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## Appeal Decision

Site visit made on 4 June 2025

by **G Sibley MPLAN MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 November 2025

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**Appeal Ref: APP/G2435/W/25/3358850**

**137 - 139 Church Lane, Whitwick, Coalville, Leicestershire LE67 5DP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Mr Nick Harding and Mrs J Tudor against North West Leicestershire District Council.
  - The application Ref is 23/01277/OUTM.
  - The development proposed is for the demolition of nos 137 and 139 Church Lane and the redevelopment of the site to provide 13 dwellings with associated works (outline, means of access, layout, and scale for approval).
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### Decision

1. The appeal is allowed and planning permission is granted for demolition of nos 137 and 139 Church Lane and the redevelopment of the site to provide 13 dwellings with associated works (outline, means of access, layout, and scale for approval) at 137 - 139 Church Lane, Whitwick near Coalville, Leicestershire LE67 5DP in accordance with the terms of the application, Ref 23/01277/OUTM, subject to the conditions in the attached schedule.

### Applications for costs

2. An application for an award of costs was made by Mr Nick Harding against North West Leicestershire District Council and is the subject of a separate decision.

### Preliminary Matters

3. The appeal is made in outline with all matters reserved except access, layout and scale. I have had regard to the submitted plans insofar as they relate to these matters. Insofar as the submitted plans relate to the reserved matters, I have had regard to them but acknowledge that they are not definitive and the scheme at the reserved matters stage could change.
4. During the consideration of the application the description of development was changed to match the amendments made to the application which included reducing the number of dwellings from 15 to 13. An amended description of development was agreed between the parties and as such I have used this description within the banner header above and in my formal decision.
5. A Planning Obligation by way of a Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 was submitted alongside the appeal, and I consider this matter in detail later in this decision.

## **Main Issues**

6. The appeal was submitted against a failure to give notice within the prescribed period of a decision of an application for outline planning permission. During the consideration of this appeal, the Council determined that it would have granted planning permission for the development and as such within its evidence it did not provide any reasons that it would have refused the application on. However, comments were received from interested parties concerning, privacy, outlook, character and appearance trees and highway safety.
7. Given the above, the main issues relevant to this appeal are:
  - the effect of the proposal upon the living conditions of nearby residents with regard to overlooking and outlook
  - the effect of the proposal upon the character and appearance of the area
  - the effect of the proposal upon trees
  - the effect of the proposal upon highway safety; and
  - whether the Unilateral Undertaking (UU) and the obligations therein are necessary to make the development acceptable in planning terms, directly related to the development and are fairly related in scale and kind.

## **Reasons**

### *Living Conditions*

8. The proposal involves demolishing two detached dwellings at 137 and 139 Church Lane. No. 137 occupies a large plot with a garden extending behind No. 139 and neighbouring properties. The scheme would introduce a new internal access road, with dwellings fronting this road and positioned broadly in alignment with existing properties on Church Lane. Rear elevations of the proposed dwellings would face existing homes, and additional tree planting is proposed along the access road, particularly adjacent to the garden of 217 Church Lane. The dwellings would be two storeys in height, with eaves and ridge levels slightly higher than surrounding properties. As layout and scale are for determination at this stage, their assessment is appropriate at this stage.
9. The Council's Good Design Supplementary Planning Document (SPD) recommends a minimum back-to-back separation distance of 20 metres(m), which the proposal exceeds throughout. While the current outlook from neighbouring dwellings is of open garden land, the introduction of built form would create opportunities for overlooking that do not presently exist. However, given the separation distances, this would not result in a significant loss of privacy or render gardens unusable. Appearance is a reserved matter, so window positions are not fixed, but the scheme before me would not harm the living conditions of existing or future occupiers. This is subject to approval of matters at the reserved matters stage.
10. Although the proposed dwellings would be taller than those on Church Lane, they remain two storeys and would not appear unduly overbearing due to the separation distances. The change from open garden to built form would alter outlook for

nearby residents, but given the proposed layout and spacing, this change in outlook would not cause significant harm to the living conditions of nearby occupants.

