



Appeal Decision

Inquiry held 6-8 October 2015

Site visit made on 8 October 2015

by Christa Masters MA (Hons) MRTPI

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

Decision date: 8 February 2016

Appeal Ref: APP/X2410/A/14/2227518

237 Bradgate Road, Anstey, Leicester LE7 7FX

- 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 Mr D Smallman and Mr A Smith against the decision of Charnwood Borough Council.
 - The application Ref P/14/0494/2, dated 13 March 2014, was refused by notice dated 18 August 2014.
 - The development proposed is described as outline planning application for residential development for up to 19 dwellings with all matters reserved, except for access (re-submission).
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Decision

1. The appeal is dismissed.

Procedural matters

2. The application is in outline form only with only the matter of access to be determined at this stage. Matters of layout, scale, appearance and landscaping are all reserved for future determination and I have dealt with the appeal on that basis. However, I note that two drawings for illustrative purposes only (drawings SK01T and SK01W) indicate how the appellants envisage the development could be carried out. I have had regard to them both in reaching my conclusions below.
3. The Council's planning proof of evidence refers to the fact that the Council could not demonstrate a 5 year housing supply at the time the application was determined. Since this time, the policy position of the Council has evolved. I shall explain this in further detail below however the Council maintained at the inquiry that it could now demonstrate a 5 year housing land supply. This was disputed by the appellants.
4. One of the Council's reasons for refusal relates to the effect of noise from the proposed access road on the adjoining properties at Nos 235 and 239 Bradgate Road. The Council have considered the submission of acoustic mitigation measures in the form of an acoustic barrier and this reason for refusal was subsequently withdrawn prior to the inquiry. Notwithstanding this, interested parties remained concerned about this matter and this is addressed as part of my decision.

5. Since the inquiry took place, the Council adopted the Charnwood Local Plan Core Strategy on 9 November 2015. The Council have confirmed that a number of policies referred to within the decision notice have now been superseded. Specifically, policies ST/1, EV/23, EV/39 and H/16 of the Local Plan have been replaced with policies CS1, CS13, CS2 and CS2 from the Core Strategy respectively. The main parties have been provided with the opportunity to comment on this change to the development plan position. The appellant has advised that an application has been made for a judicial review of the adoption of the Core Strategy.
6. An executed Section 106 Agreement was submitted at the inquiry. This Agreement addresses matters such as contributions towards healthcare, education, libraries, civic amenity, off site play area, off site youth and adult recreation. The Agreement also provides for a commitment to provide 6 of the total number of dwellings as affordable housing. Accordingly, Leicestershire County Council, who had been granted Rule 6 Status, were satisfied that their objections to the scheme had been adequately addressed by the Agreement and did not present evidence to the inquiry.
7. Since the inquiry took place, a further appeal decision reference APP/X2410/W/15/3028131 has come to my attention. Both of the main parties were provided with an opportunity to comment on this decision. I return to this matter below.

Main Issues

8. Taking the above matters into account, the main issues in this case are:
 - whether the proposal would represent a sustainable form of development, with due regard to the content of the NPPF and the Council's housing land supply;
 - the effect of the proposal on the character and appearance of the area, with particular reference to the site's relationship to Anstey and its surrounding countryside;
 - the effect of the proposal on protected species;
 - the effect of the proposal on the living conditions of the existing and future occupiers of Nos 235 and 239 Bradgate Road.

Reasons

Housing land considerations

Policy context

9. The development plan includes the adopted Charnwood Local Plan (LP) 2004. Within this plan, No 239 Bradgate Road and its garden are within the settlement boundary. However, the majority of the appeal site lies outside of the settlement, on the north-west edge of the village boundary and is designated as countryside.
10. Relevant policies from the LP include policy ST/2 and CT/1. Policy ST/2 advises that built development will be confined to allocated sites and other land within the limits to development identified on the proposals map, subject to specific exceptions set out in the plan. The supporting text to the policy goes on to

explain that the limits to development as defined by the proposals map allows new development to relate sensibly to the existing settlement pattern in order to ensure development needs can be met without unwarranted harm to the countryside and other rural interests.

