
Appeal Decision

Hearing held on 12 October 2016

Site visit made on 12 October 2016

by Graeme Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 November 2016

Appeal Ref: APP/F2415/W/16/3153871

Gilmorton House, Lutterworth Road, Gilmorton LE17 5PH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Ian Bullions (Shieling Properties and Mr N Matthews) against the decision of Harborough District Council.
 - The application Ref 16/00161/FUL, dated 1 February 2016, was refused by notice dated 8 June 2016.
 - The development proposed is the erection of eight dwellings with associated vehicular access, parking and landscaping. Formation of new parking area for tennis courts.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of eight dwellings with associated vehicular access, parking and landscaping. Formation of new parking area for tennis courts at Gilmorton House, Lutterworth Road, Gilmorton LE17 5PH in accordance with the terms of the application, Ref 16/00161/FUL, dated 1 February 2016, subject to the conditions set out in the attached schedule.

Procedural Matters

2. A "Draft Statement of Common Ground" had been agreed between the two main parties in advance of the hearing, and had been signed and dated accordingly. It was confirmed at the hearing that, notwithstanding the reference to the word "Draft" in the title of the document, this version of the document should be taken to be the agreed "Statement of Common Ground" (the SoCG) for the purposes of the Rules¹. I have considered the appeal on that basis.
3. A completed, signed and dated Unilateral Undertaking (the UU) pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) was submitted during the hearing². It was confirmed at the hearing that the content of the UU, which sets out the on-site provision of affordable housing provision, had been agreed by both parties. I will return to this matter later.

¹ Rule 6A(1)(b) : The Town and Country Planning (Hearings Procedure)(England) Rules 2000 (as amended)

² DOC 3

4. It was agreed at the hearing that the Gilmorton Neighbourhood Plan was at a very early stage of preparation and had not been subject to consultation, and so should be accorded very little weight.

Main Issue

5. Policy CS2 of the Harborough Core Strategy (CS) identifies a hierarchy of settlements, from the named settlements of Market Harborough, the Leicester Principal Urban Area (PUA), Lutterworth and Broughton Astley, to Rural Centres and selected rural villages (SRVs). CS Policy CS17(a) follows on from this, identifying a number of Rural Centres that it states will be the focus for rural affordable and market housing, amongst other forms of development, whilst in other SRVs development will be on a lesser scale. In all cases, development will be on a scale which reflects the size and character of the village concerned and the level of service provision therein.
6. Saved Harborough District Local Plan policy HS/8 identifies Limits to Development boundaries around a number of towns and larger villages within the District, a list which includes Gilmorton. The appeal site lies beyond, but adjoining the limits to development boundary for Gilmorton, which the supporting text to CS policy CS17 identifies as a SRV.
7. However, it is common ground between the Council and the appellant that the Council is currently unable to demonstrate a five year supply of housing land. Thus, as this matter is agreed between the parties and, having regard to paragraph 49 of the National Planning Policy Framework (the Framework) I too agree, and consider the relevant housing supply policies set out above to be not up to date. The presumption in favour of sustainable development set out in paragraph 14 of the Framework therefore applies. It is also common ground between the parties that the development proposed constitutes sustainable development as set out in paragraphs 7 to 9 of the National Planning Policy Framework (the Framework).
8. Thus, having regard to the sole reason for refusal, I consider the main issue to be the effect of the proposed development on the character and appearance of the surrounding area.

Reasons

9. Gilmorton lies within Natural England's Leicestershire Vales National Character Area (the NCA) and, at a District level, within the Lutterworth Lowlands Landscape Character Area (the LLLCA). Together, these identify the area as being an open landscape of gently rolling mixture of pasture and arable fields, of low-lying vales and river valleys with limited vegetation cover. Beyond the larger settlements of Leicester and Lutterworth, the NCA identifies that elsewhere there are frequent towns and villages.
10. The appeal site lies just to the south of the village playing field, itself located towards the southern edge of the village, to the east of Lutterworth Road and separated from the playing field by an access track serving Manor Cottage. It is an open paddock, enclosed by a mix of post-and-rail fencing and hedgerow, to the south of which lies Gilmorton House and two converted former farm buildings. A further former farm building within this group also has an extant permission for conversion to a dwelling.