11. Trees along the site boundary are to be retained, with plots 5 and 10 located nearby. A shadow study demonstrates that these plots would continue to receive adequate daylight and sunlight year-round, including winter months when deciduous trees shed foliage. There is no substantive evidence to dispute these findings. The siting and layout would ensure overshadowing does not unacceptably affect living conditions of the proposed occupiers.
12. There is no substantive evidence to suggest that proximity of proposed dwellings to retained trees would necessitate harmful pruning or removal for safety reasons. Additional planting is proposed along the rear boundary of No. 217 and neighbouring properties. While large trees could cause overshadowing, landscaping remains a reserved matter, and appropriate species selection can mitigate this risk.
13. The proposed dwellings are likely to include windows overlooking the internal road and site boundaries, promoting natural surveillance. Rear gardens would back onto existing gardens, maintaining defensible boundaries and avoiding undue exposure. Landscaping details, to be secured at the reserved matters stage, could further reinforce boundary treatments.
14. Therefore, the proposed development would not have a significant adverse effect on the living conditions of nearby occupiers or the occupiers of the proposed development. Consequently, the development would comply with Policies D1 and D2 of the North West Leicestershire Local Plan (LP). These seek, amongst other matters, for development to not have a significant adverse effect on the living conditions of existing and new residents through loss of privacy, excessive overshadowing and overbearing impact.

#### *Character and Appearance*

15. The appeal site comprises No. 139, a two-storey detached dwelling of similar scale and siting to neighbouring properties, and No. 137, a larger dwelling set well back from the road. The proposal seeks the demolition of both dwellings and the creation of a new vehicular access at the location of No. 139. The surrounding area is predominantly residential, characterised by varied architectural styles and there are examples of backland development, similar to that proposed. The site lies within the National Forest and the Charnwood Forest Regional Park. Existing views of countryside between dwellings and the modest scale of development contribute positively to the semi-rural character of the wider area.
16. The large trees surrounding the site make a positive contribution to this semi-rural character. A Tree Preservation Order (TPO) applies to all species on the site. The submitted Arboricultural Impact Assessment confirms that 12 trees would be removed, including two prominent Cypress specimens. Most trees proposed for removal are small and not visually prominent from Church Lane.
17. The existing dwellings are neither statutorily nor locally listed and, while in good condition, are not considered locally significant. Their removal would have minimal impact on the street scene. The proposed dwelling fronting Church Lane would be appropriately sited and in keeping with nearby properties. Backland development is not uncommon in the locality, and although the proposed dwellings would be taller

than some neighbouring properties, their rear position and overall modest scale would ensure they would not appear incongruous.

18. The development would result in some tree loss within the National Forest. However, the National Forest Company has advised that there is limited scope for on-site planting and has requested a financial contribution towards off-site woodland creation. Indicative plans show landscaping around a central attenuation pond and additional tree planting throughout the site, consistent with Policy EN3 of the Local Plan, which promotes contributions to the National Forest through planting and green infrastructure.
19. Although the development would result in tree loss within the National Forest, the National Forest Company concluded that there would not appear to be opportunity to accommodate National Forest planting within the appeal site and has requested a financial contribution towards off-site woodland creation. Indicative plans show landscaping around a central attenuation pond and additional tree planting throughout the site, which aligns with Policy EN3 of the LP that encourages contributions to the National Forest through planting and green infrastructure.
20. While landscaping details are reserved for later approval, the indicative plans include boundary planting and trees along the access road, which would be visible from the street and reinforce the area's semi-rural character. Although trees would be felled as part of this development, including those that make a positive contribution towards the semi-rural character of the area, the low-density layout would retain views of the countryside beyond, the central wetland feature and proposed tree planting would complement the landscape setting of the Charnwood Forest Regional Park. The National Forest Company has also recommended design measures, such as timber detailing and energy efficiency features, for consideration at the reserved matters stage.
21. Whilst matters related to appearance and landscaping are reserved for subsequent approval, for the reasons given above, the development as proposed would not harm the character or appearance of the area. Accordingly, the development would comply with Policies D1, EN3 and EN4 of LP. These seek, amongst other matters, that development should be based upon a robust opportunities and constraints assessment and be informed by a comprehensive site and contextual appraisal.

### *Trees*

22. The site contains a substantial number of trees and associated biodiversity features, some of which are proposed to be removed. While the trees vary in quality, including a small number of Category A specimens, none are identified as having high biodiversity value.
23. Although the loss of trees would result in some biodiversity impact, the proposal follows the mitigation hierarchy by avoiding harm where possible and incorporating measures to mitigate and compensate for unavoidable impacts. These measures would be secured through conditions, including a Landscape and Environmental Management Plan, and at the reserved matters stage.
24. Relocating trees from private gardens to publicly managed open space would support their long-term health and ecological value. While some biodiversity loss would occur, the proposed mitigation and enhancements are expected to deliver a net improvement in site biodiversity.

