



## Appeal Decision

Hearing held on 5 September 2023

Site visit made on 5 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/23/3316829**

**Land to the south-west of Lutterworth Road, Flanders Close, Burbage, Hinckley**

- 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 Redrow Homes and Peter Andrew Farmer against the decision of Hinckley and Bosworth Borough Council.
- The application Ref 21/00502/OUT, dated 15 April 2021, was refused by notice dated 16 August 2022.
- The development proposed is an outline planning application for the erection of up to 80 residential dwellings (Use Class C3), open space provision and associated infrastructure, with all matters reserved except access.

### Decision

1. The appeal is allowed, and planning permission is granted for an outline planning application for the erection of up to 80 residential dwellings (Use Class C3), open space provision and associated infrastructure, with all matters reserved except access at Land to the south-west of Lutterworth Road, Flanders Close, Burbage, Hinckley in accordance with the terms of the application, Ref 21/00502/OUT, dated 15 April 2021 subject to the attached schedule of conditions.

### Application for costs

2. An application for costs was submitted by Redrow Homes and Peter Andrew Farmer 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 with the exception of access. I have therefore had regards to the information submitted in respect of the reserved matters on an indicative basis only.
4. At a late stage, but in advance of the hearing commencing, the Council submitted additional evidence regarding the effects of the development upon the landscape. However, it is important that evidence be submitted in accordance with the requisite timetable to avoid prejudice to any party, unless exceptional circumstances apply.
5. I understand that the Council needed to obtain advice from an external consultant and that the advice needed to be reviewed by Council officers, the timetable affords sufficient opportunity for this. In result, I do not believe these

- represent exceptional circumstances. Therefore, it would cause prejudice to the other parties to accept this document.
6. It was suggested that, as the intention to submit additional information was referenced within the Council's Statement of Case, that other parties had sufficient notice that this document would be prepared. However, without foresight of the contents of the Council's additional submission, it would not have been possible to formulate a response. This does not overcome my concerns.
  7. Although the appellant had prepared a rebuttal statement, this was understandably limited owing to the short period of time between the Council submitting the document and the hearing commencing. However, as I have concluded that the additional information from the Council would cause prejudice to the other parties, it therefore follows that the submission of the rebuttal statement would also cause prejudice. I have therefore proceeded to a decision without reference to both documents.
  8. Representations from residents were also received at a late stage. It is understood that these residents had intended to attend the hearing but were unable to do so. Given the points raised, and the fact that the appellant and Council had sufficient time to consider the content of these representations, I have had regard to them.
  9. The planning application was originally refused planning permission for two reasons. However, following the submission of the appeal, the Council withdrew the second reason, which pertained to highway safety. I have no reason to disagree with this decision and have therefore proceeded accordingly.

### **Main Issue**

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

### **Reasons**

11. The appeal site consists of a relatively small field located beyond the edges of the settlement of Burbage within a gently undulating landscape. The appeal site is near to other relatively small fields of regular proportions which, cumulatively, form part of a network of less developed spaces that serve as a more rural setting to the built form of the settlement. The site is near to the relatively narrow road of Workhouse Lane. The M69 is located adjacent to the side of the site.
12. Although the planning application was made in outline, with matters such as scale and layout reserved for future consideration, it is clear that the proposed development would result in a significant increase in the overall level of built form. In result, the development would erode the site's more open and verdant character and would also contribute to an overall extension of the settlement of Burbage into the countryside.
13. In addition, the proposed development would result in a detrimental effect upon the network of small fields that are a feature of the landscape given the likely scale and permanence of the development.

