



Appeal Decision

Inquiry Held on 27 and 28 April 2021

Site Visit made on 29 April 2021

by **S J Lee BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24th June 2021

Appeal Ref: APP/X2410/W/20/3264488

Land off Melton Road, Burton on the Wolds, Leicestershire LE12 5AL

- 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 outline planning permission.
- The appeal is made by William Davis Limited against Charnwood Borough Council.
- The application Ref P/19/0041/2, is dated 14 January 2019.
- The development proposed is development of up to 70 dwellings with associated public open space, landscaping and infrastructure.

Decision

1. The appeal is allowed and outline planning permission is granted for development of up to 70 dwellings with associated public open space, landscaping and infrastructure at Land off Melton Road, Burton on the Wolds, Leicestershire LE12 5AL in accordance with the terms of the application, Ref P/19/0041/2, dated 14 January 2019, subject to the conditions in the attached schedule.

Preliminary Matters

2. The application was made in outline with all matters reserved except access. I have considered the appeal on this basis and treated all plans, apart from those showing the main vehicular access, as illustrative.
3. The Council identified a single putative reason for refusal which related to the lack of a Section 106 agreement (S106) securing the provision of, or contributions toward, affordable housing and other necessary infrastructure. A S106 securing these contributions was agreed between the parties prior to the opening of the Inquiry. As a result, the Council confirmed that they did not intend to defend the appeal. An identical duplicate application was granted outline planning permission by the Council on 30 April 2021. My decision has no bearing on that permission. However, the fact permission already exists for what is proposed remains a significant material consideration.
4. A signed S106 was provided during the Inquiry. An amended version was submitted after the close of the Inquiry with my agreement. This included a manuscript amendment which had been discussed during the roundtable session. The S106 includes obligations relating to the provision of affordable housing and on-site open space, as well as financial contributions for education, off-site open space, sports and recreation, bus passes and travel packs, healthcare and library facilities. I shall return to this matter below.

5. The Wolds Village Neighbourhood Plan (WVNP) was approved following a referendum on 6 May 2021. The main parties indicated at the Inquiry that the formal making of the WVNP would not alter their respective positions, as all evidence had been submitted and considered on the basis of the plan carrying significant weight. On this basis, it was unnecessary to ask the parties for any further comment on the implications of the referendum. I am satisfied that no interests have been prejudiced by this.
6. An amended set of suggested conditions from the main parties was submitted for my consideration following the close of the Inquiry with my agreement. This was to allow the main parties to consider matters raised during the relevant roundtable discussion.
7. Following the close of the Inquiry, the Council informed me that they had updated their 5-year housing land supply position. As this was new information that could not have been provided beforehand, I invited written comments from the parties who appeared before me. It was not necessary to reopen the Inquiry and I have had regard to any comments received in my decision.
8. At the Inquiry, the main parties agreed that the Council could demonstrate a 4.1-year supply of deliverable housing land. This was based on data produced in November 2020. However, the updated position as at 31 March 2021 indicates that the Council can now demonstrate a supply of 3.34 years. There is no substantive evidence to suggest I should not accept this figure. I have therefore considered the appeal on this basis.

Main Issues

9. Having regard to the above, I have identified the main issues as those factors which the Council identified as harmful in their initial consideration of the application. The main issues are therefore:
 - Whether or not the proposed development is in an appropriate location for residential development, having regard to relevant local and national planning policies. In particular, the spatial strategy for the Borough, access to services and facilities, the effect on the character and appearance of the area, a non-designated heritage asset and Best and Most Versatile Agricultural Land (BMVL).
 - Whether or not the proposed development makes adequate provision for affordable housing and other infrastructure requirements.
 - Whether or not any conflict with the development plan and harm arising is outweighed by other considerations.

Reasons

Whether the development is in an appropriate location for residential development

Spatial Strategy for the Borough

10. The adopted development plan for the area is the Charnwood Core Strategy (CS) (2015), the saved policies of the Charnwood Local Plan (CLP) (2004) and the WVNP. The spatial strategy and settlement hierarchy is set out in CS Policy CS1. This seeks to guide the majority of development to the Leicester Principal

Urban Area, Loughborough and Shepshed. A significant proportion of growth is also directed to Service Centres which have a wider range of services.

11. Burton on the Wolds is identified as an 'Other Settlement' where the plan allows for some small-scale infill development to meet local needs within defined 'limits to development'. This reflects the smaller range of services available in such settlements. Altogether, the plan envisages at least 500 new homes within the boundaries of Other Settlements. The CS does not therefore place a moratorium on development in settlements at this tier. Although I understand more than 500 dwellings have been delivered so far, the requirement for these villages is a minimum. Other Settlements are also not the lowest tier in the hierarchy. Indeed, below this, Small Villages and Hamlets are still considered acceptable locations for development which meet local needs.
12. The site lies outside the limits to development as defined by the CLP and WVNP. As such, the proposal falls to be considered by CLP policies CT/1 and ST/2 and WVNP Policy WV11. The CLP policies are highly restrictive in nature and allow development only in a small number of categories. The development would not fall into any of these and thus would be in conflict with these policies. However, while allowing for some development outside settlement boundaries, these policies are more restrictive than the Framework envisages. I am also mindful that the Council has allowed development outside settlement boundaries in other locations to address the housing land supply situation. These are relevant factors in considering the weight to be given to this conflict.
13. WVNP Policy WV11 also sets out a limited number of circumstances where housing would be acceptable outside development limits. Again, the proposal would not meet any of the requirements. The site is however immediately adjacent to the defined limits. Importantly, the WVNP also identifies the Seals Close estate as being within the limits. However, this enclave of housing is likely to be as far or further from facilities in the village than the appeal site. The development would therefore still be reasonably well related to the existing settlement pattern of the village. These factors suggest that the actual harm to the strategy would be limited.