25. The Council's ecological and arboricultural advisors reached similar conclusions, and no substantive contrary evidence has been presented. As the application predates the mandatory Biodiversity Net Gain requirement and no local policy requires it, imposing such a requirement would be unreasonable.
26. Therefore, whilst the development would cause some harm to the biodiversity on the site, including trees, the development would, subject to approval of matters at the reserved matters stage, enhance the biodiversity on the site. Consequently, the development would comply with Policy EN1 of LP. This seeks, amongst other matters, for development to conserve, restore or enhance the biodiversity in the district.

### *Highway Safety*

27. The proposed access would require the demolition of No. 139 and the creation of a private internal road that would not be built to adoptable standards. Church Lane is subject to a 30 miles per hour speed limit and includes traffic-calming measures. Concerns were raised about on-street parking and the timing of the initial traffic surveys during school holidays. However, a subsequent survey undertaken outside holiday periods recorded lower average speeds, confirming the adequacy of the proposed visibility splays. The Local Highways Authority has confirmed that the access arrangements would not compromise highway safety.
28. Parking provision would meet the standards set out in the Council's Good Design SPD, including tandem spaces, which are not prohibited. Although visitor parking is not specifically provided, the overall level of provision would be sufficient to limit additional on-street parking. Based on the submitted evidence, the scheme would not result in a significant increase in vehicular movements or on-street parking. While on-street parking is noted as prevalent on Church Lane, there is no substantive evidence that any additional parking associated with the development would have an unacceptable impact on highway safety.
29. Alternative access via the existing entrance to No. 139 was considered but discounted due to visibility constraints involving third-party land. As the proposed access is safe and policy compliant, other options need not be pursued.
30. The proposal would introduce a new junction that pedestrians, including children would have to cross, however, based on the information before me children from nearby homes already have to cross junctions in order to reach nearby schools. As such, it is not evident that having to do so would have an unacceptable impact on highway safety. Additionally, there is no substantive evidence that the proposed junction would be unsafe for pedestrians, including children to cross.
31. Although the internal road would not be adopted, evidence confirms that the Council's waste collection vehicles and emergency vehicles could enter and exit the site in a forward gear. The design and layout have been prepared with these requirements in mind and would not result in an unacceptable impact on highway safety.
32. Therefore, for the reasons given above, the proposal would not have an unacceptable impact on highway safety. Consequently, the development would comply with Policies IF1, IF4 and IF7 of the LP. These seek, amongst other matters, for development to incorporate adequate provision for vehicles and cycles

in order to avoid highway safety problems and to take account of the impact upon the highway network.

### Unilateral Undertaking

33. The appellant submitted a Unilateral Undertaking (UU) alongside the appeal, and they note that the contributions were based upon those requested in the Council's Committee Report. Within the Council's Statement of Case, it provided comments on the UU indicating general agreement with the contributions but identified concerns with the breakdown of how those conditions were to be used and matters related to affordable housing. A revised UU was submitted following these comments, and this is the version of the UU that I have taken into consideration.
34. It is agreed between the parties that the scheme would secure three affordable dwellings on the site in accordance with Policy H4 of the LP. The UU would secure two of the dwellings for social rent and the other for shared ownership, available for affordable home ownership. This tenure split has been determined based upon the update to the Framework which seeks to require 10% of the total number of affordable homes to be available for affordable home ownership.
35. The UU secures to provision of contributions towards transport, civic amenities, libraries, health services and National Forest. These contributions are supported by LP Policy INF1 which seeks for development to be supported by, and make contributions to as appropriate, the provision of new physical, social and green infrastructure in order to mitigate its impact upon the environment and communities. Several of the contributions have been determined in accordance with County Council's Community Infrastructure Statement. The impact of the scheme and the contributions required to mitigate this has been summarised in the comments from the statutory consultees as well as the Council and based on the information before me, I find no reason to come to a different conclusion.
36. The Community Infrastructure Levy (Amendment) (England) (No.2) Regulations 2019 (Regulations) allows for a sum to be paid in respect of the cost of monitoring planning obligations and a contribution would be secured to do so.
37. I have considered the agreement in light of the statutory tests contained in Regulation 122 of the Regulations and the Framework. I am satisfied that the UU agreement and the obligations therein are necessary to make the development acceptable in planning terms, directly related to the development and are fairly related in scale and kind. As such, it would accord with the statutory tests.