14. In reaching this view, I have had regard to the fact that landscaping could be included within the final development. However, any such landscaping would serve to soften the effects of the overall increase in built form. This would include boundary treatments. The landscaping would not compensate for the loss of the open and verdant character that is currently a feature of the appeal site and the network of small fields owing to the built form of the development and the inclusion of a noise mitigation bund.
15. I have been directed towards Policy DM4 of the Site Allocations and Development Management Development Plan Document (2016) (the Development Plan). Amongst other matters, this policy seeks to ensure that proposed developments maintain the character of the countryside. Given that the development would disrupt the verdant character of the surrounding area, with an increase in built form, the proposed development would result in a breach of this policy.
16. Having established that the proposed development would breach the Development Plan, it is therefore necessary to consider whether any harm would arise from this and, if so, the extent. The proposed development would, as mentioned, result in an erosion of the area's character due to the loss of the small field within the landscape. However, at the hearing it was established that this would be predominantly experienced from two locations.
17. The development would be viewed, at least in part, from the M69. Given that any views from this road are of an undeveloped field, the degree of change would be relatively large. This is particularly noteworthy given that parts of the appeal site and the motorway feature similar land levels. This ensures that proposed development would be readily apparent.
18. However, from the M69 any such views would be against a backdrop that includes fleeting views of other developments in the surrounding area, including the residential developments of Flanders Close and Passchendaele Drive.
19. In addition, some views from the M69 include large commercial buildings on the opposite side of the motorway when compared to the appeal site. Therefore, it is apparent that views of the appeal site in its current form are of a site that is clearly located near to a settlement as opposed to more open countryside. In result, this viewpoint is of a low level of sensitivity.
20. I acknowledge that the nature of the M69 is such that many people are likely to be passing the site. However, as such individuals are likely to be travelling at, potentially, great speed any such views would be brief in nature. It is also likely that any such individuals would be engaged in other activities, primary of which would be driving a vehicle and would be against a backdrop involving elements of other developments. Therefore, the effect on the landscape, when viewed from the M69 would be of a limited nature.
21. The appeal site is near to Workhouse Lane. This is a narrow road with significant hedges adjacent to its edges. In addition, it has been severed by the construction of the M69.
22. However, when the appeal site is viewed from the section of Workhouse Lane nearest the appeal site, it is possible to perceive the undeveloped nature of the

appeal site and its verdant and agricultural character. This means that this viewpoint is of a higher sensitivity to change.

23. However, the harm that would arise from the proposed development would be reduced given the views of other developments that exist from Workhouse Lane. These include relatively glimpsed views of parts of the dwellings in Flanders Close and Passchendaele Drive, in addition to parts of a fence sited at this development's boundaries.
24. Furthermore, from some vantage points in Workhouse Lane, it is also possible to view the M69 and the commercial buildings sited beyond. Therefore, the proposed development, including the proposed access road and turning area in Workhouse Lane would be viewed as part of an environment that includes some elements of built form.
25. This section of Workhouse Lane is a relatively narrow road and, owing to the layout of the M69 leads only to the appeal site and some nearby land. Therefore, it is unlikely that the road would be widely used by pedestrians for walking, or other recreational activity. This means that there would be limited numbers of people that would experience the proposed development.
26. Therefore, whilst the landscape is of a higher sensitivity to change, the context in which the development would be located, combined with the relatively few people that would experience the proposal means that the scheme would cause a moderate level of harm. This would be when viewed from the section of Workhouse Lane nearest to the appeal site.
27. There is a section of Workhouse Lane on the opposite side of the M69 to the appeal site. It is likely that there would be some views of the proposed development when viewed from this section of Workhouse Lane, but it would be screened by landscaping in the vicinity of the surrounding area.
28. Furthermore, any such views would also feature significant elements of the M69. This means that, from this vantage point, the proposed development would be viewed in a more engineered and developed context. This means that in this location, the proposal would result in limited harm to the landscape.
29. At the hearing, it was suggested that the proposed development should be assessed against the requirements of Policy 1 of the Burbage Neighbourhood Plan (2021) (the Neighbourhood Plan), even though this policy has not been cited on the Council's decision notice. Amongst other matters, this seeks to support development adjacent to the settlement boundary.
30. 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. In consequence, even if I were to conclude that Policy 1 of the Neighbourhood Plan was relevant to the determination of this appeal, it would not preclude an assessment against the requirements of Policy DM4 of the Development Plan.
31. Therefore, whilst the preceding factors ensure that the development would have a limited to moderate adverse effect upon the landscape, they do not overcome, or mitigate, any harm from occurring. I therefore conclude that the proposed development would have an adverse effect upon the character and

appearance of the surrounding area. I therefore conclude that the proposed development would conflict with Policy DM4 of the Development Plan.

