



Appeal Decision

Hearing held on 26 September 2023

Site visit made on 26 September 2023

by **Benjamin Clarke BA (Hons.) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 October 2023

Appeal Ref: APP/K2420/W/23/3321670

Land at Lychgate Lane, Burbage LE10 2DR

- 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 Avant Homes against the decision of Hinckley and Bosworth Borough Council.
- The application Ref 22/00192/OUT, dated 14 February 2022, was refused by notice dated 24 January 2023.
- The development proposed is an outline planning application for the residential development of up to 85 dwellings alongside associated site infrastructure and open space, with all matters reserved except for the means of access.

Decision

1. The appeal is allowed, and planning permission is granted for an outline planning application for the residential development of up to 85 dwellings alongside associated site infrastructure and open space, with all matters reserved except for the means of access. at Land at Lychgate Lane, Burbage, LE10 2DR in accordance with the terms of the application, Ref 22/00192/OUT, dated 14 February 2022, subject to the attached schedule of conditions.

Application for costs

2. An application for costs was submitted by Avant Homes against Hinckley and Bosworth Borough Council. This is the subject of a separate decision.

Procedural Matters

3. The planning application was submitted in outline, with all matters reserved apart from access. I have therefore had regard to the details relating to the reserved matters on an indicative basis only.
4. The planning application was originally refused for two reasons. The first pertained to the effect of the development upon the character and appearance of the surrounding area, and the second related to the effect of the development upon highway safety.
5. Following submission of the appeal, the Council withdrew the second reason for refusal. I have no reason to disagree with the conclusion reached by the Council, and have proceeded accordingly.
6. The Council's decision notice cited two policies, which were considered to being breached by the proposed development. However, in the Council's Statement of Case and, at the hearing, the Council suggested that the development also conflicted with Policies DM4 and DM10 of the Site Allocation and Development

Management Policies Development Plan Document (2016) (the Development Plan); and Policies 1, 2 and 11 of the Burbage Neighbourhood Plan (2021) (the Neighbourhood Plan).

7. Given that the appellant has been able to consider these policies and responded to the points raised at the hearing, I have considered the appeal with reference to the extra policies.
8. The Council's Planning Committee report did not identify the appeal site as being in a valued landscape. In addition, the reason for refusal which pertained to matters in respect of character and appearance also did not reference that the site was part of a valued landscape. In result, the appellant prepared their appeal submissions on the basis that the site and the surroundings were not part of a valued landscape.
9. Therefore, it was only upon receipt of the Council's Statement of Case that the appellant became aware of this position and the additional policies relied upon by the Council. In result, the appellant prepared a rebuttal statement. This was submitted outside of the timetable for the submission of evidence. However, given the change in position by the Council, this is understandable.
10. In addition, the appellant's evidence was submitted several weeks in advance of the hearing commencing. This has meant that the Council had sufficient time to review the rebuttal statement before the event. In consequence, I do not believe that it would cause prejudice to any party to consider the appeal with reference to the rebuttal statement.

Main Issue

11. The main issue relevant to this appeal is the effect of the proposed development upon the character and appearance of the surrounding area.

Reasons

12. The appeal site consists of an undeveloped field, which is currently used for grazing. The environs of the appeal site can be broadly described as including gently rolling countryside and pasture land. The boundaries of the appeal site are a combination of hedges, trees, and fences. The appeal site is adjacent to the built form of Burbage and is accessed from Lychgate Lane. Beyond the appeal site is open countryside and the M69.
13. The proposed development would result in a notable increase in the overall level of built form at the expense of the site's existing open and verdant character. In addition, the proposed development would result in an extension of the settlement into the countryside. This would likely comprise the proposed dwellings, as well as the site's entrance, access roads and other ancillary structures.
14. There is some debate as to whether the appeal site lies within a valued landscape. Valued landscape is not a term defined in the National Planning Policy Framework (the Framework). However, at the hearing, it was suggested that a valued landscape generally comprised one with particular significance, which should be given a greater amount of weight in the planning process.
15. In considering this appeal, I have been directed towards 'Assessing Landscape Value outside National Designations' (Landscape Institute). In terms of the

