



Appeal Decision

Hearing held on 27 September 2022

Site visit made on 27 September 2022

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 NOVEMBER 2022

Appeal Ref: APP/X2410/W/21/3289048

Land at Main Street, Woodthorpe, Loughborough, Leicestershire

- 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 Andrew Bamber of Mather Jamie for Parker Strategic Land Limited against Charnwood Borough Council.
- The application Ref: P/21/0550/2, is dated 9 March 2021.
- The development proposed is described as: 'outline application with all matters reserved (except for access) for development of up to 120 new dwellings with access from Main Street, Woodthorpe, Loughborough'.

Decision

1. The appeal is allowed and planning permission is granted for an outline application with all matters reserved (except for access) for development of up to 120 new dwellings with access from Main Street at Land at Main Street, Woodthorpe, Loughborough, Leicestershire in accordance with the terms of the application, Ref P/21/0550/2, dated 9 March 2021, subject to the conditions in the attached schedule.

Preliminary Matters

2. I have included 'Land at' and 'Leicestershire' to the address in the banner heading above as it was listed on documentation handed in at the Hearing and more precisely describes the location of the proposed development.
3. Outline planning permission is sought, but with all matters reserved, except for access. I have determined the appeal on this basis.
4. Following the close of the Hearing, a section 106 Agreement (the s.106) signed by both parties was provided on 4 October 2022, which includes all of the planning obligations sought by the Council. I consider these further below.

Background and Main Issues

5. The appeal is against the failure to give notice within the prescribed period of a decision on an application for outline planning permission. Following the lodging of the appeal, the Council considered the application at a committee meeting (the Council meeting) that took place on 26 May 2022, where it was established that the Council is not able to demonstrate a 5-year housing land supply (5YHLS). The Council resolved that it would have approved the application had an appeal not been lodged, subject to various planning conditions and a signed bi-lateral s.106 that would secure various contributions, amongst other things.

6. Accordingly, I identify that the main issues on this appeal are:

- whether the proposed development would prejudice the housing strategy aims of the Council; and,
- whether the proposed development would make adequate provision for: education, libraries, open space, affordable housing, healthcare, Biodiversity Net Gain and sustainable travel (highways).

Reasons

Housing Strategy

7. The emerging Charnwood Local Plan (ECLP) sets out strategic and detailed policies for the period 2019-37 and will replace the adopted Charnwood Local Plan Core Strategy, 2015 (CS) and the saved policies of the Borough of Charnwood Local Plan, 2004 (the CLP). ECLP Policy DS3 through its draft allocation site HA15 (land south of Loughborough) seeks to deliver 723no. dwellings and a new primary school. The appeal site forms part of ECLP Policy DS3(HA15) (HA15) and would provide access to Main Street. Although the possibility of another access serving HA15 from Allendale Road is envisaged.
8. Whilst there is agreement on many matters surrounding the proposed development, there is still dispute surrounding the planning conditions suggested by the Council. Following discussions during the event this dispute was eventually isolated to a single condition surrounding the submission of a masterplan for the development of HA15 that would have to be submitted prior to the submission of a reserved matters application.
9. I fully understand the concerns raised by the Council and other interested parties, including the adjacent landowners for the remaining area of HA15, as the development of this site without regard to the future strategic aspirations within ECLP could undermine the amount of housing delivered through HA15. However, given that the application is an outline application, with all matters reserved, except for access, I am confident that matters such as connectivity within the site and to other areas of HA15 could be satisfactorily addressed through the submission of a future reserved matters application. This is further reinforced through provisions set out within the s.106.
10. Other place making issues, such as layout and landscaping, with particular regard to the westerly area of the site adjacent to Main Street were raised at the event. In this area of the site, a belt of trees is located, set away from the road by a grass verge. However, whilst some drawings have highlighted this area potentially for development, I consider that such matters are not for consideration under this application and would need to be addressed at reserved matters stage. Any drawings that have been submitted with this application, identifying this area of the site for development are treated for indicative purposes only.
11. Whilst ECLP Policy DS3(HA15) requires a masterplan and design brief to be submitted before granting consent, I do not consider that the application before me would undermine the aspirations of delivering the potential level of development anticipated through HA15 if a masterplan was not submitted as part of this application. However, it should be noted that this stance does not diminish the requirements for such documents on future applications.