Access to services and facilities

14. It was put to me that the consequences of conflict with the above policies would be to allow growth in an area poorly served by services and facilities, leading to a reliance on the private car. Before considering the detail of this matter, it is important to note that neither the CS, CLP or WVNP consider Burton on the Wolds to be an unsustainable location for housing development in principle. All three plans allow for some growth within the limits to development in appropriate circumstances. Given the proximity of the site to those limits, it is not functionally any less accessible to facilities than development that might take place within the defined boundary.
15. Burton on the Wolds contains a primary school, a small convenience store attached to a petrol filling station, a pub, village hall, allotments and the relatively large Towles Field recreation ground. I saw nothing to suggest that these facilities could not be reached by walking or cycling from the site.
16. While better served than many rural settlements, there is little doubt that travel outside the village would be necessary to meet many everyday needs,

including work, main food shopping, secondary education and healthcare. Given the distances and nature of pedestrian links, walking or cycling to higher order villages or towns is unlikely.

17. There is some scope for access by public transport, with bus stops for both directions being located within a reasonable walking distance of the site. Services are currently affected by the COVID-19 pandemic. However, there is no reason to assume that they would not return to their pre-pandemic levels when possible. The evidence suggests that there were hourly services to the higher order centres of Loughborough and Melton Mowbray. There were limitations to those services, such as no buses in the evenings, Sundays and at some points in the morning peak. This would limit the ability to use public transport for some trips. However, the fact remains that future occupants would have some opportunity to use public transport to meet their day-to-day needs.
18. While it remains highly likely that the majority of trips generated would be by private car, this need not be the case for all trips. Paragraph 103 of the National Planning Policy Framework (the Framework) recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in decision making. Given this, and other factors referred to above, the relative accessibility of the site does not weigh heavily against the development in my view.
19. I therefore conclude that as a matter of fact, the development of this site would be contrary to the development plan strategy as set out in CS Policy CS1, CLP policies CT/1 and ST/2 and WVNP Policy WV11. Collectively, these seek to direct development to the most sustainable location and restrict development outside the defined limits to development.
20. However, the harm to that strategy would be tempered by the proximity of the site to the defined boundary, the fact that the plan does not preclude development in Other Settlements in principle and that there is some access to everyday facilities by means other than the car. I therefore consider that only moderate weight should be given to the conflict with these policies.

Character and appearance of the area

21. The site is an open agricultural field in use for the grazing of sheep. It is enclosed by mature hedgerows of varying sizes and coverage. The majority of the site is separated from Melton Road by allotments and a large detached house. The main vehicular access would be located between these two features. The site is bordered to the west by Sowters Lane, beyond which starts the main built form of the village. The site rises gently from north to south, with the prominent small housing estate of Seals Close sitting at the top of the slope. To the east are open fields extending out into the countryside. The site contains the remains of ridge and furrow earthworks. This feature is identified as a 'local heritage asset' by WVNP Policy WV7 and is thus considered to be a non-designated heritage asset.
22. This site does not form part of any national landscape designations. The appellant's Landscape and Visual Impact Assessment (LVIA) places the site in

"The Wolds" Landscape Character Area at a County¹ and Borough² level. The area is typified by a rolling landscape, with a mixed field pattern, large-scale arable fields on ridge tops and small-scale pastures on valley sides. Settlements comprise small, compact villages which are well separated from each other due to the undulating landform. Burton on the Wolds reflects the landscape character as described.

23. I am satisfied that the LVIA presents a robust and realistic picture of the likely impacts of development. It is inevitable that the change from an open field to housing development would have a very significant impact on the character of the site and would represent an urbanising encroachment into the countryside. The most significant visual and landscape impact would be on views from Sowters Lane, where the site is visible beyond a low hedgerow. This allows for open views of large swathes of countryside to the east. Views from the housing on Seals Close would also be subject to significant change.
24. However, from Sowters Lane, the Seals Close estate is already a prominent feature. While something of an adjunct to the main village, this pocket of development sits on the ridge of the slope and overlooks the site. Thus, it already represents an encroachment of the built form to the east. Nevertheless, there would still be a substantial adverse visual and landscape character impact from the proposed development when viewed from immediately adjacent to the site. This would include the effects of removing part of the hedgerow to make a pedestrian access. However, the removal of hedgerow need not be excessive and, in combination with other changes, is unlikely to be a significant factor in its own right.
25. The existing hedgerow, trees and separation caused by the allotments would filter views of the housing from Melton Road. However, the development would still be visible in gaps and/or during winter months. Seals Close also already provides a backdrop of housing when viewed from this location. Nevertheless, bringing housing further down the slope toward Melton Road would still have a negative impact. Removal of hedgerow to accommodate the vehicular access would also have an adverse impact on the Melton Road frontage. However, other than visitors to the cemetery, it is likely that most people's experience of this frontage will be drivers passing by on Melton Road. As such, both the housing and access would mainly be seen in glimpsed and fleeting views.
26. Views of the development from the PROW to the north of the cemetery would also be heavily filtered by intervening vegetation and would again be considered in the context of existing housing. Moreover, from this location, the site does not necessarily constitute a prominent element of the wider vista. The site does not therefore form an important part of wider landscape character from this vantage point.
27. WVNP Policy WV1 identifies views of the village from a PROW to the east as locally important. From this location, the edge of the village is visible to differing degrees due to the intervening vegetation and topography. The dwellings on Seals Close are again the most prominent feature. New housing would mainly be seen in the context of the existing edge of the village and Seals Close. The existing open nature of the site is also not as visible from these vantage points. As such, the encroachment into the countryside would

¹ Landscape Sensitivity and Green Infrastructure Study (2012).

² Borough of Charnwood Landscape Character Assessment (2012).

not be as obvious. Moreover, the site forms only a very small part of the wider panoramic views that are available. It is nestled into the edge of the village and does not make a significant contribution to the wider landscape character of the area or views from this location. It is most likely that only the rooflines of the new dwellings would be visible from the east. While the intensification of development might be obvious to an extent, the nature of the view would not change. It would still be that of the edge of the settlement.