### **Other Matters**

32. 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 National Planning Policy Framework (the Framework) are engaged.
33. 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'.
34. 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. 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. I also have no reason to believe that the final development would not reflect local need in terms of house sizes.
35. 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.
36. The developer has agreed to the imposition of a planning condition that would ensure that the Reserved Matters are submitted in a shorter timeframe to the norm. In result, there is a likelihood that the proposed development would be deliverable within a shorter timeframe.
37. Although I am conscious of steps being taken by the Council in order to improve the local housing supply and reduce the current deficit, I am mindful of the requirement within the Framework to significantly boost the supply of homes. In result, I give the benefits arising from the delivery of additional housing a significant amount of weight.
38. The proposed development would generate additional economic activity. This would arise from the construction of the new development, in addition to the support of nearby businesses and services by the future occupiers of the proposed development.
39. 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 they can only be given a moderate amount of weight.
40. The proposed development would result in some biodiversity improvements. However, these are unlikely to result in a significantly large increase and would be, to a degree, replace an existing and undeveloped field. Therefore, this can only be given a limited amount of weight.
41. The proposed development would include some on-site open space, which could be used by all members of the community. Due to the location of the development, it is likely that some travelling would be required for existing

- residents to access the open space. This lack of convenience means that I can only give this matter a limited amount of weight.
42. It has been suggested that the proposed development would generate increased levels of Council Tax receipts. Although the proposed development would generate additional dwellings and a greater number of residents, the purpose of Council Tax is to ensure that services required by residents are provided. Therefore, this is a matter that can only be given a limited amount of weight.
43. In result, the proposed development would generate a limited to moderate amount of harm, which cumulatively can be given a moderate amount of weight.
44. The development would generate significant benefits to the local housing supply. Other benefits can be given a limited to moderate amount of weight. Therefore, cumulatively the benefits of the proposed development can be given a significant amount of weight.
45. In consequence, when applying the 'tilted balance' I find that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits. In consequence, I find that planning permission should be granted.
46. It is likely that the proposed development would generate some additional traffic movements. However, it has been demonstrated that the development is unlikely to generate significant congestion or erode highway safety. In result, the proposed development would not create harm in this regard.
47. It has been suggested that this development may lead to additional applications for planning permission for greater numbers of dwellings in the surrounding area. However, if there were to be future planning applications for residential developments, they would need to be assessed against the Development Plan at that time and with reference to their own particular merits. In result, I do not find that the potential for future planning applications allows me to disregard my previous findings.

### **Legal agreement**

48. 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 advanced state, I allowed a longer period to allow for the submission of the completed document.
49. The submitted legal agreement, which has been signed by the relevant parties, ensures the delivery of an appropriate amount of affordable housing. 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.
50. The proposed development would also ensure the delivery of and management of the site's on-site provision. This is necessary in order to ensure that the occupiers of the development have sufficient access to recreation facilities.
51. The legal agreement would also secure financial contributions for items including the provision of library facilities, education 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.

52. 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.
53. At the hearing, it was suggested that a lower education contribution to that included in the legal agreement may be required. Although I have had regard to this suggestion, I do not have any documentary evidence before me to this effect. Therefore, the level of mitigation as previously established through the consultation stage of the planning application appears to be necessary and reasonable. If a lower level of mitigation is to be required, there is a mechanism by which unspent monies can be returned to the developer.

### **Conditions**

54. A condition specifying the reserved matters is necessary in order to frame any subsequent applications to the Council. This would include a timescale of the implementation of the development. The condition includes a reduced timespan in order to reflect the appellant's intention to bring the development forward in a shorter time span. Furthermore, conditions specifying the approved plans and the maximum number of dwellings would be necessary to provide certainty regarding the extent of the proposed development.
55. In order to ensure that the development does not lead to an adverse effect upon the environment, conditions regarding flood risk, tree protection, ecology, lighting, surface water management, landscaping, management of ecology measures; the mitigation of contamination, unsuspected contamination, and landfill gas are necessary and reasonable. Some of these details need to be agreed prior to the commencement of development given the need for mitigation to be in place at an early stage of the development process.
56. Given the proximity of the development to residential properties, a condition requiring the submission, and agreement of a Construction Management Plan is necessary and appropriate. For similar reasons, a condition regarding finished land levels is also necessary. However, I have omitted references to the routing of construction traffic as some of these are likely to be undertaken by third parties and therefore outside of the control of the appellant.
57. To ensure that the development provides appropriate living conditions for the future occupiers of the dwellings and to minimise the effects on the environment, I have imposed conditions pertaining to refuse storage, health living measures, and provision of electric car charging points. Given the importance of maintaining highway safety, it is necessary to impose conditions to ensure that the site access is provided at an opportune stage in the delivery of the development.

58. Where necessary, I have amended the suggested conditions to include suitable retention clauses and remove mechanisms by which alternative details might be agreed.

59. I have omitted a condition requiring the development to be carried out in accordance with the indicative details. This is because the Council, through the consideration of any reserved matters application can ensure this is the case. Therefore, such a condition is not necessary.