11. Policy CT/1 relates to land lying outside of development limits identified as countryside, green wedge and areas of local separation. It states that development within these areas will be strictly controlled, and refers specifically to a criteria based approach to the re-use and adaptation of rural buildings only. The policy goes on to state that in all cases, it should be demonstrated that the proposed development could not reasonably be located within or adjacent to an existing settlement.
12. The development plan documents were adopted prior to the introduction of the National Planning Policy Framework (the Framework). In these circumstances, the Framework states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework.
13. Paragraph 49 of the Framework advises that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites. The above paragraph must be read in conjunction with the decision-taking section set out in paragraph 14 of the Framework which identifies a presumption in favour of sustainable development. In terms of decision making, this means approving development proposals that accord with the development plan without delay and where relevant policies are absent, silent or out of date, granting planning permission unless any adverse impacts in doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework.
14. There was significant debate between the parties at the inquiry regarding the relevance or otherwise of policy ST/2 of the LP in the context of the Framework. The plan period is from 1991 to 2006 and as a consequence, does not make provision for housing after 2006. The settlement boundaries referred to above were consequently drawn up on the basis of the housing requirements contained in the Local Plan up to 2006. The thrust of the policy is in my view generally consistent with the Framework. However, those settlement boundaries, and the restriction placed on them by policy ST/2, remain of some weight, given the fact that the Core Strategy acknowledges that new development within the designated service centres, of which Anstey is one, will take place within the existing built up area. However, I do acknowledge that the policies can no longer be afforded full weight as the plan has time expired. As a result, I have engaged paragraph 14 of the Framework in the assessment of this appeal proposal.
15. In the context of policy CT/1, the policy refers to specific criteria applying to development within the countryside, green wedges and areas of local separation. It applies a criteria based approach to the reuse and adaptation of rural buildings suitable in scale and nature, and for small scale new built development. In so far as this policy seeks to restrict development to proposals which would, amongst other things, be essential for the efficient long term operation of agriculture, horticulture or forestry, the policy is not consistent with the Framework and attracts little weight in my decision.

16. In relation to the other policies referred to, policy CT/2 is a policy relating to the assessment of the effect of development proposals on the character and appearance of the countryside. It is not a policy which restricts housing development and as such I do not regard this as a housing supply policy for the purposes of paragraph 49 of the Framework. Policy CS2 of the Core Strategy (CS) 2015 provides a general requirement for all new housing developments to achieve a high standard of design and layout. In my view, this policy is consistent with the Framework.
17. Other policies have also been drawn to my attention. I deal with other relevant policies including those from the Core Strategy under the various issues below.

Housing land supply

18. There was no dispute between the parties regarding the overall housing land requirement figure including the 20% buffer and I have no reason to disagree with the figure specified by the CS. As I have outlined above, the Council now maintains that it can demonstrate a housing land supply in excess of five years and as a consequence, relevant policies for the supply of housing should be considered up-to-date. In support of this statement, the Council rely to a significant extent on the examining Inspector's report into the Charnwood Local Plan: Core Strategy (CS) which was published in September 2015. In this report, the examining Inspector concluded that on the basis of the objectively assessed housing requirement as set out in policy CS1 of the CS, the Council can demonstrate a supply of sites over the next five years.
19. The Core Strategy was adopted in November 2015. This document is consistent with the Framework and can be afforded full weight in terms of assessing the appeal proposal.
20. The appellants have questioned the deliverability of 3 of the strategic sites identified as part of the five year housing land supply. These sites are the West of Loughborough SUE, North East of Leicester SUE and Direction of Growth North of Birstall. I acknowledge that these are major strategic sites which may have significant planning issues to address during the planning application process. However, key to this consideration is the examining Inspector's conclusions drawn in paragraph 79 and 80 of his report. In it, he concludes that *"I am satisfied that the Council has carried out a robust and thorough assessment and has used reasonable assumptions in terms of whether sites are deliverable and developable and over what timescale.....there is considerable flexibility within the overall supply to compensate for some committed sites not coming forward as expected or for strategic sites to progress at a slower rate than expected"*. Importantly, there is also no allowance made for any windfall sites which may or may not come forward. This approach in my view allows for considerable additional flexibility. In any case, the PPG states that Local Plans are the appropriate place for the examination of the deliverability of sites to meet the five year supply.
21. In terms of the evidence presented to this inquiry, the appellants contend that the Council lack experience of dealing with schemes of such scale and complexity. However, the Council's witness on this issue provided reassurance regarding the Council's ability to process planning applications of the scale envisaged by the schemes outlined above. In my view, there is a significant amount of pre-application engagement and front loading which takes place with

schemes of this nature. This is also the approach advocated by the Framework and in particular, paragraph 191.