28. I am therefore satisfied that where the site can be seen from locations beyond its immediate periphery, the development would have only a moderate or slight adverse visual impact and landscape impact when initially constructed. From most of the village, it is unlikely that much would be seen of the development, other than the access points and possibly roofs above the trees.
29. Landscaping is a reserved matter. However, the illustrative plans suggest that there could be extensive areas of landscaping and open space around the edge of the site. While this would take some time to mature, and would be unlikely to completely screen the development in close views, it would nevertheless soften the wider visual and landscape impact over time, reducing the severity of impact to slight or negligible after 15 years. This would not be the case from nearby views on Sowters Lane or Seals Close, where additional landscaping may soften the impact but not provide complete mitigation. However, this all serves to demonstrate that the impact of development would be localised in scale and nature.
30. Appearance and layout are reserved matters. However, there is no substantive evidence to suggest that up to 70 dwellings could not be accommodated in an acceptable manner in principle. There is also nothing in the illustrative plans which suggests the layout of development would be out-of-keeping with the existing built form of the village. Indeed, apart from the separation from Melton Road, an estate of the type illustrated would be typical of the layout of much of the village.
31. In conclusion on this matter, the change from open field to housing is bound to have an adverse impact on the edge of Burton on the Wolds. There would therefore be conflict with CS policies CS2, CS11 and WVNP Policy WV1, which seek to protect landscape character and important views and ensure development respects and enhances the character of the area.
32. However, in considering the weight given to this harm, I have had regard to the fact that the development would be seen in the context of the Seals Close estate. This would help to integrate the new housing into the existing extent of the built form and soften the impact. The relatively small scale of the site, the degree of screening provided by existing and potential landscaping and intervening topography also means that the visual and landscape impacts would be highly localised in nature. For this reason, I have given only moderate weight to the harm caused.

Non-designated heritage asset

33. The full extent of any impact on the ridge and furrow would only be known when the layout is agreed. It is reasonable to assume however that much or all of the feature would be lost. This is clearly an important factor in terms of the impact on the existing landscape character of the site. Moreover, this is only one of two examples of ridge and furrow in the WVNP neighbourhood plan.

Nevertheless, Policy WVNP WV7 stops short of an outright ban on development affecting such assets. Rather, it states that proposals must balance the need for, and public benefit of, the proposal against the significance of the asset and the scale of any harm or loss. Development should also demonstrate it has taken into account any potential impact on archaeological remains and mitigation strategies. This largely reflects the guidance for non-designated assets in paragraph 197 of the Framework.

34. The appellant carried out an Archaeological desk-based assessment of the site. This concluded that the ridge and furrow earthworks do not include a wide range of features that would inform a greater understanding of the operation of the field system. The feature is not identified in the Leicestershire and Rutland Historic Environment Record (HER). It was also not included in a local study which identified 'priority townships' where surviving ridge and furrow was considered to be of national importance.
35. The assessment therefore concludes that this example is of no more than local importance. The Council's officer report also concludes that ridge and furrow is a relatively common landscape feature in the Wolds area and this example has no recognised heritage or archaeological merit. There is nothing to suggest this is not an accurate assessment. The evidence therefore suggests that, while of some importance locally, this feature does not have high significance either in terms of its scarcity or heritage value in a wider sense.
36. The likely loss of much or all of the ridge and furrow is clearly potentially harmful. However, both local and national policies require a balanced approach to considering the impact on such assets and their significance. Whether there is conflict with policy, and the weight given to this, must therefore be considered in the overall planning balance. I return to this matter below.

Best and most versatile agricultural land

37. The site is classed as Class 3a agricultural land. The development would thus result in the loss of BMVL. CS Policy CS16 states that development which protects environmental resources, including BMVL, will be supported. It would be reasonable to assume that development which does not protect BMVL will not be supported.
38. Paragraph 170 of the Framework also states that the economic and other benefits of BMVL should be recognised. Footnote 53 states that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.
39. There is no definition of what is meant by significant in the context of that footnote. However, the appellant contends that anything below 20 hectares is usually considered to fall outside this definition as that is the threshold at which Natural England must be consulted. While not persuaded that this should be the only measure of significance, I am mindful that the site is well below this figure. There is also no strong evidence that the site is of such intrinsic quality in its own right, or importance to the local economy, that its loss would be materially harmful. I am therefore satisfied that the loss of the site would not have a significant impact on the overall amount of BMVL in the Borough or the local economy.

40. As Policy CS16 contains no criteria for determining what level of BMVL can be lost, I do not necessarily agree with the main parties' view that there would be no conflict with this policy. However, given the relatively small scale of the site and lack of identified harm, any conflict that might exist should carry only limited weight.

Whether the proposal makes adequate provision for affordable housing and other infrastructure requirements

41. The agreed S106 would secure 40% affordable housing, based on a 50/50 split between social rent and shared ownership. This would accord with CS Policy CS3. The tenure split is as requested by the Council and is thus acceptable.
42. The agreement would also secure on-site open space provision including natural and amenity green space, equipped children's play space and allotments and/or community orchard. In the event that the allotment space cannot be provided on-site, then a financial contribution would be made to be spent on new or enhanced allotment plots elsewhere in the village. The requirement for open space is consistent with CS Policy CS15. The amount of space required is consistent with the findings of the Council's Open Space Assessment (2017) and Playing Pitch Strategy (2018).
43. Off-site contributions for open space and outdoor sports are justified on the same basis. The intention is for these to be spent at the Towles Field recreation ground in the first instance, though the agreement would allow expenditure elsewhere in the village if necessary. The Parish Council and interested parties questioned whether any improvements could be made to the existing facilities. It was also noted that the recreation ground is under the control of a third party. However, neither clause in the agreement is prescriptive about how it should be spent and there is some flexibility. The Borough Council also suggested ways in which improvements could be made which do not appear unreasonable in principle. Having visited the site, there is no reason to conclude that there is no scope for the improvement of facilities. There will clearly be a need for further discussion between the relevant parties, but this is not unusual. Accordingly, I am satisfied that there is a reasonable likelihood that the contributions could be used to improve existing facilities in the village.
44. The agreement requires each household to be provided with a travel pack and two six-month bus passes. This accords with CS Policy CS17 and the Framework, which seek to promote public transport use. Given the location of the development, these measures would be necessary to encourage the use of public transport by future occupants.
45. There is evidence that the Burton on the Wolds Primary School is oversubscribed. The development is expected to generate 21 primary school pupils and thus a financial contribution toward remodelling, expanding or improving the facilities at the school is justified. The Parish Council and local residents again questioned whether there is scope to expand the school. However, there is no strong evidence that this would not be possible.
46. Importantly, the Local Education Authority (LEA) raised no objections on this basis and I note that WVPN Policy WV10 specifically requires the provision of additional capacity at the school. It is unlikely that the plan would contain such provisions if there were no scope to expand. The relevant clauses also provide

a degree of flexibility, which provides comfort that any need arising from the development can be met. I am also satisfied that the contribution required for 16 years and above education is justified given the capacity issues at Rawlins Academy.

