



---

## Appeal Decision

Inquiry held on 9-12 June 2015

Site visit made on 11 June 2015

**by John L Gray DipArch MSc Registered Architect**

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

**Decision date: 13 July 2015**

---

### **Appeal Ref. APP/M1005/A/14/2226553**

#### **Land at Roes Lane, Crich, Derbyshire, DE4 5DH**

- 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 Gladman Developments Limited against the decision of Amber Valley Borough Council.
  - The application, ref. AVA/2014/0281 dated 9 April 2014, was refused by notice dated 11 July 2014.
  - The development proposed is the erection of up to 113 dwellings with associated open space and landscaping, with all matters reserved except for access.
- 

#### **Decision**

1. The appeal is allowed. Planning permission is granted for the erection of up to 113 dwellings with associated open space and landscaping on land at Roes Lane, Crich, Derbyshire, DE4 5DH, in accordance with the terms of the application, ref. AVA/2014/0281 dated 9 April 2014, subject to the conditions set out in the schedule attached to this decision.

#### **Application for costs**

2. At the inquiry, an application for costs was made by Gladman Developments Limited against Amber Valley Borough Council. This application is the subject of a separate decision.

#### **Main Issues**

3. There are two main issues in the appeal. The first is whether, bearing in mind the provisions of the Development Plan and the absence of a 5-year supply of housing land, the proposed development would be sustainable in terms of its scale and location. The second, a reason for refusal withdrawn by the Council but an objection maintained by local people, is whether development on the appeal site would cause a pollution risk either to residents of the proposed housing or to the wider community.
4. There is a third issue, which effectively comes into play only if there is no compelling objection arising from the first two. It is whether affordable housing should be provided on-site, off-site or in a combination of both.

## Reasons

### ***First main issue – sustainability***

#### The Development Plan

5. So far as this appeal is concerned, the Development Plan comprises the saved policies from the Amber Valley Local Plan 2006.<sup>1</sup> The Plan itself set out policies and proposals up to 2011 and was prepared in the context of the now rescinded Structure Plan. Among the policies saved in 2009 are those referred to in reason for refusal no. 1 – Policies LS1, EN1 and H5.
6. Policy LS1 sets out six sustainability criteria which should be taken into account in considering the location of development. Although reason for refusal no. 1 says that the proposal is in conflict with all six, there is agreement in the Statement of Common Ground that criteria (e) and (f) are not breached. There is agreement that the proposal would conflict with criterion (b), although that indicates only a preference, not a requirement, for the use of previously developed land rather than greenfield sites; and it is also agreed that there is conflict with part of criterion (c) in that the loss to housing of a greenfield site could not be said to protect or enhance the quality of the natural environment. The major part of the Council's case is that the proposal would be in breach of criteria (a) and (d) because it would not be well-related to existing patterns of development (a) and would not minimise the need to travel or offer opportunities for journeys other than by private car (d). In broad terms, Policy LS1 is in line with the thrust of the National Planning Policy Framework (NPPF) and must still attract considerable weight.
7. Policy EN1 is essentially a policy for the protection of the countryside, restricting the types of development that may be permitted outside the built framework of settlements. It is, however, the counterpart of policies for the provision of development and, to that extent, may be considered out-of-date in the context of a Plan providing for development only up to 2011. Policy H5 says much the same thing as Policy EN1, though specific to housing development, and may be considered out-of-date for the same reason.

#### The emerging Core Strategy

8. Examination of the emerging Core Strategy had been suspended at the time of the inquiry. The Council agrees that no more than limited weight can be given to the Plan. Even if hearings were to resume very shortly, the very earliest it could be adopted, without there being any significant objections to be resolved, would be around the end of 2015.
9. Notwithstanding that, emerging Policy SS12 was argued by the Council as being the 'daughter' of saved policy EN1, thus enabling more weight to be given to that policy. As initially drafted, that may be so. However, the wording as now proposed modifies criterion (b) so significantly that that argument can no longer be sustained.

#### Housing need and supply

10. The Housing Market Area (HMA) for the purposes of the emerging Core Strategy covers Derby and South Derbyshire as well as Amber Valley. The Local Plan Inspector has said that the housing requirement of 33,388 for the HMA should be maintained as the objectively assessed need (OAN) as it

---

<sup>1</sup> The Derby and Derbyshire Minerals Local Plan and Waste Local Plan are part of the Development Plan but there are no policies in either relevant to this appeal.

provides “appropriate margins of comfort” over the 32,207 requirement that was more recently calculated. This leads to a figure of 592 dwellings per annum (dpa) for Amber Valley – 2,960 over five years.

