



Appeal Decision

Inquiry held on 13 - 16 June 2023

Site visit made on 16 June 2023

by **R Norman BA(Hons), MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9th November 2023

Appeal Ref: APP/X2410/W/23/3316574

Land off Barkby Road, Queniborough, Leicestershire LE7 3FB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by David Wilson Homes East Midlands against the decision of Charnwood Borough Council.
 - The application Ref P/20/2380/2, dated 30 November 2020, was refused by notice dated 9 December 2022.
 - The development proposed is an outline application for up to 150 dwellings, together with new open space, landscaping and drainage infrastructure, with all matters reserved except for access (as amended to include proposed junction improvement works at Barkby Road cross roads, received 20/05/2022).
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Decision

1. The appeal is allowed and planning permission is granted for an outline application for up to 150 dwellings, together with new open space, landscaping and drainage infrastructure, with all matters reserved except for access (as amended to include proposed junction improvement works at Barkby Road cross roads, received 20/05/2022) at Land off Barkby Road, Queniborough, Leicestershire LE7 3FB in accordance with the terms of the application, Ref P/20/2380/2, dated 30 November 2020, subject to the conditions in the attached schedule.

Preliminary Matters

2. The proposal was submitted in outline with only access committed at this stage. All other matters (scale, appearance, layout and landscaping) are reserved for later consideration. Conceptual plans showing a possible site layout have been submitted and I have considered these as illustrative only.
3. Two legal agreements have been submitted comprising a Section 106 Agreement¹ and a Unilateral Undertaking². I will return to these later on.
4. Prior to the Inquiry, the Appellant sought to put forward plans showing the addition of a tree and landscaping belt along the southern boundary of the appeal site on adjacent land. The Council considered that these plans should not be accepted. I have had regard to the Holborn Studios³ judgement and the guidance that the appeal process should not be used to evolve a scheme. On

¹ Section 106 Agreement between Charnwood Borough Council, Leicestershire County Council, John Edmund Mansell and Jane Mansell and BDW Trading Limited dated 4 July 2023.

² Unilateral Undertaking by John Edmund Mansell and Jane Mansell, BDW Trading Limited to Leicestershire County Council dated 27 June 2023

³ Holborn Studios Limited v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

careful consideration, I find that the nature of the amendment and the scale of the change in relation to the proposed scheme as a whole would not amount to a level of change that would be unacceptable nor would prejudice any party. The Council duly carried out a further consultation on the revisions which I find to be sufficient given the scale and nature of the change. As such, I am satisfied that no party would be unfairly prejudiced by the consideration of the amended plans to include the landscaping belt.

5. Following the Inquiry, the Council provided updates on the progress of the Local Plan examination⁴. The Appellant also provided comments on the update. I will return to this below.

Main Issues

6. The main issues are:

- The effect of the development on the character and appearance of the area including the Area of Local Separation;
- Housing land supply, including affordable housing, and the policy implications; and
- Whether the development would provide acceptable contributions towards infrastructure.

Reasons

Character and appearance and the Area of Local Separation

7. The appeal site is located on the edge of Queniborough and is adjacent to the existing built form. It currently comprises an agricultural field and for the purposes of the development plan outside of the defined settlement. It is located within an Area of Local Separation (ALS). Adjacent to the appeal site are existing dwellings along Avenue Road, Barkby Road and Chestnut Close and a tree belt runs along the southern boundary of the site. The proposed development would introduce up to 150 dwellings into the appeal site. Access to the proposed development would be via Barkby Road.
8. Policy CT/2 of the Charnwood Local Plan (2004) (Local Plan) relate to development in the countryside. It seeks to ensure that development does not harm the character and appearance of the countryside. Policy CT/1 of the Local Plan considers the Areas of Local Separation and states that development within these areas of generally open land will be strictly controlled. The policy then goes on to list a series of developments that may be acceptable within these areas. Local Plan Policy CT/4 specifically considers that in areas of local separation, development acceptable in principle will only be permitted where the location, scale and design of development would ensure that the predominantly open and undeveloped character of the area is retained and the already narrow gap between settlements is not reduced. Policies CS2 and CS11 of the Charnwood Local Plan 2011 – 2028 Core Strategy (2015) (Core Strategy) require high quality design and seek to protect the predominantly open and undeveloped character of the ALS and clearly maintain the separation between settlements is clearly maintained.