47. A contribution towards improvements to library provision in the nearest settlement is based on the County Council's standard approach. The increase in population justifies a contribution toward improving local facilities. I am satisfied that the scale of contribution is based on a reasonable assessment.
48. The Care Commissioning Group (CCG) has identified capacity issues at the Barrow Health Centre and thus a contribution toward improving existing accommodation or capacity is necessary. The scale of contribution is based on a reasonable and robust assessment from the CCG.
49. I noted at the Inquiry that the obligations are all based on an assumption that 70 dwellings will be delivered, rather than on a pro-rata basis. This would only be problematic if the appellant sought permission for fewer dwellings at the reserved matters stage. I was assured that this is highly unlikely. I am also mindful that if this were to occur, the developer would have the opportunity to enter into a deed of variation with the other signatories to the agreement. As such, I am not persuaded that this is reason enough to disregard the obligations. They are all consistent with the anticipated level of delivery and there should be no assumption that a scheme of less than 70 dwellings would come forward.
50. I am therefore satisfied that the obligations are needed to address development plan policy requirements, make development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind to the development. I have therefore taken them into account in my decision.
51. Turning to other concerns raised in relation to the S106, my attention was drawn to WVNP Policy WV10. This sets out a requirement for additional community meeting space. My understanding is that this was not requested by the Borough Council. Neither the development nor the S106 therefore make provision for this policy requirement.
52. The Parish Council confirmed at the Inquiry that there are currently no plans in place for new community meeting space in the village. It is not clear therefore what any contribution would be spent on, or when it would be spent. There is also no indication as to what level of contribution would be necessary from a development of this scale. Based on the evidence before me, I am also not convinced that the failure to meet this objective would result in tangible material harm to the village or its residents. There is also no clear evidence that any impacts would be mitigated in a reasonable timescale. As such, I do not consider this to be clear evidence that the development would fail to secure necessary infrastructure or service improvements.
53. I was advised of a S106 protocol which establishes how the Council is expected to engage with the community and its representatives in the drafting of agreements and how any obligations are implemented. There was some dispute between the Council and interested parties as to whether this protocol had been followed in the preparation of the S106 in this case. In particular, that there had been no specific consultation with the Parish Council on the

content of the agreement prior to it being agreed. While strong views were expressed about this issue at the Inquiry, I find it is largely a procedural matter between the Council and the other parties involved. The process the Council and appellant went through does not invalidate the legal agreement and I must consider what it contains on its merits.

54. I acknowledge that the Parish Council are disappointed that the S106 does not make specific reference to matters they consider important. However, while I do not wish to dismiss local knowledge, it would also be remiss of me to disregard the input of the other authorities and stakeholders who have key roles in providing services and facilities across the Borough. Indeed, I note that the protocol makes it clear that the Council will defer to these organisations on many issues. The Council has been advised by its own officers and those of other authorities and organisations who should be well versed in what is both required and what is possible. That the Parish Council and/or other interested parties do not agree with that advice does not make it invalid.
55. In addition, the fact that some contributions would be spent on facilities outside the village is not a reason to withhold permission. Indeed, this would be necessary for any development in the village, including that supported by the WVPN.
56. Additional concerns were raised about the influence the Parish Council can have on how the funding received might be spent. How specific projects are identified for expenditure is outside the scope of my decision and something for the parties involved to address amongst themselves.
57. In conclusion on this matter, I am satisfied that the development would make sufficient provision for affordable housing and necessary infrastructure provision. Although the development would not contribute to community meeting spaces, as required by Policy WV10, I am not persuaded by the evidence before me that any technical conflict with this policy would result in material harm.

Other Matters

58. Importantly, neither the Council nor Local Highway Authority (LHA) identified any harm in relation to traffic flows or highway safety. This is a material consideration of significant importance. In terms of pedestrian safety, I had the opportunity to walk through the village and saw that, while the pavements between the site and facilities may not all be at the minimum width advocated by the Department of Transport's Manual for Streets, they are not unduly narrow. They also appeared to be in good condition and are largely continuous between the site and all facilities in the village.
59. There would be no pavement from the main access along the southern side of Melton Road. People exiting the site at this point would therefore have to cross the road to access the footway. However, there is good visibility in both directions. With normal care and attention, I saw nothing to suggest that this should be an unduly onerous or risky practice.
60. I also acknowledge that the width of the pavement in places means that people may need to walk in single file, wait to allow people to pass or briefly step out into the road when passing when safe to do so. There may also be places where wheelchair users or people using pushchairs may have some difficulties.

However, such issues are not uncommon in rural areas and the pedestrian environment in the village did not appear unusual or unduly problematic. With or without the development, these issues would also continue to exist and there is no evidence to suggest this has been the cause of accidents.