12. For the reasons given above, whilst there would be minor conflict with ECLP Policy DS3(HA15) through the lack of a masterplan and design brief, I have found that there would be no overall conflict with the Council's proposed development strategy in ECLP Policy DS1. Therefore, when the ECLP is taken as a whole, I find the minor conflict with ECLP Policy DS3(HA15) is clearly outweighed.

Planning Obligation

13. The executed s.106 that has been submitted would provide 30% of the dwellings to be affordable. The s.106 also contains obligations in relation to Open Space, Allotments, Outdoor Sports. Obligations in relation to on and potentially off-site mitigation to ensure that appropriate measures are put in place to protect against the effects of the proposed development on biodiversity.
14. It also makes provision for the submission of a travel plan, monitoring fee and co-ordinator to promote sustainable modes of transport and secures financial contributions for health care, education and library contributions, as well as a monitoring fee. These are all necessary in order to ensure that future users and occupiers of the development have a choice of sustainable modes of transport and to secure improvements to existing infrastructure. The s.106 also makes provision for highway connections, including to other land in separate ownership.
15. In view of the above, I consider the obligations set out in the s.106 are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind. Therefore, they meet the tests within CIL Regulation 122 and those set out in paragraph 57 of the National Planning Policy Framework (the Framework). As such, I have taken them into account in reaching my decision.

Other Matters

16. There is agreement between the main appeal parties that the development is not considered to result in any harm to the significance of the nearby heritage assets, including designated¹ and non-designated² heritage assets. In accordance with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 I have paid special regard to the desirability of preserving or enhancing a listed building or its setting or any features of special architectural or historic interest which it possesses. I agree with the Council's observations and find that the proposed development would conserve the heritage assets in a manner appropriate to their significance in line with the Framework.
17. I have had regard to the considerable number of objections received from local residents and others, including local councillors and a Member of Parliament as part of this appeal. I also note the views expressed by those interested parties who attended the Hearing, some of whom spoke as representatives of local interest groups, expressing a wide range of concerns including, but not limited to the following; loss of a recreational space; drainage; biodiversity; infrastructure; services; character and appearance; Woodthorpe as the last

¹ 80 Main Street, Woodthorpe (Reynalls Farm) which is Grade II Listed (1139035) and One Ash (west of Loughborough Road) which is Grade II Listed (1229859).

² The Great Central Railway

hamlet in Charnwood; highway safety, congestion/fumes and a lack of public transport, amongst other things. However, I note that these matters were considered where relevant by the Council at its meeting on 26 May 2022. Whilst I can understand the concerns of the interested parties, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.

18. I note the concern raised at the Hearing about the way that the Council conducted its meeting and handled the application, but this does not affect the merits of the case or form part of my consideration of this appeal. It is a matter for the relevant parties.

Planning Balance

19. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires this appeal to be determined in accordance with the development plan unless material considerations indicate otherwise.
20. CS Policy CS1 seeks for the majority of future development to be delivered through the sustainable growth pattern, taking a hierarchical sequential approach. This is firstly towards the northern edge of Leicester, then to Loughborough and Shepshed before directing development to service centres, other settlements and finally small villages and hamlets (including Woodthorpe). Due to its countryside location CS Policy CS11 is relevant, and requires new development to protect landscape character, amongst other things.
21. CLP Policy ST/2 defines the Limits to Development of Loughborough and Woodthorpe. The proposed development is outside the defined Limits to Development of Loughborough and Woodthorpe and does not meet any of the exceptions listed in CLP policy CT/1. Therefore, the proposed development is contrary to CLP policies CS1 and ST/2. As such, I consider the proposed development would be in conflict with the development plan as a whole, which I consider should be afforded significant weight. I have also found that there would be some potential conflict with ECLP Policy DS3(HA15).
22. Whilst the parties reach different figures, the current supply of deliverable sites for housing is within a range of 2.43 to 3.04 years. This represents a housing shortfall. In these circumstances, Paragraph 11 of the Framework indicates that housing policies should be regarded as out of date and that there is a 'tilted balance' in favour of granting permission.
23. The adverse impacts of the development would relate to character and appearance and the loss of some best and most versatile agricultural land, both of which would create significant and moderate harm respectively. However, the significant harm to landscape character could be notably reduced through an appropriate layout and screening, which would be a consideration at reserved matters stage and could be secured by means of a suitably worded condition. There is little doubt that the absence of a local bus service to serve the development is not ideal and attracts moderate weight against the proposed development. Although, I recognise that in the future, a bus service may come forward as part of the wider HA15 allocation.
24. Weighing against those impacts, the scheme would provide much-needed market housing, where 30% of the units would be required to comprise

affordable housing. The benefits of providing both market housing and affordable housing would be very significant. There would also be significant economic benefits through the construction phase and the future occupation of the properties. Wherever the Council's actual 5YHLS is situated within the agreed range, the fact remains that the authority does not have sufficient housing land to meet its needs. Even if, the position of 3.04 years was applied, this figure would still represent a notable deficiency.

