 - ii) limiting the discharge rate and storing the surface water run-off generated by all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site
 - iii) provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall

- events up to the 100 year plus 30% (for climate change) critical rain storm
- iv) detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements
 - v) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime
- 15) No development shall take place at plots 15-21 and at the surface water balancing pond until the culvert forming the existing farm field access crossing forming part of the southern ditch as shown on drawing M110-100 has been removed.
- 16) Before the first occupation of the 26th dwelling hereby approved, the off-site highway works on Moira Road being the provision of a new footway, a crossing facility, speed cushions and a vehicle activated sign (with the exception of the location of the crossing and with the possible relocation of a bus stop) shall be completed in accordance with the details shown on drawing NTP 12006.02.
- 17) Before the first occupation of any dwelling plot hereby approved, the following plot-related access works shall be completed:
- The gradients of the access drives shall not exceed 1:12 for the first 5 metres behind the highway boundary.
- Any garage doors shall be set back from the highway boundary a minimum distance of 5.5 metres for sliding or roller/shutter doors, 6.1 metres for up-and-over doors or 6.5 metres for doors opening outwards.
- The approved pedestrian visibility splays in connection with the access serving that dwelling shall be provided with nothing within those splays higher than 0.6 metres above ground level, in accordance with the current standards of the highway authority
- Its access drive and any turning space shall be surfaced with tarmacadam, concrete or similar hard bound material (not loose aggregate) for a distance of at least 5 metres behind the highway boundary
- 18) No development shall take place until a programme of archaeological work, commencing with an assessment of the dating of the burnt deposit detected by the trial trenching, has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions; and:
- A programme and methodology of site investigation and recording (including the initial trial trenching, assessment of results and preparation of an appropriate mitigation scheme)
 - A programme for post-investigation assessment
 - Provision to be made for analysis of the site investigation and recording
 - Provision to be made for publication and dissemination of the analysis and records of the site investigation
 - Provision to be made for archive deposition of the analysis and records of the site investigation

The scheme shall include the nomination of a competent person or persons/organisation to undertake the works set out within the written scheme of investigation.

- 19) No demolition or development shall take place other than in accordance with the written scheme of investigation approved under condition 18.
- 20) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the written scheme of investigation approved under condition 18 and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.
- 21) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - the parking of vehicles of site operatives and visitors
 - loading and unloading of plant and materials
 - storage of plant and materials used in constructing the development
 - the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - wheel washing facilities
 - measures to control the emission of dust and dirt during construction
 - a scheme for recycling/disposing of waste resulting from demolition and construction works.