61. It would be reasonable to assume that pedestrian flows might increase following the development, particularly relating to picking up and dropping off at the school. While I find the appellant's estimate of 3 additional two-way trips at peak times pessimistic, it is unlikely that the increase would be such to cause genuine safety concerns. The pedestrian environment is nothing out of the ordinary and issues can be addressed through normal care, attention and pedestrian etiquette. I therefore have no concerns about pedestrian safety in this regard.
62. The illustrative plans suggest a secondary pedestrian and cycle access would be provided on Sowters Lane. This is an unpaved and unmarked road which provides access to the poultry farm, a garage workshop and the housing further along the lane and on Seals Close. The exact position and design of the access would be a matter for any reserved matters application. Residents would however need to walk along a short stretch of unpaved road to meet up with the main pavement on Melton Road. Occupants of housing on Sowters Lane or Seals Close will already need to walk along this road to reach nearby facilities and there is no evidence that this is problematic.
63. Sowters Lane is not a through route and thus traffic levels are likely to be relatively low. Vehicles approaching the access would have just turned into the lane from the main road and are unlikely to have reached full speed when passing the site. The lane is straight and pedestrians walking along the carriageway would be easily seen. Similarly, pedestrians would see approaching vehicles. The likely distance between any new access and Melton Road would not be excessive. The intention would also be for some form of barrier at the access point to stop people being able to walk straight out onto the road. Based on all of these factors, I am satisfied that a secondary access would not result in unacceptable safety risks.
64. The Framework states that the development should only be prevented or refused on highways grounds if the residual cumulative impacts on the road network would be severe. Notwithstanding the concerns of local residents, this is not an especially large proposal and the traffic generated, even during the evening and morning peaks, would not be significant. The data supporting the Transport Statement was proportionate and based on normal accepted methodologies. Even accounting for any reasonable errors, it remains unlikely that the traffic generated by the development would be so high as to result in severe traffic problems, either in the village or further afield. The main access would also allow for adequate visibility in both directions and would be safe.
65. In coming to this conclusion, I have had regard to the likely cumulative impacts of development with the recently approved conversion of a nearby industrial estate to 91 dwellings. It would be reasonable to assume that the existing industrial use already generates trips. Indeed, the appellant's transport witness contended that the change of use would actually reduce the number of trips on the network to and from that site. Whether or not this is the case, it is unlikely that the cumulative impact of development would be severe. I am aware that an application has been recently made for housing on the Sturdee Farm site.

This is however at a very early stage and has no bearing on my decision. It will be for the Council and LHA to assess any transport impacts resulting from that proposal.

66. The site is in Flood Zone 1, but there is some potential for surface water flooding across the northern edge of the site. The illustrative plans suggest that there would be no housing in this area, though the main access would run through it. The appellant has submitted a draft drainage strategy to address both this issue and any wider drainage matters. The Local Lead Flood Authority raised no objection to the development, subject to conditions. I am therefore satisfied that this issue can be adequately addressed at the reserved matters stage. In coming to this conclusion, I have noted the concerns raised by interested parties and photographs of flood events around the site. However, the technical evidence suggests that any drainage issues can be satisfactorily mitigated. This is not a reason to withhold permission.
67. The site is located near to an operational poultry farm. This has been the subject of a number of complaints in recent years relating to noise and odour. Noise and Odour assessments carried out by the appellant conclude that parts of the site might be affected by the farm, particularly toward the western and south western boundaries. Both documents are robust assessments of likely impacts and include appropriate mitigation measures. In terms of odour, this would mean avoiding development in the south western part of the site, where odour has been modelled to be at or above the baseline level and could be subject to moderately offensive odours. The area identified reflects the worst case of the scenarios modelled.
68. This is not to say that other parts of the site would not be affected by odours. The modelling also indicates a 'yellow' zone where odour would be experienced periodically, depending on the activities of the farm and meteorological conditions. I am satisfied that occasional exposure to low intensity odours would not have long-term or lasting impacts on the living conditions of future occupants. Large parts of the site are unlikely to be affected by odour to any material degree.
69. Similarly, the Noise Assessment concludes that any noise associated with the farm can be dealt with by appropriate conditions on glazing, ventilation and boundary treatments. These measures are not out of the ordinary and can be considered in more detail in relation to the layout of development at the reserved matters stage. The likely distance between dwellings and noise generators is such, however, that a suitable form of development could be achieved in principle.
70. There is no reason why the introduction of new housing on this site should have any impact on the operation of the poultry farm. There are already dwellings located closer to the farm than any dwellings on the site are likely to be. Notwithstanding the complaints that have been made, the farm remains operational. The new housing would be no more affected by the farm than existing dwellings, and thus I see no reason why this should have any prejudicial impact.
71. The appellant's Ecological Assessment concludes that there is no evidence of badgers, bat roosts, or reptiles. Contrary to the assertions of local residents, the assessment found no evidence of Great Crested Newts (GCN) on site and any use of the site by GCN from other locations is likely to be limited to very

occasional or transient use at the northern edge of the survey site. There is no substantive evidence to suggest this assessment is wrong. The site itself is improved grassland of low ecological value, surrounded by species poor hedgerows. The boundary features may however be suitable for bird and bat foraging. The removal of hedgerow and trees for access may therefore have a very low-level impact.

72. The majority of hedgerow is to be retained and the development provides scope for compensatory measures that would mitigate the low levels of risk identified. Moreover, the parties have suggested conditions which would require updated surveys to be carried out prior to any works to ensure the situation has not changed in the intervening period, a construction ecological management plan and a biodiversity audit which demonstrates how the findings and mitigation strategy are to be implemented. Overall, I am satisfied by what is before me that there would be no unacceptable impacts on biodiversity assets or protected species.
73. There is sufficient scope to accommodate the development without having a harmful effect on the living conditions of residents on Seal Close or Sowters Lane. There is also no reason in principle why a suitable form of development could not be achieved whereby future occupants were able to enjoy a satisfactory living environment. These factors would be assessed at the reserved matters stage and do not weigh against the development. Similarly, the type of housing delivered would be assessed as part of any reserved matters application. There is no reason why concerns about the mix of housing and house types cannot be adequately addressed at that stage in line with relevant policies.
74. Any issues relating to impacts during construction can be mitigated by a condition requiring the approval of a Construction Management Plan. This would require the Council's approval for construction vehicle parking, traffic routing and hours of operation. It is not necessary for the condition to stipulate the routes that would be acceptable, as this would form part of the approval process. Overall, there is no reason in principle why construction traffic, or associated activity, should result in unacceptable harm to highway or pedestrian safety or the living conditions of nearby residents.
75. Withholding permission on the basis of prematurity is not justified in this case. The WVNP has now been subject to referendum and thus this issue no longer applies.
76. Subject to the provisions of the S106, I am not persuaded that the growth in population, either individually or in combination with other development, would put unacceptable pressure on existing services and facilities in the village or elsewhere. There is also no reason why the development of this site would result in any precedent for other proposals outside the limits of development. Each case must be considered on its own merits, taking account of the prevailing policy context and any cumulative impacts.
77. My attention was drawn to another appeal in Charnwood³ where the Inspector gave weight to accessibility issues in dismissing the appeal. The issues in that case were different to those before me. Not least, that decision involved harm to a designated heritage asset which is not the case here. In addition, the

³ Appeal reference: APP/X2410/W/17/3186714

Inspector found 'significant' harm to character and appearance. While I acknowledge there would be harm in this case, it does not rise to that level of severity in my view. The range of factors, and the resulting planning balance, are therefore different. Accordingly, this example does not alter my overall conclusion.

