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## Appeal Decision

Site visit made on 27 April 2015

by **Julia Gregory BSc BTP MRTPI MCMI**

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

Decision date: 5 August 2015

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**Appeal Ref: APP/X2410/A/14/2229055**

**Loughborough Road, Hathern, Loughborough, Leicestershire LE12 SHY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by SF Leicester Ltd against Charnwood Borough Council.
  - The application Ref P/14/0966/2, is dated 13 May 2014.
  - The development proposed is the erection of 14 dwellings and associated access road.
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### Decision

1. The appeal is dismissed and planning permission for the erection of 14 dwellings and associated access road at Loughborough Road, Hathern, Loughborough, Leicestershire LE12 SHY is refused.

### Preliminary matters

2. The appellant submitted an amended layout plan ref 2141-04-A3 Rev i to the Council shortly before the appeal in respect of non-determination was made. This plan has not been the subject of any consultation locally. I acknowledge that the appellant has sought to overcome some local concerns with this amended plan, but I am unable to take it into account because to do so would deprive those who may wish to comment on it that opportunity. I have therefore determined the proposal on the basis of layout plan reference 2141-04-A3 Rev G.
3. The appeal is accompanied by an executed Unilateral Undertaking dated 2 April 2015. That document makes provision for contributions towards a civic amenities site, education, library, off-site children's recreation facilities and off-site adult/youth recreational facilities. I shall return to these matters later in my decision.
4. The Council has indicated that had it been in a position to do so it would have refused the application for the reasons set out in its statement. These relate to the adequacy of provision for affordable housing, the effect on the biodiversity of the area with particular regard to bats, whether the development would have a satisfactory layout; and the effect of the development in respect of outlook and loss of light to the occupiers of neighbouring properties.
5. The Council has referred to the Charnwood Local Plan Core Strategy 2006-2028 which was submitted for examination in 2014. The Inspector examining the plan has indicated that it can be made sound subject to modifications. Those modifications have been subject to consultation. The Council has made

representations about the relevant policies as part of this appeal. I attribute substantial weight to relevant policies of the plan except where I have indicated otherwise.

### **Main Issues**

6. Having considered all the representations made, I consider the main issues to be:
- the effect on the character and appearance of the area;
  - the effect on the living conditions of the occupiers of neighbouring properties principally in respect of outlook and loss of light;
  - the effect on Brown Long-eared and Pipistrelle bats; and
  - whether the development would make adequate provision for affordable housing.

### **Reasons**

#### *Character and appearance*

7. The dwellings would be located on undeveloped land outside the defined limits of Hathern. Saved policy ST/2 of the Charnwood Local Plan (LP) seeks to restrict development to within the existing limits of development. Also saved LP policy CT/1 seeks to strictly control development in the countryside. That policy also advises that in all cases it should be demonstrated that the proposed development could not reasonably be located within or adjacent to an existing settlement.
8. Policy CS 1 of the submitted Core Strategy currently being examined, allows for small scale opportunities within defined settlement boundaries in Hathern. There is no indication that the limits of development are likely to change. This can be accorded significant weight because it is well advanced and the position of Hathern in the hierarchy has not been contested.
9. Nevertheless, the Council acknowledges that it does not have a demonstrable 5-year supply of deliverable housing sites. Paragraph 49 of the National Planning Policy Framework (the Framework) specifies that policies relevant to the supply of housing should in those circumstances be considered to be not up to date.
10. In those circumstances paragraph 14 specifies that applications should be granted planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework; or specific policies indicate development should be restricted.
11. Although it is defined as countryside, the land is adjacent to the settlement and so in principle the development would relate well to the existing settlement, within which housing development is likely to be acceptable.
12. Nevertheless, LP policy CT/2 amongst other things identifies that where development is acceptable in principle in the countryside it is not to harm the character and appearance of the countryside.

13. This land is part of a relatively small field comprising some 0.75 Ha that has housing on two sides and these dwellings impinge somewhat on the rural character of the area. The land rises markedly to the rear. It is relatively well constrained by a hedgerow to the south and the built edge of Hathern to the east and north and whilst the field is valued as providing an open aspect and amenity for occupiers of those properties adjoining the site, the land is not of any wider landscape significance on its own or in conjunction with other land. Boundary hedgerows could be retained and there would be some space for landscaping.
14. Any residential development would have some effect on the character of the area since it would change from undeveloped to developed and so change would be an inevitable consequence. However this layout would be dominated by its extensive road layout and prominent car parking on hard surfacing to the frontages of the dwellings.
15. I saw on my site visit that there are dwellings elsewhere locally in Hathern that have similar features. But, bearing in mind that the Framework attaches great importance to the design of the built environment as a key element to sustainable development, the appearance of the estate dominated by hard surfacing would not represent the good design anticipated by national policy. For these reasons I conclude that it would be harmful to the character and appearance of the area which would be contrary to LP policies EV1, H16 and CT/2 and the Leading by Design (SPD) which all accord with the thrust of national guidance in the Framework.

*Living conditions*

16. The Leading in Design Supplementary Planning Document and the amended Backland and Tandem Development SPDs set down standards for the spacing of dwellings in new layouts and existing properties. Those relationships of particular concern to the Council are the proposed relationships of the detached garage on plot 1 to No 89 Loughborough Road, plot 5 to No 85 Loughborough Road, plots 6 and 7 to No 79 Loughborough Road and plot 12 to No 9 Brunsleigh Croft in relation to the distances to existing closest residential properties. All of these properties would fail to meet the standards laid down in the SPDs.
17. The properties in Loughborough Road have rear elevations that would face towards the rear elevations of proposed dwellings on higher land and have particularly short rear gardens. Because of that the occupiers of these properties rely on the openness of the field to achieve satisfactory outlooks.
18. The proposed dwellings would be close to one another and would include a terrace of three dwellings with high pitches to incorporate rooms within the roof as a second floor. They would also be sited on rising land relatively close to the rear boundaries. For these reasons, although they are not alleged to fail to achieve the relevant separation distances, except for in respect of plot 5 and No 85, where as a result privacy would be compromised, the development would nevertheless be overbearing on the outlook from those properties and would be oppressive on the use of their rear gardens. The large detached and hipped roofed garage on plot 1 close to the common boundary with No 89 would add to the overbearing effect of the development.