11. It is common ground that the Council cannot presently demonstrate a 5-year supply of housing land. It calculates a supply of 2,461 dwellings, though that includes a windfall allowance of 205 dpa whereas the Local Plan Inspector has indicated that an appropriate allowance would be 50 dpa. It also accepts that a 20% delivery buffer is applicable, rather than the 5% in its own calculation. A total of 694 dwellings has been completed since the Plan’s start date of 2011, leaving a backlog of 1,082 dwellings. Taking all of this into account, and using the Sedgfield method to deal with the backlog, the 3.1-year supply claimed by the Council is reduced to just 1.8-years.
12. The Council produced a Housing Land Supply Statement in April 2014, claiming a supply of 5,565 dwellings. However, the Local Plan Inspector made clear that he thought the supply was actually “somewhere in the region of 3,000”. The Council has said it would redraft that document and has not sought to rely on it, or any amendment of it, in this appeal. However, if the supply were to be taken as 3,000, it would still amount to only 3.23 years.
13. Thus, whichever view is taken of housing land availability, it falls considerably short of a 5-year supply. If one then looks to see how quickly the shortfall might be rectified, the signs are not encouraging. There is no indication of when exactly the Council will publish housing land supply figures or if, when it does, they will not be the subject of significant objection. It seems likely that, at the earliest, it will be well into 2016 before the Core Strategy, assuming it is found sound, could be adopted. At the same time, it could easily be over three years before dwellings could be delivered on the appeal site, by which time the land supply issue may have been resolved.
14. Setting that to one side, housing land supply at the present time is somewhere between 35% and 65% of what it should be, the Council accepts that a significant number of greenfield sites will have to be released to achieve a 5-year supply and the Local Plan Inspector has suggested looking at “a slightly wider range of locations [than the four main settlements of Alfreton, Belper, Heanor and Ripley] as this would provide more market choice and probably speed take-up and delivery”.

#### Conclusion on policy and housing supply

15. The conclusions are clear. Firstly, saved Policies EN1 and H5 must be considered out-of-date. Case law<sup>2</sup> is clear that they are to be considered as policies for the supply of housing in as much as they restrict housing in the countryside as a counterpart of policies for the provision of housing. But there are no such policies and there is a significant shortfall of deliverable housing land. Secondly, any measure which will contribute to reducing that shortfall should be given careful consideration and the search, on the Local Plan Inspector’s suggestion, should be cast wider than the present concentration on the four main settlements in Amber Valley.

---

<sup>2</sup> In *South Northamptonshire Council v Secretary of State for Communities and Local Government & Ors* [2014] EWHC 573 (Admin), Ouseley J held that a policy which stated that planning permission would not be granted for development in the open countryside, subject to certain exceptions, was a policy for the supply of housing within para. 49 of the NPPF; he distinguished between such a general policy and one to protect a specific area or feature such as a gap between settlements. Lang J endorsed Ouseley J’s reasons in *Cheshire East Borough Council v Secretary of State for Communities and Local Government & Richborough Estates Partnerships LLP* [2015] EHCW 410 (Admin), though that case is to go to the Court of Appeal.

16. Both parts of para. 49 of the NPPF therefore come into play and so too does para 14. The question thus to be answered is whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, assessed against the policies in the NPPF, or whether specific policies therein indicate that development should be restricted.
17. The possibility of prematurity in relation to the plan-making process does not arise. A development of up to 113 dwellings is not so substantial in relation to the overall housing need in Amber Valley that it could possibly undermine that process. Indeed, the Council does not raise prematurity as an issue. Nor can it be an issue in relation to preparation of the Neighbourhood Plan, which has yet to reach the stage of an initial questionnaire to local residents.

#### Specific NPPF policy

18. There is no specific policy in the NPPF which indicates that development of the appeal site should be restricted. It does not come within any of the examples identified in footnote 9 to para. 14. That list is not closed but no other claim is argued. The site is in the countryside – but para. 17 says that one should “take account of the different roles and character of different areas, ... .. recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it”. Thus, the merit of the proposal must be weighed in terms of what might be lost and what support it might give to the village of Crich. Para. 32 says that decisions should take account of whether “opportunities for sustainable transport modes have been taken up depending on the nature and location of the site” – again, the merits are to be weighed in the balance and should bear in mind what is said in paras. 54 and 55 about housing in rural areas.
19. The sustainability of the proposed development is therefore to be assessed in terms of the three dimensions set out in para. 7 of the NPPF. And, bearing in mind that the relevant Development Plan policies are out-of-date, the presumption in favour of sustainable development set out in para. 14 will apply if the benefits of providing the proposed housing are not “significantly and demonstrably” outweighed by the adverse impacts.

#### Location of the appeal site within Amber Valley

20. The emerging Core Strategy seeks, through Policy SS1, to place most of the required housing growth in and around the four main urban areas of Alfreton, Belper, Heanor and Ripley. That does not appear to be an unreasonable approach in principle. The Policy also says that a limited amount of growth will take place at villages in accessible and sustainable locations, the specific intention being to promote the vitality and viability of communities, maintain their rural character and individual identities and meet the needs of the local community.
21. The meaning of “limited” in this context is nowhere defined. The report on the Core Strategy presented to Full Council on 15 October 2014 says that, while some additional housing development may be beneficial, particularly in larger villages, “the scale of development on individual sites should generally be below 50 dwellings, given the need to maintain and promote sustainable patterns of development”. However, no reasons are given as to why this should be – the figure of 50 refers to sites, not villages, which might mean that a much larger number of dwellings could be provided from several sites; the report says “generally”, implying that exceptions might be acceptable;