- appeal site, there is no evidence before me that indicates that the appeal site holds particularly significance in respect of ecological, geological, geomorphological, or physiographic interest. Accordingly, the appeal site, or the surrounding area, cannot be considered to having significant natural heritage.
16. Although the appeal site forms part of a rural setting to Burbage, it is part of a large network of small fields near to the edge of the built form. In addition, the appeal site does not feature any notable views of the historic form of Burbage. Furthermore, there is no compelling evidence before me that the site and the surroundings feature items of historic or archaeological significance. Therefore, the landscape has limited cultural heritage value.
 17. The appeal site maintains its traditional boundaries and features some planting. However, the evidence before me does not indicate that the planting and hedges are of an unusual aesthetic quality. Furthermore, the site, and the surrounding area does not feature items such as parklands. Although the field pattern is retained, this has been reduced by the growth of Burbage and the construction of features, such as the M69. In consequence, the surrounding area and limited scenic quality and the landscape condition is not significant.
 18. There is limited evidence before me that indicates that the appeal site, and the surrounding area, features a landscape associated with a sense of wilderness or tranquillity. Noise from the M69 is also audible, which reduces the sense of tranquillity. The surrounding area does not appear to benefit from any notable historical associations.
 19. Although the nearby area features a variety of small fields, these are replicated in several other locations. This means that the landscape does not feature any items that are of an unusual, or distinctive, quality. Although the landscape provides a rural setting for Burbage, it has been eroded through the growth of the settlement. These factors, when combined, means that the landscape has a limited level of distinctiveness.
 20. It has been suggested that Lychgate Lane is used for recreation. I have no reason to disagree. In addition, there are some pavements in the road. However, these are relatively limited in length. Given this and the relatively limited amount of public open space that is accessed from Lychgate Lane, or village greens in the surrounding area means that the landscape does not have significant recreational value.
 21. In addition, the appeal site, and the surrounding area, does not represent an identifiable or valuable function in respect of the functioning of the landscape.
 22. Therefore, for the preceding reasons, I do not believe that the appeal site, and the surrounding area, represents a valued landscape. In reaching this view, I have had regard to Policy 11 of the Burbage Neighbourhood Plan (2021) (the Neighbourhood Plan). This policy identifies an area of landscape sensitivity. However, neither the policy nor the preamble, suggests that an area of landscape sensitivity is synonymous with a valued landscape. Therefore, the presence of this policy does not overcome my preceding findings.
 23. Although the planning application was submitted in outline form, it sought permission for up to 85 dwellings. This would, cumulatively, result in a significant increase in the overall level of built form. In addition, the planning

- application sought permission for the erection of an access to the site. It is also likely that the proposed development would result in the increase in a more engineered appearance.
24. In result, the development would result in an erosion in the existing open and verdant character that is a feature of the appeal site and the wider surrounding area. It would create an extension of Burbage into the countryside. The development would give rise to a more engineered appearance that would conflict with the existing and surrounding countryside.
25. The indicative details seek to retain a significant proportion of the hedgerow that fronts onto Lychgate Lane, there would need to be reduction in the overall level, to create the associated access into the site. This would create a less verdant character in Lychgate Lane. In result of this matters when combined, the development would not integrate with the surrounding landscape. Therefore, the proposed development would result in some harm to the character and appearance of the surrounding area.
26. Having concluded that the development would harm the character of the area, it is necessary to consider the extent of the harm that would arise. It was established at the hearing that the proposed development would be predominantly viewable from Lychgate Lane and the neighbouring dwellings in Lychgate Lane and Flamville Road.
27. Views of the proposed development would be relatively limited from Lychgate Lane. This is due to the layout of the road, which prevents views from a significant distance away. In addition, the presence of developments elsewhere in Lychgate Lane also provide some screening.
28. Although views would be possible from the section of Lychgate Lane directly in front of the appeal site, these would be screened by the notable sections of landscaping that would be retained at the front of the site. In addition, the appeal site is not located on a ridge. This means that the development would not be unduly prominent. The proposed development would not project beyond the boundaries of the field. Therefore, the traditional field pattern would not be eroded by the proposed development. These would mean that the development would not be a prominent addition to the locality.
29. In addition, several of these views would be against the backdrop of the periphery of Burbage. Furthermore, I note that planning permission has been granted for a residential development on an adjoining site. This scheme appears to be in the early stages of construction.
30. The approved plan for the neighbouring development features open areas near to the appeal site, but it is likely that views, at least in part, would be viewable Lychgate Lane. Therefore, the appeal site can be described as being the edge of a settlement. In result, the degree of change would not be substantial.
31. It has been suggested that Lychgate Lane is used for recreational activity. Although this may be the case, I note that sections of the road are unlit, do not feature pavements for pedestrians and have a speed limit of 60 miles per hour. This means that some pedestrians would be deterred from using it, particularly due to the presence of footpaths in the wider area. In result, I do not believe that the development would be experienced by a significantly large number of