22. Two of the schemes have resolutions to grant outline planning permission. The Council advised that in connection with the final scheme at direction of Growth North of Birstall, an outline planning application was expected to be submitted in December 2015. The appellants did not put forward any robust evidence to support their case that the programme was an unrealistic one. The Council has also recently appointed a Growth Support Manager with experience in the deliverability of large strategic sites which supports the Council's position that these sites can be delivered within the required timescales. In addition, even if the appellants are correct and the strategic sites do progress at a slower rate than expected, there is considerable flexibility within the housing figures identified, as acknowledged by the examining Inspector, coupled with the additional flexibility unidentified windfall sites may deliver.
23. The appellants' planning witness argued that the appeal site's inclusion within the Council's most recent SHLAA exercise was an indication of its suitability for housing development. However, in my view the SHLAA provides a helpful starting point to assess a site's suitability, availability and achievability. It does not include any policy judgements or assess site constraints which have been undertaken at the planning application stage and the explanatory notes which accompany the site's inclusion within the SHLAA make this clear. I therefore place only limited weight on this argument.

Conclusion on housing land considerations

24. Taking the above matters into account and the evidence presented at the inquiry, I am satisfied that the Council can demonstrate a five year housing supply. Nevertheless and in any event, for the reasons set out above, I regard policies ST/2 and CT/1 of the LP to be effectively out of date and can therefore only be afforded limited weight in the determination of this appeal. Paragraph 14 of the Framework is therefore engaged and it is therefore necessary for me to assess whether there would be any adverse impacts in granting planning permission which would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework. Accordingly, before I carry out the balancing exercise as required by the Framework, I will now turn to consider the other main issues of relevance to this appeal.

The effect of the proposal on the character and appearance of the area, with particular reference to the site's relationship to Anstey and its surrounding countryside

25. The appeal site consists of a detached dwelling and associated garden fronting Bradgate Road. This dwelling would be demolished and along with the rear garden, would form the access and the immediate setting to the appeal site when viewed from the public highway. The rear part of the site, where the proposed dwellings would be located, is on the north western edge of Anstey.
26. The Charnwood Forest Landscape Character Assessment (CFLCA) notes that in relation to the western part of the village where the appeal site is located, it is formed by a row of residential properties but beyond this the old village green and historic core forms a distinct feature. From what I saw on the site visit, I would concur with this description as an accurate reflection of the established

pattern of development which to my mind is reflective of ribbon development running along Bradgate Road.

27. As the appeal proposal is in outline form only, the only matters for consideration are both the principle of the development and access. In order to establish the principle of the development, the assessment undertaken must in my view consider whether, taking into account existing site constraints, the site could accommodate the scale of development proposed, in this case, the 19 dwellings proposed.
28. Both illustrative layouts SK01T and SK01W indicate the copse to be retained and managed, a grassland area of some form to be retained, the established hedgerows along the boundaries to the site to be retained, a SUDS area to be provided as well as the trees to be retained which are covered by a tree preservation order (TPO) which runs across the site and the root protection area as required by the arboricultural analysis. These factors, when considered collectively, represent considerable restrictions on the amount and form of built development which could be accommodated on the site.
29. My attention has been drawn to a Supplementary Planning Document entitled 'Leading by Design' (2005). The Council confirmed at the inquiry that this document has been subject to public consultation and formally adopted by the Council. As such, I regard it as a material consideration in the assessment of the appeal proposal and have apportioned moderate weight to this document in the assessment of the appeal proposal.
30. 'Leading by Design' advises at paragraph 3.2 that a fundamental principle of the guidance is the importance of creating well-integrated, linked up places. Public routes should be, amongst other things, connected, well lit, short, direct, overlooked by frontages and related to desire lines. Paragraph 3.3 goes on to advise that developments should be linked up within the site but should also integrate with existing routes to connect to the wider area, in particular towards main streets and public facilities. The supporting text goes on to state that the rear of a cul-de-sac should not connect to an unsupervised pedestrian network as this can provide an access and exit point for criminals and those intent on anti-social behaviour.
31. Both parties also agree that the guidance contained within 'Buildings for Life' was also relevant to the consideration of the appeal proposal. The document reflects the Framework and has been designed to enable local planning authorities to assess the quality of proposed and completed developments. Page 6 of the document echoes the advice contained within Leading by Design above. It requires development to integrate into the existing neighbourhood, rather than creating an inward looking cul-de-sac development. Furthermore, it requires development to consider how to contribute to a more walkable neighbourhood, as well as creating connections that are attractive, well lit, direct, easy to navigate, well overlooked and safe.
32. The Framework is clear at paragraph 61 that amongst other things, high quality and inclusive design goes beyond aesthetic considerations. Planning decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment.