78. I must consider the appeal in the most up-to-date policy context. As such, delays in the determination of the original application have no bearing on my decision. Similarly, any conjecture about the conduct of the Planning Committee cannot override their formal decision and minutes that are before me. Concerns were raised by interested parties that the Council Officer representing the authority at the Inquiry did not assess the original application. The Council's position on the appeal was however clear and there is nothing to suggest the officer who appeared was not able to provide adequate assistance. This is not an unusual situation in my experience and has had no bearing on my decision.
79. I note the concerns about the implementation and enforcement of conditions raised by interested parties. However, there is nothing unusual about the conditions that I have attached to this decision. Compliance with them is a matter for the Council and appellant following any grant of permission and is thus outside the scope of my decision. This does not constitute a reason for the withholding of planning permission.
80. I have had regard to all other comments made, including those relating to such matters as loss of views and house prices, and conclude that there are no other factors that result in conflict with the development plan or that weigh against the development in the planning balance.
81. Notwithstanding this, I have found conflict with the plan in terms of the overall spatial strategy for the Borough and the approach to housing development in the WVPN. In addition, there would be conflict with the plan in terms of the effect on the character and appearance of the area, the loss of BMVL and the failure to make a contribution toward community meeting space. For the reasons given above, I do not consider any of these factors garner significant weight against the proposal. Nevertheless, there would still be conflict with the plan when taken as a whole.

Planning Balance

82. The Council cannot demonstrate a 5-year supply of deliverable housing land. In that context, footnote 7 of the Framework states that the most relevant policies for the determination of the application should be considered to be out-of-date. As such, paragraph 11d(ii) of the Framework states 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 when taken as a whole.
83. Paragraph 14 of the Framework states that in situations where paragraph 11d applies, the adverse impacts of allowing development that conflicts with a neighbourhood plan are likely to significantly and demonstrably outweigh the benefits where all of four criteria apply. Criterion b) is of particular importance here. This states that for paragraph 14 to apply, the neighbourhood plan must contain policies and allocations to meet its identified housing requirement.

84. The supporting text to WVNP Policy WV11 states that "Burton on the Wolds might be said to be expected to deliver at least 36 dwellings"⁴. I acknowledge that the Planning Practice Guidance (PPG) states that a local requirement could be set exceptionally by the neighbourhood planning body. However, the figure of 36 dwellings is set out only in supporting text and thus does not have the status of development plan policy. This must limit the weight that can be given to this figure.
85. Secondly, the figure is based on a proportionate share of the provisional housing figure for 'Other Settlements' in the draft Local Plan. However, this plan is still at a very early stage of preparation and carries very little weight. The figure has not therefore been based on any adopted strategic plan or an up-to-date assessment of local needs. I am not therefore persuaded that this constitutes an 'identified housing requirement' in the context of paragraph 14.
86. Even so, the PPG also states that the neighbourhood plan must contain policies *and* allocations to meet the need. Windfall policies alone are not sufficient. The Sturdee Farm site is the only site identified for any form of housing. WVNP Policy WV12 states that this site will be released in accordance with the draft Charnwood Local Plan, *when* it is adopted, *if* a local housing requirement is identified for which the site is appropriate. It is clear, therefore, that the Sturdee Farm site is not intended to be released prior to the adoption of the new Local Plan. Even in those circumstances, this would only be the case if the plan identifies an additional extra need. Therefore, even if the 36 dwellings were an identified requirement now, the Sturdee Farm site is not seen as the means of meeting this need.
87. While it would be logical to assume the Parish Council see Sturdee Farm as being preferable to the appeal site, this is not how the plan is written. It does not create a mechanism for releasing the site in circumstances other than set out in Policy WV12. This site does not therefore constitute an allocation. As such, the WVNP does not meet all of the criteria in paragraph 14 of the Framework and thus it is not relevant to this appeal.
88. The development would provide up to 70 dwellings to the deliverable housing land supply. The Council's updated housing supply figures stands at just 3.34 years, when considered against an annual requirement of 1,111 dwellings per annum. As the CS is more than five years old, this figure is based on the standard Local Housing Need methodology endorsed by the Framework. This establishes a higher overall requirement than the CS. The current shortfall stands at 1,941 dwellings in total. This is a notable deterioration in the position that was put to me at the Inquiry, where a 4.1-year supply equated to a shortfall of 1,047 dwellings.
89. As there was no dispute between the parties as to the extent of the shortfall it was not necessary for me to consider these figures in any further detail at the Inquiry. With regard to the updated data, some general points have been made by interested parties about housing delivery and the apparent mismatch between dwellings with permission and those identified as being 'deliverable'. In addition, some specific concerns have been raised about whether the Council's schedule of 'deliverable' sites includes everything it should. However, there is no reason to assume the Council will have underestimated the

⁴ Paragraph 172.

deliverable supply and none of the comments made amount to substantive evidence that the Council's evidence is not robust.