- people that would render the development an unduly strident addition to the landscape.
32. There would be some views from the nearest properties in Lychgate Lane and Flamville Road. These would generally be made at an oblique angle and, at least in part, would be screened by the boundary treatments that would be included in the proposed development, even though some existing landscaping may need to be reduced. This means that the proposal would not be a prominent addition when viewed from these locations.
33. Although there is likely to be some views from the wider area, such as from the previously described network of footpaths these views would be only partial in nature and likely to comprise glimpses of the development. Therefore, the appeal scheme would have a very limited effect upon the character of these areas.
34. These measures; either individually or combined; would result in a reduction in the effects of the development on the character and appearance of the surrounding area. However, these matters would not completely mitigate the effects of the development. Owing to the reduction in these effects, the development would give rise to a moderate adverse effect upon the landscape.
35. At the hearing, it was suggested that the proposed development should be assessed against the requirements of Policy 1 of the Neighbourhood Plan. Amongst other matters, this seeks to support development adjacent to the settlement boundary.
36. Although the proposed development could be considered to being adjacent to the settlement boundary, Policy 1 of the Neighbourhood Plan is clear that any development should also comply with the other policies of the development plan. Furthermore, Policy DM4 of the Development Plan provides more detail in respect of the types of development that might be acceptable in these locations. In consequence, an assessment against Policy 1 of the Neighbourhood Plan would not preclude an assessment against the requirements of Policy DM4 of the Development Plan.
37. It has been suggested that the proposal would result in the coalescence of Burbage and the nearby village of Aston Flamville. However, the appeal site would be located in a relatively narrow section of land between Burbage and the M69. There would, in result, be a notable amount of countryside retained between the appeal site and Aston Flamville, which would not be the subject of development through the appeal scheme.
38. Therefore, even though the proposed development would result in the expansion of Burbage into the countryside, there would remain significant undeveloped areas between the two settlements. These would retain their distinctive identities. In result, the development would not result in a coalescence of settlements.
39. I therefore conclude that the proposed development would have an adverse effect upon the character and appearance of the surrounding area. The development, in this regard, would conflict with the requirements of Policies DM4 and DM10 of the Development Plan and Policies 1, 2 and 11 of the Neighbourhood Plan. Amongst other matters, these seek to ensure that developments maintain the character of the countryside; that developments on

the edge of the settlement are supported, provided that they comply with other policies; enhance the character of the surrounding area; respect its surroundings; and plan for integration of the development in the landscape.