33. The appellants make significant comparisons between the context and setting of the nearby residential development at Long Close and the appeal site. I also agree that Long Close is a relevant comparison in so far as it relates to the established settlement form further east towards the centre of Anstey.
34. From what I saw on the site visit, the entrance to Long Close is a spacious wide entrance with dense vegetation and landscaping running along both footpaths and a dense grass verge fronting Bradgate Road. Beyond the 2 corner properties at the junction with Bradgate Road, there are properties fronting along the access from the western corner which assist in creating an active frontage. The Long Close development is quite clearly seen as a continuation of the established residential development along Anstige Avenue and beyond. The pedestrian linkage here reinforces this relationship between the two developments. In this way, the development is clearly viewed as a continuation of the residential pattern and form of more established parts of Anstey.
35. In sharp contrast, the entrance and vehicular access to be created as part of the appeal proposal would be facilitated through the demolition of No 237 Bradgate Road. This would result in a relatively narrow access road, and considering the illustrative layout(s), the flank elevation of Nos 235 and 239 would sit uncomfortably close to the entrance. This would result in a cramped appearance to the singular vehicular access point to the development. The narrow width of the access would mean that only one footpath could be provided. The length of the access road is not the only consideration in determining whether the development would integrate successfully within the existing urban fabric of this part of Anstey. However, in the particular circumstances of this appeal, the access road created would be a bland and narrow access with limited opportunities for any form of active frontages to be created. I agree with the appellants' statement that landscaping could soften the impact of the access road to a certain degree. However, in my view even a high quality landscaping scheme would fail to adequately address the lack of active frontage along this principle access point to the site. In this way, the proposal would fail to accord with the guidance provided by 'Leading by Design' and 'Building for Life' outlined above.
36. Turning to consider the wider setting of the Long Close development, the site is enclosed by a dense landscape buffer which runs around from the rear of the Bradgate Road and wraps around to the rear of the properties to Dale Close. As a result of the scale and height of the existing landscaping buffer, Long Close is also significantly screened from views along the public right of way (PROW) J74. This buffer provides an important delineation to the settlement parameters along this boundary. As a result the appeal site, developed within this surrounding context, would appear as an isolated feature and would fail to complement the established character and appearance of Anstey.
37. It is agreed between the parties that Anstey itself is regarded as a sustainable location. However, the Council contend the appeal site itself is not in a sustainable location in relation to the main services and facilities offered by the village. Whilst the Parish Council who spoke at the inquiry agreed that a direct pathway link to Long Close as envisaged by drawing SK01W would be desirable, there is no evidence before me to confirm that this would be achievable or could in any way be secured at a reserved matters stage. In any event, whilst such a link may be desirable, I do not consider that this link alone

would make the site inherently more sustainable. I share the concerns of the Council that it would still be a rural footpath, with little natural surveillance. The principle route any pedestrians would be likely to take, particularly those with young children or the elderly would be along Bradgate Road. Taking into account the site constraints, it is not in my view possible to provide the important useable connections with the existing settlement pattern. The proposal would therefore fail to accord with paragraph 61 of the Framework outlined above. It would also fail to address the guidance contained within 'Leading by Design' and 'Building for Life' outlined above.