25. As the site is currently undeveloped, I accept that the harm from this proposed development to landscape character, visual amenity and the loss of some best and most versatile agricultural land would be permanent. Additionally, whilst this scheme is outside the ECLP process, the proposed development does not deviate substantially from its aims that to grant planning permission would undermine the plan-making process. I am therefore clear that the adverse impacts of granting planning permission in this instance would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
26. I conclude therefore that these material considerations mean that in this case the proposed development should be determined other than in accordance with the development plan.

Conditions

27. I have considered what planning conditions would be appropriate in light of the discussion at the Hearing, making amendments and minor corrections, where necessary, to ensure clarity and compliance with the tests contained within Paragraph 56 of the Framework and the Planning Practice Guidance. In addition to conditions relating to the time limit for implementation, for reasons of certainty a condition requiring the development to be undertaken in accordance with approved plans/documents is necessary.
28. A pre-commencement condition relating to the submission of a Reserved Matters application is reasonable and necessary for the avoidance of doubt and to define the permission. Pre-commencement conditions for a Construction Environmental Management Plan; Landscape and Ecology Management Plan; Construction Management Plan and drainage are all reasonable and necessary in the interest of the living conditions of neighbouring occupiers, highways safety and the environment.
29. Pre-occupation conditions are reasonable and necessary for a lighting scheme and the installation of bat and bird boxes to ensure a safe environment for future occupiers and in the interests of biodiversity. A pre-occupation condition is reasonable and necessary surrounding surface water drainage to ensure acceptable living conditions for future and existing occupiers. Finally, a pre-occupation condition surrounding access arrangements and off-site works are reasonable and necessary in the interests of highway safety and the environment.
30. Other conditions have been included surrounding accessible and adaptable homes, noise and ground levels; biodiversity, including badger surveys; landscaping and trees; open space and the public right of way (PROW) where all are reasonable and necessary to ensure acceptable living conditions for future occupiers, ecology, character and appearance and the continued ability for public access and enjoyment of the PROW.

31. For the reasons set out earlier in my decision, I have not included a condition to submit a Masterplan

Conclusion

32. For the reasons given above, I conclude that the appeal should be allowed.

W Johnson

INSPECTOR

SCHEDULE OF CONDITIONS

Time Limit

1) Application for approval of reserved matters shall be made within 12 months of the date of this permission and the development shall be begun not later than 12 months from the final approval of the last of the reserved matters.

Approved drawings

2) The development hereby permitted shall be carried out in accordance with the following plans and documents:

- Location Plan LBS02/019 dated 3/3/21
- Proposed Access Arrangement JNY10416-01 Rev I (Appendix B of Updated Addendum to the Transport Assessment, RPS dated 20/12/21)
- Flood Risk Assessment and Drainage Strategy (WSP, March 2021)
- Noise Impact Assessment (Cole Jarman, 26/3/18)
- Air Quality Assessment (WSP, 2021)

Pre-commencement

3) The development shall not commence until approval of the following reserved matters has been obtained in writing from the local planning authority: - a. layout, b. scale, c. appearance and d. landscaping.

4) The development shall not commence (including demolition, ground works, vegetation clearance) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP: Biodiversity shall include as a minimum:

- a) Risk assessment of potentially damaging construction activities;
- b) Identification of 'Biodiversity Protection Zones';
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
- d) The location and timing of sensitive works to avoid harm to biodiversity features;
- e) The times during construction when specialist ecologists need to be present on site to oversee works;
- f) Responsible persons and lines of communication;

g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
h) Use of protective fences, exclusion barriers and warning signs
The approved CEMP: Biodiversity shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

5) The development shall not commence until a Landscape and Ecology Management Plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority. The LEMP shall include a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all public open spaces, ecological mitigation areas and surface water drainage system. Thereafter, the LEMP shall be carried out in accordance with the approved details.