11. The entrance to Gilmorton from the south, along Lutterworth Road, is described by the Council as being low-key. What is meant by this is not clear, however. The wedge-shaped playing field provides a more open counterpoint to the linear development on the western side of Lutterworth Road, opposite. The trees and hedgerows around its southern boundary provide a soft transition to the appeal site beyond the access track to Manor Cottage. However, the tennis courts, the fencing around them and the various items of play equipment within the playing field, create, if not a “de facto urbanised extension” along the eastern side of Lutterworth Road as claimed by the appellant, then certainly a distinctly different character to that of the rural, pastoral fields and hedgerows opposite the appeal site.
12. It is not disputed that the appeal site does not lie within the village. Having viewed the site and the context of its surroundings, I agree. However, the backdrop of the village, clearly visible from adjacent to Gilmorton House on Lutterworth Road, and the highway signs announcing the playground, clearly indicate that the site, if not within the village itself, is closely related to it.
13. The appellant’s Landscape and Visual Appraisal³ (the LVA), describes the site as being semi-domestic in character. Having observed the clearly regularly maintained roadside verge at the entrance to Gilmorton House, the managed nature of the paddock and the beech hedge along the roadside frontage, the formal brick gate piers at the entrance to Gilmorton House and the access track to Manor Cottage, this seems to me to be a reasonably accurate description. These factors combine to create an immediate environment somewhere between the built up extent of the village to the north, and the open countryside to the south of Gilmorton House.
14. However, the development would introduce built development to a site where currently there is none. It would be clearly visible from Lutterworth Road adjacent to the site, and from open views across intervening farmland from the public rights of way that run to the east and west of the appeal site. Views towards the site from within the village on Lutterworth Road would be partially screened by intervening trees and hedges around the playing field, but the site and proposed dwellings would nonetheless be visible.
15. This, the Council aver, would introduce a significant built development to the site which would have a harmful impact on the countryside, detracting from its intrinsic character and beauty. The proposal would certainly change the appearance of the site. However, in terms of harm to the intrinsic character and quality of the countryside, I agree with the suggestion, made by the Council at the hearing, that such matters involve subjective judgement. I acknowledge too that, in reaching their conclusion, the Committee exercised that judgement. However, in this instance the appellant sought to establish an objective view of the character and quality of the landscape, and the effect of the proposed development upon those factors, as part of the application submissions. In turn, the Council-commissioned review⁴ of the LVA (the TLP report) considered the LVA and its conclusions and the methodology underpinning the LVA.

³ Lutterworth Road, Gilmorton : Landscape & Visual Appraisal, January 2016 - Aecom

⁴ Review of Landscape and Visual Aspects of the planning application for land at Lutterworth Road, Gilmorton, Leicestershire on behalf of Harborough District Council – The Landscape Partnership

