



Appeal Decision

Hearing Held on 22 & 23 June 2021

Site visit made on 25 June 2021

by Zoe Raygen Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2021

Appeal Ref: APP/P3040/W/20/3251801

Costock Road, East Leake LE12 6HY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Martin Valentine (Positive Homes Ltd) against Rushcliffe Borough Council.
 - The application Ref 19/02205/FUL, is dated 30 July 2019.
 - The development proposed is the erection of 22 residential units and a 3.5m high ball strike net to the eastern boundary.
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Decision

1. The appeal is dismissed, and planning permission is refused.

Costs

2. Applications for costs were made by Mr Martin Valentine (Positive Homes) against Rushcliffe Borough Council and by Rushcliffe Borough Council against Mr Martin Valentine (Positive Homes). These applications are the subject of separate Decisions.

Preliminary Matters

3. During the course of the planning application the proposal was amended to include the erection of a 3.5m high ball strike net to the eastern site boundary. This is reflected in the banner heading above and I have considered the appeal on that basis.
4. The appeal was made against the failure of the Council to give notice within the prescribed period of a decision on an application for planning permission. As part of its appeal submission the Council has submitted an application report which details the reasons for refusal that it would have issued had it been in a position to do so.
5. The reasons for refusal would have related to the unacceptable location of the appeal site outside of the existing physical settlement edge and the consequent impact on the housing distribution strategy and the character and appearance of the area. In addition, the absence of a signed S106 agreement would mean that the proposal would not provide an appropriate level of affordable housing or contributions to education provision and health facilities. Furthermore, there

would be no means to ensure the long term maintenance of public open space, drainage, highways and the ball strike net.

6. Since the Council prepared its original Statement of Case, the appellant submitted a Development Viability Report 2021 (DVR) which, in his view, demonstrated that the proposal would not be viable if it had to include for the provision of any affordable housing and the requested contributions towards education and health facilities. The Council has had the opportunity to respond to the DVR and the matters were discussed at the Hearing.
7. The appellant's appeal submission also includes revised site layout, street elevation and house type plans to facilitate the change of house type on plot 6 from a two bedroom house to a three bedroom house, and the reduction in the pitch of the roof to all house types. Given the timing of the revisions the Council was able to undertake an additional consultation exercise to which I have received responses. Therefore, I am of the view that interested parties would not be prejudiced were I to take the amended plans into consideration. I have therefore proceeded on that basis.
8. Prior to the Hearing the Council advised that it was no longer relying on conflict with Policy E1 of the East Leake Neighbourhood Plan 2013-2018 adopted in 2015 (the NP) as part of its putative reason for refusal No 1. This matter was discussed at the Hearing.
9. At the Hearing the appellant advised that Mr Hilton, his witness regarding viability was not the author of his DVR which had been prepared by Jones Long Laselle whose offices were no longer open. As a consequence, a revised Viability Assessment (VA) and other supporting information was submitted just prior to the Hearing.

Main Issues

10. The main issues are:

- whether or not the proposal makes appropriate provision for infrastructure with particular regard to affordable housing, education and health services;
- whether or not the proposal makes appropriate provision for the long term maintenance of public open space, Suds/drainage, private drive and roads, and ball strike net;
- the effect of the proposal on the identified strategy for growth for the Borough; and
- the effect of the proposal on the character and appearance of the area;

Reasons

Infrastructure

11. Following the submission of further information from Nottinghamshire County Council as Education Authority immediately prior to the Hearing, the appellant is content that a contribution of £104,590 is required towards the provision of a new primary school in the village.
12. Furthermore, there is no dispute between the parties that, given the evidence provided by the Health Authority, there is a requirement for a contribution of

£17,109 as requested by Nottingham University Hospitals NHS Trust in accordance with Policy 19 of the Rushcliffe Local Plan Part 1: Core Strategy 2014 (the Core Strategy) which requires that development meets the reasonable cost of new infrastructure required as a consequence of the proposal. In addition, there is agreement that in accordance with Policy 8 of the Core Strategy the scheme should include four affordable units. The Council's Housing Officer has requested that these should comprise 2 and 3 bed dwellings and that shared ownership and rent to buy affordable housing should comprise the 'intermediate' affordable contribution rather than starter homes or discount market sales housing.