6) The development shall not commence until such time as details in relation to the management of surface water on site during construction of the development has been submitted to and approved in writing by the Local planning Authority. The approved details shall be adhered to and implemented throughout the construction period, unless otherwise agreed in writing by the Local Planning Authority.

7) The development shall not commence until such time as a surface water drainage scheme has been submitted to and approved in writing by the Local planning Authority. The drainage scheme shall be constructed and completed in accordance with the approved plans before the first occupation of any of the dwellings hereby approved.

8) The development shall not commence until such time as infiltration testing has been carried out (or suitable evidence to preclude testing) to confirm or otherwise the suitability of the site for the use of infiltration as a drainage element, has been submitted to and approved in writing by the Local Planning Authority.

9) The development shall not commence, including any works of demolition until a Construction Management Plan, has been submitted to, and approved in writing by the Local Planning Authority. The statement shall provide for at a minimum:

- a) The parking of vehicles of site operatives and visitors;
 - b) The routing of HGVs to and from the site;
 - c) Loading and unloading of plant and materials;
 - d) Storage of plant and materials used in constructing the development;
 - e) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - f) Wheel washing facilities including type of operation (automated, water recycling etc) and road sweeping;
 - g) Measures to control the emission of dust and dirt during construction;
 - h) A scheme for recycling/ disposing of waste resulting from demolition and construction works;
 - i) Delivery, demolition and construction working hours;
- The approved Construction Management Plan shall be adhered to throughout the construction period for the development.

Prior to occupation

10) Prior to first use and occupation, a detailed outdoor lighting scheme shall be

submitted to and approved in writing by the local planning authority. The scheme shall accord with the recommendation R5 in the Preliminary Ecological Appraisal (Middlemarch Environmental, February 2021) and shall include full details of the proposed lighting and how the scheme has been designed to avoid illuminating bat sensitive areas. The development shall be implemented, and thereafter maintained, in accordance with the approved scheme.

11) Prior to first use and occupation, full details of a scheme for the location of bat and bird boxes, to be integrated into buildings, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the bat and bird boxes shall be installed on that building in accordance with the approved details.

12) Prior to first use and occupation, until details in relation to the long-term maintenance of the surface water drainage system within the development have been submitted to and approved in writing by the Local Planning Authority. The surface water drainage system scheme shall be thereafter managed and maintained in accordance with the approved details.

13) Prior to first use and occupation, until such time as the access arrangements and off-site improvements shown on RPS drawing number JNY10416-01 Revision I 'Proposed Access Arrangement & indicative internal Layout - Phase 1' have been implemented in full.

14) Prior to first use and occupation, until such time as the offsite works shown on RPS drawing number JNY11123-RPS-0100-002 Revision A, 'Park Road Roundabout Highway Proposals' have been implemented in full.

15) No part of the development hereby permitted shall be occupied until such time as site drainage details have been provided to and approved in writing by the Local Planning Authority. Thereafter surface water shall not drain into the Public Highway and thereafter shall be so maintained.

16) Notwithstanding the RPS Framework Travel Plan (version 2 dated 05 October 2021) a revised Framework Travel Plan shall be submitted to and approved in writing by the Local Planning Authority prior to first use and occupation. The revised Framework Travel Plan shall thereafter be fully implemented.

Other

17) The details to be submitted pursuant to condition 3 shall include that 10% of new market homes will meet the Building Regulations Part M4(2) standard for being accessible and adaptable. The affordable homes on the site shall meet the M4(2) and/or M4(3) standards for being suitable for wheelchair users, subject to assessment of viability and/or site-specific constraints.

18) The details to be submitted pursuant to condition 3 shall show all units in compliance with the Nationally Described Space Standards and as accessible and adaptable accommodation.

19) Notwithstanding the submitted Biodiversity Impact Assessment Metric (v2), the details submitted pursuant to condition 3 above shall include a Biodiversity Impact Assessment Metric of the proposed layout.

20) Notwithstanding the Badger Survey (Middlemarch Environmental, January 2021) a Badger Mitigation Statement shall be submitted with any reserved matters application. The Statement shall include:-

- i) how the development has been designed to avoid disturbance of the existing badger sett;
- ii) a timetable for updating the badger survey and recommendations for how any increase in on site badger activity would be addressed.

21) The landscaping details submitted pursuant to condition 3 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.