⁴ Charnwood Local Plan Examination Letter dated 21 August 2023 and emails dated 26 September 2023 and 27 September 2023

9. At present, the settlements of Queniborough and Syston are separated by the ALS mainly comprising agricultural fields, part of which is the appeal site. The parties agree that the development would not result in physical coalescence between Queniborough and Syston⁵ and therefore the key consideration is whether the development of the appeal site would result in the erosion of this sense of separation and the impact on the separate identities of the two settlements.
10. The narrowest part of the gap is currently along Melton Road, nevertheless, still provides a clear break between the end of one settlement and beginning of the other. Homestead Farm is located within this area of land, however is set back from Melton Road and, as such, does not diminish the sense of leaving one settlement and entering the other. Along Barkby Road, the gap is wider, comprising more agricultural fields extending south to the Barkby Road, Queniborough Road crossroads. There are sporadic properties long this stretch of road but it retains its sense of open, rural landscape. From the appeal site, the settlement of Syston is visible across the landscape however is distinctly separate from Queniborough.
11. The development of the appeal site would serve to reduce the amount of open land between the two settlements in physical terms. However, the appeal site is essentially bounded on three sides by existing development. To the north of the site are existing dwellings within the settlement itself, to the west lies a developed commercial and industrial estate, and across Barkby Road to the east and south east is an existing housing estate, the Boonton Meadows development. Given the presence of the existing properties, I consider the development of the appeal site would sit within the existing confines of the built form. Furthermore, whilst it would reduce the distance between Syston and Queniborough when measured along Barkby Road, a substantial distance between the settlements would remain along this road.
12. I find that, although the proposed dwellings would be partially visible from along parts of Melton Road, this would not be to a scale or degree that would alter the perception of separation from this location within the ALS. This area along Melton Road would remain the narrowest part of the ALS and I find that, as a result of the distance to the appeal site and the level of visibility that would be likely, there would be no sense of erosion of the function of the ALS and it would remain perceptible that you were leaving one settlement and entering into the other.
13. Whilst I find that there would be little adverse impact on the ALS from Barkby Road and Melton Road, there is also a public right of way, referenced as I84, which runs from Avenue Road in Queniborough, diagonally through the ALS, including the appeal site, and adjoins the footpath in the estate in Syston adjacent to Wallace Healey Close. This provides a direct connection between the two settlements for pedestrians and other users and both settlements can be seen various points along the footpath.
14. The development of the appeal site would encompass a relatively large proportion of this public footpath and it is indicated that a formal connection through the proposed development would be provided. This would result in a change in character of this part of the footpath and a significantly different experience for users of this part of I84. I have been provided with a number of

⁵ Landscaping Statement of Common Ground paragraph 5.2

visualisations from within the site, the footpath and surrounding areas which demonstrate that for a user of the footpath, they would emerge from the development into the ALS at a closer point to Syston before they would experience the separation between the settlements. However, I find that there would still be a reasonable length of the public footpath which travels through the fields. Whilst the two settlements would be perceived as being much closer together, their separate identities would still be appreciated and a distinction between the two would remain.

15. I have been provided with a number of measurements between various points between the settlements to show the level of reduction. I have considered these however, for the above reasons I find that the development of the appeal site would not unacceptably harm the function or perception of the ALS in this instance.
16. As part of the emerging Charnwood Local Plan 2021 – 2037 (ELP) housing allocations have been proposed to the edge of Syston. These would see the settlement of Syston extend further towards Barkby Road, thus reducing the distance between Queniborough and Syston along this stretch of road. Nevertheless, I consider that even if the emerging allocations were to be developed, a sufficient stretch of the ALS would remain between the appeal site and the allocations to give a clear sense of separation and reiterate that along Barkby Road the Boonton Meadows development already stretches further along to the south.
17. The landscape and visual impacts of the proposed development have also been raised. The proposal is in outline at this stage with only access committed. Therefore matters such as the scale, external appearance, landscaping and layout have not yet been committed. Indicative plans have been provided which show a potential arrangement within the site however.
18. The appeal site is located within the Wreake Valley Landscape Character Area and the High Leicestershire NCA 93⁶ and the application was accompanied by a Landscape and Visual Appraisal (LVIA)⁷ which, in addition to considering the role and function of the ALS, assessed the likely impacts of the development on the landscape and visual character of the area. The appeal site forms a parcel of land classed as PSH316 and has been assessed as having a moderate landscape sensitivity in relation to 2 – 3 storey residential housing⁸.
19. The proposed development would have some adverse visual effects on the surrounding area as a result of introducing a number of houses and associated infrastructure into a currently undeveloped site. However, I find that as the site is adjacent to the edge of the settlement and bounded on three sides by built form, these impacts would be limited to those experienced within and in proximity to the site itself. From the wider area, whether it be along Barkby Road, the public right of way or Melton Road, the development would be seen against the backdrop of the existing residential developments. Accordingly, the adverse impact would be highly localised and limited in its overall significance.
20. Furthermore, the development could include a landscaping corridor to the southern boundary of the site and planting throughout and to the other

⁶ Landscape Statement of Common Ground paragraphs 4.4 – 4.6

⁷ Golby & Luck Landscape Architects – Landscape and Visual Appraisal Ref: GL0673

⁸ Landscape Sensitivity Assessment of SHLAA Sites – LUC, March 2019

boundaries. Whilst this would take time to establish, over time this would provide a degree of mitigation and serve to soften the overall visual impacts of the proposal on the landscape character of the surrounding area.