16. Both the LVA and the TLP report concluded that the proposed development would be small scale. Although the Council's refusal reason described the proposal as introducing "significant built development", I have not been presented with any evidence to suggest that the description set out in the LVA or the TLP report in this respect is inaccurate or incorrect.
17. The development of the site would result in a total of eight dwellings. Gilmorton is a sizeable village and the quantum of development would strike an appropriate balance between reflecting the scale and nature of the village, and the location of the appeal site on the village edge. The TLP report does not disagree with the LVA's conclusion that, in terms of its scale, density and layout, the proposal would not be inappropriate in this village edge location. Having considered the evidence before me, and having viewed the appeal site, I agree.
18. Whilst I consider that the development would not be of a scale, density or layout that would be inappropriate in this location, it is not disputed that the proposal would result in change to the character, appearance and setting of the site. However, the extent to which this would be harmful to the character and appearance of the surrounding area was a matter of disagreement between the parties.
19. Whilst both the LVA and the TLP report concluded that the proposal would have a harmful impact on the countryside, they differed on the degree of harm that would arise. However, that difference in the overall assessment of harm, as well as localised impacts from certain photo-viewpoints, appeared to stem from an error in reproducing part of the LVA methodology employed by the appellant. There⁵, the TLP report argues, the definitions of the level of effect were identified as having a relatively high threshold. As a consequence, the application of definitions on this basis would result in a lower level of overall effect than may be otherwise expected.
20. However, at the hearing, the appellant set out that the descriptions for moderate and major adverse effect set out in table C3 of the LVA had been transposed with each other, a point conceded by the Council. If read correctly, it was suggested, the level of overall effect in the LVA more clearly equated to moderate, rather than major, effects.
21. I note, too, the concerns, expressed in the TLP report, that the photo-viewpoints in the LVA did not include vantage points due east or due west of the site, from footpaths Y95/1 or Y88/1, respectively. However, I am satisfied that the 12 photo-viewpoints set out in the LVA provided a sufficient basis upon which to assess landscape quality and impact of the development. I am also satisfied that, of those 12 viewpoints, the 5⁶ given more detailed consideration provide a suitably broad range of locations, aspects and distances from the appeal site to provide a balanced assessment of the effect of the proposal. Having viewed the site from these footpaths, as well as from, amongst others, photo-viewpoints 6A and 11, these additional footpath vantage points do not provide a different context, or views, of the site not already identified from, or assessed at, other vantage points. The appellant concludes that these would not add anything to the assessments set out in the LVA, and I agree.

⁵ Table C3 Lutterworth Road, Gilmorton : Landscape & Visual Appraisal, January 2016 - Aecom

⁶ Photo-viewpoints 5, 6A, 9, 10 and 11

22. Although the TLP report contends that the effect of the proposal on the landscape would be of major importance, I am satisfied that this conclusion is based on the error in reproducing the table of effects set out the LVA. I accept therefore that the proposal would have an effect of moderate importance on the landscape character at the level of the site, but wider impacts upon the LLLCA would be minor to negligible.
23. CS policy CS11 recognises the importance of good design and seeks the highest standards of design in new development in order to create attractive places for people to live, work and visit. Amongst other things, development should be inspired by, respect and enhance local character and respect the context in which it is taking place, and respond to the unique characteristics of the site and wider local environment. As such, I find that the provisions of CS policy CS11 to be broadly consistent with the Framework in seeking to secure high quality design and to promote or reinforce local distinctiveness and I thus attach significant weight to its provisions. CS policy CS17(c) states that rural development should be located and designed in a way that is sensitive to its landscape setting, retaining and where possible enhancing the distinctive qualities of the landscape character area in which it is situated.
24. From the varied viewpoints, and from my own observations during my site visit, I am satisfied that the site is well related to Gilmorton, even if it lies beyond the built extent of the village itself. Gilmorton House and the grouping of dwellings around it provide a natural, developed bookend to the appeal site and to the village itself, whilst the parties agree that the scale, density and layout of the development would be appropriate for appeal site and its village edge location. It is not been disputed that the site has a moderate capacity to accommodate small scale development such as that proposed. Moreover, the evidence does not dispute the conclusion that, with appropriate conditions, the proposal would cause no significant harm to the landscape of the edge of the village, with a negligible effect on the wider LLLCA.
25. This is not a remote, isolated rural setting, but one adjoining the built up extent of Gilmorton. I agree with the conclusions set out in both the LVA and the TLP report that the proposal would be appropriate to the immediate local context of the site and the setting of the village edge in terms of its scale, density and layout and note that. In views into, and out of, Gilmorton along Lutterworth Road the site would lie in the middle ground between the village itself and the grouping of buildings at, and around, Gilmorton House. Whilst there would be a moderate adverse effect on the landscape character of the site arising from its development, it has not been shown that the proposal would fail to retain or enhance the distinctive qualities of the landscape character area in which it lies, as required by CS policy CS17(c), or that it would fail to achieve the highest standards of design required by CS policy CS11.

