
Appeal Decision

Hearing held on 30 June 2015

Site visit made on 30 June 2015

by Sarah Housden BA (Hons) BPI MRTPI

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

Decision date: 24 August 2015

Appeal Ref: APP/F1040/W/15/3014387

Land east of Rosliston Road South, Drakelow, Derbyshire DE15 9UD

- 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 Providence Land Ltd against the decision of South Derbyshire District Council.
 - The application Ref 9/2014/0948, dated 30 September 2014, was refused by notice dated 29 January 2015.
 - The development proposed is 'erection of up to 75 dwellings with associated public open space and sustainable drainage'.
-

Decision

1. The appeal is allowed and outline planning permission is granted for up to 75 dwellings with associated public open space and sustainable drainage at land to the east of Rosliston Road South, Drakelow, Derbyshire DE15 9UD in accordance with the terms of the application Ref 9/2014/0948, dated 30 September 2014, subject to the conditions attached as a Schedule to this decision.

Procedural Matters

2. The application was made in outline with all matters of detail reserved for future approval except for access. In addition to a site location plan and a plan showing the layout of the proposed vehicular access and visibility splays, an indicative site layout was submitted together with a topographical survey, tree constraints plan, opportunities and constraints plan and concept layout. I have taken the indicative plans that have been submitted into account insofar as they are relevant to my consideration of the principle of the development on the appeal site.
3. A revised indicative site layout was submitted with the Statement of Common Ground (SOCG) (drawing ref 0129_SK_02B). The revised indicative layout incorporates a wider landscape belt to the southern boundary of the site but with the overall number of dwellings the same at up to 75. The scheme is in outline only with detailed layout to be reserved for later approval and the concerns of those who would normally have been consulted are clear from consultation at the application stage and responses to the appeal. I do not consider that the interests of third parties would be prejudiced by not having had an opportunity to comment on the revised indicative layout. Accordingly, I have had regard to it in reaching my decision.

4. A completed Planning Obligation under section 106 of the Town and Country Planning Act 1990 dated 26 June 2015 (s106) was submitted at the hearing. This provides for the payment of various financial contributions in accordance with the Council's Supplementary Planning Guidance 'Section 106 Agreements: A Guide for Developers' (April 2010) (SPG), a copy of which was submitted at the hearing. I return to the Planning Obligation later in my decision.
5. After the hearing, I requested further details of the status of pooled contributions for items of infrastructure contained in the s106 in order to clarify the position in relation to the Community Infrastructure Levy Regulations 2010, Regulation 123(3) as amended. This limits the number of contributions from s106 agreements for a specific project or type of infrastructure to no more than five. The Council responded by emails dated 27 July and 10 August 2015 and the appellant's observations were received on 27 July 2015. I assess the provisions of the s106 later in my decision.
6. I visited the area and observed the site from Rosliston Road South the day before the hearing and made a formal site visit accompanied by the Council and the appellant on the same day as the hearing.
7. At the hearing, the appellant made reference to a recent appeal decision at Sutton-on-the-Hill. However, copies of the decision were not supplied and I have therefore not had regard to it in coming to my decision.

Main Issues

8. The main issues in this case are:
 - whether in the development would accord with national and local policies relating to the location of development in the District;
 - the effect of the development on the character and appearance of Drakelow and the surrounding area; and
 - the effect on highway safety with particular regard to the capacity of Rosliston Road South to accommodate the additional traffic from the development.

Reasons

Main issue 1: Whether the development would accord with national and local policies relating to the location of development in the District

9. The appeal site covers 2.89 hectares and comprises two parcels of land which have been used in connection with a 'hobby farming' business managed from the existing bungalow at No 39 Rosliston Road South (No 39). The site is bounded by the existing residential development at Drakelow to the west and by the Leicester-Burton freight railway line to the east. To the north, the railway bridge creates a point of transition between the countryside of South Derbyshire and Stapenhill, part of the urban area to the south of Burton-on-Trent.