### **Other Matters**

38. The County Council has identified that the site is within Minerals Safeguarding Area for coal. However, it notes that in consideration of the size of the site and its proximity to existing dwellings, it is unlikely that the extraction of the mineral would be practicable or be made to be environmentally acceptable and thus had not objected to the application from a mineral safeguarding point of view. Based on the information before me, I find no reason to conclude otherwise.
39. Comments have been received from interested parties concerning several matters which are considered below.
40. Disruption that may be caused during construction as well as from construction traffic could be managed through a Construction Environment Management Plan

secured via a condition and any disruption during construction would only be for a limited period of time.

41. Noise and disturbance from future occupiers would be typical of a residential setting such as this. No substantive evidence has been provided that would suggest that domestic installations such as air source heat pumps, would cause significant harm to residential amenity.
42. The effectiveness of the existing speed mitigation measures on Church Lane is a separate matter outside of the remit of this appeal.
43. As landscaping is a reserved matter, concerns regarding the type and size of trees and other landscaping that would be planted could be addressed at that stage, including matters related to leaf litter that may occur from this development.
44. The Lead Local Planning Authority determined that subject to the imposition of conditions that the development would not increase the risk of flooding elsewhere. Furthermore, the proposed design of the surface water drainage system would provide a betterment to the existing run-off rates which may reduce the rate of surface water runoff from the site. Based on the information before me, I find no reason to conclude differently.
45. Severn Trent Water did not object to the application and there is no substantive evidence before me that there is insufficient capacity in the foul drainage network for the proposed development.
46. The exact dimensions of the proposed attenuation pond would be determined at a later stage, and a suggested condition would seek to secure this. Additionally, it has not been substantiated that an attenuation pond on site could not comply with the Council's SPDs guidance for such ponds.
47. Matters covered by Building Regulations are dealt with under separate legislation and thus are not determinative in this instance. Additionally, the Council's Waste Services Development Officer did not object to the location of the proposed bin collection points and based on the information before me I find no reason to come to a different conclusion on this matter.
48. The proposed mix of houses would generally be in accordance with that set out in Policy H6 of the LP and could be secured via a suggested condition.
49. Financial contributions would be secured via the UU which would mitigate the impact of the development upon local services and infrastructure.
50. The existence of potentially more suitable development sites would not preclude this site from coming forward for development.
51. Based on the information before me the 'Green Wedge' designation has not been included within the adopted LP. Furthermore, the appeal site is located outside of the land designated as an Area of Separation identified in the LP.
52. Each case must be determined on its own merits and permission being granted would not necessarily set a precedent for further development in the area. Additionally, the site to the south is within an area identified in Policy EN5 as an area of separation which is a material consideration that would have to be taken into account in any future application.

53. Whilst the Framework encourages applicants to engage with the local planning authority and the local community it is not necessarily a requirement for such applications.

### **Conditions**

54. With regard to Section 100ZA (5) of the Town and Country Planning Act 1990, the appellant has given their written agreement to the pre-commencement conditions attached to this decision.
55. Further to the statutory commencement conditions for outline applications [1,2 and 3] a condition requiring the development is carried out in accordance with the approved plans is necessary in the interests of certainty [4].
56. Council's Environmental Protection Team has suggested a condition requiring a Construction Environmental Management Plan (CEMP) which is necessary in the interests of the living conditions of nearby occupiers with regard to noise and disturbance [5]. The details for this shall include the timing for deliveries, demolition and construction hours and as such as separate condition specifying this is unnecessary. It is necessary for this to be pre-commencement to ensure works which may affect the living conditions of neighbouring occupiers is not undertaken before the CEMP is approved.
57. The condition for Construction Environmental Management Plan for Biodiversity (CEMP: Biodiversity) is necessary in the interests of protecting biodiversity [6]. It is necessary for this to be pre-commencement to ensure works which may harm biodiversity is not undertaken before the CEMP: Biodiversity is approved.
58. Conditions 7 and 8 are necessary in the interests of ensuring the development does not increase the risk of flooding elsewhere during construction works and afterwards. Condition 24 is necessary for similar reasons. It is necessary for conditions 7 and 8 to be pre-commencement in the interests of ensuring the approved surface water drainage scheme and detailed water drainage scheme are in place before abortive works which may affect them are undertaken which could increase the risk of flooding elsewhere.
59. A condition requiring a programme of archaeological work is undertaken is necessary in order to ensure that appropriate provision is made so that the significance of the historic environment is recorded [9]. Condition 15 is necessary for similar reasons. It is necessary for condition 9 to be pre-commencement to ensure provisions are in place in relation to matters of potential archaeological interest before abortive works which may affect them are undertaken.
60. A condition requiring the finished levels are provided is necessary in the interests of the living conditions of nearby occupiers with regard to privacy [10]. It is necessary for this to be pre-commencement to ensure works which may affect the levels are not undertaken.
61. Condition 11 is necessary in the interests of ensuring the retained trees and hedges on site are protected during construction. It is necessary for it to be pre-commencement as it is fundamental to have this matter secured prior to any works commencing on site which could affect the implementation of the works that shall be secured through the condition.