Other Matters

26. A signed and dated UU was submitted at the hearing in response to CS policy CS3 for the on-site provision of two affordable dwellings. The Council confirmed at the hearing that the content of the UU was acceptable to them and satisfied the level of provision set out in CS policy CS3.
27. However, the Council's Planning Committee report notes, at paragraph 6.21, a recent Court of Appeal decision in relation to the threshold for provision of

affordable housing on schemes of 10 or more units. I note that the Council approached the appellant regarding this matter at the time, but that the appellant wished to retain two affordable dwellings within the scheme and did not wish to amend the proposal.

28. Paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations (the CIL Regulations) require that planning obligations should only be sought, and weight attached to their provisions, where they are: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
29. Whilst it is noted that the Council have confirmed that the UU is acceptable to them, in light of the Court of Appeal decision, I consider the UU not to be necessary to make the development acceptable in planning terms. I therefore attach no weight to its provisions in reaching my decision.
30. Local residents object to the proposal on a wider basis, including highway safety and congestion, inadequate village infrastructure, the design of the houses, whether there is need for more housing in the village, increased pressure for development elsewhere within the village and drainage and flood risk. These did not form part of the Council's reasons for refusal and I am satisfied that these matters would not result in a level of harm which would justify dismissal of the appeal.

Conditions

31. The conditions set out in the Draft Statement of Common Ground, together with the content of the Council's verbal updates to the Planning Committee and the content of updated list of suggested conditions submitted at the hearing were discussed at the hearing. I have considered these conditions in the light of the Framework and Planning Practice Guidance and have made minor amendments to them where necessary and in the interests of clarity.
32. In addition to the time limit condition, a condition specifying the approved plans is necessary in order to provide certainty. I agree that conditions regarding the details of external materials, the brick bond for the garden walls, the hard and soft landscaping and levels are necessary and reasonable in the interests of the character and appearance of the area. An additional landscaping condition regarding a landscape management plan for the longer term management and maintenance of areas of non-domestic gardens was discussed at the hearing, which I have also attached for the same reasons as set out in respect of materials and hard and soft landscaping.
33. I have imposed conditions relating to a construction method statement, the surfacing of the access road, the laying out of parking areas for each of the dwellings, the laying out and provision of the footway and relocated car parking provision and the provision and maintenance of appropriate visibility splays at the entrance to the site in the interests of highway and pedestrian safety. I have not imposed suggested condition 7, in respect of the development access, as it was agreed that the plans condition adequately covered these requirements.
34. Conditions relating to ecological precautionary working, the details of renewable sources of energy and drainage are necessary and reasonable in the

interests of protected species, energy efficiency and to ensure the adequate drainage of the site, respectively.

35. With regard to archaeological matters, it was agreed at the hearing that the Written Scheme of Investigation (the WSI) required by suggested condition 11 had been prepared and agreed by the local planning authority. It was also agreed that the trial trenching, required by suggested condition 11 and the WSI, had also been undertaken, the results of which were set out in the Archaeological Evaluation Report⁷ submitted at the hearing, and the content of which the Council confirmed was acceptable. It was agreed that suggested conditions 11 and 12 were no longer necessary, but that suggested condition 13 remained relevant as the results of the work undertaken had not, at the time of the hearing, been deposited in the archives. With slight rewording therefore, I have attached suggested condition 13 but I have not imposed conditions 11 and 12.
36. I have also imposed a condition restricting permitted development rights in respect of chimneys and dormer windows in order to ensure the integrity and retention of the barn-type design and appearance of the approved dwellings. Such a condition would, I conclude, be in the interests of the character and appearance of the area.