- and there is anyway no intention to introduce more detail into the Plan. In short, it is no part of the Council's case to say that the proposal is objectionable simply because it would provide more than 50 dwellings.
22. The Council accepts that Crich is a sustainable location for some development; its objection is that what is proposed is not "limited" and thus goes beyond what is anticipated in emerging Policy SS1. The Inspector examining the 2006 Local Plan said then that Crich was a sustainable location. The Inspector for the emerging Core Strategy has said that the Council might look more widely for housing sites. Crich is a relatively large village with a good range of services and facilities. No one disagrees that it is a vibrant village. There is no objection from the relevant authorities that a development of the size proposed would put undue pressure on existing services or facilities (an education contribution having been agreed and included in the section 106 obligation); or that it would cause unacceptable traffic problems (especially given the proposed Travel Plan).
  23. One strand of the Council's objection is to what it sees as the relative lack of sustainable transport options. There are, however, several bus services, some of them with bus stops virtually at the proposed site access; they link Crich with Matlock and Alfreton (service 140), Ripley and Matlock (141), Belper and Alfreton (142) and Ripley, Ambergate and Belper (143/144). There is also a school service to and from Matlock and a university service to and from Buxton. The regular services may be 2-hourly but the overlap in destinations effectively means that there is an hourly bus to most of them. Services may not be as frequent as one might find in some urban areas – but not all urban areas will have a more regular service or bus stops within the same walking distances. What it comes down to is that the opportunities exist for sustainable transport modes to be taken up (as set out in para. 32 in the NPPF) for work, shopping and leisure purposes. Those opportunities may not be as great as in some urban areas but that is not entirely to the point – because an assessment of sustainability ranges far wider than transport choices and each case must be assessed on its merits.
  24. It is nevertheless true that there would be considerable reliance on travel using the private car, whether for work, shopping or leisure. The forecast reliance on the private car would, however, be very similar to existing travel patterns elsewhere in Amber Valley, including in the main settlements. Thus, the difference in Crich will lie primarily in the lengths of journeys to be undertaken, generally longer but, given the compact nature of the District, perhaps not so much longer as to tip the balance in an overall assessment of sustainability.
  25. It may also be noted that the NPPF accepts that some housing will be acceptable in rural areas. Para. 54 says that some market housing might facilitate the provision of affordable housing (the subject of the third main issue), para. 55 that new housing located to enhance or maintain the vitality of rural communities may promote sustainable development.
  26. In principle, therefore, there is no compelling objection to housing development in Crich. It is recognised as a sustainable location, it is a vibrant village with good services and facilities and the opportunities exist for the use of sustainable transport modes to centres elsewhere. An assessment of sustainability must also, however, test the proposed development against the specific nature and character of Crich itself.

Location and scale of the proposed development in relation to Crich

27. Crich has developed broadly along a north-south axis, determined partly by the topography, partly by transport routes (themselves influenced by the topography) and partly by the existence and expansion of Hilts Quarry to its east. The early village was essentially linear – and that is still apparent today. Housing built since the mid-20th century has extended the village on its west side but the topography has tended to restrict how far expansion could go. No significant development has been possible on the east side of the village because of the extent of Hilts Quarry and the steep downward slope of the land to the south-east, between the quarry and the village axis. Looking at a map, therefore, the appeal site appears somewhat divorced from the village and its historic development pattern because of the intervening presence of Hilts Quarry. It can also be said that the eventual total of up to 113 dwellings on the appeal site would represent a development much larger than anything that has hitherto taken place as a single development in Crich.
28. The impression is somewhat different on the ground. Leaving Crich eastwards on Roes Lane (the B5035), one passes the residential cul-de-sac of Hillcrest on the south and a row of houses on the north side. The appeal site is separated from the cul-de-sac only by the (substantial) domestic curtilage of 10 Hillcrest; the houses on the north side of Roes Lane would overlap the north-western corner of the appeal site. Looking westwards from around Park Head, the proposed housing, especially given time for appropriate landscaping to grow and mature, would be seen very much as are the existing buildings in Crich – as a roofscape within the landscape. Development would represent significant change, both along Roes Lane (within and outside the village) and from where it would be seen from the east. Change does not automatically mean harm, however. The Council offered no objection to the visual impact of the proposal, its Landscape Manager being content that that could be dealt with at reserved matters stage. That may be considered a sound conclusion.
29. Although Hilts Quarry extends over a large area and has been capped at a level around 30m below the appeal site, one is simply unaware of it when within or around the village (save in those properties which back on to it). There is dense tree growth all around it, mainly just within its boundaries. There is no impression, as one moves from the Market Place up Bowns Hill and turns right along Roes Lane to the appeal site, of moving around such a large hole in the ground. One has to know it is there to work out the relationship between it, the appeal site and centre of the village. Thus, while it is obvious on a map, Hilts Quarry offers no visual reason for arguing that the appeal site would be divorced from the village.
30. On the contrary, if one looks at the physical relationship between the two, development on the appeal site would be seen as a clear extension of the village but as one convenient for the services and facilities it offers. Despite the contours, an unhurried walk of 7½ minutes took me from the Market Place to a point equivalent of the centre of the proposed development, perhaps a little beyond. That equates closely with the Council's estimate of a 20-minute round trip. Manual for Streets says that "Walkable neighbourhoods are typically characterised by having a range of facilities within 10 minutes' (up to about 800m) walking distance ... [although] ... this is not an upper limit". The appellant tabulates that the majority of shops and services within Crich

(including the medical centre and the infants and junior schools) are less than 700m from the centre of the appeal site.