62. Condition 12 is necessary in the interests of ensuring the development approved as part of the landscaping reserved matters conserves, restores or enhances biodiversity. Given that the application was submitted before the mandatory Biodiversity Net Gain condition came into force, it would not be reasonable to require the development to achieve a net gain in biodiversity.
63. Condition 13 is necessary in the interests of the living conditions of nearby occupiers with regard to health and safety.
64. Conditions 14, 19, 25 and 28 are necessary in the interests of the character and appearance of the area and the living conditions of nearby occupiers with regard to privacy.
65. Conditions 16, 17 and 18 are necessary in the interests of highway safety.
66. Condition 20 is necessary in the interests of protecting protected species.
67. It is necessary to ensure bin collection details are secured in the interests of the living conditions of the occupiers of the proposed development as well as highway safety [21, 22 and 23].
68. Condition 26 is necessary in the interests of conserving the biodiversity that is proposed to be retained on site.
69. It is necessary that the development is carried out in accordance with the housing mix contained in the permitted plans, in the interests of maintaining local housing mix insofar as it relates to the character and appearance of the area and the living conditions of local residents [27].
70. The National Planning Policy Framework states that planning conditions should not be used to restrict permitted development rights unless there is a clear justification to do so. The Planning Practice Guidance also states that the blanket removal of freedoms to carry out small scale domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.
71. A condition restricting the erection of buildings permitted by Classes E and F of Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) (GPDO) is necessary in the interests of protecting retained trees near to certain proposed dwellings [29]. Given that this condition only restricts these rights for dwellings that are proposed close to trees that are to be retained, this condition is not a blanket wide removal of freedoms. It also precisely defined referencing relevant provisions in the GPDO. Condition 30 is necessary for similar reasons and again only refers to specific proposed dwellings as well as the relevant provision in the GPDO.
72. Given that retaining walls would be approved as part of the condition to secure boundary treatment, it is not necessary to include a condition to stipulate the height of any retaining wall. Dependent on what was proposed planning, permission may be required for retaining walls or structures. It has not been substantiated that retaining walls or structures below 0.2 metres in height are a feature of the area that would then require consistency with to preserve the character and appearance of the area. As such, I have not included this suggested condition.

73. The Lead Local Flood Authority has not identified that a foul pumping station would be necessary nor is one proposed as part of this scheme. As such, a condition specifying that one should not be constructed, or a substation, unless approved by the local planning authority, is not necessary. Planning permission would typically be required in most instances for such development. Consequently, I have not included the suggested condition.
74. The Local Highways Authority did not state that it would be necessary in the interests of highway safety to restrict permitted development rights to install gates, fences, walls, or other means of enclosure. A separate condition regarding the visibility splays is worded to ensure that these would not be obstructed. Additionally, the appeal site is not in a location where the design of boundary treatment makes a positive contribution towards the character and appearance of the area which may justify restricting permitted development rights to install them. As a result, there is no clear justification to do so in this instance.
75. A condition stating that no more than 13 dwellings shall be constructed is not necessary given that the description of development states that permission is granted in outline for 13 dwellings. Any reserved matters application would have to be in accordance with the operational part of the description of development which specifies that permission is granted for 13 dwellings.

### **Conclusion**

76. The proposed development would be in accordance with the development plan and the material considerations do not indicate that a decision should be made other than in accordance with it. Therefore, for the reasons given above, I conclude that the appeal should be allowed and planning permission granted.