### **Conclusion**

60. 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:**

|               |                                       |
|---------------|---------------------------------------|
| Sioned Davies | No. 5 Chambers                        |
| Emma Baumber  | Hinckley and Bosworth Borough Council |
| Matt Jedruch  | Hinckley and Bosworth Borough Council |
| David Hickie  | David Hickie Associates               |

#### **For the Appellant:**

|                |                |
|----------------|----------------|
| Satnam Choongh | No. 5 Chambers |
| Brian O'Connor | Lichfields     |
| James Atkin    | Pegasus Group  |

#### **Interested Parties**

|                 |                                          |
|-----------------|------------------------------------------|
| Richard Fleming | Burbage Neighbourhood Plan Working Party |
| Barry Walker    | Burbage Parish Council                   |

#### **Documents submitted at the hearing:**

Copy of the Burbage Neighbourhood Plan (2021)

#### **Documents submitted after the hearing closed:**

Completed Section 106 Agreement  
Updated schedule of conditions

## **Schedule of Conditions**

1. Applications 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 commence until plans and particulars of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") have been 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 80 dwellings in total and shall be in accordance with the following approved details:
  - Dwg No. 1693-08-02-120 Location Plan – Received 20/04/2021
  - Dwg No. 002 Rev B Land Use Parameter Plan – Received 19/04/2021
  - Dwg No. 19409-RLL-20-XX-DR-C-2100 Rev D Section 278 Access General Arrangement – Received 11/08/2021
  - Dwg No. 19409-RLL-21-XX-DR-D-5004 Workhouse Lane Stopping Up – Received 30/09/2021
4. The development hereby permitted shall be carried out in strict accordance with the recommendations outlined in Section 4 of the submitted Ecology mitigation and enhancement strategy (fpcr, April 2021). The mitigation and enhancement measures shall be implemented in accordance with the timetable of works (Section 5) and shall thereafter be retained in perpetuity.
5. During the construction period, the existing trees and hedgerows to be retained (as identified in the Tree Retention Plan 9685-T-04 Rev B, Page 18 of the Arboricultural Assessment, FPCR, (April 2021), shall be protected in accordance with a Tree Protection Plan that has been submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The protection measures/barriers shall be erected before any equipment, machinery or materials are brought onto the site for the purposes of development and shall be maintained until all equipment machinery and surplus material has been removed from the site. Nothing shall be stored or placed within the areas protected by the barriers erected in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavations be made, without the written consent of the Local Planning Authority.
6. 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.

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.

7. 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. Any remediation works so approved shall be carried out prior to the site first being occupied.

8. No development approved by this permission shall be commenced until a scheme for the monitoring of landfill gas on the site has been submitted to and agreed in writing by the Local Planning Authority which shall include details of how any landfill gas shall be dealt with. 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.

9. Development shall not begin until a scheme for protecting the proposed dwellings from noise from the M69 has been submitted to and approved in writing by the Local Planning Authority. All works which form part of the scheme shall be completed before any of the permitted dwellings are first occupied and thereafter retained in perpetuity.

10. No part of the development hereby permitted shall commence until details of the geotechnical risk relating to the noise attenuation bund (see Highways England Planning Response (HEPR 16-01) January 2016) have been submitted to and approved in writing by the Local Planning Authority. The noise attenuation bund shall be erected before any of the permitted dwellings are first occupied and thereafter shall be retained in perpetuity.

11. 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 occupation of the dwelling/unit to which the waste facilities are associated and shall be thereafter retained in perpetuity.

12. No development shall commence until a scheme to provide a sustainable surface water drainage system in accordance with the Flood Risk Assessment and Outline Surface Water Drainage Strategy dated January 2021 has been submitted to and approved in writing by the Local Planning Authority. Thereafter the scheme shall be implemented in accordance with the approved details prior to the first occupation of any dwelling/unit and shall be thereafter retained in perpetuity.

13. 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. Thereafter the surface water shall be managed during construction of the development in accordance with the submitted details, with any management measures retained during the course of the construction of the development.

14. 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. The scheme shall subsequently be implemented in accordance with the approved details.

15. 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.

16. Prior to commencement of development a Construction Environmental Management Plan including a Construction Traffic Management Plan shall be submitted to and agreed in writing by the LPA.

a) 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 detail how such controls will be monitored and will provide a procedure for the investigation of complaints.

b) The plan shall include details of the routing of construction traffic, wheel washing facilities, vehicle parking facilities, measures for controlling dust and general pollution from site construction operations, and a timetable for their provision.

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

17. 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.

18. 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.