38. In terms of the impact of the development on Anstey and the countryside, I have taken into account the evidence presented, in particular the Landscape and Visual Impact Assessment prepared by the appellants, as well as what I saw on the site visit. There are a number of well-established trees which run along the western boundary of the site covered by the TPO. They make a significant contribution to the character of the area and are clearly visible in both the immediate environment and also in longer distant view of the site along public right of way (PROW) 74 which runs along the north eastern boundary.
39. Walking along PROW 74, the footpath has a rural feel. There is a clear impression of open countryside and of being on the edge of the settlement. Only glimpsed views of the ridgelines of the Bradgate Road properties are visible from the footpath, inter-dispersed between the existing trees and general vegetation of the area and separated by the generous rear gardens. It cannot be described as a busy urban edge route as suggested by the appellants. In both illustrative layouts, residential development would be brought significantly closer into the open countryside. The distance from the established building line on Bradgate Road, coupled with the clear separation between the appeal site and Long Close, would mean the site would be visible as an isolated island of housing when viewed from the PROW 74. This would be in stark contrast to the existing situation and the established settlement form of Anstey.
40. In considering the indicative layout SK01W, which is perhaps the most comparable to the Long Close development, plots 3 to 9 would be readily visible from along the PROW 74. The existing sense of being on the edge of the settlement when walking along this boundary would be lost. The landscape buffer around the Long Close development ensures that the rural character within the edge of the settlement is retained. For all of these reasons, the comparisons I can draw between the two schemes are very limited. The appeal proposal would not be comparable in layout, access or form.
41. For these reasons, I conclude the proposal would result in a significant harmful effect on the character and appearance of both the appeal site and the settlement of Anstey. In this way, the proposal would fail to accord with policy CT/2 of the LP. This policy states that within areas defined as countryside, development will be permitted where it would not harm the character or appearance of the countryside. This policy is consistent with the National Planning Policy Framework and in particular, paragraph 64 which states that permission should be refused for development of poor design that fails to take the opportunity available for improving the character and quality of an area and the way it functions.

42. For the same reasons, the proposal would also be in conflict with policy CS2 of the CS. This policy requires new development, amongst other things, to respect and enhance the character of the area, having regard to scale, density, massing, height, landscape, layout, materials and access arrangements. The proposal would also conflict with the SPG document 'Leading by Design' as well as Buildings for Life outlined above.

The effect of the proposal on protected species

43. Paragraph 118 of the Framework advises when determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by allowing development proposals where the primary objective is to conserve or enhance biodiversity. It goes on to state that opportunities to incorporate biodiversity in and around developments should be encouraged.
44. The site is subject to a number of ecology considerations, which I have considered in more detail below. The appellants have submitted a Habitat Mitigation Strategy and Management Plan which set out a number of objectives which are broadly agreed between the parties. However, the Council is concerned about the feasibility of implementing a number of these objectives in the context of the illustrative layouts provided by plans SK01T and SK01W. I shall deal with each of these specific concerns in detail below.
45. The hedgerows around the perimeter of the site are recognised as a priority habitat in the Local Biodiversity Action Plan. It was also accepted by both parties that the hedgerow functions as a wildlife corridor. These hedgerows would be retained and replanted/reinforced with native shrub and trees species. In addition, the woodland area would also be retained and managed in an appropriate way. As a result, I consider the mitigation proposed in relation to the hedgerows on the site to be appropriate and satisfactory.
46. There is evidence that the site has been used by badgers for foraging purposes. There is no evidence of any setts on the site. Concerns were expressed regarding plan SK01W and whether it provides sufficient space to accommodate foraging badgers. Both layouts provided are for illustrative purposes. As this is an outline application only, I am content that a scheme could be designed to accommodate a sufficient area for badger foraging and therefore consider that this issue could be adequately addressed at a subsequent reserved matters stage.
47. The 2013 surveys recorded the presence of Smooth Newts on the site. The latest survey from June 2015 advised that both existing ponds on the site had become overgrown and contained very little open water and there was no longer any evidence of protected or notable species. Nevertheless, the submitted Habitat Mitigation Strategy and Management Plan includes for a replacement wildlife pond and SUDS facility on site. Although concerns have been expressed by the Council regarding the location of these facilities in relation to the access road, I am also satisfied that the mitigation proposed in this regard is appropriate and could be adequately addressed by an appropriately worded condition.
48. A bat roost was identified within the house to be demolished at 237 Bradgate Road. These are a protected species as identified by the Conservation of Habitats and Species Regulations 2010 (as amended). The demolition work associated with the removal of the dwelling would therefore need to be

supervised by a licensed bat ecologist. The Council have not raised any concerns regarding the mitigation strategy in relation to the continuation of a bat roost habitat in the long term. However, the Council have expressed concerns in connection with the June 2015 Habitat Survey. This report advises that 7 of the trees along the western boundary of the site have good or moderate potential to support bat roosts. Concerns were raised regarding the implications of residential development and lighting in such close proximity to these trees. However, I am satisfied that any external lighting scheme could be adequately designed to avoid light spill onto vegetated areas where possible. Taking into account indicative layout plans SK01T and SK01W, there would in my view be minimal impact on the bat roosting potential of these trees based. Accordingly, the mitigation proposed in this regard would be satisfactory.