31. There can be no real doubt, despite being an expansion of Crich in a new direction, and despite the presence of Hilt's Quarry, that the proposed development would be a sustainable extension of the village with no harmful visual impact that could not be overcome at reserved matters stage. That leaves consideration of the scale of the proposal in relation to the village's existing pattern of development.
32. The Office of National Statistics (ONS) records the population of the Parish of Crich, which includes Whatstandwell and Fritchley as well as Crich, as 2,898 in 2011. Crich Ward excludes a small eastern part of the Parish and is recorded as having a population of 2,401. An addition of 113 houses would represent an increase of just over 11% for the Parish. The figure would be greater, perhaps around 16%, for the village of Crich itself. It may be compared with the increase of about 8% between 2001 and 2011 but, in simple numerical terms, it is not so great an increase as automatically to be harmful.
33. Nor would the houses come all at once. The appellant estimates delivery at 25-30 market houses per annum. If 30% affordable housing were provided on-site, that would represent a delivery period of 2½-3 years. The lead-in time, given the need to sell the site to a house builder, gain approval of reserved matters, get a contractor on-site and complete the first house, could not be expected to be less than three years. Thus, it would be over six years before the development was completed. The percentage increase in the number of houses has to be viewed over that period of time.
34. The end-result would effectively be a single housing estate. Visually, however, as indicated above, the scale of development would not cause any significant harm in views from the east. Also, the proposed open space at roughly the mid-point of the Roes Lane frontage, and the substantial mature tree to be retained there, would give noticeable visual relief along that road and would tend to reduce the apparent overall scale of the development.
35. The enlargement of Crich might not be unduly great proportionally – but what would be the effect of 113 new households for the vitality and vibrancy of Crich? There is an indication, though little more than that, of a slightly ageing population structure, both in Crich over time and also in relation to the rest of the Borough: to the extent that that is so, the proposed development would tend to offset the trend. The average house price in Crich is about 38% higher than the Borough average, which suggests that affordability in Crich must be worse than elsewhere in the Borough; the proposed development would tend to widen the range of housing available for sale. Those may not be telling arguments in themselves – but there are other factors.
36. All are agreed that Crich is a vibrant, thriving village. It has infant and junior schools, with secondary education provided at Alfreton. There are no capacity problems at the infant or secondary schools and the Education Authority is content with a financial contribution towards improving junior school capacity. There is no suggestion from the Health Authority that additional population would put undue pressure on the surgery in Crich, which is reported as accepting new patients. Nor is it at all likely that undue pressure would be placed on the shops and other services and facilities in the village; indeed, it is easier to argue that the additional population from 113 dwellings would tend to support their vitality and viability. Lastly, there is no reason to think

that the development would be akin to a gated community. Accessibility to the village could only encourage residents to make use of what it has to offer and thus to become involved in village activities; and the location on a public footpath would likely mean other people walking through the development.

37. The Council suggests that the proposed development would effectively destroy the historic pattern of Crich. That is not really so. The depth of development to the west, beyond the original linear pattern, is plain to see, even if it has become integrated into the village. The historic linear pattern is nevertheless evident in the designated the Conservation Area. That will remain; indeed, there is the potential for enhancement in visual and activity terms by having 113 additional dwellings on one of the three main routes out of the village.

#### Overall assessment of sustainability

38. The NPPF says that there are three dimensions to sustainable development – economic, social and environmental – and that, because they are mutually dependent, they should not be assessed in isolation.
39. There would be economic benefits in terms of construction spending of around £13 million, supporting the equivalent of 65 full-time construction jobs over some 3-4 years; 113 houses would provide for around 170 economically active residents; and additional household spending would support some ten additional full-time jobs. It may be argued that that would be so for housing development anywhere in the Borough – but some of the construction jobs would likely go to people living in Crich; some of the economically active residents would work in Crich, even if at home (nowadays around 14%); and a not insignificant amount of household spending would be in Crich and would support additional jobs in the village or, at the least, support those that already exist.
40. There would be social benefits from the ability of the new housing to attract people at all stages of life, tending both to enhance the demographic mix and balance of the community and to at least sustain, if not enhance, the vibrancy of the village. There would also, subject to consideration of the third issue below, be benefits from the provision of affordable housing, enabling people with existing connections to stay within (or return to) the community.
41. There would be environmental advantages and disadvantages. The loss to housing of a greenfield site would be an environmental loss – but the Council accepts that the proposed housing could be satisfactorily accommodated within the landscape and that, with appropriate landscaping and open space, there would be a net ecological/biodiversity benefit. About 1.5 hectares of the site is grade 3a agricultural land, amongst the best and most versatile; the loss of such a small area should not, however, weigh significantly in the balance. Also to be added into that balance are the potential physical benefits to the character and appearance of the village, which would flow from some of the social benefits identified above, principally the support for or enhancement of the services and facilities within the village.
42. Overall, therefore, there would be economic and social benefits and, at worst, a neutral position environmentally. Accordingly, the proposed development must be considered sustainable in the terms of the NPPF.