10. The railway line is in a cutting alongside the site but is well defined by the mature trees at the top of the embankment which provide a green backdrop to the site and are visible between the houses on Rosliston Road South. The established hedge on the southern boundary is a strong landscape feature containing mature trees. The undulating topography of the area and the extent of tree cover and hedges create a sense of enclosure in the landscape. From longer distances to the south, views of Burton-on-Trent are distant and whilst the houses at Drakelow are visible, they are seen within the context of the surrounding rural landscape.
11. The existing detached bungalow on the appeal site is accessed via a private driveway which runs between Nos 37a and 41 Rosliston Road South. The property is excluded from the application site but is shown as being retained within the indicative site layout plan. The existing access would become a pedestrian/cycle path with the development being served by a new access to the south of No 45 in the position of the existing field access.
12. The National Planning Policy Framework (the Framework) seeks to boost significantly the supply of housing and requires local planning authorities to identify and update annually specific, deliverable sites sufficient to provide five years' supply of housing against their objectively assessed housing requirements.
13. As outlined in the SOCG and confirmed at the hearing, there was consensus between the parties that a five year supply of deliverable housing land did not exist as required by paragraph 47 of the Framework. The officer report to Committee in January 2015 indicated that the figure was 'below four'. At the hearing, the appellant confirmed that the figure put forward in their evidence was 3.24 years, a figure which was not disputed by the Council. This being the case, under the terms of paragraph 49 of the Framework, any relevant policies for the supply of housing should not be considered up to date. However, there was disagreement between the parties as to which of the policies in the South Derbyshire Local Plan (1998) (LP) were 'relevant' policies for the supply of housing, whether they could be considered as being 'up to date' and the weight that should be attached to them.
14. Drakelow is defined as a 'rural settlement' in the LP where Policy H6 restricts new housing development to the infilling of a small gap for normally not more than 2 dwellings. Policy H8 seeks to restrict housing development in the countryside to that which is necessary for the operation of rural based activities.
15. The parties agreed at the hearing that the purposes of Policy H6 were twofold, to direct development to more sustainable locations as well as protecting the character of the countryside. In the sense that the policy seeks to assign development to certain locations within the settlement hierarchy for the District, I consider that it is a relevant policy for the supply of housing. In the context of a plan where the identified locations for housing have been taken up, the policy should be considered as being out of date. Policy H8 sets out the circumstances in which proposals for isolated residential development in the countryside may be acceptable, none of which apply in this case. I therefore conclude that Policies H6 and H8 are relevant in terms of housing supply, are not up to date and can be afforded limited weight in my decision.

16. Policy EV1 seeks to protect landscape quality and does not permit development in the countryside except in the circumstances outlined in Policy H6. There was disagreement about the status of Policy EV1 and whether it should be regarded as a relevant policy for the supply of housing.
17. The appellant argued that in restricting development beyond the settlements identified in the LP hierarchy, Policy EV1 is relevant to the supply of housing. Reference was made in the evidence to a number of other appeal decisions in support of this argument. In the Linton appeal¹, the Inspector concluded that Policy EV1 was a 'blanket ban' type policy, restricting the location of new development in the countryside in a general way. He concluded that it should be accorded little weight, both in terms of its age, but also because housing provision in the LP has been used up.
18. The appellant also drew my attention to the South Northamptonshire High Court Judgement (HCJ)² in which Mr Justice Ouseley indicated that policies restraining development in the countryside fall into two categories – a general restriction on the location of development or to protect specific landscape features such as a green wedge. Paragraph 49 of the Framework would apply in relation to the former but not the latter. The appellant considered that as a general countryside protection policy, Policy EV1 falls into the former category and as such paragraph 49 of the Framework applies in this case.
19. However, the Council considered that the primary purpose of Policy EV1 is to safeguard and protect the character of the countryside rather than being relevant to the supply of housing. As such, it was argued that it should be considered up to date and afforded significant weight in this decision. It advanced three appeal decisions in support of this argument.
20. The appeal decision at Weston-on-Trent³ in South Derbyshire relied on Policy EV1 to justify the dismissal of housing in the countryside. The Irchester⁴ appeal decision was in a different local planning authority area but referred to Policy G6, the purpose of which was to restrain development in the countryside and therefore broadly similar to Policy EV1. However, these decisions pre-date the South Northamptonshire HCJ which limits the weight that can be afforded to them in coming to my decision. I acknowledge that Policy EV1 was given weight in the appeal decision at Melbourne⁵. However, given the smaller number of dwellings proposed in that case, the balance of benefits versus harm was different compared with the scheme before me.
21. To my mind, Policy EV1 is general in nature and does not seek to protect specific landscape features. I therefore conclude having had regard to the appeal decision and HCJ referred to above that it is a policy that is relevant to the supply of housing. In the context of a District where housing needs cannot be accommodated within the limits of existing settlement boundaries, it should therefore be regarded as out of date and accorded little weight. I

¹ Appeal Decision APP/F1040/A/14/2214428; outline application for 100 dwellings at 50 High St, Linton, Swadlincote, Derbyshire DE12 6QL; allowed 27 October 2014

² High Court Judgement between South Northamptonshire Council (claimant) and Secretary of State for Communities and Local Government and Barwood Land and Estates Ltd (defendants) 10 March 2014

³ Appeal Decision APP/F1040/A/13/2202043; erection of a dwelling at The Field, Trent Lane, Weston-on-Trent, Derby, Derbyshire DE72 2BT dismissed 3 January 2014

⁴ Appeal Decision APP/H2835/A/12/2182431; erection of up to 124 dwellings at Site A Land west of High Street, Irchester Northants and Site B Land off Alfred Street, Irchester, Northants; dismissed 5 June 2013.