Other Matters

40. It was agreed at the hearing that the Council cannot currently demonstrate a five-year housing land supply. In consequence, the provisions of Paragraph 11(d) of the Framework are engaged.
41. Amongst other matters, this states that planning permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This is often referred to as the 'tilted balance'.
42. This means that although the current level of supply is not a substantial amount below the required five-year housing supply, there remains a notable shortfall that I am compelled to give weight to.
43. In this instance, the benefits of the development include an increase in the local housing supply. This would, by reason of the scale of the development, be a sizeable increase. In addition, the proposed development would deliver a level of affordable housing consistent with the requirements of the Development Plan. Therefore, the development would also assist in delivering a mixture of tenure types.
44. Although I understand that the current housing land supply is fluctuating, it remains below the five-year level. In addition, I understand that a new local plan, which would include allocations for a five-year housing land supply, may not occur imminently. In result, given that there is a need in the Framework to significantly boost the supply of homes, I give the benefits to the local housing supply, arising from both the delivery of market and affordable housing, a significant amount of weight.
45. The proposed development would generate economic activity. This would arise from the construction of the new development, in addition to usage of businesses and services in the vicinity by occupiers of the development.
46. Although the proposed development would be of a relatively large scale, those benefits arising from the construction process would be relatively time-limited and would, potentially, not be local in impact. This means that the economic benefits can be only given a moderate amount of weight.
47. The proposed development would result in some biodiversity improvements. However, these would be limited to the confines of the appeal site and would, to a degree, replace an existing and undeveloped field with a greater amount of development. Therefore, this can only be given a limited amount of weight.
48. The occupation of the proposed development would generate increased levels of Council Tax receipts. However, the purpose of Council Tax is to ensure that services required by residents are provided. In result, the development would not necessarily allow for the delivery of a greater number of services for the local community. Therefore, this is a matter that can only be given a limited amount of weight.

49. In result, the benefits of the proposed development can be cumulatively given a significant amount of weight. Conversely, the adverse effects arising from the proposed development, arising from the impacts upon the character and appearance of the surrounding area, are given a moderate amount of weight. It therefore follows the adverse effects of granting planning permission do not significantly and demonstrably outweigh the benefits.
50. Accordingly, when applying the 'tilted balance' as outlined in the Framework, it means that, notwithstanding the previously described adverse effects, planning permission should be granted for the proposed development.
51. I acknowledge concerns raised regarding the quantum of development that has taken place in Burbage in recent times. However, given that the development could provide sufficient mitigation through the legal agreement and conditions, these concerns do not outweigh my previous findings.

Legal Agreement

52. A draft legal agreement was included as part of the appeal documents. At the hearing, it was explained that this was nearing completion. Considering this, I allowed a longer period to allow for the submission of the completed document.
53. The submitted legal agreement, which has been signed by the relevant parties, ensures the delivery of an appropriate amount of affordable housing and tenure types. This is in line with the Council's adopted policies in this regard. In consequence, this obligation ensures the delivery of the affordable housing obligations and a mixture of tenure types in line with the requirements of the Framework.
54. The proposed development would also ensure the delivery of and management of open space. This is necessary in order to ensure that the occupiers of the development have sufficient access to recreation facilities.
55. The legal agreement would also secure financial contributions for the provision of library and health care facilities. These matters are of particular importance given the fact that family accommodation is likely to be provided within the proposed development. Therefore, although existing problems with local provision have been highlighted to me, the effects of the development would be mitigated within these matters.
56. The legal agreement would also secure the provision of measures to encourage travelling by public transport. This is necessary given the location of the appeal site near to the edge of the settlement. In addition, the legal agreement would include measures for waste management, which is necessary to provide appropriate living conditions for the future occupiers of the development.
57. In addition, the legal agreement would provide financial contributions for the delivery of education facilities. This is necessary given that the proposed development would include the delivery of family housing. In consequence, residents requiring access to education facilities can be expected.

Conditions

58. In addition to the standard implementation condition, a condition specifying the reserved matters is also required to provide certainty regarding the timescales

for the implementation of the development and to provide clarification regarding the scope of future reserved matters applications.