13. Having reviewed the evidence, I am satisfied that the provision of affordable housing and the requested contributions would meet the statutory tests contained in Regulation 122 of the CIL, and the requirements of paragraph 56 of the Framework. The Council is content with the methodology used by the appellant to assess viability, but raises concerns regarding a number of the assumptions that have been used, namely the Benchmark Land Value (BLV), Gross Development Value (GDV), level of external works, profit assumption and assumed acquisition fees. The Council, using its own values for these inputs, asserts that the scheme would be viable with the provision of policy compliant affordable housing together with the requested contributions.

BLV

14. Planning Practise Guidance (the PPG) states that BLV should be based upon the existing use value (EUV), allow for a premium to landowners (including equity resulting from those building their own homes) and reflect the implications of abnormal costs; site-specific infrastructure costs; and professional site fees¹.
15. It is agreed that the existing use of the appeal site is for grazing land and that would result in a value of about £19,240. The DVR considers that the land would be suitable for residential purposes with a value of £148,000 based on achieved sale prices of other land elsewhere appropriate for residential use but without planning permission. That figure is then used for the EUV. However, the site does not have planning permission for housing, nor does it form an allocation within the development plan. In my view therefore the EUV should be based on the existing use of grazing land.
16. The PPG does allow for the value of land for uses other than its existing use (Alternative Use Value). However, the PPG is very clear that if applying alternative uses when establishing BLV these should be limited to those which would fully comply with up to date development plan policies, including any policy requirements for contributions towards affordable housing at the relevant levels set out in the plan. For reasons that I set out elsewhere in this decision, that is not the case here.
17. The second component of BLV is the premium, which the PPG states should provide a reasonable incentive for a landowner to bring forward land for development while allowing a sufficient contribution to fully comply with policy requirements². In the appellant's DVR it is suggested that the premium should be 30% on the EUV (residential) giving a total of £192,400. At the Hearing though, Mr Hilton suggested the incentive should be about ten times the EUV

¹ Paragraph: 014 Reference ID: 10-014-20190509

² Paragraph: 016 Reference ID: 10-016-20190509

(grazing land) giving a total of £192,400, the same figure as in the DVR but reached in a different manner.

18. I understand the appellant's assertion that a 30% premium on the grazing land value of £19,240, would only give an incentive to the landowner of £5,772 to sell the land, which given the prospective uplift in the value of the land for residential purposes, would be unlikely to incentivize the owner to sell and the land would remain in grazing use. However, this is assuming that residential use of the land is policy compliant, which I have found is not the case, and that a sufficient contribution to fully comply with policy requirements has been made. There is nothing before me to demonstrate that the appellant's preferred BLV, by however means it is reached, takes account of the affordable housing requirements and required infrastructure contributions. Furthermore, in the appellant's DVR, what were considered to be comparable examples of land being sold without planning permission achieved between £17,391 and £98,375/acre. The one example of £98,375/acre, the closest to the £100,000/acre assumed for the appeal site, is some distance away in Leicester. I cannot be sure therefore that it is similar to the appeal site in location and individual characteristics.
19. Therefore, I am not persuaded that the appellant's figure of £192,400 is an appropriate BLV that has been robustly calculated in accordance with the PPG.