⁵ Appeal Decision APP/F1040/A/14/2214209; residential development at Main St, Melbourne, Derby DE73 8BS; dismissed 4 June 2014.

recognise that my conclusion differs from those of the Inspectors in the Melbourne and Yoxford⁶ appeal decisions referred to by the Council. However, in this case I am persuaded by the weight of the evidence from other appeals and the HCJ that Policy EV1 should be accorded little weight in my decision.

22. The replacement South Derbyshire Local Plan examination hearing sessions will be reconvened in Autumn and the matter of housing land supply is an outstanding issue. This being the case, the parties agreed at the hearing that in line with the advice in paragraph 216 of the Framework, the policies in the RLP can be given limited weight including Policy H1A in which Drakelow is classified as a 'rural settlement'. I agree with that assessment.
23. I conclude in relation to the first main issue in this case that the proposal would not comply with policies H6, H8 and EV1 of the LP. This would normally weigh heavily against the proposal. However, the Council does not have a five year housing land supply. In these circumstances, paragraph 49 of the Framework directs that policies covering land supply should not be regarded as up to date and Policies H6, H8 and EV1 can therefore be afforded limited weight in coming to my decision.
24. The presumption in favour of sustainable development as set out in paragraph 14 of the Framework applies in this case which means that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework, taken as a whole. The effect on the character and appearance of Drakelow and the wider countryside are material considerations that must be weighed in that balance and I address these matters below.

Main Issue 2: The effect of the development on the character and appearance of Drakelow and the surrounding area

25. The site is not covered by any statutory landscape designation. Nevertheless, the importance of recognising the countryside's intrinsic character and beauty is one of the Framework's core principles as set out in paragraph 17. Paragraph 109 recognises that non-designated landscapes are valued. Notwithstanding my conclusion that Policy EV1 of the LP has limited weight, it is necessary to assess the contribution made by the appeal site to the wider landscape of South Derbyshire in order to conclude against the Framework when read as a whole.
26. The form and character of Drakelow and its relationship to the surrounding open countryside were matters of disagreement between the parties. The Council argued that the construction of up to 75 new dwellings on the site would represent a significant intrusion into open countryside which would adversely affect the existing landscape character of this part of the District. This is defined as 'village estate farmlands' within the Landscape Character Area 72 'Mease/Sence Lowlands'⁷ and comprises 'well ordered, gently rolling agricultural landscape punctuated by discrete villages'. It was argued that this landscape type would not support a new housing estate and the cumulative impact of the appeal proposal with the development underway at

⁶ Appeal Decision APP/J3530/A/13/2204639; residential development of 26 dwellings, associated access and landscaping at Land at Old High Road, Yoxford, Suffolk dismissed 15 July 2014.

⁷ The Landscape Character of Derbyshire, Derbyshire County Council 2007.

Drakelow Park would have a cumulative and significant adverse effect on the landscape character of the area. The Council considered that the appeal site acts as a 'buffer' between the urban edge of Burton-on-Trent and the rural landscape of South Derbyshire.

27. The appellant's view was that the site adjoins and is influenced by the urban edge of Burton-on-Trent and after crossing the railway bridge, the development on Rosliston Road South is a continuation of the urban area of Stapenhill. It was argued that the site has the character of urban fringe and is occupied by various buildings associated with its existing use. The appellant considers that it is well contained by existing development and the railway cutting and the proposed development would not alter the setting of Burton-on-Trent. The appeal proposal would not extend the existing limits of the development further than the existing linear development on Rosliston Road South.
28. At my site visit, I saw that Drakelow has a distinctly different character to the urban area of Stapenhill. The linear form of the frontage development along Rosliston Road South represents a transition between the urban edge of Burton-on-Trent and the more scattered form of development which is characteristic of the village estate farmlands in South Derbyshire. The introduction of development to the rear of the existing houses would consolidate development along Rosliston Road South, changing the character and appearance of the site itself and the wider area. The existing views of trees in the gaps between the houses in Drakelow would be replaced with houses. A section of the established hedge to the south of No 45 would be removed to accommodate the proposed vehicular access and although it would be re-planted around the visibility splay this would have an urbanising effect on the edge of the site.
29. It was accepted by both parties at the hearing that longer distance views of the site from vantage points to the south would be limited by the undulating topography and hedge and tree cover. I saw from my site visits that glimpses of the development would be possible but it would be seen in the context of the existing distant views of the urban area of Burton-on-Trent and the houses at Drakelow. There would be views of the development from closer vantage points such as from the farm track to Stapenhill Fields Farm. Whilst the revised indicative layout shows how a 'buffer' could be incorporated along the southern boundary of the site to soften the edge of the development, there would still be a significant change in the existing character of the site. The fact that a development would be well contained or screened does not mean that it would not cause harm to the intrinsic value of the countryside.
30. Whilst not part of a designated landscape, it is evident from representations and views expressed by interested parties at the hearing that the site is valued locally. Notwithstanding its enclosed character, it is clearly part of the open countryside of South Derbyshire. My conclusion is that development of the site would consolidate the existing development in Drakelow and result in a change to its existing form and character and landscape setting. However, the extent to which this would cause harm must take into account the development underway in the vicinity of the site.
31. The appellant drew my attention to the scheme for Drakelow Park which is now underway and will eventually comprise 2600 houses together with a new