59. I have omitted a condition requiring that the reserved matters be in general conformity with the submitted illustrative masterplan as this condition does not feature the requisite level of precision. In addition, the Council can ensure the development is of an appropriate standard through the consideration of the Reserved Matters.
60. A condition specifying the approved plans is also necessary to frame the scope of the approved development. However, I have amended the condition to include details of the approved access arrangements and highway works.
61. I have also omitted references to documents submitted in respect of the original planning application, as these provide background information, rather than refer to an element of the proposed development.
62. In order to secure satisfactory living conditions for the future occupiers of the development; and to ensure that the development does not give rise to an adverse effect upon the environment conditions are required in respect of ground contamination; unexpected contamination; noise attenuation; waste and recycling facilities; drainage, including maintenance; infiltration testing; landscape and ecology management; floor levels; lighting; vehicle charging points; health communities; biodiversity; and archaeological investigation.
63. The proposal would result in an increase in vehicle movements. Therefore, conditions requiring the provision of a safe means of access and improvements to the surrounding road network are necessary and reasonable to prevent an adverse effect upon the highway system and to maintain highway safety.
64. Given the proximity of the development to neighbouring properties, conditions regarding the management of the construction process are necessary to maintain the living conditions of existing residents. However, I have amended the suggested conditions to remove references to the routing of construction traffic as such matters would fall outside of the control of the developer.
65. A condition has been suggested regarding internet provision. However, I have amended the wording suggested to allow for the submission, and agreement, of a strategy for the provision of internet connections. This is because there is some doubt that the details required by the original condition can be delivered and that the technology involved is evolving. The revised wording allows for more modern technology to be considered.
66. Where necessary some of these conditions require the agreement of details prior to the commencement of development. This is to ensure that the necessary mitigation has been provided at an appropriate stage in the development process.

Conclusion

67. For the preceding reasons, I conclude that the appeal should be allowed, and planning permission granted.

Benjamin Clarke

INSPECTOR

APPEARANCES

For the Local Planning Authority:

Laura Ashworth	Hinckley and Bosworth Borough Council
David Hickie	David Hickie Associates

For the Appellant:

Thea Osmund-Smith	No. 5 Chambers
David Pendle	Marrons
Gary Holliday	FPCR

Interested Party:

Richard Fleming	Burbage Parish Council
-----------------	------------------------

Document submitted at the hearing:

Copy of 'Assessing landscape value outside national designations'
Plan showing adjacent development

Document submitted after the hearing closed:

Completed Section 106 Agreement

SCHEDULE OF CONDITIONS

1. Application for the approval of reserved matters shall be made within two years from the date of this permission and the development shall be begun not later than two years from the date of approval of the last of the reserved matters to be approved.
2. No development shall be commenced until plans and particulars of "the reserved matters" referred to in the above conditions relating to the: appearance; landscaping; layout; and scale shall be submitted to, and approved, in writing, by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
3. The development hereby permitted shall not exceed 85 dwellings in total and shall be in accordance with the following approved details:
 - Site Location Plan n1456 001 A received 25 February 2022
 - Proposed habitat plan received 11 November 2022
 - Proposed Access Junction Layout – ADC2167-DR-001 P3
 - Proposed Relocation of Speed Limit Change – ADC2167-DR-003 P1
4. Land Contamination
 - a). Notwithstanding the recommendations within the Phase 1 Geo- Environmental desk study carried out by Rodgers Leask Environmental dated the 30 September 2020 (Ref: 20291-RLE-20-XX-RP-O-0001) no development approved by this permission shall be commenced until a scheme for the investigation of any potential land contamination on the site has been submitted to and agreed in writing by the Local Planning Authority which shall include details of how any contamination shall be dealt with.
 - b). The approved scheme shall be implemented in accordance with the agreed details and any remediation works so approved shall be carried out prior to the site first being occupied.
5. Land Contamination Found Later
 - a) If during development, contamination not previously identified is found to be present at the site, no further development shall take place until an addendum to the scheme for the investigation of all potential land contamination is submitted to and approved in writing by the Local Planning Authority which shall include details of how the unsuspected contamination shall be dealt with.
 - b) Any remediation works so approved shall be carried out prior to the site first being occupied.
6. Noise Attenuation
 - a). Development shall not begin until a scheme for protecting the proposed dwellings from noise from the road network has been submitted to and approved in writing by the Local Planning Authority
 - b). All works which form part of the scheme shall be completed before any of the permitted dwellings are first occupied and shall be retained thereafter.
7. No occupation of any dwelling shall take place until a scheme that makes adequate provision for waste and recycling storage of containers and collection across the site has been submitted to and approved in writing by the Local Planning authority. The details should address accessibility to storage facilities and confirm adequate space is provided at the adopted highway boundary to store and

service wheeled containers. The approved details shall be implemented prior to the first occupation of each dwelling to which the waste facilities are associated and shall be retained thereafter.