Gross Development Value

20. There were a number of updates to the appellant's case, regarding sales figures for the proposed houses both prior to and during the Hearing. For the purposes of the appellant's revised VR, valuations from a local estate agent were used for the proposed three house types within the appeal scheme.
21. The Council relies on the asking price for houses within a nearby development within East Leake and, after applying an inverse correlation to take account of the difference in size of the units, reach figures of between £3,063 and £3,895/m² for the proposed units.
22. At the Hearing, the appellant presented evidence of actual sales figures for semi-detached and terraced houses also from a nearby development within East Leake which result in an average sale price of between £2,687/m². Only three of the sale prices are above £3,000/m².
23. The Council has also used the appellants most recent data submitted at the Hearing and applied the inverse correlation and allowed for an increase in price due to the age of the figures to reflect the local market conditions. This gives a figure of £3,401/m² for the smaller units and £2,872/m² for the larger units. The Council is therefore of the view that the GDV used by the appellant is too low.
24. I note that the appellant's figures presented at the Hearing, based on actual selling data rather than asking prices, are from March-December 2020, the earliest therefore being some 15 months old. The market has changed since that time and this is confirmed by a local estate agent who stated that "*the Market has been exceptionally strong in terms of properties selling quickly and achieving high values. This is partly due to the pent up demand from buyers who have wanted to move for some time now being able to. There is a lack of*

homes coming to the market meaning the sales rate is fast and we are currently achieving 99% of asking price across the region".

25. This statement is tempered by a further email from the same estate agent regarding the specific values that had previously been suggested for each house type used in the revised VR, due to their modular construction and the preference for side by side parking rather than the tandem within the proposal. However, the viability calculations have been predicated on the basis of brick built properties, both on the GDV and build costs.
26. I am of the view therefore, that the appellant's actual figures would require some uplift, given their age and the improvement in the local market. In addition, the valuations provided by the local estate agent used in the revised VR, relate only to the three different house types. However, there are variations in the floor space of The Haldon and The Holt mid terraces, end terraces and semi-detached properties creating, in effect, seven different house sizes with consequent different values and inputs into the DVR. Moreover, the housing mix used does not reflect that in the revised plans. Whichever figures are used therefore, I am not persuaded that the appellant's calculated GDV has sufficient accuracy to give a reliable indication of viability of the proposed scheme.
27. I have no doubt that both of the appellant's viability reports have been prepared with professional integrity by suitably qualified practitioners. However, I have not been convinced by the use of the evidence to reach the conclusions input into them regarding the BLV and GDV. I am aware that other matters are also under dispute but, given my findings on these two key inputs into viability matters, I conclude that, on the evidence before me, the appellant has not successfully demonstrated that the scheme would not be viable if it had to include policy compliant affordable housing and the requested contributions.
28. The appellant is of the view that due to the modest size of the housing proposed it would fulfil the requirement identified in evidence supporting the emerging Greater Nottinghamshire Strategic Plan that Rushcliffe has a need for 96 affordable homes per year. In addition, 68.1% of newly forming households are unable to afford to buy or rent a property.
29. However, there would be no proposed discount on the market price and therefore the dwellings would not meet the definition of affordable housing in the National Planning Policy Framework (the Framework). Nor is there any means before me to ensure that the housing would remain affordable in perpetuity such as a legal obligation. Moreover, the Council's Housing Officer expresses a preference for shared ownership and rent to buy rather than discount market sales housing in this location.
30. Therefore, for the reasons above I conclude that the proposal would not make appropriate provision for infrastructure with particular regard to affordable housing, education and health services. There would therefore be conflict with Policies 8, 12, 18 and 19 of the Core Strategy, Policy 43 of the Rushcliffe Local Plan Part 2: Land and Planning Policies 2019 (the LPP2) and Policy H1 of the NP. These require that 20% of housing on sites over 5 dwellings be delivered as affordable homes, and that planning obligations are sought to secure the reasonable cost of the provision of new infrastructure. In addition Policy H1 states that further new residential development above the 400 minimum number within Policy 3 of the Core Strategy will only be supported where it is