primary school and two local centres. It was argued by the appellant that this development will change the character of Drakelow to a much larger settlement with a wider range of facilities.

32. The Council's landscape consultant considered that the visual impact of Drakelow Park would be contained due to its location behind the main roads bounding the site and that the character and appearance of the wider open countryside to the south-west of the junction of Walton Road and Rosliston Road South would not be harmed. It was also argued that unlike the appeal site, part of the site is brownfield land.
33. At my site visit, I saw the houses currently under construction to the north-west of the junction of Walton Road and Rosliston Road South which are part of the Drakelow Park site. The development is clearly visible after passing over the railway bridge and when fully developed it will be in close proximity to the existing development on Rosliston Road South, changing the existing character and appearance of Drakelow as a small rural settlement within open countryside. From longer distances, it will be seen as a continuation of the urban area of Burton-on-Trent and features such as street lighting and access roads into the site will change the character of the area.
34. The existing hedgerows and tree cover across the appeal site provide a framework for the development of the site as well as opportunities for assimilating the development into the wider landscape. The Tree Constraints Plan (drawing ref 1420-14-01) shows that with the exception of one horse chestnut tree, the condition of existing hedges and trees would enable them to be retained as part of the proposed development. Whilst the scheme is in outline only at this stage, the retention and longer term management of existing trees and hedgerows together with additional planting where required could be secured as part of a detailed scheme by means of a planning condition. The exception would be the hedgerow to the south of No 45 a section of which would have to be removed to provide the visibility splays associated with the site entrance. However appropriate replacement planting around the splay can be secured by a planning condition.
35. The revised indicative site layout also shows that there is scope for a landscape buffer along the southern boundary of the site. Whilst the edge of the development would still be visible, the buffer would provide an opportunity for additional planting to reduce the visual impact of the edge of the development and can be conditioned to be incorporated within a detailed layout for the site.
36. I conclude in relation to the second main issue in this case that the appeal scheme would consolidate the existing form of development in Drakelow and result in a change to its form and character and landscape setting. On the other hand, the landscape setting of Drakelow will be changed by the development at Drakelow Park and the visual impact of the development would be mitigated by the retention of existing trees and hedgerows and provision of a landscape buffer to the south of the site. On balance I conclude that there would be limited harm to the character and appearance of Drakelow and its landscape setting.

Main Issue 3: the effect on highway safety with particular regard to the volume and free flow of traffic on Rosliston Road South.

37. The effect of the development on existing traffic levels and the increased use of the local highway network has been raised by a number of local residents.
38. At the time of my site visit during early afternoon, Rosliston Road South was busy and large HGVs formed a component of the traffic. However, in assessing the accident data for the wider road network, the Highway Authority confirmed that whilst a number of collisions were identified at the Flint Mill crossroads approximately 120 metres to the south of the appeal site, no collisions resulted from vehicles turning into or out of Rosliston Road South towards Swadlincote. On this basis, the Highway Authority concluded that there is no evidence to suggest that the proposed development would exacerbate the existing situation with regard to highway safety.
39. The Transport Assessment submitted with the planning application demonstrates that the additional traffic generated by the proposal could be satisfactorily accommodated within the existing highway network without the need for new highway infrastructure. The new vehicular access proposed to the south of No 45 in the position of the existing field access would be within the 30mph traffic calmed zone and adequate visibility could be achieved by the removal of a section of the existing hedge with re-planting around the splay secured as a condition of planning permission. The existing footway on the east side of Rosliston Road South would be extended to the new access point and would be opposite the footway on the west side of the road. Whilst the design does not fully comply with the Highway Authority's design criteria with regard to width, the benefits would outweigh this, particularly as an additional pedestrian and cycle path from the site would be created along the existing driveway access to No 39.
40. The s106 agreement makes provision for the production and monitoring of a Travel Plan to encourage increased use of sustainable means of travel.
41. In relation to the third main issue, there is nothing in the evidence before me to suggest that the proposed development would exacerbate existing highway safety issues or affect the free flow of traffic on Rosliston Road South. Accordingly, there would be no conflict with saved LP Policy 6 which seeks adequate provision for access and states that planning permission will not be granted for development which interferes with the free and safe flow of traffic. In coming to this view, I have had regard to the lack of objection from the Highway Authority.