*G Sibley*

INSPECTOR

### **Schedule of Conditions**

- 1) Details of the appearance and landscaping, ("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 three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) Unless where required or allowed by other conditions attached to this permission, the development hereby permitted shall be carried out in accordance with drawing nos: Location Plan 2388/01 Rev C and Site Layout Plan 2388/03 Rev X;
- 5) No development shall take place, including any works of demolition, until a Construction Environmental Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:

- i. the parking of vehicles of site operatives and visitors;
- ii. loading and unloading of plant and materials;
- iii. storage of plant and materials used in constructing the development;
- iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- v. wheel washing facilities;
- vi. measures to control the emission of dust and dirt during construction;
- vii. a scheme for recycling/disposing of waste resulting from demolition and construction works;
- viii. delivery, demolition and construction working hours;
- ix. location of temporary buildings and associated generators, compounds, structures and enclosures;
- x. routing of construction traffic;
- xi. contact details for the site manager, including how these details will be displayed on site.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 6) No development shall take place (including ground works or vegetation clearance) until a Construction Environmental Management Plan for Biodiversity (CEMP: Biodiversity) has first been submitted to and approved in writing by the local planning authority. The CEMP: Biodiversity shall include the following details:
  - i. Identification of potentially damaging construction activities;
  - ii. Practical measures and sensitive working practices to avoid or reduce impacts during construction (including in relation to bats);
  - iii. Timing of works to avoid harm to nesting birds;
  - iv. Responsible persons for overseeing sensitive works; and
  - v. Use of protective fencing where required.

The approved CEMP: Biodiversity shall be implemented and adhered to throughout the construction phase of the development in accordance with the approved details.

- 7) No development hereby permitted shall take place until details in relation to the management of surface water on site during construction phase of the development hereby permitted has been submitted to and approved in writing by the local planning authority. The approved surface water drainage scheme during the construction phase shall then be provided prior to the commencement of the development and subsequently maintained for the entirety of the construction phase.
- 8) No development hereby permitted shall take place (except site clearance) until a surface water drainage scheme for the site has been submitted to and approved in writing by the local planning authority. The approved surface water drainage scheme shall then be provided in full in accordance with the approved details before the first occupation of any dwelling within the development hereby permitted.

- 9) No demolition or development hereby permitted shall take place until a programme of archaeological work has been completed. The programme of archaeological work shall commence with an initial phase of trial trenching so as to inform a final archaeological mitigation scheme (if necessary). Each stage of archaeological work shall be completed in accordance with the Written Scheme of Investigation (WSI) which shall first be submitted to and approved in writing by the local planning authority. Any WSI shall including the statement of significance and research objectives, and:
- i. The programme and methodology of site investigation and recording and the nomination of competent person(s) or organisation to undertaken the approved works; and
  - ii. The programme for post-investigation assessment and subsequent analysis, publication and dissemination and deposition of resulting material.

For land that is included in the WSI, no development shall take place other than in accordance with any WSI approved under this condition.

- 10) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 11) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees and hedgerows (the tree and hedgerow protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) has been submitted to and approved in writing by the local planning authority. The development thereafter shall be implemented in accordance with the approved details and adhered to for the entirety of the construction phase.

In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.

- 12) The following details shall be submitted for approval as part of the landscaping reserved matter:

Landscape, Ecological and Biodiversity Enhancement and Management Plan (LEBEMP) has been submitted to and approved in writing by the local planning authority. The LEBEMP shall include the following details:-

- i. Description, evaluation and location of the ecological features and biodiversity enhancement measures to be created and managed;
- ii. Ecological trends and constraints on site that might influence management;
- iii. Aims and objectives of biodiversity enhancements and their management including for protected species;
- iv. Appropriate management options for achieving the aims and objectives of the project;
- v. Prescriptions for management actions;

- vi. Preparation of a work schedule;
- vii. Details of the body or organisation responsible for the implementation of the plan;
- viii. On-going monitoring and remedial measures;
- ix. The strategy for the on-going maintenance of soft landscaping infrastructure (including street trees, individual trees and hedgerows, but excluding those within residential curtilages with the exception of any soft landscaping infrastructure provided to demarcate between the public and private domain, tree planting within front gardens and hedgerows to the boundaries of the site); and
- x. The timetable(s) for implementation.

The development shall then be implemented in accordance with the approved LEBEMP which shall be adhered to thereafter.