90. Moreover, it is unlikely that the COVID-19 pandemic would have slowed delivery to such an extent that the Council would otherwise have had a five-year supply. Speculating on such matters does not alter the fact that the Council now has a very large undersupply of deliverable housing that is unlikely to be addressed in the near future.
91. The provision of up to 70 additional dwellings therefore adds very substantial weight in favour of the proposal. A replacement plan is some time away from being adopted. As such, there is no immediate prospect of this considerable undersupply being addressed by a new plan. This ability to deliver housing in the short term is an important consideration. Given the evidence relating to affordable housing needs, the provision of 40% affordable housing is an important additional benefit which is afforded additional weight over and above that of general housing provision.
92. Notwithstanding the concerns of interested parties, the development would help to maintain or enhance the vitality and viability of the village and other settlements in the area. In highlighting the ability of development in one village to support the vitality of a village nearby, the Framework anticipates there may be some travel between settlements. The development would therefore have associated economic and social benefits for Burton on the Wolds and further afield. There would also be some short-term economic benefits for the construction industry. These factors add moderate weight in favour of the development.
93. The appellant suggested that environmental benefits would be garnered through the provision of new landscaping, sustainable drainage and open spaces. These would be provided mainly as mitigation for the development and any benefits must be considered in the context of the likely loss of some trees and hedgerow. However, there remains some scope for creating new habitats within the site or enhancing existing assets. These factors also add some weight in favour of the development.
94. Finally, there is the matter of the extant permission for the identical form of development. There is no indication that the appellant would not be able to implement either proposal. The only difference between the two permissions would be in the planning conditions, which would have little effect on the impact of development. The extant permission therefore constitutes a realistic fallback position. This also weighs heavily in favour of the proposal.
95. As noted above, I must balance the impact on the ridge and furrow with the need and public benefits of the development. Having regard to all of the above, including the relative significance of the asset and proposed mitigation, I find that the benefits of the development would outweigh the impact on this asset. On this basis, there would be no conflict with WVPN Policy WV7 or paragraph 197 of the Framework. This adds no further weight against the development.
96. In terms of paragraph 11d(ii), I am mindful of the conflict between the proposal and the development plan, in particular the very recently approved WVPN. I acknowledge that some residents of Burton on the Wolds will be disappointed by development outside the village boundary contrary to this plan. However, the housing needs of the Borough are substantial, growing and

urgent. On this basis, I find that the moderate adverse impacts of the development would not significantly and demonstrably outweigh the benefits. The development therefore benefits from the presumption in favour of sustainable development set out in paragraph 11d(ii).

97. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise. The presumption in favour of sustainable development is a significant material consideration which justifies a decision other than in accordance with the development plan in this case.

Conditions

98. I have considered the conditions put forward by the main parties against the advice within the Framework and PPG. This is based on the revised conditions put to me following the close of the Inquiry. I have amended the wording of some conditions as necessary so that they meet the relevant tests.
99. A condition requiring the submission of reserved matters is necessary to ensure the appearance, layout, scale and landscaping are acceptable. I have amended the suggested condition on the approved plans to include a limitation to no more than 70 dwellings. Notwithstanding the views expressed as the Inquiry, I consider this is necessary for certainty and because the proposal has been assessed on the basis of the stated number. I am satisfied that the timescales for submission of reserved matters and delivery suggested in the conditions are acceptable in light of the importance given to delivery of the housing to help meet the 5-year supply shortfall. These have been agreed between the parties.
100. I have imposed conditions clarifying what should be submitted at reserved matters stage in relation to requirements of the layout, finished floor levels, updated protected species assessments, habitat management through a construction ecological management plan and details of lighting and mitigation measures for GCN, birds, reptiles and bats. These are necessary to ensure the development takes all of these matters into account and a satisfactory form of development secured. I have also imposed conditions requiring the reserved matters details to include noise and odour mitigation as set out in the relevant assessments. These are necessary to protect the living conditions of future occupants. I have amended these conditions to ensure development is carried out in accordance with the approved details.
101. Pre-commencement conditions, other than those related to reserved matters, are needed for archaeological investigation and reporting, surface water drainage and the provision of a Construction Management Plan. These conditions need to be addressed pre-commencement as they are matters that either require investigation, need to be in place before works commence or are details that may affect the final layout or design.
102. I have imposed a condition requiring the agreement of a landscape management plan for any areas of open space or surface water drainage prior to occupation. I have also imposed a condition ensuring that any landscaping measures will be maintained. These are necessary to safeguard the character and appearance of the area.
103. In the interests of highway and pedestrian safety, I have imposed a condition requiring the access and visibility splays to be implemented prior to first

occupation of any dwelling. I am satisfied that this is an appropriate point at which the access should be provided. I have also imposed an additional condition requiring at least one pedestrian access onto Sowters Lane prior to occupation of any dwelling. This would be an important link through to the main village and thus it should be delivered prior to any dwellings being occupied. The potential for this condition was discussed at the Inquiry.

104. I have not imposed the suggested condition stating that the reserved matters should comprise a mix of affordable and market homes that meet identified local housing needs, that 'has regard to the character of the area' and 'appropriately integrates open market and affordable housing'. While these factors are not unimportant, the suggested condition is vague and imprecise. It contains ambiguous language which is open to interpretation. Moreover, the provision of affordable housing is required by the S106 and the final mix of dwelling types, their layout and effect on local character will all be assessed against relevant policies at the reserved matters stage. These matters can therefore be controlled by other means. On this basis, the condition is not necessary.

Conclusion

105. For the reasons given above I conclude that the appeal should be allowed and outline planning permission granted.

S J Lee

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by, the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for the approval of the reserved matters shall be made within one year of the date of this permission and development shall commence within three years of the date of this permission or within two years of the date of approval of the last of the reserved matters, whichever is the later.
- 3) The development hereby permitted shall be limited to no more than 70 dwellings and shall be carried out in accordance with the following approved plans: DEF_185.005A – Site Location Plan; 180261-001 Rev B – Proposed Access Arrangement.
- 4) No development shall take place until a programme of archaeological work, including the ridge and furrow landscape, which includes a written scheme of investigation has been submitted to and approved in writing by, the local planning authority. The scheme shall include an assessment of significance and research questions; and:
 - the programme and methodology of site investigation;
 - the programme for post investigation assessment;
 - provision to be made for analysis of the site investigation and recording;
 - provision to be made for the publication and dissemination of the analysis and records of the site investigation;
 - provision to be made for archive deposition of the analysis and records of the site investigation; and,
 - nomination of a competent person or persons/organisation to undertake the works set out within the written scheme of investigation.