Planning balance - sustainable development

42. Paragraph 14 of the Framework indicates that the presumption in favour of sustainable development applies where the development plan is absent, silent or relevant policies are out of date. This leads me to an assessment of whether the development would meet the three dimensions of sustainable development as the first part of the test set out in paragraph 14 of the Framework before coming to a conclusion on the overall planning 'balance'.
43. The distance to local services and their accessibility by sustainable modes of transport are important considerations in assessing whether this would be a sustainable location for housing development. The site is within walking and

cycling distance of local shops and facilities in Stapenhill, with the nearest shop being approximately 0.4km away and accessible by existing footways. There are regular bus services along Walton Road and additional services in Stapenhill into Burton-on-Trent and Swadlincote.

44. The catchment primary school at Rosliston approximately 3.7km away has spare capacity. I have no information regarding the availability of a primary school bus service, although there are other primary schools nearby in Stapenhill. The secondary school is accessible by school bus which serves Drakelow. Furthermore, the development at Drakelow Park will incorporate retail, leisure, health and community uses together with a primary school. Notwithstanding the designation of Drakelow as a rural settlement in the LP, I conclude that the site is in a sustainable location based on the proximity to local services and facilities and their accessibility by sustainable modes of transport.
45. In terms of the economic aspects, it was agreed by both parties at the hearing that the proposal would have benefits to the construction industry and the creation of jobs during construction. Residents would be likely to support nearby shops and facilities.
46. The Framework advises that the economic and other benefits of the best and most versatile agricultural land should be taken into account and that where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality. Although development of the site would result in the loss of some Grade 2 agricultural land, they are small parcels of land that do not form part of a larger farming unit and the profitability of arable cropping would be limited by their shape and size. As such, their loss is unlikely to harm the rural economy.
47. Overall, I conclude that the contribution to the economic dimension weighs in favour of the proposal.
48. The principal social benefit would be the provision of additional housing in an area where there is currently a significant shortfall in the supply of housing land. The resolution of this through the Local Plan process will be some time ahead. The Section 106 Planning Obligation provides for 30% affordable housing with a mix of house types and intermediate and social rented and/or affordable rented tenures which would represent a significant benefit. It was agreed by the parties that the development would contribute to the social aspect of sustainability and I agree with that assessment.
49. The environmental dimension is less clear cut. I have found that the appeal proposal would cause limited harm to the character and appearance of Drakelow and its landscape setting as development of the site would be seen in the context of the changes to the landscape arising from the much larger development at Drakelow Park. Other aspects of the environmental dimension that are relevant include the maintenance and possible enhancement of biodiversity.
50. The ecological value of the appeal site is limited. The Ecological Appraisal indicates that there was no evidence of protected species within the two small ponds on the site and no evidence of bats using the existing buildings during the surveys. However, the hedges, trees and scrub provide suitable nesting

habitat for birds and foraging for bats and I have already concluded that their retention would be important for landscape purposes. The retention of the pond together with further biodiversity enhancements such as nesting boxes could be secured by a condition to ensure that these are provided as part of any reserved matters application. The contribution to National Forest Planting both on-site as part of the laying out of the open space area and off-site could also lead to biodiversity benefits.

51. Overall, I conclude in relation to the environmental dimension that the impact on character and appearance of Drakelow and its landscape setting would be offset by the changing context of the site created by the development at Drakelow Park, the retention of existing hedges and trees which would provide a framework for the development and the measures to safeguard biodiversity.

Section 106 Planning Obligation

52. The Section 106 Planning Obligation covers a range of contributions, none of which are in dispute between the main parties. These include provision and maintenance of on-site open space, contributions to National Forest planting and off-site recreation, provision of affordable housing, a contribution to secondary school places and household waste management facilities, maintenance of drainage infrastructure and the monitoring of a Travel Plan. I have assessed the s106 agreement in the light of CIL Regulation 122 and the Framework which set out three tests for planning obligations - necessary to make the proposed development acceptable in planning terms, directly related to the proposed development and fairly and reasonable related in scale and kind to the development.
53. From April 2015, CIL Regulation 123 (3) also restricts the use of pooled contributions.
54. The Section 106 SPG sets out the requirements for contributions for provision and maintenance of on-site open space, off-site recreation, provision of affordable housing, education and National Forest Planting. As such, I am satisfied that the contributions to these items meet the tests in the Framework and CIL Regulation 122.
55. The provision for household waste management facilities at the Newhall Bretby Household Waste Recycling Centre (NBHWRC) arises from Derbyshire County Council's Developer Contributions Protocol. I am satisfied that the contribution meets the tests in the Framework and Regulation 122. However, Derbyshire County Council confirms that the number of pooled contributions to the NBHWRC since April 2010 exceeds five. Therefore in accordance with Regulation 123, I disregard the contribution to the HWRC in my decision.
56. The maintenance of drainage infrastructure and the monitoring of a Travel Plan are not specifically required in the SPG or the County Council's Developer Contributions Protocol. However, I consider that these are necessary to make the development acceptable, relate directly to the development on the site and are reasonably related in scale and kind and I am satisfied the contributions to those items meet the tests in CIL Regulation 122 and the Framework. These items would be specific to the site and do not raise any issues in respect of pooled contributions.