- 13) Notwithstanding the details shown on drawing no 2388/03 Rev X and condition 4 of this decision, prior to the commencement of construction of the attenuation pond shown on drawing no 2388/03 Rev X precise construction details and scaled section plans for the attenuation pond shall be submitted to and approved in writing by the local planning authority. The attenuation pond shall be carried out in accordance with the approved details prior to the first occupation of any dwelling within the development hereby permitted and retained as such thereafter.
- 14) Details of the materials to be used in the construction of the external surfaces of any building shall be submitted to and agreed in writing with the local planning authority before development commences above slab level. The development shall be carried out in accordance with the approved details and retained as such thereafter.
- 15) Prior to the first occupation of any dwelling within the development hereby permitted the site investigation and post investigation shall be completed in accordance with the programme(s) of archaeological works set out in any WSI approved under condition 9 of this decision and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.
- 16) Prior to the first occupation of any dwelling within the development hereby permitted the vehicular visibility splay of 2.4 metres(m) by 54m visibility splays east and 2.4m by 43m west and the 1m by 1m pedestrian visibility shall be provided at the site access. These shall thereafter be kept free of any obstruction exceeding 0.6m in height and shall be retained as such thereafter.
- 17) Prior to the first occupation of any dwelling within the development hereby permitted, space shall be laid out within the application site for the parking and turning of vehicles in accordance with drawing no 2388/03 Rev X. Thereafter these areas shall be retained for the purposes of parking and turning vehicles only.
- 18) Prior to the first occupation of any dwelling within the development hereby permitted the means of access for vehicles, pedestrians and cyclists shall be constructed in accordance with the drawing no 2388/03 Rev X. The access shall be retained as such thereafter.

- 19) Prior to the first occupation of any dwelling within the development hereby permitted details of the positions, height, design, materials and type of boundary treatment to be erected shall be submitted to and approved by the local planning authority. The boundary treatment shall be completed as in accordance with the approved details before the first occupation of any dwelling within the development hereby permitted.
- 20) Prior to the first occupation of any dwelling within the development hereby permitted, details of an external lighting scheme to be provided in association with the development shall be first submitted to and approved in writing by the local planning authority. The details of the external lighting scheme shall include:
- i. Elevation information of the lighting to be installed as well as illumination levels to ensure there is no light spill to existing residential receptors;
  - ii. Identify those areas / features on site that are particularly sensitive for bats and nocturnal wildlife, and which artificial lighting of, would be likely to cause disturbance in or around potential roosting sites and / or habitats or along important foraging routes;
  - iii. Show how and where external lighting shall be installed so that it can be clearly demonstrated (through the provision of a lighting contour plan(s) and technical specification(s)) that areas to be lit shall not disturb or prevent bats and nocturnal wildlife using the site or gaining access to roosting features and / or habitats; and
  - iv. Timetable for implementation.

The external lighting scheme shall be installed in accordance with the approved details set out in the lighting strategy and timetable for implementation. No other external lighting shall be installed without prior grant of planning permission pursuant to an application made to the local planning authority in that regard.

- 21) Plots 4 to 8, as identified on drawing no 2388/03 Rev X, shall not be occupied until the respective dwellings bin collection point has been provided in accordance with the details shown on drawing no 2388/03 Rev X. Once provided the bin collection points shall be retained as such thereafter.
- 22) Notwithstanding the approved drawings, nor condition 4 of this decision, prior to the first occupation of any dwelling within the development hereby permitted details of the bin storage points for the individual dwellings shall be submitted and approved in writing by the local planning authority. The bin storage points for the respective dwellings shall then be provided prior to the first occupation of the respective dwelling and once provided shall be retained as such thereafter.
- 23) Notwithstanding the approved drawings, nor conditions 4 and 22 of this decision, no dwelling where the bin storage point would be to the respective dwellings frontage (in accordance with the scheme to be approved under condition 22 of this decision) shall be occupied until details of an enclosed bin storage solution(s) has first been submitted to and approved in writing by the local planning authority. The approved bin storage solution(s) for the

respective dwelling shall then be provided prior to the first occupation of the respective dwelling and once provided shall be retained as such thereafter.