49. The situation in relation to the Local Wildlife Site (LWS) has evolved somewhat since the appeal was submitted. The Phase I Habitat survey June 2015 concluded that the LWS mesotrophic grassland habit had declined since the previous surveys were undertaken and the application was determined. As such, both parties agreed that the site would no longer qualify as a LWS habitat. Whilst the plan which accompanied the survey notes that the area with the greatest ecology value was the central part of the site, there is no statutory policy protection for this area. However, both parties agreed that through sympathetic management of the site, the overall ecological value of the site could be improved and I have no reason to disagree with this overall conclusion.
50. The appellants argue that the layout as shown by SK01W demonstrates how a housing layout could be achieved with the retained woodland and area of managed grassland. The Council raised concerns regarding this layout and the fact that the central area of grassland would measure less than 0.05ha, it would be isolated from the local habitat network and surrounded by housing. Given the change in circumstances regarding the classification of the grassland area, it would not be necessary for this area to now meet the minimum size threshold stipulated by the Council. There is therefore little merit in the argument that the size of this area would mean it would be insufficient to qualify as a LWS even if that overall objective was achieved through the active long term management of the site as there is no policy requirement to provide such an area.
51. It may be that, as the appellants suggest, the development of the site could secure benefits in ecological terms. However, in the context of this appeal, the appropriate mitigation of harm is not in itself a benefit. The only potential measure which could be classified as real benefit in ecological terms would be the recreation of the recently lost LWS mesotrophic grassland habitat on the site. If this were achieved around a suitable layout which could provide the mitigation measures outlined, this would, in my view, accord with paragraph 118 of the Framework outlined above.
52. I therefore conclude on this issue that the mitigation measures proposed by the appellants would be acceptable. The proposal would therefore not result in any material harm to protected species on the site. As such, the proposal would accord with policy CS13 of the CS. This policy states, amongst other things, the Council will support development that protects biodiversity and geodiversity. The policy goes on to state that the Council will expect

development proposals to consider and take account of the impacts of biodiversity and geodiversity.

The effect of the proposal on the living conditions of the existing and future occupiers of Nos 235 and 239 Bradgate Road

53. The Council's SPD 'Backland Development' provides specific guidance regarding the impact of the use of the new dwelling and new access points. The Council have formally approved the use of this document as Supplementary Planning Guidance, however it does not form part of the development plan. As such, I can only attach moderate weight to it in the determination of this appeal. Nevertheless, the guidance notes that the movement of vehicles and pedestrians along a newly formed access close to existing dwellings, as would be the case here, could cause concerns in terms of noise disturbance and loss of privacy. It recommends that there should be a minimum of 5 metres between main habitable room windows and a new access road and there is no dispute between the parties that this separation distance could be achieved. The issue of noise from the creation of the access road is addressed later in my decision.
54. Although the appeal proposal is in outline form only, the location of the access is to be approved. Given the site constraints outlined above, the access to be created through demolition of no 237 would provide the only vehicular access to the site.
55. The existing garden at No 239 provides a pleasant environment for the enjoyment of the existing occupiers. There is a patio area immediately to the rear of the property, and further seating areas along the length of the garden. The new access would run along the boundary of this property. It would replace the existing domestic garden with an access road serving 19 dwellings. It would also be likely to be well used by pedestrians and cyclists given that this route would provide the only well lit, secure route to Anstey. The occupiers of No 239 would therefore be aware of the increase in comings and goings taking place along this access road.
56. There can therefore be no doubt that the proposal would result in a material change to the environment currently enjoyed by the occupiers of No 239, and to a lesser degree No 235. However, fundamental to this consideration is whether this change would result in material harm. The boundary already benefits from extensive screening and this could be enhanced to ensure the privacy of the garden areas when in use. This would also protect the amenity of the occupiers of the neighbouring properties from the potential glare from headlights which was also raised as a concern. The impact of street lighting was also raised, however I am satisfied that the location of the street lighting could be adequately addressed at the reserved matters stage. The Council has raised concerns that the proposal would give rise to increased vibration from vehicles using the access road however no technical evidence was presented to support this assertion. Overall, I am of the view that this change would not result in material harm to the living conditions of Nos 235 and 239.
57. At the site visit, I was also able to view inside No 239. The main windows where the new access road would be most apparent would be the flank elevation windows which serve the reception rooms on the ground floor and bedrooms at first floor level. The access road would also be readily visible from the large bay windows at the front ground floor of the property. However, for

the reasons outlined above, this change in the outlook from the internal living accommodation at No 239 would not amount to material harm to the existing or future occupiers of No 239.