- demonstrated that the provision of improved infrastructure, including health centre provision/ improvements, primary school place provision and sewerage capacities, can be achieved in time to serve the needs of the development.
31. The Council also raises concerns regarding the lack of the S106 agreement to secure the long term management and maintenance of public open space, Suds/drainage, private drive and roads, and ball strike net.
32. The PPG states that it may be possible to overcome a planning objection to a development proposal equally well by imposing a condition on the planning permission or by entering into a planning obligation under section 106 of the Town and Country Planning Act 1990. In such cases the local planning authority should use a condition rather than seeking to deal with the matter by means of a planning obligation³.
33. The Council is of the view that in this instance the use of an obligation would be more robust, particularly in terms of enforcement and so that the requirements are readily apparent and binding on future occupiers.
34. While legal agreements may be more robust, I see no reason in this instance, given the scale of the development, why a condition could not be drafted to require a comprehensive submission detailing how the matters involved are to be maintained and managed in the long term which would be enforceable. Indeed, such conditions are included within the Statement of Common Ground.
35. Therefore, for the reasons above I conclude that the proposal makes appropriate provision for the long term maintenance of public open space, Suds/drainage, private drive and roads, and ball strike net. There is therefore no conflict with Policy 16 of the Core Strategy and Policies 1, 17, 18, 19, 32 and 43 of the LPP2 which seek to secure development requirements, effectively manage water courses and flood risk and the delivery of green infrastructure, landscape and open space

Growth Strategy

36. The development plan includes the Core Strategy, LLP2 and the NP. Policy 3 of the Core Strategy allows for urban concentration with regeneration for the whole of Greater Nottingham to 2028. The settlement hierarchy for Rushcliffe to accommodate sustainable development is for development to be primarily directed to the main built up area of Nottingham followed by Key Settlements identified for growth which include East Leake.
37. The scale of proposed development in the Key Settlements is based on a range of factors such as Green Belt impacts, local regeneration needs, accessibility, environmental constraints and the ability to sustain growth based on the capacity of existing or planned services, facilities and job opportunities. This has resulted in a planned growth of a minimum of 400 dwellings at East Leake within Policy 3.
38. It was confirmed by the Council at the Hearing that between 2011 and 2020 844 dwellings had been constructed in and around East Leake. At 2020 planning permission had been granted for a further 559 dwellings, all of which are considered to be deliverable by the Council. More recently a further 51

³ Paragraph: 011 Reference ID: 21a-011-20140306

dwellingings have been granted planning permission⁴ giving a total of 1454 additional dwellingings, against a backdrop of 2595 existing in the 2011 census, effectively an increase of 64% and well above the 400 envisaged within Policy 3.

39. I am mindful of the comments of the LLLP2 examining Inspector who considered that *"Due to the location of East Leake in relation to Nottingham, the identification of further land would put at risk the Core Strategy focus to locate development within or adjacent to the main urban area of Nottingham. In addition, I have had regard to the implications for the character of the village and concerns expressed about the capacity of services and facilities to support additional housing over that already consented... Consequently, further allocation of housing land at East Leake through this Plan would not promote sustainable patterns of development within the Borough nor be consistent with the spatial strategy of the Core Strategy."* Consequently, at that time, no further allocations were made other than on those sites that had recently received planning permission at appeal at a time when the Council was unable to demonstrate a five year housing land.
40. In addition, the Inspector in his consideration of a site at Lantern Lane⁵ found that the level of that development at that time represented a divergence from the spatial strategy for Rushcliffe set out in Policy 3 as while some growth was envisaged to sustain existing settlements, it was not at the scale that was taking place. Therefore, he considered that the proposed development of 195 houses would be at odds with the spatial distribution of housing set out in Policy 3.
41. Nevertheless, he went on to conclude that he was not persuaded that an additional 195 dwellingings at East Leake would materially undermine the overall spatial strategy for the borough, either on its own or cumulatively with other recent permissions in the settlement. However, on further reading of the decision it is clear that this conclusion was reached based on the specific circumstances at that time when he considered Policy 3 to be out of date due to the Council being unable to demonstrate a five year housing land supply. Furthermore, at that time the Council proposed to make up the shortfall in housing supply by increasing the amount of land allocated for housing at the Key Settlements in the LPP2, significantly above the minimum targets for these settlements set out in Policy 3. The resulting distribution would reduce the supply of additional homes in and adjoining the main built area of Nottingham within the plan period and increase the reliance of the spatial strategy on the Key Settlements, in order to deliver a 5 year housing land supply and boost significantly the supply of housing in line with the Framework.
42. That is not the case now, with the allocations having been made in LPP2, including at East Leake, the Council is now able to demonstrate a robust five year housing land supply and there is no meaningful dispute to that by the appellant. Therefore, in that respect Policy 3 is up to date and its policy of the hierarchical approach to development remains sound and in accordance with the Framework.
43. I appreciate that Policy 3 requires a minimum of 400 dwellingings, however the significant amount of provided and committed housing goes considerably