21. As the proposal is in outline at this stage, reserved matters would be submitted which would ensure that any design, layout and scale of the properties themselves could be controlled to ensure that they do not have unduly harmful visual impacts on the immediate locale or the wider surroundings. From the indicative plans submitted to date, and given the existing dwellings in the area, I am satisfied that a suitable development could be achieved on this site that would not harm the visual character of the area.
22. I acknowledge that the introduction of a housing estate into what is currently an open, undeveloped field would result in a substantial level of change, but change is not necessarily harmful or unacceptable. I consider that, whilst change would inevitably occur as a result of the proposed development, it would not be unduly harmful, effects would be highly localised, and the scheme could be suitably mitigated.
23. Prior to the inquiry, the Appellant provided a revised scheme which would include a landscaping belt outside of the southern boundary of the appeal site on land also in the control of the Appellant. This would provide a softer landscaping buffer to the edge of the development in order to provide a softer transition between the built form and the ALS which was formulated to address the comments of the Council's Landscape Officer⁹. The indicative plans also show an area of landscaping within the southern edge of the site, with dwellings positioned away from the boundary.
24. The provision of the tree belt would serve to soften the edge of the built form but conversely, over time would further reduce a strip of the ALS from an open area to a densely wooded location, which may further reduce the perception of open character associated with the ALS. I consider that, although this would further reduce the gap in physical terms, it would have a very different character and appearance to dwellings and would not therefore result in harm to the function or appearance of the ALS. Nevertheless, I have had regard to the character of the existing settlement edge, with dwellings backing onto the ALS on Avenue Road, the edge of the commercial site and the dwellings fronting onto Barkby Road and find, in character and appearance terms, that the proposed development, without the additional landscaping would reflect the existing character and would not appear at odds with the surroundings. Furthermore, the careful consideration of the layout at Reserved Matters stage could ensure that suitable landscaping is provided within the site at the southern boundary to mitigate any visual and character impacts. Accordingly, whilst the additional landscaping would improve the appearance and serve to further mitigate the proposed development, I do not consider it to be necessary to make the development acceptable in this case.
25. Accordingly, I find that the proposed development would not result in unacceptable harm to the ALS, would not result in a reduction of the existing narrowest point, and the distinction between and identities of the settlements of Queniborough and Syston would be adequately retained. Furthermore, the proposed development would not harm the character and appearance of the area. As such, it would comply with the requirements of Policies CT/2, CT/4

⁹ CD3.21

and EV/1 of the Local Plan and Policies CS2 and CS11 of the Core Strategy. There would be a breach however of Policy CT/1 of the Local Plan which seeks to restrict the development of land lying outside of the defined limits of a settlement to those listed within the policy, none of which include new housing developments. I will return to the weight given to this policy in due course.

26. The proposal would also comply with Policy Q6 of the Queniborough Neighbourhood Plan 2019 – 2028 (February 2021) (QNP) which seeks to maintain the ALS between Queniborough and Syston, amongst other things.

Housing land supply

27. It is agreed between the parties that the Council cannot currently demonstrate a five-year supply of housing land, with the supply currently standing at 4.27 years. I note that this is an improvement on previous years, nevertheless there is still a shortfall, albeit not extensive.
28. The proposed development would provide 40% affordable housing which would equate to up to 60 dwellings. Policy CS3 of the Core Strategy requires 40% affordable housing provision on sites of 5 dwellings or more in Queniborough. The proposed provision accords with this requirement. Furthermore, ELP Policy H4 will require 30% which is exceeded by the development.
29. In terms of affordable housing, the parties are in agreement about the need for affordable housing and the fact that the Council have not fully met this need. I have had regard to the findings of all of the submitted documents, the most recent of which include the Leicester and Leicestershire Housing and Economic Needs Assessment (Updated June 2022) and the Housing Needs Assessment (September 2020). Given the level of identified need, which is not disputed, and the appellant's provision of 40% affordable housing I consider that this makes an important contribution to the stock of affordable housing within Charnwood and therefore carries significant weight.
30. The ELP is moving through the examination process and has been progressing. It is now at a relatively advanced stage. However, whilst further progress has been made, I have not been provided with full details of the remaining outstanding matters which would give a level of assurance of its likely adoption date, which would not therefore lead me to reconsider my overall conclusions.
31. Taking into consideration all of the submitted information and reports, I find that there is an unmet need for housing and a demonstrable requirement for the provision of affordable housing. Accordingly, I find that the provision of market housing and affordable housing should carry substantial weight in the planning balance given the levels of need and delivery to date. In terms of the provision of affordable housing the provisions are compliant with Policy CS3 of the Core Strategy and exceed that of the ELP.

Infrastructure Contributions

32. Since the application was refused, legal agreements have been provided which include provisions for infrastructure contributions including education, allotments, NEAP and outdoor sports, bus stops, a travel plan including bus passes and travel packs, library facilities, waste, tree replacement and maintenance, as well as the provision of biodiversity impact assessments, affordable housing and the provision of on-site open space.