- 24) Prior to the first occupation of any dwelling within the development hereby permitted details in relation to the long-term maintenance of the surface water drainage system(s) approved under condition 8 of this decision shall be submitted to and approved in writing by the local planning authority. The surface water drainage system shall then be maintained in accordance with the approved details thereafter.
- 25) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of any the dwellings hereby permitted or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 26) The residential curtilages for plots 5, 6, 7, 8, 9 and 10 shall be confined to the areas marked on the plan annexed to this decision.
- 27) The development hereby permitted shall be carried out in accordance with the housing mix identified on drawing no 2388/03 Rev X.
- 28) The scale of the development hereby permitted shall be carried out in accordance with the details specified on drawing no 2388/03 Rev X.
- 29) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no building, enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse nor any hard surface be installed within the curtilages permitted by virtue of Classes E and F of Part 1 of Schedule 2 to the Order shall be undertaken with regard to plots 1, 3, 4, 5, 7, 10, 11, 12 and 13 shown on drawing no 2388/03 Rev X.
- 30) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no enlargements, improvements or other alterations permitted by virtue of Class A and AA of Part 1 of Schedule 2 of the Order shall be undertaken with regard to plots 1 and 5 shown on drawing no 2388/03 Rev X.

End of Schedule



# Planning Inspectorate

## Annex - Plan



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## Costs Decision

Site visit made on 4 June 2025

by **G Sibley MPLAN MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 November 2025

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### **Costs application in relation to Appeal Ref: APP/G2435/W/25/3358850 137 - 139 Church Lane, Whitwick, Coalville, Leicestershire LE67 5DP**

- 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 Mr Nick Harding and Mrs J Tudor for a full award of costs against North West Leicestershire District Council.
  - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the demolition of nos 137 and 139 Church Lane and the redevelopment of the site to provide 13 dwellings with associated works (outline, means of access, layout, and scale for approval).
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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. The PPG advises that all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceedings, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
4. Although the decision to defer the application was contrary to the officer's recommendation, this does not in itself constitute unreasonable behaviour, provided the reasons were supported by objective analysis.
5. On balance, the committee undertook an objective assessment of the aspects of the proposal that raised concern. The decision to defer was informed by members' experience and evidence presented by Ward Members. It is reasonable for committee members to rely on such information, provided they analyse it objectively. Considering the submitted material, including representations from interested parties, the request for deferral was not unreasonable. Furthermore, given the limited time between committee meetings, the proposed extension of time was adequately justified. Equally, the applicant's decision to decline the extension was not unreasonable, and it appears that a determination would have been made at a subsequent committee meeting based on the available evidence.

6. The committee minutes confirm that the deferment was agreed prior to detailed discussion of the application. Consequently, the application would have been reconsidered at a later meeting, where its merits would have been debated. This was reflected in the subsequent committee meeting held after the appeal against non-determination was lodged.
7. As set out in my Appeal Decision, I concluded that the development would not result in harm to highway safety, among other matters. However, the weight attributed to material considerations is a matter of planning judgment for the decision-maker, in this case, the committee. The Council did not act unreasonably in exercising its judgment on these matters, including consideration of evidence from the applicant and other parties. Nor did it prevent development that should clearly have been permitted. Notably, the committee did not refuse the application on highway safety grounds. It resolved that it would have approved the application had the appeal not been submitted. This demonstrates that advice from the Technical Briefing and statutory consultees was taken into account. The committee's resolution informed the Council's approach to its case before the Planning Inspectorate. Given that the Council resolved to approve the application, it was reasonable that its appeal submissions did not include additional highways-related work deemed unnecessary to make the development acceptable.
8. The reason for the deferment was not unreasonable and whilst the outcome of the January Planning Committee indicates that permission may have been granted based on the available evidence without the additional highways work, the appeal was submitted only one day before the proposed revised January committee date. With regard to the works undertaken at appeal the applicant could have waited until after the committee meeting to submit it at which point, if it had been refused, they would have known the matters that needed to be addressed. The applicant chose to submit the appeal before a decision was made, and it is not evident that the committee's actions in requesting the deferral caused unreasonable delay.
9. While the applicant raised concerns regarding the handling of the application, the Council did not make vague, generalised, or inaccurate assertions about the proposal's impact.
10. The applicant was disappointed with the Council's handling of the application, procedures, and outcome. However, its submissions were, on balance, sufficient to substantiate its case and its behaviours and actions at the time of the planning application and this appeal have not resulted in unreasonable behaviour or unnecessary or wasted expense at the appeal stage.

*G Sibley*

INSPECTOR