Conclusion

37. At the heart of the Framework is a presumption in favour of sustainable development. Housing applications should be considered in the context of that presumption in favour of sustainable development, and relevant policies for the supply of housing should not be considered up-to-date where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. In such circumstances, permission should be granted unless any adverse impacts of doing so would clearly and demonstrably outweigh the benefits, when assessed against the Framework as a whole.
38. It is agreed between the main parties that the Council is not able to demonstrate a five-year supply of deliverable housing sites, and that the presumption in favour of sustainable development, as set out in paragraph 14 of the Framework, is engaged. It is also agreed that the proposal would constitute a sustainable form of development in a sustainable location and would boost housing supply. Further, it is also agreed that the proposal would provide improved facilities for accessing the adjacent playing field, and improved linkages to the village.
39. Whilst there would be a moderate adverse effect on the landscape character of the site arising from its development, it has not been shown that the proposal would fail to retain or enhance the distinctive qualities of the landscape character area in which it lies, as required by CS policy CS17(c), or that it would fail to achieve the highest standards of design required by CS policy CS11. It is not contested that the proposal would be acceptable in terms of its design, scale, and layout, and in terms of highways, ecology, heritage, residential amenity, flooding and drainage and climate change matters. Nothing I have heard or read leads me to conclude otherwise. Thus, for the reasons set out above, I consider that the adverse impacts of granting planning

⁷ Archaeological Evaluation Report: Land off Lutterworth Road, Gilmorton, Leicestershire prepared by Allen Archaeology Ltd for Landmark Planning on behalf of Shieling Homes – September 2016

permission in this instance would not significantly and demonstrably outweigh the benefits of so doing, when assessed against the policies in the Framework, taken as a whole.

40. For the reasons set out, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Graeme Robbie

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: S3981/01; 215052-PL01 Revision A; 215052-PL02 Revision A; 215052-PL03 Revision A; 215052-PL04 Revision A; 215052-PL05 Revision A; 215052-PL06 Revision A; 215052-PL07 Revision A; 215052-PL08 Revision A and 215052-PL09 Revision A.
- 3) No above ground development shall commence on site until a schedule indicating the materials to be used on all external elevations of the hereby approved dwellings has been submitted to and approved in writing by the local planning authority. Thereafter, the development shall be implemented in accordance with the approved details and shall be retained as such in perpetuity.
- 4) No development shall commence on site until a scheme of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority, the details of which shall include:
 - (a) Details of any trees and hedgerows to be retained, together with measures for their protection in the course of development, in accordance with BS5837:2012(Trees in relation to design, demolition and construction);
 - (b) Details of all species, planting sizes and planting densities, including those within the new hedgerow on the south boundary, those to improve the existing hedgerow on the east boundary and a specimen tree to be planted on the north corner of Plot 6, spread of all trees and hedgerows within or overhanging the site, in relation to the approved buildings, roads and other works;
 - (c) Details of materials for all brick boundary walls; and
 - (d) Hard surfacing materialsThereafter the development shall be implemented fully in accordance with the approved details and retained in perpetuity.
- 5) No development shall commence on site until a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small, privately owned, domestic gardens has been submitted to, and approved in writing by, the local planning authority. The development shall be implemented in accordance with the approved details and shall be retained as such thereafter.
- 6) No development shall commence on site (including any works of demolition), until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for:
 - (a) The parking of vehicles of site operatives and visitors

- (b) Construction traffic/site traffic management plan;
- (c) Loading and unloading of plant and materials;
- (d) Storage of plant and materials used in constructing the development;
- (e) Wheel washing facilities;
- (f) Measures to control the hours of use and piling technique to be employed if any;
- (g) Measures to control the emission of dust and dirt during construction; and
- (h) A timetable for the provision of (a) – (g);