⁴ 20/00888/FUL (the Rempstone Road planning application)

⁵ APP/P3040/W/18/3196537 (the Lantern Lane appeal)

beyond that level. The amount of housing was predicated on amongst other things environmental constraints and ability to sustain growth based on the capacity of existing or planned services, facilities. Furthermore, Policy H1 of the NP seeks to only allow new residential development above the minimum 400 figure where it can be demonstrated that the provision of improved infrastructure including health centre provision/improvement primary school place provision can be achieved in time to serve the needs of the development. I have already found that the appeal proposal would not make appropriate provision for infrastructure to serve its needs. I therefore find conflict with Policy 3.

44. Putting to one side for the moment the strategic requirements for the location of new development, the Council also considers that the appeal site is beyond the physical edge of the settlement and is consequently identified as countryside. Policy 22 of the LPP2 requires that the countryside will be conserved and enhanced for the sake of its intrinsic character and beauty, the diversity of its landscapes, heritage and wildlife, the wealth of its natural resources, and to ensure it may be enjoyed by all. Consequently, development is restricted to that which requires a countryside location, meets an essential rural need or supports rural diversification. The parties agree that this proposal for market housing does not comply with the requirements of Policy 22. However, the appellant is of the view that the appeal site is contained within the built up area of the settlement and therefore should be considered under Policy 11 of LPP2 which details the criteria for development on unallocated sites within that built up area.
45. Settlement boundaries are not defined by the development plan. Paragraph 6.12 of the LPP2 states that in the case of settlements beyond the Green Belt, which are surrounded by open countryside, settlement boundaries could be established through a Neighbourhood Plan. As a matter of fact, in this instance the NP was adopted in 2015 and therefore could not have defined settlement boundaries in response to this paragraph of the LPP2 adopted in 2019. However, the appellant seeks to define settlement boundaries through the combined use of Policies H6 and E1 of the NP.
46. Policy H6 sets out criteria for the consideration of housing developments outside of the existing village built boundary and there is no dispute between the parties that the proposal complies with this policy. I see no reason to disagree. However, Policy H6 was adopted in 2015 prior to Policy 22 of the LLP2 which was adopted in 2019. Paragraph 30 of the Framework states that *once a neighbourhood plan has been brought into force, the policies it contains take precedence over existing non-strategic policies in a local plan covering the neighbourhood area, where they are in conflict ; unless they are superseded by strategic or non-strategic policies that are adopted subsequently.*
47. Therefore, while Policy H6 may be in accordance with the requirements of the Framework, it pulls in a different direction to Policy 22 of the LPP2. Consequently, in accordance with paragraph 30 of the Framework, Policy H6 is superseded by Policy 22. The LPP2 does not make it clear where local policy will override neighbourhood plan policy and where the latter will continue to apply in accordance with advice from the Planning Officers Society. However, that is just advice and not a requirement.