33. A point of dispute remains in relation to infrastructure contributions in relation to a healthcare contribution. The Leicester, Leicestershire and Rutland Integrated Care Board (LLR ICB) have requested contributions in order to mitigate the impact of additional people registering with local healthcare providers as a result of the proposed development.
34. The surgeries that would be likely to be impacted upon as a result of the proposed development are The County Practice and The Jubilee Medical Practice, which are both located within the Syston Health Centre¹⁰. It has been highlighted that these surgeries are very busy, already providing extended hours and at capacity. The practices are not, however, closed for additional patients. Nevertheless, it has been demonstrated that GP surgeries are only closed to new patients in very exceptional circumstances and therefore I do not consider that the fact that they are still accepting patients to be a wholly reliable indicator that the surgeries have capacity.
35. The Appellant has raised concerns that, as the NHS provide funding for the expansion of doctors' surgeries, that any contributions made from the development would amount to double funding. However, the ICB highlighted the different funding schemes and legal mechanisms for reimbursement which would ensure that reimbursement of Section 106 money spent on improving or expanding the surgeries would not occur. I am therefore satisfied that double funding would not occur.
36. I have had regard to the assessment of clinical rooms and the practice workforce at the surgeries¹¹. The requested contribution has been calculated using a standard formula and whilst it is difficult to anticipate the exact level of new patients that would arise from the proposed development, the formula doesn't seem to take into account the fact that some people may be moving in from the existing area and therefore already be registered at these practices, or may wish to remain at their existing practices. Accordingly, whilst I accept that many people want to be registered at their local practice and being registered elsewhere can have implications for referrals, it has not been demonstrated how the development would significantly impact on the identified local practices and I am not satisfied that the formula is sufficient to make it clear how the capacity would be increased and accordingly justify the amount requested. I therefore find that, based on the evidence before me, it has not been justified that the healthcare contribution is necessary to make the development acceptable and therefore fails to meet the relevant tests.
37. My attention was drawn to an appeal decision¹² where the matter of NHS contributions was considered and found to be necessary. However, I do not have the full details of the affected practices, nor the evidence presented in this case. I also note this appeal decision relates to a different location not within the same Council area. As such, I cannot reasonably conclude that this is sufficiently comparable to the case before me to lead me to a different outcome in this instance.
38. In terms of the other infrastructure provisions not disputed by the parties, I have been provided with two signed legal agreements as well as a summary of the Heads of Terms.

¹⁰ CD8.77 Response to Mr Hunter

¹¹ Appendix 1, Appendix 2 and Appendix 3 of the Rebuttal Proof of Evidence of Sarah Shuttleworth

¹² APP/Q3305/W/22/3311900 included in Rebuttal Proof of Evidence of Sarah Shuttleworth

39. I have been provided with a CIL compliance statement¹³ which details the justification for the requested contributions relating to libraries, waste, primary education, SEND education, Sustainable travel and highways infrastructure. This provides details of the method of calculating the requirements and, in respect of these contributions, are sufficient to demonstrate that these are directly related to the development and fairly and reasonably related in scale and kind. I therefore find that the tests have been met and these contributions are justified.
40. I have concluded above that whilst the landscaping buffer would be an improvement to the southern boundary of the appeal site and mark a softer transition between the development and the Area of Local Separation, it would not be necessary to make the development acceptable. As such, the matter of the provision of the buffer can be agreed between the Council and Appellant and this provision does not take effect as per paragraph 3.3.3 of the bilateral Section 106 Agreement.
41. In addition to the bilateral Section 106 Agreement, the Appellant has provided a signed Unilateral Undertaking dated 27 June. This makes provision for a voluntary tree replacement contribution from the Appellant to be paid to Leicestershire County Council, prior to the commencement of the development. It relates to the junction improvement works at the crossroads at Barkby Road, Syston Road, Queniborough Road and Rearsby Road. The Appellants are providing this as a voluntary contribution.
42. I have considered the content and structure of the submitted legal agreements and have found them to be legally sound and I am satisfied that their content would be suitably enforceable. In conclusion, I find that it has not been adequately demonstrated that the healthcare contribution requested by the LLR ICB meets the necessary tests. Accordingly, the development would provide the necessary contributions towards infrastructure through the provision of the legal agreement. I will return to the legal agreements shortly. The development would therefore comply with Policies CS3, CS13, CS17 and CS24 of the Core Strategy and the Housing Supplementary Planning Document.

Other Matters

43. I have been provided with a number of other appeal decisions concerning a number of different sites and developments, however these were not specifically referred to during the Inquiry. I note that some of these concern different areas, policies and considerations. Therefore, I do not have sufficient information before me to conclude that these are wholly comparable to the scheme before me.