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

- 7) Before first use of the development hereby permitted the access drive shall be surfaced with tarmacadam, concrete or similar hard bound material (not loose aggregate) for a distance of at least 10 metres behind the highway boundary and shall be so maintained at all times. Any vehicular access gates, barriers, bollards, chains or other such obstructions shall also be set back a minimum distance of 10 metres behind the highway boundary and shall be hung so as not to open outwards.
- 8) Notwithstanding the details shown on the plans hereby approved, car parking shall be provided, hard surfaced and made available for use to serve each dwelling on the basis of 2 spaces for a dwelling with up to three bedrooms and 3 spaces for a dwelling with four or more bedrooms. Prior to the commencement of above ground works on site, details of the parking provision for plots 6 and 7 shall be submitted to and approved in writing by the local planning authority and the approved parking shall be made available prior to the first occupation of any dwelling, and the parking spaces so provided shall thereafter be permanently retained as such.
- 9) Prior to the first occupation of any dwelling within the development hereby permitted, visibility splays of 2.4 metres by 110 metres shall be provided at the junction of the access with Lutterworth Road. These shall be in accordance with the standards contained in the current County Council design guide and shall thereafter be permanently so maintained. Nothing shall be allowed to grow above a height of 0.6 metres above ground level within the visibility splays.
- 10) Prior to commencement of above ground development, details of design for the provision of a new footway between the development's access and existing footway along Lutterworth Road and the relocation of parking provision within the development site shall have been submitted and approved in writing by the local planning authority. Highway mitigation works shall be provided in general accordance with the amended drawing number 215052- PL09 revision A. No dwelling in the development hereby permitted shall be occupied until that scheme has been constructed in accordance with the approved details and made available for public use. In addition, the relocated parking provision onto private land shall be permanently so maintained.

- 11) No dwelling shall be occupied until the Archaeological Evaluation Report has been made available for analysis, publication and dissemination of results and archive deposition has been secured, in the manner set out in the Archaeological Evaluation Report.
- 12) Prior to any site clearance works a written diary statement from a suitably qualified and licenced ecologist which shows compliance with the requirements of the approved Precautionary Method of Works: Great Crested Newt (RammSanderson 2016) and a written statement from the ecologist of a site visit just prior to any site clearance works to confirm that this is still an appropriate approach to GCN mitigation shall be submitted to and approved in writing by the Local Planning Authority.
- 13) Notwithstanding the details shown on the approved plans, no above ground development shall commence on site until details of the following matters have been submitted to and approved in writing by the Local Planning Authority:
 - a) solar pv panels;
 - b) air source heat pumps;The submitted details shall include make, model, manufacturer, compliance with MCS Planning Standards or equivalent, materials, finish, siting and any screening. The development shall be carried out in accordance with the approved details and retained as such in perpetuity, unless otherwise agreed in writing by the Local Planning Authority.
- 14) No development shall commence on site until details of the proposed ground levels and finished floor levels of the development have been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be implemented in accordance with the approved details and shall be retained as such in perpetuity.
- 15) No development shall commence on site until full details of the means of foul and surface water drainage for the site have been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be implemented in accordance with the approved details and retained in perpetuity.
- 16) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), no chimneys or dormer windows shall be installed on any building forming part of the development hereby permitted.
- 17) The bond for the brickwork on plots 1 and 2 and all brick boundary walls shall be Flemish Garden Wall bond and shall be retained as such in perpetuity.

End of Schedule of Conditions

APPEARANCES

FOR THE APPELLANT:

Mr Lance Wiggins	Landmark Planning
Mr Nigel Weir	Aecom
Mr Ian Bullions	Shieling Properties

FOR THE LOCAL PLANNING AUTHORITY:

Mr Nigel Harris	Enigma Planning
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DOCUMENTS SUBMITTED DURING THE HEARING

DOC 1	Suggested Conditions. Submitted by the Council.
DOC 2	Archaeological Evaluation Report: Land off Lutterworth Road, Gilmorton, Leicestershire prepared by Allen Archaeology Ltd for Landmark Planning on behalf of Shieling Homes – September 2016. Submitted on behalf of the appellant.
DOC 3	Signed and dated unilateral undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended). Submitted on behalf of the appellant.
DOC 4	Topographical Survey. Drg. No. S3981/01
DOC 5	Gilmorton Neighbourhood Plan – Map extracts 1 and 2