48. I acknowledge that the Council has used Policy H6 in its assessment of the Rempstone planning application. However, I have assessed the appeal on the evidence before me and the requirements of the Framework.
49. I saw at my site visit that the location of the houses and their two storey height together with shallow pitched roofs means that the settlement ridges and views of them would be protected in accordance with the requirements of Policy E1 which is entitled Containment of Built Environment. Paragraph 5.1.3 of the NP states that *containing the settlement within this bowl is critical to maintaining the rural aspect* (within the settlement ridges). However, I remain far from convinced that, given the actual wording of the policy requirements, this defines settlement boundaries either on its own or in combination with Policy H6 even if it were not superseded by Policy 22. If the settlement ridges were to constitute the boundaries for East Leake, that would allow large areas of the Parish available for development. Even taking into account the appellant's suggestion that compliance with Policy H6 as well would effectively provide a settlement boundary, LPP2 is very clear that settlement boundaries *could* be established through a NP, they do not have to be. Furthermore, paragraph 3.122 of the LPP2 in acknowledging that the plan does not identify the settlement boundaries states that the location of the proposal and its relationship to neighbouring buildings and the physical edge of the settlement will determine whether the application is within the settlement or within the open countryside. For example, developments that do not extend beyond the identifiable settlement boundary are considered within the settlement.
50. The appellant draws my attention to *R (o.a.o. Cherkley Campaign Ltd) v Mole Valley DC* [2014] 2 EGLR 98 concerning the relationship between a development plan policy and its supporting text. It was reasoned that *"The policy is what is contained in the box. The supporting text is an aid to the interpretation of the policy but is not itself policy. To treat as part of the policy what is said in the supporting text ...is to read too much into the policy"* However, in my view the supporting text here helps the decision maker to draw conclusions as to whether a site is within the settlement or the open countryside, based on specific site circumstances in each individual circumstance. It seems to me therefore that an assessment of whether the appeal site is within the built up area or beyond the physical edge of the settlement comes down to specific circumstances of its location in relation to surrounding buildings.
51. In this instance the appeal site is an undeveloped parcel of land. It is bounded to the north and a small part of the western boundary by housing on the adjacent modern housing estate (DWH estate). However, this does not provide any significant degree of containment given the very limited housing on the shared boundary and that only the upper parts of the houses are visible above the substantial hedge which would be retained. On the remainder of the western boundary, the land is open and landscaped save for a small parking area. On the opposite side of the road to the north is open countryside. The appellant advised that a planning application has been submitted by the Parish Council to use part of the land to the north as an overspill car park for the playing fields. However, there is very little detail of this proposal before me and the Council confirmed that no decision has been made on the proposal. I therefore give it very limited weight in my assessment.

52. To the west is the large green playing fields together with a part single part two storey pavilion building. There are other sporadic buildings within the countryside to the east until the settlement of Costock is reached. However, paragraph 6.11 of the LPP2 states that existing outlying buildings, or larger clusters of buildings, separated from the identifiable boundary of the settlement by more than a small scale infill plot are within the open countryside and development located between these buildings and the settlement would be subject to Policy 22. In my view the considerable distance between the settlement and these buildings is far more than a small scale infill plot. The proposal on its own includes five houses along the frontage together with a road providing access to the rear of the site.
53. While the playing fields are a more domesticated form of open space, they do form an acceptable form of development in the open countryside as defined by Policy 22 and are not necessarily urban development, especially given the modest nature of the pavilion building, and the very large extent of the playing fields. I was advised that notwithstanding the planning permission in place for a two storey building, the pavilion building would be replaced with one on a similar scale due to the funding available. Whether one or two storeys in height, the relationship to the large area of playing field is unlikely to change. Furthermore, while the proposed building may form a community hub that does not in itself make it part of the built up area of the settlement based on the physical characteristics of the immediate surroundings.
54. Consequently, when travelling towards East Leake along Costock road, the generous set back of the adjacent DWH estate behind the landscaped area (for whatever reason), together with the playing fields and the retention of the mature hedge along Costock Road means that the settlement edge is formed by the housing line of the DWH estate, with a clear demarcation to the appeal site of large mature hedgerow. Similarly, when travelling out of East Leake towards Costock, the area after the older housing on the roadside appears distinctly rural in nature with only glimpses of the DWH estate through the hedgerow and access road. Consequently, even though not adjacent to land in agricultural use, the appeal site is outside of the built up area and is more readily viewed as beyond the physical edge of the settlement and therefore identified as countryside.
55. I note that the 'entrance' signage to East Leake, and the place where the speed limit drops to 30 mph, lies next to the eastern boundary of the sports pitches. While views of the adjacent housing estate can be seen from here, the appeal site remains distinctly beyond that physical edge of the settlement, outside of the built up area, with there being a very rural character at this point.
56. In my view therefore the appeal site falls to be considered under Policy 22 of the LPP2 with which, it is agreed, the scheme is in conflict. Even if I had considered the appeal site to be within the built up area of the settlement, Policy 11 requires that the proposal in terms of scale and location is in accordance with Policy 3 of the Core Strategy which I have already found not to be the case.
57. I am mindful that the Rempstone Road planning application has recently been granted planning permission. However, that site is an existing allocation in the LPP2 and located within the built up area of the settlement. Although the total dwellings on the appeal site with planning permission is in excess of the

