
Appeal Decision

Inquiry opened on 18 October 2016

Site visit made on 25 October 2016

by Martin Whitehead LLB BSc(Hons) CEng MICE

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

Decision date: 06 December 2016

Appeal Ref: APP/F1040/W/16/3147682

Jawbone Lane, Melbourne, Derbyshire DE73 8BW

- 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 Investin Properties (Jersey) Ltd against the decision of South Derbyshire District Council.
 - The application Ref 9/2014/1141, dated 28 November 2014, was refused by notice dated 7 October 2015.
 - The development proposed is the erection of up to 69 dwellings and detailed means of access.
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Decision

1. The appeal is allowed and outline planning permission is granted for residential development of up to 44 dwellings and detailed means of access at Jawbone Lane, Melbourne, Derbyshire DE73 8BW in accordance with the terms of the application, Ref 9/2014/1141, dated 28 November 2014, subject to the conditions in the attached schedule.

Procedural and Preliminary Matters

2. I opened the Inquiry on 18 October and it sat for 4 days, closing on 25 October. I conducted an accompanied site visit following the close of the Inquiry on 25 October.
 3. The application was submitted in outline form with all matters of detail, except access, reserved for later consideration. Following the submission of the application, the description of the development proposed has been changed to the following: '*residential development of up to 44 dwellings and detailed means of access*'. The application was determined by the Council based on this amended description.
 4. At the Inquiry, the appellant requested that the appeal be determined on the basis of a residential development of up to 34 dwellings and an indicative layout plan that was submitted with a subsequent planning application involving 34 housing units that I understand has been refused as an affordable housing scheme. Both the Council and the appellant agreed at the Inquiry that, should the 34 dwelling layout be considered, the redline plan should be reduced in area to reflect the amended scheme layout and to omit land included that is in the ownership of the Parish Council.
 5. Having heard submissions at the Inquiry, I find that the amended proposal is within the scope of this appeal outline planning application and has been
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consulted upon in the subsequent application; it would reduce the extent of the proposed development compared to that considered when the Council made its decision; and the appellant had given the Council sufficient notice of its intentions to allow the Council to adequately consider the amended indicative layout. Therefore, applying the 'Wheatcroft Principles'¹, I am satisfied that these amendments do not prejudice the interests of any of the parties and I have determined this appeal on the basis of the amended indicative layout showing 34 housing units and the amended redline boundary shown on Drawing No I15.1-001D, submitted at the Inquiry, but using the amended description on which the Council made its decision.

Main Issues

6. The main issues are whether a five-year supply of deliverable housing sites has been demonstrated; the effect of the proposal on the character and appearance of the surrounding area and whether it would preserve the setting of nearby heritage assets.

Reasons

Five-year Supply

7. Since the adoption of Part 1 of the Local Plan in May 2016, the Council has published its updated July 2016 Housing Position Paper, which demonstrates that it has a 5.33 year housing land supply for the five-year period of 2017 to 2022. However, it has accepted that the figures used in that paper indicate that a 4.82 year supply would be delivered for the period 2016 to 2021. Following discussions at the Inquiry, the Council has amended its trajectory. These amendments would result in it demonstrating a 5.27 year supply for 2017 to 2022, which would reduce the 2016 to 2021 figure to a 4.73 year supply. The Council has accepted that the July 2016 Housing Position Paper represents the latest position. Therefore, although the Examination Inspector for the Local Plan Part 1 found in her report that the Council had demonstrated a 5.08 year housing land supply for the 2016 to 2021 period, based on the November 2015 Housing Position Paper, this has now been superseded by the Council's own updated figures.
8. Whilst neither the National Planning Policy Framework (Framework) nor government guidance specify what period of time should be used to demonstrate a 'five-year supply of deliverable housing sites', the 2016 to 2021 period is most relevant to the current appeal, rather than a future five-year period for 2017 to 2022 as suggested by the Council. This is because it covers the period that includes the date of this appeal, with a significant part of the first year of that period remaining, and includes known completions, which should give a greater degree of certainty over delivery than using a future period. It is also the period mentioned in the Local Plan Part 1 Examination Inspector's Report. Furthermore, the appellant has contested the Council's trajectory for the 2017 to 2022 period, suggesting that the start dates and/or delivery rates for 10 of the sites are over optimistic. Although the Council's adjusted figures still show that there would be a five-year supply for this period, I am concerned that this supply figure would be very vulnerable to any

¹ Bernard Wheatcroft Ltd v Secretary of State for the Environment (1982) 43 P&CR 233

potential delays to the development due to matters that have been identified by the appellant.