Local Representations

44. Objections have been received from Queniborough Parish Council, local councillors and residents concerning, in addition to the above matters, impact on local infrastructure, highway safety, loss of agricultural land, impacts on wildlife and Biodiversity Net Gain, loss of living standards and light and privacy, increased pollution, flooding, other homes for sale in Queniborough, overdevelopment, other new builds being constructed, lack of community

¹³ Leicestershire County Council Community Infrastructure Levy Statement dated 11 April 2023

- cohesion, impact on green belt land, lack of visitor parking and inadequacies in the illustrative plans and concerns over the proposed layout and design.
45. Regarding the impacts on highway safety the proposal has been supported by a number of transport reports including a Transport Assessment and Travel Plan and the development would involve improvements to the junction at Barkby Road, Syston Road, Rearsby Road and Main Street. I have also had regard to the various consultation responses from the Leicestershire County Council Highways Team who concluded that they had no objections subject to the imposition of conditions. Regarding the need for visitor parking, this is a matter that would be addressed as part of any reserved matters application submission.
46. The development would result in the loss of an area of Grade 2 agricultural land which is of a good and was being used to grow crops at the time of my site visits. However, the scale of the area of land to be lost would not be extensive and would not therefore result in significant adverse impacts that would outweigh the benefits of providing housing in this instance.
47. The original application was accompanied by an Ecological Survey¹⁴ and further biodiversity net gain information, great crested newts information and biodiversity impact assessments have also been provided¹⁵. The appeal site comprises an area of open, agricultural land with some boundary vegetation with no wildlife or ecological designations. The appeal proposal would generate a Biodiversity Net Gain of around 7.3%, which would increase to around 12% should the additional planting belt be provided. The Council's ecologist has raised no objections in principle and conditions can be imposed to secure the necessary mitigation measures or further surveys. I am therefore satisfied that matters of wildlife and ecology can be satisfactorily addressed and that there would be no undue harm arising from the development in this regard.
48. In relation to flooding and pollution the proposal has been accompanied by a Flood Risk Assessment and Drainage Strategy¹⁶. The appeal site is located within Flood Zone 1 which is a low-risk area. I am satisfied that the submitted reports adequately address matters of flood risk and pollution and I have been provided with little evidence which would lead me to question the findings. Furthermore, I note the consultation responses from the Lead Local Flood Authority and Environment Agency who raise no objections and I am satisfied that the submitted investigations and suggested conditions would ensure that there would be no flood or pollution risk to the site or surrounding area as a result of the proposed development.
49. Whilst there may be other homes for sale in Queniborough and other new dwellings being constructed this is not a reason to preclude further development within the area.
50. Regarding concerns over the design and layout and adequacy of the indicative drawing, this is an illustrative suggestion of how the site could be developed and is not committed at this stage. The final layout and design would be detailed within any reserved matters applications.

¹⁴ Reference RSE_4406_01_V1 Preliminary Ecological Appraisal

¹⁵ CD2.11, CD2.12, CD2.13 and CD2.14

¹⁶ CD1.12 and CD1.13

51. The proposed dwellings would sit adjacent to the existing built form with links to the existing settlement and I have little before me that would lead me to have concerns with the ability of future residents to integrate with the existing community.
52. I note the reference to impact on green belt land by a local resident, however this site is not located within a designated green belt.

Planning Balance

53. The proposal would conflict with Policy CT/1 of the Local Plan as a result of its location outside of the main defined settlement. I find that the proposal would comply with Policies CT/2, CT/4 and EV/1 of the Local Plan, CS2, CS3, CS11, CS13, CS17 and CS24 of the Core Strategy and QNP Policies 6 and 14.
54. The shortfall in the Council's five-year housing land supply means that the tilted balance in Paragraph 11d) of the National Planning Policy Framework (the Framework) is engaged. Therefore, the policies which are most important for determining the application are out of date. However, although the application of paragraph 11 d) renders the policies out of date, it does not mean that no weight should be given to them. It is therefore necessary to consider their consistency with the Framework and the weight that can be given to them.
55. Turning to the policies, those that are considered to be most important for the determination of the appeal are agreed between the parties¹⁷. These comprise saved Policies ST/2, EV/1, CT/1, CT/2 and CT/4 of the Local Plan, policies CS1, CS2 and CS11 of the Core Strategy, policies Q6 and Q14 of the QNP and policies DS1, DS3, C1, EV1 and EV4 of the Emerging Local Plan. The Council and Appellant agree that policies ST/2, CT/1, CT/2, CT/4 CS1, CS11 and Q6 are out of date¹⁸ as a result of the Council's 5-year supply of housing land shortfall.
56. Policy CS1 of the Core Strategy directs development to the most sustainable locations and sets out a settlement hierarchy. However, it is based upon housing numbers which are now out of date, and I therefore give this policy limited weight.
57. Core Strategy Policy CS2 relates to design principles and the need to achieve high quality design and it is agreed between the parties that this policy remains consistent with the Framework and is therefore up-to-date and carries full weight. Similarly, Policy EV/1 of the Local Plan and Q14 of the QNP relate to the principles of design of new development and the character of the area and provides criteria to be met. These policies are broadly consistent with the Framework and therefore carries full weight.
58. Policy CS11 relates to the character of the countryside and provides a list of criteria to be met. It also seeks to protect the character of ALS and maintain the separation. Council considers this policy to be up to date and consistent with the Framework. In addition, Policy Q6 of the Neighbourhood Plan reflects and links to Policy C11 of the Core Strategy. I find that these policies are consistent with the Framework and therefore carry full weight.
59. Policy ST/2 of the Local Plan relates to the supply of housing land. It seeks to limit development to allocated sites and land within the development limits and