8. No development shall commence until a scheme to provide a sustainable surface water drainage system in accordance with the Flood Risk Assessment dated January and June 2022 has been submitted to and approved in writing by the Local Planning Authority, and the scheme shall subsequently be implemented in accordance with the approved details before the development is completed and shall be retained thereafter.

9. Prior to commencement of development details in relation to the management of surface water on site during construction of the development shall be submitted to and approved in writing by the Local Planning Authority. Details should demonstrate how surface water will be managed on site to prevent an increase in flood risk during the various construction stages of development from initial site works through to completion. This shall include temporary attenuation, additional treatment, controls, maintenance, and protection. Details regarding the protection of any proposed infiltration areas should also be provided. Development shall be carried out in accordance with the approved details, be fully implemented prior to the first occupation of the development hereby permitted and shall be retained thereafter.

10. Prior to commencement of development details in relation to the long-term maintenance of the sustainable surface water drainage system on the development shall be submitted to and approved in writing by the Local Planning Authority. Details of the SuDS Maintenance Plan shall include for routine maintenance, remedial actions and monitoring of the separate elements of the system and should also include procedures that must be implemented in the event of pollution incidents within the development site. Development shall be carried out in accordance with the approved details, be fully implemented prior to the first occupation of the development hereby permitted and shall be retained thereafter.

11. No development approved by this planning permission shall take place 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.

12. Prior to commencement of development a Construction Environmental Management Plan shall be submitted to and agreed in writing by the LPA. The plan shall detail how, during the site preparation and construction phase of the development, the impact on existing and proposed residential premises and the environment shall be prevented or mitigated from dust, odour, noise, smoke, light and land contamination. The plan shall also include in which site preparation and construction works will take place. The plan shall detail how such controls will be monitored. The plan will provide a procedure for the investigation of complaints. The agreed details shall be implemented throughout the course of the development.

13. Prior to commencement of development a landscape and ecology management plan shall be submitted to and approved in writing by the local planning authority. The plan shall provide details on the mitigation and management measures

required by this development to ensure that the flora and fauna is appropriately considered and protected. The development shall only be carried out in accordance with the approved details and timescales and shall be retained thereafter.

14. No development shall commence on site until such time as the existing and proposed ground levels of the site and proposed finished floor levels have been submitted to and agreed in writing by the local planning authority. The development shall then be implemented in accordance with the approved details.

15. Prior to commencement of development a lighting scheme shall be submitted to and approved in writing by the Local Planning Authority. This information shall include a layout plan with beam orientation and a schedule of equipment proposed in the design (luminaire type, mounting height, aiming angles and luminaire profiles). The lighting scheme shall ensure there shall be no more than 1 lux of light spill onto bat foraging corridors. The lighting shall be installed prior to the first occupation of the development hereby permitted, maintained and operated in accordance with the approved details and retained thereafter.

16. No development shall commence above foundation level until a scheme for the installation of electric vehicle charging points shall be submitted to and approved in writing by the local planning authority. The scheme shall identify the number of units to benefit from electric charging points, together with full details of the location fitting and timetable for installation of the units. Development shall be carried out in accordance with the approved timetable and shall be retained thereafter.

17. A `Building for a Healthy Life` assessment (including timetable for implementation) shall be submitted as part of the reserved matters submission details for this development. The details of the development shall incorporate the 12 considerations set out within the `Building for a Healthy Life` document (Homes England) and parameters shall be agreed with the local planning authority and implemented on site in accordance with the approved details and retained thereafter.

18. No development shall commence on the site until such a time as construction traffic management plan including as a minimum details of wheel washing facilities, vehicle parking facilities and a timetable for their provision has been submitted to and approved in writing by the local planning authority. The construction of the development shall thereafter be carried out in accordance with the approved details and timetable.

19. No part of the development hereby permitted shall be occupied until such time as the access arrangements and off-site works (widening of Lychgate Lane) shown on ADC drawing number ADC2167-DR-001 Rev P6 have been implemented in full.

20. Development shall not commence before a scheme of highway improvements for the junction of Burbage Rd/Hinckley Rd/Sapcote Rd have been submitted to and approved in writing by the local planning authority. No dwellings shall be occupied before the improvements have been completed in accordance with the approved details.