57. The contribution to National Forest Planting would secure planting within the open space area and make provision for maintenance. In the event of this not being provided on site, the s106 makes provision for planting off-site. The Council has confirmed that there have been three contributions to off-site National Forest planting since April 2010 and I am therefore satisfied that I can take the contribution into account in my decision.
58. The contribution to off-site recreation is to Rosliston Forestry Centre, approximately 2 miles from the site. At the hearing the parties confirmed that this is the nearest outdoor recreation facility within the District to the appeal site. The Council has confirmed that there have been no other contributions to Rosliston Forestry Centre since April 2010 and I am therefore satisfied that I can take the contribution into account in my decision.
59. The education contribution provides for 11 additional secondary school places at William Allit School. The Council has confirmed that there has been one other contribution to this school since April 2010 and I am therefore satisfied that I can take the contribution into account in my decision.

Other Matters

60. The developer of the Drakelow Park site considers that the appeal scheme should not commence until the Walton-on-Trent bypass has been constructed and in addition that a financial contribution to highway works should be sought via a s106 contribution. However, I note that the Highway Authority does not require a contribution towards works on Walton Road or to the Walton bypass. There is nothing in the evidence to suggest that the development would have an effect on traffic flows in the vicinity of the Walton bypass to the extent that it would justify a financial contribution towards the planned works.
61. Many representations referred to the proposal being over-development and detrimental to the rural character of Drakelow and to highway safety which I have addressed in relation to the main issues above.
62. The need for the development in addition to that taking place at Drakelow Park has been questioned in representations, but as I have outlined above, the Council cannot demonstrate a five year supply of land for housing and in these circumstances, the Framework indicates a presumption in favour of sustainable development.
63. Residents referred to the potential for overlooking of existing properties and loss of privacy. However, the application is in outline only and ensuring that there is sufficient distance between existing and new properties to safeguard the living conditions of existing and future occupiers can be addressed as part of the detailed layout at the reserved matters stage.
64. The presence of an existing livestock operation close to the site was also referred to but no indication of its exact location has been given. Stapenhill Fields Farm adjoins the site to the south but there is nothing in the evidence before me to suggest that there would be problems arising from disturbance or smell that would adversely affect the living conditions of new residents.
65. The de-valuing of existing property and the existence of a covenant restricting the use of the land are not planning matters.

66. There is nothing in the evidence before me to suggest that there is potential for the proposed development to increase levels of crime.
67. The lack of capacity in local schools was also referred to by residents. The Education Authority has confirmed that the catchment primary school at Rosliston has capacity and the financial contributions set out in the s106 agreement would address the shortfall in secondary school places. No evidence has been supplied by health organisations to indicate that there is a lack of capacity in local health services.
68. Problems with surface water flooding on Rosliston Road South have been raised by local residents. A Sustainable Urban Drainage system (SuDs) is proposed which would limit surface water run-off flows to the existing greenfield rate via a system of on-site storage and attenuation and would improve the existing situation. The Council as LLFA has no objections to these arrangements subject to conditions requiring details of the scheme at the reserved matters stage.
69. I do not dismiss the concerns of local residents lightly, but neither these nor any other considerations are of such significance as to outweigh my conclusion on the main issues in this case.

Conditions

70. I have based the conditions on those that the Council indicated it would wish to impose were the appeal to be allowed. I have taken into account the advice on the use of conditions in the Planning Practice Guidance and made amendments in the light of corrections discussed at the hearing and to improve precision and enforceability.
71. This is an outline permission, however there are a number of detailed conditions that cover aspects which I consider must be attached to the permission to ensure that they are incorporated as part of any reserved matters scheme.
72. In addition to the standard time limits for submission and approval of reserved matters and the commencement of development, a condition requiring the implementation of landscaping is necessary. I have added a requirement for the retention of existing trees and hedgerows and provision of a landscape buffer on the southern boundary to form part of the landscaping details to be submitted.
73. Other areas where conditions at this stage are necessary for the proper implementation of the development include details of foul and surface water drainage, a scheme of boundary treatment and existing site and proposed floor levels. I have altered the condition relating to boundary treatment to refer to the current General Permitted Development Order 2015.
74. Conditions to prevent contamination, deal with any landfill gas and mitigate noise from the railway line are necessary in the interests of the health and safety and living conditions of existing and future occupiers.
75. A programme of archaeological work is necessary to safeguard the historic environment.