All works including site clearance shall be carried out in accordance with the written scheme of investigation.
- 5) The landscaping details submitted pursuant to condition 1 above shall include:
 - i. the treatment proposed for all ground surfaces, including hard surfaced areas;
 - ii. planting schedules across the site, noting the species, sizes, numbers and densities of plants and trees; including tree planting within the planting belt to the east of the site;
 - iii. finished levels or contours within any landscaped areas;
 - iv. any structures to be erected or constructed within any landscaped areas including play equipment, street furniture and means of enclosure;
 - v. functional services above and below ground within landscaped areas; and
 - vi. all existing trees, hedges and other landscape features, indicating clearly any to be removed.
- 6) The details of layout, appearance and scale submitted pursuant to condition 1 above shall meet with the following principles set out within the Design and

Access Statement and shown on Development Framework Plan (DEF_185.003 Rev H):

- i. a minimum garden depth of 15m, for those two or more storey properties located at the southern edge of the site where those units directly adjoin the gardens to existing properties on Seals Close and the incorporation of structural planting to enhance privacy to this boundary;
- ii. the retention of the existing pond within a linear corridor of open space;
- iii. structural landscaping to the eastern side of the site;
- iv. the provision of at least one new footpath link to Sowters Lane; and,
- v. development that is predominantly one or two storeys high.

The development shall be carried out in accordance with the approved details.

- 7) The details submitted pursuant to condition 1 above shall include full details of existing and proposed ground levels and finished floor levels of all buildings relative to the proposed ground levels. The development shall be carried out in accordance with the approved details.
- 8) The details of appearance, layout, landscaping and scale submitted pursuant to condition 1 above shall include those mitigation measures set out within section 6.0 of the approved Noise Assessment July 2019. The development shall be carried out in accordance with the approved details.
- 9) The details of layout submitted pursuant to condition 1 above shall include the exclusion of new dwellings or associated private amenity space from the area defined as Odour Effect Zone A as illustrated in Figure 16 within the submitted Odour Survey and Assessment July 2019. The development shall be carried out in accordance with the approved details.
- 10) The details submitted pursuant to condition 1 above shall include the submission of a construction ecological management plan which should include the following:
 - updated badger survey, (immediately pre-construction), and protection measures as set out within the recommendations of the Ecological Assessment 2020;
 - updated bat roost assessments (immediately pre-construction), of trees to be removed; and,
 - protection measures relating to Great Crested Newts, birds and reptiles as set out within the recommendations of the Ecological Assessment 2020.

The development, including site clearance, shall be carried out in accordance with the approved construction ecological management plan.

- 11) The details submitted pursuant to condition 1 above shall include the following:
 - a biodiversity audit for the site which shows that the landscaping scheme provides a net gain for biodiversity as set out within the recommendations of the Ecological Assessment 2020;
 - details of external lighting for the site that minimises light spill onto boundary habitats as set out within the recommendations of the Ecological Assessment 2020; and,

- details of a scheme of bat and bird boxes within the recommendations of the Ecological Assessment 2020.

The development shall be carried out in accordance with the approved details and any measures implemented retained thereafter.

12) No development approved by this planning permission shall take place until such time as a surface water drainage scheme in general accordance with the Proposed Drainage Strategy 180260-SK03F November 2020 has been submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with these approved details.

13) No development shall commence until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. This shall include the following:

- details of the management of surface water during construction;
- details of construction vehicle parking;
- details of construction traffic routing; and,
- hours of operation for construction and delivery of materials.

The development shall be carried out in accordance with these approved details.

14) Prior to occupation of any dwelling a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all public open spaces and surface water drainage system, shall be submitted to, and approved in writing by, the local planning authority.

The approved landscape management plan shall then be fully implemented and maintained in accordance with the approved details.

15) Any trees or plants removed, dying, being severely damaged or becoming seriously diseased within 5 years of planting shall be replaced in the following planting season by trees or plants of a size and species similar to those originally required to be planted in the approved landscaping details.

16) The visibility splays shown on the approved access arrangement drawing listed at condition 3) shall be implemented prior to first occupation of any dwelling hereby approved. They shall be retained and thereafter kept free of any obstruction higher than 0.6 metres above the adjacent highway.

17) Any new pedestrian footpath link to Sowters Lane, as required by condition 6 shall be provided prior to first occupation of any dwelling hereby approved and retained thereafter.

Appearances

FOR THE LOCAL PLANNING AUTHORITY:

Howard Leithead *of Counsel* Instructed by Kathryn Harrison, Principal Solicitor, Charnwood Borough Council

He called:

Lewis Marshall MRTPI Principal Planning Officer, Charnwood Borough Council

FOR THE APPELLANT:

Gwion Lewis *of Counsel* Instructed by Claire Saffer, Legal Counsel, Gunner Crooke

He called:

Mark Rose BA(Hons), MA, DipUD, MRTPI Director, Define

Andrew Gilnicz MCIHT Senior Transport Planner, Ardent Consulting Engineers

Claire Saffer participated in the discussions of the S106 and proposed conditions

INTERESTED PERSONS:

Councillor Jenny Bokor Charnwood Borough Ward Councillor

Robert Shields Burton on the Wolds, Cotes and Prestwold Parish Council

Helen Jarvis Local resident

Additional Documents submitted during the Inquiry

1. Appellant's Opening Comments
2. ID1 – Manual for Streets
3. ID2 – Appeal Decision APP/X2410/W/17/3186714
4. ID3 – Councillor Bokor Written Statement
5. ID4 – Helen Jarvis Written Statement
6. ID5 – Council 5-year supply position – November 2020
7. ID6 – Correspondence between Councillor Bokor and the Council – dated 18 March 2021
8. ID7 – Correspondence between Councillor Bokor and the Council – dated 26 March 2021
9. ID8 – Additional comments on open space provision from Charnwood Borough Council
10. ID9 – Technical note re: S106 process
11. ID10 – Protocol for Community Involvement in Infrastructure
12. ID11 – S106 Contributions SPD (2007)
13. Appellant's Closing Statement

Additional Evidence accepted following close of Inquiry

1. Revised Suggested Conditions submitted by the appellant
2. Revised S106 Agreement submitted by the appellant
3. Council updated 5-year housing land supply data – dated 31 March 2021 submitted by the Council
4. Appellant's response to 5-year supply position – dated 27 May 2021
5. Charnwood Borough Council response to 5-year supply position – dated 27 May 2021
6. Helen Jarvis response to 5-year supply position – dated 2 June 2021
7. Burton on the Wolds, Cotes and Prestwold Parish Council response to 5-year supply position – dated 10 June 2021

Plans considered as part of the planning application

DEF_185.005A – Site Location Plan

180261-001 Rev B – Proposed Access Arrangement

DEF_185.003 Rev H - Illustrative Development Framework Plan