#### Conclusion on the first main issue

43. Saved Policies EN1 and H5 from the Amber Valley Local Plan 2006 may be considered “policies for the supply of housing” in terms of para. 49 of the



NPPF; and they are out-of-date for the purposes of para. 14, there being well short of a 5-year supply of deliverable housing land in the Borough. Paras. 49 and 14 come into play and planning permission should be granted for sustainable development unless "any adverse impacts of doing so significantly and demonstrably outweigh the benefits".

44. Saved Policy LS1 remains broadly consistent with the thrust of the NPPF on sustainability and attracts weight accordingly. In broad terms, Crich is accepted as a sustainable location for some new housing – the question to be answered is "how much"?
45. The appellant accepts conflict with part of criterion (c) of LS1 in that the loss to housing of a greenfield site cannot be said to protect or enhance the quality of the natural environment. On the other hand, the Council concedes that landscape and visual impact can be resolved at reserved matters stage. Once established, the proposed development would not be seen as incongruous or unduly intrusive in the wider landscape.
46. On criterion (a), the proposal might not appear particularly well-related to existing development when looking at a map; it would be an expansion in a new direction (save for Hillcrest and the houses on the north side of the B5035). On the ground, however, it would appear to be a logical extension of the village, within comfortable walking distance of its centre and its numerous services and facilities.
47. On criterion (d) the development would fail to minimise the need to travel only in the relative sense of perhaps being a greater distance from some of the main urban areas. Set against that, it would certainly offer opportunities for journeys other than by private car.
48. Overall, the proposed development would bring economic and social benefits, some of them directly to Crich, and the environmental impact would be no worse than neutral; it must be considered sustainable in terms of its scale and location. Subject to consideration of the second main issue, therefore, the presumption in para. 14 of the NPPF should apply.

### ***Second main issue – pollution***

49. Hilts Quarry was used by Rolls Royce to dispose of low-level radioactive waste. The tip has been capped and is required to be monitored by Rolls Royce under the watchful eye of the Environmental Agency. Reason for refusal no. 2 was because the Council considered there to be insufficient information on potential contamination to allow a determination. Since that time, additional information has been provided and the Council has consulted upon it, enabling it to withdraw the reason for refusal.
50. Local people, however, and particularly the Keep Crich a Village Action Group (KCAV) have considerable concerns about the potential of the development either to result in unacceptable living conditions for its residents or to cause harm to the wider environment, including Crich itself, or both. They are also concerned about potential pollution from the former landfill site at Old Quarry, a little to the east of the appeal site.
51. So far as Hilts Quarry is concerned, none of the expert or responsible bodies consider that there is even slight potential for a problem. Rolls Royce is responsible for the site's integrity and would be susceptible to claims of liability if a risk to residents on the appeal site did exist; advised by SLR Consulting, it has not objected. The Environmental Agency, the expert

nuclear regulator, has consistently said, and recently explicitly confirmed, that it has no concerns and does not think there is a credible risk of a criticality (an uncontrolled nuclear chain reaction) occurring. Peter Brett Associates, for the appellant, provided information to the Council to support the lack of risk. The Council consulted Public Health England, whose response agreed with the Environmental Agency's conclusion and saw nothing to suggest that any contamination of the appeal site could have occurred from radionuclides disposed of in the quarry. In short, no plausible pollution linkage was seen to exist, whether from fugitive dust emissions or the migration of radiological isotopes; and construction of the proposed development would not create a pollution linkage where none currently existed.