¹⁷ Statement of Common Ground February 2023 paragraph 49

¹⁸ Statement of Common Ground February 2023 paragraphs 53 and 54

is inconsistent with the provisions of the Framework. As such, limited weight can be given to this policy.

60. Local Plan Policy CT/1 refers to Areas of Local Separation. Both parties consider this policy to be out of date. The Council still consider that significant weight should still be given to any breach of this policy however the Appellant is of the view that limited weight should be given. However, I find that this policy applies a restrictive approach to development in the countryside and are not consistent with the Framework. As a result, limited weight can be given to this policy.
61. It has been accepted by the parties that Policy CT/2 of the Local Plan is not relevant as it relates to development within the countryside and the appeal site is defined as being within the ALS rather than within the countryside.
62. Policy CT/4 of the Local Plan relates specifically to areas of local separation. It identifies a list of criteria that should be met in order for development within an ALS to be permitted and includes the retention of the open and undeveloped character of the area and ensuring that the already narrow gap between the settlements is not reduced. This policy, whilst out-of-date, remains consistent with the Framework and is therefore given full weight.
63. ELP Policies DS1, DS3, C1, EV1 and EV3 are all identified as relevant. The ELP is progressing, and the Council consider that moderate weight should be given to these and that significant or very significant breaches occur as a result of the proposed development. ELP Policy EV1 seeks to ensure that new development would protect and reinforce landscape character and local distinctiveness and maintain the separate identity of towns and villages. Policy EV3 of the ELP seeks to protect the open and undeveloped character of an ALS and restrict development to those that meet the listed criteria. Policy DS1 sets out the overall spatial strategy for Charnwood including the housing requirements and DS3 makes reference to the emerging housing allocations. ELP Policy C1 seeks to manage and protect the largely undeveloped and character and beauty of the countryside through a set of criteria to be met.
64. I have had regard to the content of the letter provided by the Council, dated 21 August 2023, and the emails dated 26 and 27 September 2023 in relation to the progress of the local plan examination. However, whilst this shows progress in the examination process, they highlight the consultation process and that there may be unresolved objections remaining and does not refer specifically to the other matters highlighted during the inquiry. Whilst I therefore accept that moderate weight can be given to the ELP policies, I consider that any breaches should not be given significant weight but rather limited weight, as the level of remaining objection to these policies is not clear and it remains unclear when the likely adoption of the ELP will take place.
65. Turning to the benefits of the proposal, it would result in the provision of market housing towards the Council's shortfall, the provision of affordable housing to meet an identified need within a sustainable location to which I give significant weight. The provision of public open space and play areas would attract substantial weight as the provision is over and above policy requirements. The proposal would also give rise to economic benefits as a result of short-term construction employment and long-term benefits including additional expenditure from additional residents and additional council tax and I give this moderate weight.

66. There would also be environmental benefits arising from the proposed development, including additional planting, off-site planting in relation to the junction improvements and around a 7% biodiversity net gain without the additional landscaping buffer. Collectively, I give these moderate weight in the planning balance.
67. As identified above, the tilted balance is engaged in this instance, and taking all of the above in the balance, I find that the harms arising from the proposed development would be significantly and demonstrably outweighed by the benefits identified above. Therefore, whilst there is conflict with Policy CT/1 and therefore the development plan as a whole, there are sufficient material considerations to indicate that planning permission should be granted in this instance.
68. I have had regard to the provision of the landscaping belt as shown in the revised indicative plans and find that this would represent an enhancement to what is already an acceptable scheme. Given that I have found that the development as originally proposed would be acceptable, it is not necessary for the additional planting belt to be provided. As such, it is a matter for the Council and Appellant to discuss and not for me to impose that this element of the proposal is brought forward.