21. The measures and incentives included in ADC, Document Ref: ADC2167-RPE, Residential Travel Plan, Version 3, dated 19 January 2022 and submitted to the

Local Planning Authority on 25 February 2022 shall be implemented in full from first occupation unless an alternative timetable is submitted to and approved in writing by the Local Planning Authority.

22. The existing vehicular access on Lychgate Lane that becomes redundant as a result of the approved development shall be closed within one month in accordance with details first submitted to and agreed in writing by the Local Planning Authority of the new vehicular access hereby permitted first coming into use.

23. No development shall take place (including ground works or vegetation clearance) until a Biodiversity Net Gain Plan (the Plan) has been submitted to and approved in writing by the Local Planning Authority. The Plan shall be based on the submitted Biodiversity Net Gain metric spreadsheet (Sam Weston 05/05/2022) and shall provide a minimum of 1% net gain on the reported baseline habitat loss. The Plan shall include the following details:

- a) Location plan of the area(s) to be used for Biodiversity Net Gain;
- b) Description of existing habitats on and off site;
- c) Description of planned habitat creation/enhancement, including species;
- d) Baseline habitat data used to inform metric;
- e) Habitat creation/enhancement plans used to inform metric;
- f) Timetable for implementation of habitat creation/enhancement;
- g) Habitat management and monitoring plan including timetable for management routines and reviews, and strategy for any remedial measures, if and when required;
- h) Mechanism for securing the implementation of the biodiversity off-setting and its maintenance/management for a period of 30 years in accordance with details approved in the Plan;
- i) timetables for implementation.

The Plan shall be supported by up to-date Biodiversity Net Gain metric calculations for both the application site and the site for off-setting using the latest DEFRA version of the metric. The Plan shall be implemented in accordance with the approved details and shall be retained thereafter.

24. During the construction period, none of the trees or boundary hedges (except for access) indicated to be retained shall be cut down, uprooted or destroyed, nor shall be topped or lopped other than in accordance with the approved plans, without the written approval of the Local Planning Authority. If any of the trees or hedges to be retained are removed, uprooted or destroyed or dies, a replacement shall be planted at the same place and that tree or hedge shall be of such size and species, and shall be planted at such time, in accordance with details agreed in writing by the Local Planning Authority.

25. No development shall take place/commence until a programme of archaeological work, comprising further post-determination trial trenching, specific metal-detecting and as necessary targeted archaeological investigation. The full programme and timetable will be detailed within a Written Scheme of Investigation, submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions; and:

- The programme and methodology of site survey, investigation and recording (including assessment of results and preparation of an appropriate mitigation scheme)
- The programme for post-investigation assessment

- Provision to be made for analysis of the site investigation and recording
- Provision to be made for publication and dissemination of the analysis, interpretation and presentation of the site investigation
- Provision to be made for archive deposition of the analysis and records of the site investigation
- Nomination of a competent person or persons/organisation to undertake the works, with particular reference to the metal detecting survey, as set out within the Written Scheme of Investigation.

No development shall take place other than in accordance with the Written Scheme of Investigation.

26. The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition 26; and provision has been made for analysis, publication and dissemination of results and archive deposition has been secured. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the Written Scheme of Investigation.

27. Notwithstanding the details submitted, a strategy for ensuring that each dwelling will feature an internet connection shall be submitted to, and approved in writing by, the Local Planning Authority. Development shall be carried out in accordance with the approved details, be fully implemented prior to the first occupation of each dwelling, and shall be retained thereafter.