19. Whilst the distances involved would be sufficiently far away so as not to adversely affect direct light levels in existing dwellings, this does not outweigh that the dwellings would be oppressive on outlook from existing dwellings and in gardens.
20. In respect of the effect on No 9 Brunsleigh Croft, which has been extended towards the common boundary, there are 3 ground floor windows that would face the side elevation of the plot 12 dwelling. Although there is intervening boundary planting, nevertheless the close and direct relationship to a two storey flank wall close to the common boundary would again be an oppressive presence on outlook from the existing dwelling failing to achieve the distance set out in the SPD.
21. As far as No 79 Hathern Road is concerned there is a kitchen window to the side facing a rear garage with intervening boundary planting. There is only one window affected with an inadequate separation distance in terms of outlook. That would face a single storey building and so light would not be significantly affected, and the property is not orientated to face the site as this is its side elevation. Nevertheless there would be a significant extent of buildings along the common boundary as a result of the extensive flank elevations of plots 6 and 7. Whilst these would be less high than other dwellings, this adds to my concerns about the impact of the development would have on its neighbours.
22. I conclude that the development would be contrary to saved LP policies EV/1 and H/16, emerging CS policy CS2 and the SPDs.

#### *Bats*

23. LP policy CT/2 amongst other things identifies that where development is acceptable in principle in the countryside it is not to harm the character and appearance of the countryside, and requires that it would amongst other matters safeguard its nature conservation interest. Emerging CS policy CS13 seeks to conserve and enhance the natural environment.
24. Paragraph 99 of Circular 06/2005 states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by a proposed development, is established before planning permission is granted.
25. The appellant supplied a Ecological Appraisal dated July 2014. Furthermore there has been an additional document dated 2 April 2015. That identifies that there were no trees with a high bat roost potential. The boundary hedgerows were considered to only have potential for foraging and flight corridors. Although this document includes recommendations for conservation measures some of which could be incorporated into buildings and lighting could be controlled, the information provided does not amount to a bat survey.
26. Therefore the appeal scheme is not supported by a sufficiently detailed ecological survey demonstrating clearly whether or not the proposal would adversely affect any bats that may be present on the site. It is common ground that the identified bat species are present in the Hathern area. I consider therefore that it is reasonable to seek a detailed survey given the presence hedgerows and that there have been sightings of bats in the vicinity.
27. In the absence of a suitably detailed ecological survey, given the close proximity that the access road would have to the hedgerow on the southern boundary, I consider that it has not been demonstrated that the proposed

development would not have an adverse impact on Brown Long eared and Pipistrelle bats. Accordingly the proposal is contrary to emerging CS policy CS13 and LP policy CT/2 insofar as they seek to prevent harm to protected species. The proposal would also be contrary to Section 11 of the Framework insofar as it seeks to protect biodiversity.

### *Affordable Housing*

28. Policy CS3 of the submitted Core Strategy requires developments of 5 dwellings or more in Hathern to include affordable housing at a rate of 40% of the total number of dwellings.
29. However, there have been representations about that policy and it is subject to modification as part of the Examination in respect of the 5 dwelling threshold, the outcome of which I have not been informed. For this reason, whilst I acknowledge that the Examining Inspector raised no objections to the 40% target, I can accord the provision of the Core Strategy in respect of the threshold at which it should be applied little weight.
30. The Framework identifies the need to plan for a mix of housing reflecting local demand. Whilst I note that the Council has referred to the evidence base for the emerging plan, I am not able to conclude on that evidence, as this is a matter for the Examining Inspector in the context of considering the soundness of the plan. I fully appreciate that a new policy with a different threshold to that in the LP for affordable housing may be adopted in the not too distant future but LP policy H5 only requires the provision of affordable housing on schemes of more than 15 homes with which the appeal proposal would comply.
31. In the absence of any alternative adopted policy to the LP policy H5, which the development does not offend, I conclude that, albeit that no affordable housing would be provided, that the development would not make inadequate provision for affordable housing. Notwithstanding my conclusions on this matter, it does not outweigh my conclusions in respect of the other main issues that I have identified.

### **Other matters**

32. Local residents have raised many other matters, but have raised particular concerns about the highway safety of the access to the A6 in the vicinity of a bus stop and a pedestrian crossing, across the road from a public house car park. I note that there have been two personal injury road traffic accidents close to the site in the last 5 years.
33. I have paid careful attention to the access but in the light of the comments by the highway authority, who recommended approval to the proposal subject to conditions, I am satisfied that the access for the relatively limited amount of traffic generated would be adequate and that severe harm would not be caused to highway safety as a result.
34. Whilst I note the drainage matters raised by local residents I have no reason to conclude on the basis of the comments of Seven Trent Water that conditions could not secure adequate drainage.
35. The S106 agreement makes provision for mitigation of the infrastructure demands of the development. Because I am dismissing the appeal for other reasons, and because the provisions of the agreement are not contested

matters between the main parties, it is not necessary for me to consider the obligation further since it is not a determinative matter.

**Conclusion**

36. For the reasons given above, I conclude that the appeal should be dismissed.

*Julia Gregory*

Inspector

Richborough Estates