allocation in the LLP2, the proposal was viewed by the Council as an efficient use of an allocated site and not harmful to the environment; the character and appearance of the development; or the local infrastructure. I see no reason to disagree, the circumstances surrounding the consideration of the additional 51 dwellings are not the same as those before me now and do not justify me reaching a similar conclusion on the appeal proposals.

58. Concerns were raised by the Ward Councillor regarding the proximity of the appeal site to a bus stop at which a convenient bus service would call. However, there is no dispute between the main parties that the appeal site is less than 1km from the centre of the village and therefore the site is within close proximity to local services, making it an accessible location. I saw this to be the case at my site visit and while the walk to the bus stop is some distance, I am of the view that the appeal site would offer a genuine choice of transport modes for future occupants.
59. Nevertheless, notwithstanding the accessibility of a number of services and facilities for future residents, the development would materially undermine the spatial strategy underpinning the development plan due to the amount of development already built and committed in the area and the consequent effect on local infrastructure which, in this case, I have found has not been robustly demonstrated to be mitigated bringing it into conflict with Policy 3 of the Core Strategy, Policy 22 of the LPP2 and Policy H1 of the NP.
60. The Council has a claimed five year housing land supply of 8.5 years. The Council's current position is in contrast to the position facing my colleague in determining the Lantern Lane appeal. At the present time therefore, the Policies are up to date and I give conflict with them full weight. To develop the appeal site as proposed would be at odds with, and would undermine public confidence in, the plan led system. I am mindful in this regard, that the Framework recognises that the planning system should be genuinely plan led. In my view therefore, this would not be an appropriate site for development having regard to local planning policies that seek to manage the location of new development.

Character and appearance

61. I have found that the appeal site forms part of the open countryside. Its undeveloped nature together with mature hedgerows on the edge of the settlement has a distinctly rural character and appearance. While the housing development to the north of the site forms a relatively hard edge to the surrounding countryside, this is set well back from the road and has minimal visibility from Costock Road. Although more visible from the adjacent playing fields its continuation down to Costock Road through the addition of houses as proposed would present a harsh form of development which I saw that, despite the presence of the adjacent pavilion building, would be visible on approaching East Leake from the east.
62. Furthermore, the implementation of the proposed scheme would require the removal of the mature roadside hedge to allow for an enlarged access road together with visibility splays. The hedge contributes considerably to the rural character and appearance of the area at the entrance into the village. Although the appellant proposes to replace the hedge further back in the site, this would take some time to establish and would be punctuated by the access road and proposed footway allowing views into the development of built form particularly

at the frontage of the site where the setback is significantly less than that on the adjacent site. As a result, there would be views of a more continuous and intensive developed frontage, which would unacceptably encroach into the rural area reducing the openness particularly as the site adjoins open space, and the northern side of the road in this part of East Leake is relatively undeveloped. This would be reinforced through the introduction of further residential paraphernalia such as car parking and refuse bins and be accompanied by increased traffic generation and more intensive domestic activity in and around the buildings all of which would detract from the rural character and appearance of the area.

63. I saw at my site visit that the edge of East Leake is close to the small settlement of Costock to the east. However, given the width of the appeal site and the considerable intervening space between the settlements which would be maintained, I am content that the proposal would not lead to materially harmful coalescence between the two settlements.
64. The Council also objects to the revised roof design of the proposed houses which would be of a much shallower pitch than that originally proposed. The roofs on the houses on the adjacent housing estate have a steep pitch more akin to that originally put forward by the appellant. However, I saw numerous examples within East Leake, both on the main road through the village and in the outlying housing estates, of shallow pitch roofs either as the dominant roof form or located next to roofs with a higher pitch. I do not therefore consider this element of the proposal to be materially harmful to the character and appearance of the area.
65. For the reasons above, although acceptable in some respects, I conclude that the proposal would be harmful to the character and appearance of the area. The proposal would therefore be contrary to Policy 22 of LPP2 and paragraph 170b of the Framework which seek to conserve and enhance the countryside for the sake of its intrinsic character and beauty.