52. The reasoning behind these various views takes various factors into account. The quarry has been capped at a level some 30m below that of the appeal site. The geology of the appeal site includes, above that level, a minimum depth of 14m (and up to 29.5m) of boulder clay, considered impermeable, or virtually so; excavations for foundations and drainage would penetrate that stratum to a depth of no more than 2-3m. Data from the boreholes on the appeal site, in the quarry and around the outlet of the Fritchley Sough (a remnant from old lead mining days) into the Fritchley Brook together indicate nothing inconsistent with normal ranges for uranium concentrations.
53. There is evidence of uranium enrichment in the leachate data from the quarry, which is to be expected – but the concentrations are extremely small. The real issue is whether there is a plausible pathway to link the source (the quarry) with the receptor (the appeal site). There is no evidence for this, or on whether radioactive materials may be escaping from the quarry in significant amounts, or even at all. The Environmental Agency has no concerns on this score, or on the possibility of a criticality.
54. In one sense, arguments about pollution risk from the quarry and the possibility of a criticality are not necessarily relevant to the decision on this appeal. The key factors are the depth of impermeable material between the levels of the appeal site and the capped quarry and the fact that excavations for development would penetrate that by only two or three metres. That in itself seems sufficient for a conclusion that there is no significant risk of pollution on the appeal site, or of construction of the development causing wider environmental harm. If the conditions to cause pollution were to exist elsewhere, away from the appeal site, that would be for the Environment Agency to deal with, in association with Rolls Royce.
55. Rainwater infiltration as a result of the proposed development could not upset the present position. The surface water drainage proposals would capture run-off from the development and take it to a balancing pond in the south-east corner of the site from where it would drain at normal agricultural land run-off rates. In fact, the proposed sustainable drainage scheme is much more likely to improve the existing position than worsen it.
56. Nor is there any significant likelihood of development on the appeal site causing problems with the stability of the quarry face and thus upsetting the present position. For example, the illustrative sketch perspective in the Design and Access Statement shows only five dwellings anywhere near the site boundary with the quarry. Quite apart from distance, the constructional techniques available to ensure building stability would equally ensure no side effects at the quarry face.

57. There are also the questions of radon and of pollution from the Old Quarry landfill site. Radon has effectively nothing to do with Hilts Quarry. It occurs naturally in this area and the risk it poses is guarded against by methods secured by the Building Regulations. For landfill gas, monitoring over a year shows that no specific protection measures are required; even so, the required radon protection measures would guard against any landfill gas risk. The methane levels found in the quarry pose no risk unless they can migrate in significant quantity to the appeal site, which, on the evidence, they do not.
58. On this second main issue, therefore, the conclusion must be that there is no material risk from Hilts Quarry or Old Quarry of unsafe or unacceptable pollution either for residents of the proposed development or, as a result of construction, for the environment in the wider area.

**Third issue – affordable housing**

59. The Council argued that affordable housing should be catered for by a financial contribution which would go towards provision in the main urban areas rather than on-site. That may be an understandable position when the thrust of the emerging Core Strategy is to concentrate development in those main urban areas, less so when considered against the argument that there is no need for affordable housing in Crich.
60. The Council's Strategic Housing Market Assessment (SHMA) sets out the affordable housing need in the Borough and in its three sub-areas. It identifies a 5-year need of 907 units in the Belper-Ripley sub-area over and above what would come from the extant land supply. The affordable housing in Crich, on the other hand, is argued as no more than 15, about 1.65% of the need in the sub-area; and that would be met by the development at Coast Hill, which the Council had resolved to approve subject to a section 106 obligation. The figure of 15 is argued as meeting the need identified in the 2007 Local Housing Needs survey for Crich, which it argues as not having changed significantly over time. There are several problems with that approach.
61. Firstly, a survey from 2007 must be considered out-of-date in 2015; there is no clear data to support the argument that need has not significantly changed. Secondly, that survey must be considered a snapshot in time, as the Council accepted, rather than any assessment of on-going need over a period of time. Thirdly, its conclusions were drawn from a 31% response rate to the questionnaire, substantial in itself but not proportionate to the make-up of the population – older age groups were over-represented and those in rented accommodation under-represented; and the broad assumption was made that those who did not respond had no affordable needs. Some 23% of respondents knew of someone who had had to move out of the parish but that seems not to have prompted any further analysis.
62. For the appellant, Mr Venning made two estimates, which he himself was quick to point out were speculative and could not properly be relied upon. The first, working down from the SHMA, estimated an affordable housing need in Crich of around 40 dwellings over five years; the second, seeking to allow for what he saw as the shortcomings of the 2007 Local Housing Needs survey, came to an estimate of 45. While both should be treated with great caution, it is notable that they come to not dissimilar conclusions. The appeal scheme and the Coast Hill development would together provide 49 affordable homes over a period of rather more than five years, consistent with either scenario.

63. The default position in the NPPF is that affordable housing should be provided on-site unless off-site provision or a financial contribution can be robustly justified. The appellant proposes on-site provision and the Council's evidence fails to persuade that there is no need for the amount of affordable housing that would come forward.

### **Overall conclusion**

64. On the first main issue, the housing policies of the Development Plan are out-of-date, which brings paragraphs 49 and 14 into play. The proposed development is sustainable, indicating that planning permission should be granted unless the adverse impacts of so doing would significantly and demonstrably outweigh the benefits of the proposal.
65. It may be that the emerging Core Strategy has been adopted and a 5-year housing land supply identified before the first house on the appeal site is occupied – but that does not outweigh the conclusion on sustainability, operation of the presumption in favour of sustainable development and the exhortation in the NPPF to boost significantly the supply of housing.
66. On the second main issue, on which the potential for serious adverse impact was argued by KCAV and others, there is no material risk of pollution from either Hilts Quarry or Old Quarry. Other potential adverse impacts have been assessed in the context of the first main issue and the three dimensions of sustainability set out in the NPPF. On the third issue, the evidence does not robustly justify the provision of affordable housing other than on-site.
67. Accordingly, subject to appropriate conditions and the terms of the executed obligation, the appeal may be allowed and planning permission granted.