Conditions

69. In addition to the standard time limit conditions, I have imposed a condition listing the approved plans as this provides certainty. I have reduced the time limits for submission of reserved matters and the commencement of development to ensure that the development contributes to the housing land supply and affordable housing need in a timely manner. The Council have provided a list of suggested conditions which I have considered against the tests in the Framework and the Planning Practice Guidance.
70. Conditions 5, 6 and 11 are necessary to ensure that the proposed development would not adversely impact the character and appearance of the area. I have imposed condition 7 to ensure that trees and hedges are sufficiently protected throughout the course of construction. It has been necessary to impose conditions 8, 10, 12 and 22 in the interests of protecting the living conditions of existing and future residents.
71. Condition 12 is also necessary to ensure that sufficient details of the children's play areas are submitted as the standard Reserved Matters condition refers to landscaping however does not specify the submission of the details of these areas.
72. I have included condition 9 in the interests of protecting the living conditions of existing and future occupiers and the character and appearance of the surrounding area, as well as to ensure that there are no adverse impacts on ecology from light levels. Conditions 13, 18, 19, 20 and 21 are imposed in order to ensure that the site is safe for future occupiers in relation to contamination and flooding and to ensure that the systems put in place are suitable to protect the surrounding area also.
73. Conditions 14 and 15 are necessary in the interests of highway safety. Condition 16 is necessary to promote sustainable modes of transport. I have imposed condition 17 in order to protect the Public Right of Way and its users.

74. I have not imposed the suggested condition seeking to restrict the heights of the dwellings as this is something that can be reasonably controlled as part of subsequent reserved matters applications. I have also not included a condition requiring a landscape management plan as this is sufficiently secured through the submitted legal agreement. It is not necessary for me to include a condition relating to the need for a Landscape and Biodiversity management Strategy as this too has been secured within the legal agreement.
75. Conditions 6, 7, 8, 17, 18, 19, 21 and 22 are required to be pre-commencement conditions as it is fundamental to have these details agreed prior to any work commencing on site. The Appellant has agreed to these.

Conclusion

76. For the reasons given above, and having had regard to all matters raised, I conclude that the appeal should be allowed.

R Norman

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 approval of the reserved matters shall be made to the local planning authority not later than 1 year from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby approved shall be carried out in general accordance with the following plans and document: Drawing QUEN-LOCA-01C Location Plan, Drawing ADC1659-DR-001 Rev P2 Proposed Barkby Road Access; ADC1659-DR-002-P3 – Off-site Junction Improvements; Travel Plan (ADC, June 2021); Transport Assessment (ADC, 2021); Landscape and Visual Appraisal (Golby and Luck, 2018); Flood Risk Assessment (Race, 2017); Drainage Strategy Plan (Race, 2018); Noise Survey and Assessment (Assured Acoustics, 2018); Arboricultural Impact Assessment and Method Statement (FPCR, 2022); Design and Access Statement (Pegasus, 2018).
- 5) The landscaping details submitted pursuant to condition 1 above shall include provision for the following:
 - a) The treatment proposed for all ground surfaces, including hard surfaced areas;
 - b) Planting schedules across the site, noting the species, sizes, numbers and densities of plants and trees; including tree planting within the planting belt along the southern boundary of the site;
 - c) Finished levels or contours within any landscaped areas;
 - d) Any structures to be erected or constructed within any landscaped areas including play equipment, street furniture and means of enclosure;
 - e) Functional services above and below ground within landscaped areas; and all existing trees, hedges and other landscape features, indicating clearly any to be removed;
 - f) A programme for the implementation of the landscaping details, to include phasing and timescales.

The landscaping scheme should then be implemented in accordance with the above. 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.

- 6) No development shall take place until the following information shall have been submitted to and approved in writing by the local planning authority:

A full site survey showing:

- a) The datum used to calibrate the site levels;
- b) Levels along all site boundaries; levels across the site at regular intervals and floor levels of adjoining buildings;
- c) Full details of the proposed finished floor levels of all buildings and hard landscaped surfaces.

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

- 7) No development shall commence until an Arboricultural Method Statement, prepared in accordance with BS 5837:2012 Trees in Relation to Design, Demolition and Construction, has been submitted to and approved in writing by the local planning authority. Works shall thereafter be carried out only in accordance with the approved details. The Arboricultural Method Statement shall include the specification, location and phasing for the installation of tree and hedge protection measures and a schedule of all proposed tree and hedge works. No trees or hedges shall be wilfully damaged, cut down, uprooted, pruned, felled or destroyed except for the trees and hedges to be removed to facilitate the development, without the prior written consent of the local planning authority.
- 8) No development shall commence until a construction management plan has been submitted to and approved in writing by the local planning authority. The plan shall provide for:
 - a) The parking of vehicles of site operatives and visitors;
 - b) Arrangements for turning vehicles;
 - c) Routes for the use of construction traffic;
 - d) Means of protecting pedestrians and cyclists;
 - e) A method of preventing mud from being carried onto the highway;
 - f) A method of controlling dust and debris from construction;
 - g) Delivery, demolition and construction working hours.