76. The submission of a Nature Conservation Management Plan is necessary in the interests of biodiversity, as is a condition to control the timing of removal of vegetation.
77. Conditions requiring details of the layout and controlling timing of highways works and management during construction are necessary in the interests of vehicular and pedestrian safety as is a condition to provide for parking.

Conclusion

78. I have found that the proposal would be in a sustainable location and would contribute to the economic and social aspects of sustainable development. In relation to the second main issue I have concluded that the character and appearance of Drakelow and its setting within the wider landscape would be changed by the proposal, but I have concluded that the harm would be limited by the changing context of the site and the mitigation afforded by the retention of existing hedges and trees. Taking all of the above matters into account, I conclude that, on balance, the proposal would represent sustainable development.
79. I have concluded in relation to the first main issue that the policies in the LP that relate to the supply of housing are out of date in so far as they relate to the circumstances of this appeal and can be afforded limited weight in coming to my decision. As such, the presumption in favour of sustainable development set out in paragraph 14 of the Framework is clear that having considered sustainability aspects, the test is to assess whether any adverse impacts would *significantly and demonstrably* outweigh the benefits.
80. I conclude that the adverse impacts of the proposal would not be so significant as to outweigh the social and economic benefits of the proposal. These include the contribution that it would make to addressing the under supply of housing land in the District and to boosting the supply of housing, including affordable housing, as required by the Framework. Subject to the s106 planning obligation and the conditions set out in the Schedule, the development would be in accordance with the provisions of the Framework when read as a whole. In these circumstances, paragraph 14 of the Framework states that planning permission should be granted and I therefore conclude that the appeal should be allowed.

Sarah Housden

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Robert Wickham	Howard Sharp & Partners
Jonathon Harbottle	Howard Sharp & Partners
Tom Hutchinson	Howard Sharp & Partners
Jeremy Emmerson	Providence Land Ltd
Katharine Schofield	PPCR Environment & Design Ltd

FOR THE LOCAL PLANNING AUTHORITY

Ian McHugh	IMcH Planning & Development Consultancy
Peter Wood	Consultant Landscape Architect

INTERESTED PERSONS

Sue Sheratt	Local Resident
John Grant	Ward Councillor, South Derbyshire District Council
Andy Roberts	Ward Councillor, South Derbyshire District Council

DOCUMENTS SUBMITTED AT THE HEARING

1. Section 106 Agreements (Version 8) – A Guide for Developers (April 2010)
2. Section 106 agreement dated 26 June 2015
3. Land Registry Register of Title Number DY296401.
4. Letter from Howard Sharp & Partners to Derbyshire District Council dated 16 June 2015 with a copy of the Council's proposed amendment to paragraph 1.18 of the emerging South Derbyshire Local Plan.

SCHEDULE OF CONDITIONS

1. 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.
2. 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. The submitted landscaping details shall include a significant amount of new tree planting to reflect the site's location within the National Forest and shall provide for a landscape buffer along the southern boundary of the site.
3. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
4. The submitted landscaping scheme required under Condition 2 above shall include details to show how the existing trees and hedgerows would be retained and protected during the course of development. The hedgerows that are to be retained and incorporated within the development shall be provided with undeveloped green corridors. The works shall be carried out in accordance with the approved details.
5. All planting, seeding or turfing comprised in the approved details of landscaping under condition 2 above shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
6. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building(s) have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.
7. No development shall take place until details of a scheme for the disposal of surface and foul water has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.
8. The development shall not be commenced until a scheme to identify and control any contamination of land, or pollution of controlled waters has been submitted to, and approved in writing by, the local planning authority and until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of section 3.1 the South Derbyshire District Council document 'Guidance on submitting planning applications for land that may be contaminated', unless the local planning authority dispenses with any such requirement specifically and in writing.

Prior to occupation of the development (or parts thereof) an independent verification report shall be submitted, which meets the requirements given in Box 2 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

In the event that it is proposed to import soil onto site in connection with the development, this shall be done to comply with the specifications given in Box 3 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

9. No development shall take place until monitoring at the site for the presence of ground/landfill gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the local planning authority, which meets the requirements given in Box 4, section 3,1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then the applicant shall submit a written scheme to identify and control that contamination. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA, and appropriate remediation proposals, and shall be submitted to the LPA without delay. The approved remediation scheme shall be implemented in accord with the approved methodology.