58. Overall, I conclude the proposal would not cause unacceptable harm to the living conditions of Nos 235 and 239 Bradgate Road. The proposal would therefore accord with paragraph 17 of the Framework which seeks to ensure, amongst other things, a good standard of amenity for all existing buildings. For the same reasons the proposal would accord in part with policy EV/1 of the LP. Policy EV/1(vii) advises that the Council will seek to ensure a high standard of design and ensure, amongst other things, proposals safeguard the amenities of adjoining properties, particularly the privacy and light enjoyed by adjoining residential properties.
59. The proposal would also accord with policy CS2 of the CS. This is a general policy concerning high quality, inclusive design. It requires, amongst other things, that new development protects the amenity of people who live or work nearby.

Other matters

60. Concerns were expressed by both the Council and interested parties regarding the effect of the proposal on protected trees on the site. A tree survey report accompanied the application and included a tree constraints plan. In addition, a proof of evidence was prepared by the appellants' tree surgeons to address both the protected trees fronting 235 and 239 Bradgate Road as well as those covered by the TPO on the remainder of the site.
61. As outlined above, the mature trees on the western boundary of the site make an important contribution to the character of the area. In both illustrative plans, the trees would in my view be a sufficient distance from the proposed dwellings to avoid any material harm. As an existing established feature, they would also be readily visible to any prospective purchasers. Moreover, they are afforded protection through the TPO.
62. Turning to the two oak trees which are subject to TPO's at the entrance to 235 Bradgate Road, the supporting information explains how the new access road would be created in this location, respecting the RPA. In light of the evidence presented, I am satisfied that subject to an appropriately worded condition which could cover an arboricultural method statement, piling methodology and tree protection measures, the proposal would not result in material harm to any of the protected trees adjacent to the site.
63. A number of interested parties also raised concerns regarding the effect of the proposal on the local highway network, and the potential for increased congestion at the new access point. However I have seen no evidence from any statutory consultee that the proposed access would have a harmful effect on highways safety. Accordingly, I can only attach limited weight to these concerns.
64. Concerns have also been raised regarding the potential adverse impact of the construction of the dwellings on the amenity of neighbouring properties. However, this is a matter which I consider could be addressed by a suitably worded condition which would require a construction method statement to be agreed with the local planning authority at reserved matters stage.

65. I am also mindful of the concerns raised by interested parties regarding the drainage proposed at the site. The evidence prepared by the appellant's drainage consultants confirms that the proposed development satisfies the requirements of national policy in this regard and subject to suitable mitigation measures, the proposed development would not increase flood risk to the surrounding area. As a result, I am satisfied that this issue could be suitably addressed at the reserved matters stage.
66. Although the Council withdrew their objections to the scheme in relation to noise disturbance, this matter was raised by an interested party. The appellants provided evidence at the inquiry on this matter. Subject to the acoustic barrier as appropriate mitigation, the World Health Organization guidelines for outdoor living areas are achieved in the gardens of 235 and 239 Bradgate Road. The good standard of ¹BS8233 is achieved with partially open windows at ground floor level and the reasonable standard is achieved at 1st floor rooms in the daytime period. On the basis of the evidence prepared by both the Council's Environmental Health Officer and the appellants noise consultant, I am satisfied that the acoustic barrier proposed would provide suitable mitigation in this regard. I can see no evidence before me which would lead me to conclude that the proposed access would cause noise disturbance which would cause material harm to the living conditions of nos 235 or 238 Bradgate Road.
67. The Council also raised concerns regarding the layout shown on plan SK01T and in particular, the distance between the rear elevations of plots 6-9 and plots 15-12 which the Council consider could give rise to overlooking between the properties. As this is an outline scheme only and the layout is for illustrative purposes only, I am content that there would be scope for an alternative layout which could address this particular issue, and as a result, this could be adequately addressed at the reserved matters stage.