19. 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, maintained and operated in accordance with the approved details and retained thereafter.

20. No development shall commence above foundation level until a scheme for the installation of electric vehicle charging points has been 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. The electric vehicle charging points shall be installed prior to the first occupation of the dwelling to which they relate and shall thereafter be retained thereafter.

21. A `Building for a Healthy Life` assessment 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.

22. No part of the development hereby permitted shall be occupied until such time as the access arrangements shown on RLRE drawing number 19409-RLL-20-00C-DR-C-2100 Revision D have been implemented.

23. 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.

24. The measures and incentives included in RLRE Document Ref: 19409-RLL-20-30C-RPD-503 Residential Travel Plan Burbage Fields Farm — Phase 2 submitted to the local planning authority on 12 Aug 2021 shall be implemented in full from the first occupation of the development.



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## Costs Decision

Hearing held on 5 September 2023

Site visit made on 5 September 2023

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

an Inspector appointed by the Secretary of State

**Decision date: 30 October 2023**

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### **Costs application in relation to Appeal Ref: APP/K2420/W/23/3316829 Land to the south-west of Lutterworth Road, Flanders Close, Burbage, Hinckley**

- 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 Redrow Homes and Peter Andrew Farmer for an award of costs against Hinckley and Bosworth Borough Council.
  - The appeal was against the refusal of planning permission for the erection of up to 80 residential dwellings (Use Class C3), open space provision and associated infrastructure, with all matters reserved except access.
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### **Decision**

1. The application for an award of costs is refused.

### **Reasons**

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (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.
3. In this case, the planning application was refused permission for two different 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.
4. In the case of the first reason for refusal, the Council identified a potential breach of Policy DM4 of the Site Allocations and Development Management Development Plan Document (2016) (the Development Plan). Amongst other matters, this policy seeks to ensure that proposed developments maintain the character of the countryside. In order to ensure this, the policy lists several types of development that might be appropriate in these areas.
5. The appellant has suggested that this policy contrasts with the requirements of Policy 1 of the Burbage Neighbourhood Plan (2021) (the Neighbourhood Plan), even though this policy has not been cited on the Council's decision notice. Amongst other matters, this seeks to support development adjacent to the settlement boundary.
6. However, Policy 1 of the Neighbourhood Plan is clear that it should be read in conjunction with other policies. In result, the application of Neighbourhood Plan Policy 1 does not preclude an assessment against other policies, such as Policy DM4. Therefore, I do not believe that the adoption of the Neighbourhood Plan

- has superseded policies in the Development Plan. This means that I am unable to find the approach taken by the Council to be unreasonable.
7. It has been suggested that the application of Policy 1 of the Neighbourhood Plan allows for the creation of market housing on the periphery of the settlement, which would not be supported by Policy DM4 of the Development Plan.
  8. However, Policy DM4 sets out numerous types of development that might be acceptable in these areas and the wider development plan sets out locations where market housing might be acceptable. In result, the approach taken by the Council sets out a strategy for the delivery of market housing. Therefore, I cannot conclude that the approach taken by the Council to be unreasonable or lacking in justification.
  9. The Council submitted evidence at a late stage. This was outside of the previously provided timetable for the submission of evidence. However, in doing so, the Council knew that there was a likelihood that I might not accept the submitted additional evidence. This is what occurred, and I have not had regard to this evidence in reaching my decision.
  10. However, the appellant prepared a rebuttal statement if the Council's late evidence was accepted. Although I have noted this, the decision to prepare the rebuttal statement was the decision of the appellant and was not a requirement of the process. In result, this is not evidence of unreasonable behaviour that result in wasted and unnecessary expense on the part of the appellant.
  11. The planning application was also refused planning permission due to the potential effect on highway safety. However, the reason for refusal was clear in that the Council considered that there would be harm to locations including the junction of Lutterworth Road and Flanders Close. This reason is therefore precise.
  12. Following the submission of the appeal, the Council withdrew the second reason for refusal. However, this took place at an early stage, which prevented the need for the appellant's Statement of Case to consider highway matters in substantial depth.
  13. The appellant was also not required to enter into discussions regarding the effects of the development upon highway safety at the hearing. In result, I do not find that the approach taken by the Council to be unreasonable and resulted in wasted expense for the appellant.
  14. In consequence, I cannot agree that the Council has acted unreasonably in this case. As such, I do not believe that the appellant was put to unnecessary or wasted expense. Therefore, an award of costs is not justified.

## **Conclusion**

15. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

*Benjamin Clarke*

0INSPECTOR