### **Obligation**

68. The executed obligation provides for an education contribution, a travel plan monitoring contribution, the management and maintenance of the open space and for affordable housing by one of three options. The conclusion above being that affordable housing should be provided solely on-site, Part 2 of Schedule 2 to the obligation applies and Parts 3 and 4 do not. The education and travel plan monitoring contributions were agreed in negotiations with the Council, which submitted Community Infrastructure Levy Regulations (CIL) Compliance Schedules for both. It also submitted a Compliance Schedule for the affordable housing contribution, though addressing only the off-site and hybrid options, not the on-site option. All of the obligations comply with CIL Regulation 122 in that they are necessary to make the development acceptable in planning terms, directly related to the development and fairly related to it in scale and kind.

### **Conditions**

69. Suggested conditions were discussed at the inquiry in the light of my written comments and queries on them. In the first instance, there is a preference for model or standard conditions, adapted as necessary to suit the particular circumstances, and certain of the suggestions may be modified for clarity or precision. Bearing that in mind, the suggested conditions on reserved matters, the access road junction with Roes Lane (identifying the approved drawing), the footpath along Roes Lane, the provision of relevant access roads before occupation of any dwelling, construction methodology, noise protection, decontamination, tree protection, foul and surface water drainage and ecological protection are all both reasonable and necessary in the

interests of achieving a satisfactory standard of development. Given the passage of time, an updating of the badger survey would be appropriate. From the paucity of potential from the submitted archaeological information, a watching brief condition would be more appropriate than a trial investigation.

70. In addition, a condition is necessary to secure the proposed travel plan and a landscaping condition would be appropriate to supplement the reserved matters and suggested tree protection conditions.

*John L Gray*

Inspector

Richborough Estates

## APPEARANCES

### FOR AMBER VALLEY DISTRICT COUNCIL

Andrew Hogan, of Counsel

instructed by Paul Benski, Solicitor to the Council.

He called

Jeremy Dickinson BA(Hons)

Housing Strategy Officer with the Council.

Derek Stafford BA(Hons) MRTPI

Assistant Director (Planning and Regeneration) with the Council.

### FOR GLADMAN DEVELOPMENTS LIMITED

Martin Carter, of Counsel

Instructed by Laurie Lane, Planning Manager, Gladman Developments Limited.

He called

Nigel Weeks BSc FACE

Director, Stirling Maynard Transportation Consultants.

George Venning MA

Associate Director, Levvel Limited.

Robert Hindle BSc(Hons) MRICS

Director, Rural Solutions Limited.

Richard Puttock BSc MSc FGS

Partner, Peter Brett Associates.

Nicholas Folland BA(Hons) DipLA  
CMLI

Director, Barnes Walker Limited.

Laurie Lane BSc(Hons) MRTPI

Planning Manager, Gladman Developments Limited.

### INTERESTED PERSONS

John Bettison }

Kevin Oliver }

Len Jones }

Jim Gray }

Cllr Gareth Gee

} Keep Crich a Village Action Group (KCAV)

} Member for Crich Ward.

Cllr Margaret Lane

} Chair of Crich Parish Council.

## **DOCUMENTS submitted during the inquiry**

- 1 1 – letter of notification (23/10/2014) of appeal; 2 – letter of notification (16/1/2015) of inquiry, with distribution list; 3 – newspaper advertisement (20/5/2015).
- 2 Extract from Planning Practice Guidance (re. housing needs assessments).
- 3 Draft section 106 obligation.
- 4 Hand-drawn plan (submitted by KCAV) showing footway widths in Roes Lane and Bowns Hill.
- 5 KCAV presentation to the inquiry.
- 6 Jim Gray’s response to Peter Brett Associates’ reply to third party comments.
- 7 Cllr Gee’s statement.
- 8 Note from Pauline and Roger Cowen.
- 9 Copy of Letter of 16/2/2015 from Public Health England.
- 10 CIL Compliance Schedules for: 1 – affordable housing contribution; 2 – education contribution; 3 – travel plan monitoring fee.
- 11 High Court Judgements: 1 – [2015] EWHC 410 (Admin); 2 – [2015] EWHC 425 (Admin); 3 – [2015] EWHC 925 (Admin).
- 12 Copy of executed section 106 obligation.

### **Also**

- CD58 Policy SS12 of the emerging Core Strategy, as proposed to be modified.
- CD59 Planning permission ref. 394/199 for the domestic use of land to the east of 10 Hillcrest, Crich.
- CD60 Committee report for application ref. AVA/2014/0678 for the development of land to the rear of Coast Hill, Crich, for 15 affordable dwellings and 3 market-sale bungalows.
- CD61 Affordable housing delivery in Amber Valley, 2008/09-2014/15.