Costs Decision

Hearing held on 26 September 2023

Site visit made on 26 September 2023

by Benjamin Clarke BA (Hons.) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 October 2023

Costs application in relation to Appeal Ref: APP/K2420/W/23/3321670 Land at Lychgate Lane, Burbage, LE10 2DR

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Avant Homes for an award of costs against Hinckley and Bosworth Borough Council.
 - The appeal was against the refusal of planning permission for an outline planning application for the residential development of up to 85 dwellings alongside associated site infrastructure and open space, with all matters reserved except for the means of access.
-

Decision

1. The application for an award of costs is partially allowed, in the terms set out below.

Reasons

2. The Planning Practice Guidance (the PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Local Planning Authorities are encouraged, through the PPG, to exercise their development management responsibilities by relying only on reasons which stand up to scrutiny on the planning merits of the case.
3. In this case, the planning application was originally refused for two reasons. The first pertained to the effect of the development upon the landscape; and the second related to the potential effects of the development upon highway safety.
4. The planning application was recommended for approval by Planning Officers to the Council's Planning Committee. The committee report that detailed this recommendation did not suggest that the appeal site was in a valued landscape.
5. Although the Planning Committee was not beholden to follow the advice of the Council's Planning Officers, the relevant reason for refusal, as cited on the Decision Notice, did not identify the surroundings of the appeal site as a valued landscape. In result, the appellant only became aware upon receipt of the Council's Statement of Case, which followed the making of the appeal.
6. Furthermore, the Council's Statement of Case identified a potential breach of Policy DM10 of the Site Allocation and Development Management Policies Development Plan Document (2016). This policy was not listed in the reason

- for refusal. In result, the appellant did not have opportunity to respond to this policy when making the appeal.
7. Although I have disagreed with the appellant regarding the weight to be given to the cited policies and whether the policies of the neighbourhood plan supersede the Site Allocation and Development Management Policies Development Plan Document, they are material considerations to which the appellant needed to respond.
 8. Therefore, the appellant was required to prepare an additional rebuttal statement in advance of the hearing and, at a late stage, prepare submissions for the hearing in respect of these points. This amounted to unnecessary expense as such preparations could have been made earlier, or through the submission of the appellant's original Statement of Case.
 9. In consequence, in refusing the application for planning permission, the Council's reason for refusal was vague and did not provide a succinct summary of its concerns. This meant that fresh evidence was required at a late stage. This resulted in additional expense. This was unreasonable behaviour on the part of the Council.
 10. The second reason for refusal pertained to the effect of the proposed development upon highway safety. This reason for refusal was withdrawn at an early stage. Although this withdrawal did not follow the submission of additional evidence, it took place a notable amount of time in advance of the hearing. This meant that the appellant was not compelled to submit additional documentation or prepare for the hearing in respect of this reason for refusal.
 11. Therefore, I am unable to find that the approach taken by the Council to be unreasonable in this regard and has not result in unnecessary or wasted expense.
 12. The required Section 106 Legal Agreement was not agreed in advance of the hearing. On the day of the hearing, the Council requested further amendments in order to ensure that the agreement fulfilled its requirement to provide mitigation for the effects of the development.
 13. Although it is unfortunate that this did not happen at an earlier stage, the Council needed to ensure that the legal agreement was sound and secured the necessary infrastructure for future occupiers of the development. Therefore, the additional drafting would have needed to take place irrespective of the timing of the requested amendments.
 14. In this regard, I do not believe that the Council has acted unreasonably that has resulted in wasted or unnecessary expense in respect of the drafting of the Section 106 Agreement.

Conclusion

15. I have found that the Council acted unreasonably by not drafting the first reason for refusal (which related to landscape matters) in a sufficiently precise way which covered all relevant planning policies and identified the appeal site's surroundings as potentially being a valued landscape. This resulted in unnecessary and wasted expense on the part of the appellant. Accordingly, in this regard, an award of costs is justified.

16. However, as I have not found that the withdrawal of the reason for refusal in respect of highway safety and the drafting of the Section 106 Agreement was not unreasonable behaviour that result in unnecessary and wasted expense, an award of costs in respect of these matters is not justified.
17. Therefore, I conclude that an award of costs in respect of the part of the appeal proceedings pertaining to the first reason for refusal is necessary.

Costs Order

18. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Hinckley and Bosworth Borough Council shall pay to Avant Homes, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in respect those costs incurred in the appeal process contesting the Council's first reason for refusal. Such costs to be assessed in the Senior Courts Costs Office if not agreed.
19. The applicant is now invited to submit to Hinckley and Bosworth Borough Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Benjamin Clarke

INSPECTOR