Planning Obligation

68. As previously identified, a completed Section 106 Agreement was submitted at the inquiry. The effect of the development on local infrastructure including healthcare, education, libraries, civic amenity, off site play area, off site youth and adult recreation would be off-set by contributions outlined within the Section 106 Agreement. The Agreement also provides for a commitment to provide 6 of the total number of dwellings as affordable housing.
69. I am satisfied that on the basis of the evidence presented, the terms of the obligation would accord with the requirements of Regulation 122 of the Community Infrastructure Regulations. However, as concluded below, I find that the appeal should be dismissed and there is no requirement for me to consider this obligation any further.

Other appeal decisions

70. Both the appellants, the Council and interested parties provided me with a number of appeal decisions as part of the evidence presented to the inquiry which they consider to be comparable to the appeal case under consideration. However, I have had regard to these decisions and do not consider any of these to be directly comparable to the specific nature of this appeal. I have

¹ BS8233: 2014 Guidance on sound insulation and noise reduction for buildings

thus determined this appeal on the basis of the evidence presented to me and on its own merits.

71. Since the inquiry closed, a further appeal decision has come to my attention. This decision, appeal ref APP/X2410/W/15/3028131 was issued in January 2016. In the case of this particular appeal which related to a single dwelling house, the Inspector concluded that the Council could not demonstrate a five year supply of deliverable housing land. However, there are a number of important differences between this appeal decision and the case before me. I have not seen the evidence presented by either of the main parties in relation to this appeal. However, that was a written representations case. In relation to this appeal, I heard detailed evidence on the matter of housing land supply and in particular the deliverability of the strategic sites referred to. The evidence was also subject to cross examination. Based on the evidence presented and what I heard on this issue, I have reached a different conclusion on this matter.

Conclusion and Planning Balance

72. I attach weight to the benefits arising from the provision of new homes which would have both social and economic benefits in terms of supporting the local economy and improving the mix of housing in the local area. The provision of affordable housing is also a matter of considerable weight. These are the factors which weigh in favour of the development.
73. I have concluded the proposal would have an acceptable effect on the protected species on the site. I have also concluded the proposal would have an acceptable effect on the living conditions of existing and future occupiers of No 235 and 239 Bradgate Road. These matters are neutral in terms of the balancing exercise to be undertaken.
74. In terms of harm, the proposal would cause significant visual harm to the character and appearance of the area. This harm would arise from the creation of the access road and its impact on the existing built frontage to Bradgate Road. It would also have an unacceptable adverse impact on the broader settlement form of Anstey. The failure to comply with development plan policy CT/2 also weighs heavily against the appeal proposal.
75. I have concluded that the Council can demonstrate a 5 year housing supply. Nevertheless, for the reasons set out above, I regard policies ST/2 and CT/1 of the LP to be out of date and therefore of limited weight. The Framework states that where such circumstances arise, planning permission should be granted unless any adverse impacts in granting planning permission which would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework.
76. In the case of this appeal, these adverse effects would significantly and demonstrably outweigh the scheme's benefits when assessed against the policies in the Framework taken as a whole. I conclude that this matter is sufficient to overcome the presumption in favour of granting planning permission set out in paragraph 14 of the Framework.

Conclusion

77. For these reasons and taking all other matters into account, the appeal should be dismissed.

Christa Masters

INSPECTOR

Richborough Estates

APPERANCES

FOR THE LOCAL PLANNING AUTHORITY

Jack Smythe of Counsel

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He called

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Hoare Lea

INTERESTED PERSONS

Cllr D Snartt

Local Resident and County Councillor

Mr Broomhead

Anstey Parish Council

Mr Nightingale

Local Resident

Mr Day

Local Resident

DOCUMENTS SUBMITTED AT THE INQUIRY

Council documents

1. List of Core Documents
2. Notification of inquiry and arrangements letter
3. Appendices to I Reid Proof of Evidence
4. Local Plan extract – Proposals map
5. Agreed Ecology Statement between the main parties dated 6 October 2015
6. Schedule of proposed Local Development Documents
7. Main Modifications to the Core Strategy – Appendix B
8. Statement of common ground
9. Closing Submissions on behalf of the Council
10. Oral submission made by interested party
11. Oral submission made by interested party
12. Oral submission made by interested party

Appellants' documents

13. Appellants' opening Statement
14. Updated Phase I Ecology appraisal including Habitat Plan
15. Email from Leicestershire County Council regarding infrastructure contributions dated 7 October 2015
16. Signed Section 106 Agreement dated 8 October 2015
17. Supplementary Proof of Evidence of Simon Pease
18. Closing Submissions on behalf of the Appellants