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

- 9) No part of the development shall be occupied until details of any external lighting have been submitted to and approved in writing by the local planning authority. The scheme should be implemented in accordance with the agreed details.
- 10) The details submitted pursuant to condition 1 shall include full details for the storage of refuse and materials for recycling, including bin collection points. The development shall be implemented in accordance with the approved details.
- 11) No construction above damp proof level shall be commenced until such time as details of the type, texture and colour of the materials including make and manufacturer to be used on the external surfaces of the proposed development have been submitted for the agreement of the

- local planning authority. Only materials agreed in writing by the local planning authority shall be used in carrying out the development.
- 12) The details submitted pursuant to condition 1 shall include details of the way in which any children's play areas are to be laid out and landscaped including details of boundary treatments and any structures to be erected and a programme of implementation has been submitted to and agreed in writing by the local planning authority.
 - 13) If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.
 - 14) No part of the development shall be occupied until the access arrangements shown on Drawing ADC1659-DR-001 Rev P2 have been implemented in full. Visibility splays once provided shall thereafter be permanently maintained with nothing within those splays higher than 0.6 metres above the level of the adjacent footway/verge/highway.
 - 15) No part of the development shall be occupied until such time as the offsite works at Rearsby Road / Queniborough Road / Barkby Road / Syston Road shown on Tree Protection Plan drawing number 8151-T-03 Rev A and ADC1659-DR-002-P3 have been implemented in full.
 - 16) The development hereby permitted shall be carried out in accordance with the Travel Plan ADC1659-C which sets out actions and measures with quantifiable outputs and outcome targets. Thereafter the agreed Travel Plan shall be implemented in accordance with the approved details.
 - 17) No development shall take place until a scheme for the treatment of the Public Right(s) of Way has been submitted and approved in writing by the local planning authority, including improvements to Public Footpath 184 between the development site and Avenue Road. Such a scheme shall include provision for their management during construction, fencing, surfacing, width, structures, signing and landscaping in accordance with the principles set out in the Leicestershire County Council's Guidance Notes for Developers. Thereafter the development shall be carried out in accordance with the agreed scheme and timetable.

Design details shall include:

- a) Where a Public Right of Way crosses a Carriageway, drop kerbs should be installed at the crossing points;
 - b) No trees or shrubs should be planted within 1 metre of the edge of the Public Right(s) of Way.
 - c) Any trees or shrubs planted alongside a Public Right of Way should be non-invasive species.
- 18) No development shall commence until such time as a surface water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.

- 19) No development shall 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 development shall be implemented in accordance with the approved details.
- 20) No part of the development shall be occupied until such time as 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 development shall be implemented in accordance with the approved details.
- 21) No development shall 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.
- 22) No development shall commence until details of the noise attenuation measures required to achieve levels in accordance with BS8233:2014 as outlined in the Noise Survey and Assessment produced by Assured Acoustics (reference AAL-17-0065 Report R1 dated 24/01/2018) have been submitted to and approved in writing by the local planning authority. The development shall not be occupied until the noise mitigation measures have been provided in accordance with the approved details and shall thereafter be retained in perpetuity.

APPEARANCES

FOR THE APPELLANT:

Paul Tucker KC Kings Chambers, assisted by Constanze Bell, instructed by Helen Bareford RTPI, Planning Manager, David Wilson Homes East Midlands

He Called:

Andrew Cook BA(Hons) MLD CMLI MIEMA CEnv – Co Founder and Executive Director, Pegasus Group

Ben James Hunter BA DipMS – Associate Director, Education Facilities Management Ltd (EFM)

James Stacey BA (Hons) DipTP MRTPI – Managing Director, Tetlow King

Angela Brooks BA (Hons) DipTP MRTPI – Partner, Fisher German

FOR THE LOCAL PLANNING AUTHORITY:

Howard Leithead No5 Barristers Chambers instructed by Kathryn Harrison, Principal Solicitor, Charnwood Borough Council

He Called:

Simon Neesam BA (Hons), Dip LA, CMLI – Director, The Landscape Partnership
Michael Hopkins, BSc (Hons), MSc, PhD – Principal Planner, Charnwood Borough Council

Liam Ward MRTPI – Acting Principal Planning Officer, Charnwood Borough Council

FOR THE LEICESTER, LEICESTERSHIRE AND RUTLAND INTEGRATED CARE BOARD (LLR ICB)

Leenamari Aantaa-Collier, Solicitor at Wilkes Partnership LLP

Lorna Simpson, Head of Strategic Estates, LLR ICB

Sarah Shuttleworth, Head of Contracts, LLR ICB

INTERESTED PARTIES:

Councillor L Needham	Local Councillor
Mr Croker	Local Resident

DOCUMENTS RECEIVED AT THE INQUIRY

- ID1 ALS Plan P23-0196-EN-20
- ID2 Appellant's Opening Statement and Appearances
- ID3 Council's Opening Statement and Appearances
- ID4 PINS Planning Obligation Guide
- ID5 Separation Distance Table
- ID5a Separation Distance Plan P23-0196-EN-20
- ID6 CBC Comments on Unilateral Undertaking relating to the proposed tree belt
- ID7 Council's Closing Submissions
- ID8 Appellant's Closing Submissions

Richborough