Conclusion and planning balance

66. The proposal would deliver 22 houses with a mix in compliance with Policy H3 of the NP. While I appreciate that the Council is able to demonstrate a five year housing land supply, this is not a cap on development and 22 houses would contribute towards the Government's objective of significantly boosting the supply of homes as required by the Framework. I therefore give appreciable weight to the provision of market housing in this accessible location at this time.
67. The proposed houses would be net zero carbon ready (in line with the requirements of the Future Homes Standard) and have an EPC 'A' rating standard. The number of houses would double those already reaching that standard within the Borough. Paragraph 131 of the Framework states that in determining applications great weight should be given to outstanding or innovative designs which promote high levels of sustainability. However, this is only where they fit in with the overall form and layout of the surroundings. I have found that is not the case here.
68. Nevertheless, low carbon development is a key strand of the Government's ambitions in terms of creating a better quality and more energy efficient

environment. This is a considerable benefit of the scheme which should attract significant weight.

69. There would be biodiversity net gain through the provision of meadow planting and native trees alongside the retention of existing hedgerows. This represents a net gain on the existing semi-improved grassland. I give this moderate weight given the relative size of the site and areas given over to planting and the number of new trees which would be accommodated.
70. There would be economic benefits through the creation of construction jobs and the increased local spend within the economy. I give these modest weight based on the scale of the development.
71. There is no doubt that the benefits of this proposal are considerable, and in that respect the proposal would broadly accord with many policies of the Core Strategy, LPP2, NP and the Framework. However, the harm to the spatial strategy, local infrastructure and the character and appearance brings it into fundamental conflict with Policies 3, 8, 12, 18 and 19 of the Core Strategy, Policies 22 and 43 of the LPP2 and Policy H1 of the NP and therefore the development plan as a whole. Therefore, in the overall planning balance, although considerable, the benefits of the proposal are not sufficient in this case to outweigh the harm I have identified and the conflict with the development plan. Consequently, while Paragraph 154b of the Framework states that when determining planning applications for low carbon development decision makers should approve the application this would only be where its impacts are (or can be made) acceptable. That is not the case here.
72. Therefore, for the reasons set out above, and having had regard to all other matters raised, I conclude, on balance, that the appeal should be dismissed.

Zoe Raygen

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Mr David Wetherill	ET Planning on behalf of Rushcliffe Borough Council
Mr John King	Principal Planning Officer Rushcliffe Borough Council
Mr Dan Hays	ET Planning on behalf of Rushcliffe Borough Council
Mr Will Lawrence	Nottinghamshire County Council

FOR THE APPELLANT

Mr Bob Woolard	Director, Planning and Design Group
Mr Matthew Hilton	HEB Surveyors
Mr Martin Valentine	Appellant Positive Homes
Ms Tricia Valentine	Appellant Positive Homes

INTERESTED PARTIES

Councillor Carys Thomas	Ward Councillor
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DOCUMENTS SUBMITTED AT THE HEARING

- 1 House sale data from the appellant
- 2 *Cawrey v SOS (2016)* EWHC 1198 (Admin)
- 3 Suggested viewpoints for Inspector's site visit from the appellant
- 4 Agreed revised wording for suggested condition 29
- 5 Suggested viewpoints for Inspector's site visit from Councillor Thomas
- 6 Costs application form the Council
- 7 Comments on appellants costs application form the Council

DOCUMENTS SUBMITTED AFTER THE HEARING

- A Comments on the Council's cost application from the appellant
- B Revised comments on appellant's cost application from the Council
- C Final comments on the Council's cost application from the appellant
- D Final comments on the appellant's cost application from the Council