**APPEAL REF. APP/M1005/A/14/2226553**  
**LAND AT ROES LANE, CRICH, DERBYSHIRE, DE4 5DH**

**Schedule of conditions attached to planning permission**

- 1) Details of the appearance, landscaping, layout and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) Development shall not begin until full details of the junction between the proposed access road and Roes Lane, including visibility splays, and including a footway on the south side of Roes Lane between the junction and Hillcrest, have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the junction and footway have been constructed in accordance with the approved details.
- 5) Development shall not begin until full details of the access roads and footpaths within the site have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the means of vehicular and pedestrian access serving it has been constructed in accordance with the approved details.
- 6) The landscape reserved matter referred to in condition 1 above shall include full details of both hard and soft landscape works, including: proposed finished levels or contours; areas of open space; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (such as furniture, play equipment, refuse or other storage units, signs, lighting); proposed functional services above and below ground (such as drainage, power and communications cables and pipelines); planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants (noting species, plant sizes and proposed numbers/densities as appropriate); biodiversity enhancement measures (including bat and bird boxes); and the identification of all trees and hedgerows to be retained (within and on the boundaries of the site) together with measures for their protection during the course of the works.
- 7) The details of hard and soft landscape works shall be accompanied by implementation and management programmes. All hard and soft landscape works shall be carried out in accordance with the approved details and implementation programme.
- 8) Development shall not begin until full details of a sustainable surface water drainage scheme, together with a future management and maintenance plan for it, have been submitted to and approved in writing by the local planning authority. The details shall include information 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. No dwelling shall be occupied



until the scheme has been implemented in accordance with the approved details.

- 9) Development shall not begin until full details of foul drainage have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the scheme has been implemented in accordance with the approved details.
- 10) Development shall not begin until:
- a strategy for investigating contamination present on the site has been submitted to and approved in writing by the local planning authority;
  - an investigation has been carried out in accordance with the approved strategy; and
  - a written report, detailing the findings of the investigation, assessing the risk posed to receptors by contamination and a proposing remediation scheme, including a programme for implementation, has been submitted to and approved in writing by the local planning authority;
- Remediation work shall be carried out in accordance with the approved remediation scheme and programme. Remediation work on contamination not identified in the initial investigation but found during construction work shall be carried out in accordance with details submitted to and approved in writing by the local planning authority subsequent to its discovery.
- 11) If any materials are to be imported in order to raise or fill any part of the site, evidence shall be provided to show that they are free from contamination.
- 12) All noise-sensitive dwellings on the site, as identified in the acoustic report by Wardell Armstrong dated 9 July 2014, shall be protected from noise operations at the Old Quarry such that the following noise levels are not exceeded:
- 50dB  $L_{Aeq\ 1\ hour}$  in outdoor living areas between 07:00 and 23:00 hours;
  - 35dB  $L_{Aeq\ 1\ hour}$  inside living rooms and bedrooms between 07:00 and 23:00 hours;
  - 40dB  $L_{Aeq\ 1\ hour}$  inside dining rooms/areas between 07:00 and 23:00 hours;
  - 30dB  $L_{Aeq\ 5\ mins}$  in bedrooms between 23:00 and 07:00 hours.
- Development shall not begin until details of noise mitigation measures have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 13) No development shall take place 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 and shall provide for:
- i) no construction works or deliveries to and from the site outside the hours of 08:00-18:00 on weekdays, 08:00-13:00 on Saturdays and not at all on Sundays or public holidays
  - ii) the parking of vehicles of site operatives and visitors;
  - iii) the loading and unloading of plant and materials;
  - iv) the storage of plant and materials used in constructing the development;
  - v) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - vi) wheel washing facilities;

- vii) measures to control the emission of dust and dirt during construction and from vehicles entering or leaving the site;
  - viii) a scheme for recycling/disposing of waste resulting from construction works;
  - ix) no burning of materials on-site;
  - x) measures for the control of works causing noise or vibration.
- 14) No development shall take place until a construction environmental management plan has been submitted to and approved in writing by the local planning authority. The Plan shall be adhered to throughout the construction period and shall provide for:
- i) the identification of biodiversity features to be protected during the course of construction;
  - ii) a risk assessment of construction activities potentially damaging to biodiversity features;
  - iii) measures to protect biodiversity features to be retained;
  - iv) the timing of potentially damaging works to avoid harm to biodiversity features to be retained;
  - v) no removal of existing hedgerows, trees or shrubs between 1 March and 31 August in any year; and
  - vi) measures to ensure ecological supervision.
- 15) Development shall not begin until a survey to update the badger survey incorporated in the fpcr Ecological Appraisal dated March 2014 and the update of 3 July 2014, together with appropriate mitigation proposals, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved mitigation proposals.
- 16) The developer shall afford access at all reasonable times to any archaeologist nominated by the local planning authority and shall allow that person to observe the excavations and record items of interest and finds.
- 17) No dwelling shall be occupied until a Travel Plan, broadly in accordance with the Stirling Maynard Framework Travel Plan dated June 2014, has been submitted to and approved in writing by the local planning authority. The Travel Plan shall include a programme for implementation, monitoring, regular review and improvement and shall subsequently be implemented, maintained and developed as approved.