22) The existing trees and hedgerows identified in the Tree Retention Plan within the Arboricultural Impact Assessment, (Middlemarch Environmental, February 2021) shall be retained and shall not be felled, lopped, topped or uprooted. Any trees removed, dying, being severely damaged or becoming seriously diseased shall be replaced with trees of such size and species as previously agreed in writing by the local planning authority within one year of the date of any such loss, for a period of 5 years from the date development begins.

23) The details submitted pursuant to condition 3 above shall include the following minimum amounts and typologies of open space:-

- An on-site multi-function green space (0.09ha minimum parks provision and 0.13ha minimum amenity green space)
- An 0.58ha on-site natural and semi open space
- An on-site LEAP facility

24) The details submitted pursuant to condition 3 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 thereafter be carried out in accordance with the approved details.

25) The layout details submitted pursuant to condition 3 above shall include a façade noise map identifying potential noise levels at each dwelling within the blue and gold zones shown on Figure 18/0051/F5 (page 19 of the Noise Impact Assessment Report 18/0051/R1 dated 26/3/18). This noise façade map shall be accompanied by a Noise Mitigation Scheme which confirms necessary glazing and ventilation requirements to control noise within habitable rooms and

mitigation for external amenity areas to achieve acoustic standards detailed within BS 8233:2014.

26) The layout details submitted pursuant to condition 3 above shall include:

- i) save for tree removal required to enable the access road hereby approved, no development shall take place within the existing woodland belt adjacent to Main Street, Woodthorpe (identified in the Arboricultural Impact Assessment, Middlemarch Environmental, February 2021) the woodland in this area shall be retained;
- ii) a landscaping buffer between the hamlet of Woodthorpe and the new built development;
- iii) a landscape buffer adjacent to the railway line and the public footpath

27) If any changes to the existing boundary treatment that currently separates the application site from the Public Right of Way (Footpath K35) are required, details must first be submitted to and approved in writing by the Local Planning Authority prior to the first use and occupation of the development. Any alterations proposed should be in accordance with the principles set out in the Leicestershire County Council's Guidance Notes for Developers.

28) No trees or shrubs shall be planted within 1 metre of the edge of the Public Right of Way (Footpath K35). Any trees or shrubs planted alongside a Public Right of Way should be of a non-invasive species.

****End of Conditions****

APPEARANCES

FOR THE APPELLANT:

Killian Garvey of Counsel

Instructed by Mr Wakefield

He called:

Guy Wakefield BA Hons, MRTPI

Agent

Brian Plumb BSc(Hons) CEng MICE MCIHT

RPS Group

Paul Hunt BA (Hons) LARTPI

Howes Percival

FOR THE LOCAL PLANNING AUTHORITY:

Hugh Richards of Counsel

Instructed by Charnwood Borough Council

He called:

Susan Garbutt BA (Hons) DipTP MRTPI

Charnwood Borough Council

Helen Knott MRTPI

Charnwood Borough Council

Karol Jakubczyk BA (Hons) BTP MRTPI

Charnwood Borough Council

Geoff Brown BSc MA MRTPI

Charnwood Borough Council

INTERESTED PARTIES:

David Pendle on behalf of the Bowler Family
David Sangwine
Jane Hunt MP
Cllr Anne Gray
Dr Satbir Jassal

Marrons Planning
Woodthorpe Residents Assoc.
Member of Parliament
Charnwood Borough Council
Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

The following documents were submitted and accepted at the Hearing:

ON BEHALF OF THE APPELLANT:

- Appearances on behalf of the Appellant
- Hard copies of core documents (6no folders) that have already submitted electronically to the Planning Inspectorate.
- Draft Deed of Planning Obligation Under Section 106 of the Town and Country Planning Act 1990 (Received by email dated 26 September 2022)
- Statement of Common Ground on Housing Land Supply (Received by email dated 23 September 2022)
- Note on Section 106 Agreement with superseded draft Section 106 Agreement (Received by email dated 23 September 2022)

ON BEHALF OF THE LOCAL PLANNING AUTHORITY:

- Update for Inspector; Planning Guidance for Biodiversity (update) 9 June 2022 and Monitoring fees for Section 106 agreements (update) 9 February 2022 (Received by email dated 15 September 2022)

DOCUMENTS SUBMITTED FOLLOWING THE CLOSE OF THE HEARING

- Final S106 Agreement

****End****