10. Prior to the commencement of development details of a scheme of noise mitigation, specifically detailing how noise impact from the adjacent railway line will be controlled, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
11. No development shall take place until a Written Scheme of Investigation for archaeological work has been submitted to and approved by the Local Planning Authority in writing, and until any pre-start element of the approved scheme has been completed to the written satisfaction of the Local Planning Authority. The scheme shall include an assessment of significance and research questions; and:

1. The programme and methodology of site investigation and recording.
2. The programme for post investigation assessment.
3. Provision to be made for analysis of the site investigation and recording.
4. Provision to be made for publication and dissemination of the analysis and records of the site investigation.
5. Provision to be made for archive deposition of the analysis and records of the site investigation.
6. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

No development shall take place other than in accordance with the archaeological Written Scheme of Investigation approved under 'A' above.

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 archaeological Written Scheme of Investigation approved under 'A' above and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

12. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 2015, no development shall take place until there has been submitted to and approved in writing the materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.
13. Prior to the development hereby approved commencing, details of the finished floor levels of the buildings hereby approved and of the ground levels of the site relative to adjoining land levels, shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter, the development shall be constructed in accordance with the agreed level(s).
14. Prior to the commencement of development a Nature Conservation Management Plan, to include biodiversity enhancements and the incorporation of bat and bird boxes within the development shall be submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details.
15. No removal of hedgerows, trees or shrubs shall take place between 1st March and 31st August inclusive unless a competent ecologist has undertaken a careful check of vegetation for active birds' nests immediately before the vegetation is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation shall be submitted to and approved in writing by the Local Planning Authority.
16. Prior to any other works commencing, a detailed design based on the topographical survey shall be submitted to and approved in writing by the Local Planning Authority in consultation with the County Highway Authority for the new access into the site, the new footway on the eastern side of Rosliston Road South fronting Nos. 41 to 45 and the application site and the realignment of the carriageway, generally in accordance with the amended application drawing No. 1240-01 Revision B.
17. No development shall be commenced until a temporary access for construction purposes has been provided in accordance with a detailed design first submitted to and approved in writing by the Local Planning Authority. The access shall have a minimum width of 5.5m and be provided with 2.4m x 35m visibility sightlines in each direction, the area forward of which shall be cleared and maintained clear of any obstruction exceeding 600mm in height relative to the nearside carriageway edge.
18. No development shall take place until a construction management plan or construction method statement has been submitted to and approved in writing by the Local Planning Authority. The approved plan/statement shall

be adhered to throughout the construction period. The statement shall provide for the storage of plant and materials, site accommodation, parking of site operatives' and visitors' vehicles, routes for construction traffic, hours of operation, method of prevention of debris being carried onto the highway, pedestrian and cyclist protection, proposed temporary traffic restrictions and arrangements for turning vehicles.

19. Before any operations commence involving the movement of materials in bulk to or from the site, facilities shall be provided that have previously been approved in writing by the Local Planning Authority, to prevent the deposition of mud or extraneous material on the access roads to the site. All construction vehicles shall have their wheels cleaned before leaving the site.
20. The gradient of the new estate street shall not exceed 1 in 30 for the first 10m into the site and 1 in 20 thereafter.
21. No building shall be occupied until a drainage scheme for the disposal of highway surface water has been completed in accordance with details first submitted to and approved in writing by the Local Planning Authority. The drainage scheme shall take the form of a positive gravity-fed system, discharging to an approved outfall/public sewer, highway drain or watercourse, or a sustainable drainage system, which shall be managed thereafter in accordance with the agreed management and maintenance plan.
22. Prior to the first occupation of any dwelling, the new estate street junction shall be constructed to Rosliston Road South. The access shall be laid out in accordance with the detailed design approved under condition 16 above, having a minimum width of 5.5m, 2 x 2m footways, 6m radii and visibility sightlines of 2.4m x 43m in each direction. The area forward of the sightlines shall be cleared, constructed as footway and taken into the highway.
23. Prior to the first occupation of any dwelling, the carriageway realignment and provision of the footway on Rosliston Road South in the vicinity of the application site shall be provided. The works shall be laid out and constructed in accordance with the detailed design approved under Condition 16 above.
24. The internal layout of the site shall be in accordance with Derbyshire County Council's 6C's Design Guide and Manual for Streets.
25. A swept path diagram of the site shall be submitted at reserved matters stage to demonstrate that emergency and service vehicles can adequately enter/manoeuvre within the site and leave in a forward gear.
26. The existing access to No.39 Rosliston Road South located between Nos. 37a and 41, shall be reserved for pedestrians and cyclists only. The route shall be constructed to adoption standards with measures to prevent vehicular use of the route. The existing dwelling shall be served via the new estate street.
27. Unless otherwise agreed in writing by the Local Planning Authority, space shall be provided within the site for the parking of two vehicles per dwelling and maintained throughout the life of the development free of any impediment to their designated use.