9. The Framework aims to boost significantly the supply of housing and the Council has accepted that its most up-to-date housing land supply figures indicate that it would not meet what I consider to be the most relevant five-year period for this appeal. Based on this, and the reasons that I have previously given, I find that the Council has not demonstrated a five-year supply of deliverable housing sites in accordance with the Framework.
10. The Council has referred to 2 recent appeal decisions² on sites in the District in which the Inspector has concluded that a five-year supply of deliverable housing sites has been demonstrated. However, these appeals were determined before the Council published its July 2016 Housing Position Paper and, based on the evidence provided, the Inspectors in those appeals had not been provided with sufficient information to test the Council's position on its claimed housing land supply. Whilst the appellant at the Inquiry accused the Council's officer of acting dishonestly in not stating the period covered by the five-year housing land supply provided to the Inspector for the appeal in Linton, I have no evidence to support this accusation. However, it is clear to me that the Inspector did not know the full circumstances behind the 5.33 year supply that was mentioned in the decision letter. Therefore, I have attached limited weight to these previous appeals with regard to my determination of the five-year housing land supply for the current appeal, which is based on the most up-to-date evidence.

Character and Appearance

11. The appellant has undertaken Landscape and Visual Impact Assessments (LVIAs) for the 69 dwelling and 44 dwelling proposals and an LVIA, dated February 2016, has been provided to accompany the subsequent application for a 34 dwelling proposal. Whilst the indicative layout plan for the 34 dwelling proposal would not include the area of open space shown along the north east boundary of the site on the indicative layout plan for the 44 dwelling proposal, it would not develop the large area of agricultural land to the north west, which is adjacent to Melbourne Cemetery and footpath FP15 and is the nearest part of the original site to Kings Newton Conservation Area (CA).
12. The appeal site for the 34 dwelling proposal includes agricultural land and a residential property, known as Bond Elm, which has a generous curtilage. It is located adjacent to the rear gardens of predominantly 2 storey residential development in Huntingdon Court and Oaklands Way which form part of the north eastern development boundary of Melbourne. The appeal site lies outside the settlement boundary of Melbourne as defined in the 1998 South Derbyshire Local Plan (SDLP) and, at the Inquiry, the Council confirmed that its emerging Local Plan Part 2, which when adopted will redefine the settlement boundaries, also omits the site from the boundary of Melbourne. As such, it lies within the surrounding countryside.
13. The site is classified in Derbyshire County Council's 'The Landscape Character of Derbyshire' as being within the Estate Farmlands Landscape Character Type in the Melbourne Parklands in which the fields are bounded by managed

² Appeal Refs APP/F1040/W/15/3132831 Cauldwell Road, Linton and APP/F1040/W/15/3139116 Land at Jawbone Lane, Melbourne

hedgerows and mature trees and the land use is generally a mixed agricultural landscape with extensive cropping. The Council and appellant have agreed that the site accords well with this character. It forms part of the rolling pastoral farmlands and lies on a gentle south facing slope that falls away from its north western end. It is bounded to the east by Jawbone Lane, which is a relatively narrow rural lane with a footway, grass verge and hedgerow along the appeal site side and a field boundary with hedges and trees on the opposite side, and the County Council has designated it as a 'Greenway'.

14. The proposal would adversely affect the landscape character of the appeal site, as it would result in built development on currently undeveloped land. However, it would retain some of the landscape features of the area, including the trees and hedgerows, which would help to screen the built development. The Council has accepted that the site is not part of a 'Valued Landscape' in terms of the Framework. Additional boundary planting would help to screen the development by obscuring views into the site. Although this would also prevent views through the site of existing features in the landscape, at my site visit there did not appear to me to be any places where important views would be lost as a result of such planting. As such, I find that the proposal would have a moderate adverse effect on the landscape character of the area.
15. The appeal proposal would be accessed from Jawbone Lane and would therefore require the creation of a new relatively wide access road with the removal of part of the hedgerow to provide the required entry widths and visibility splays. This, together with the widening of part of the footway and carriageway, would erode the rural character of that part of Jawbone Lane. However, it would be towards the end of the lane that is close to the junction with Huntingdon Close, which is a residential cul-de-sac within Melbourne, and close to the entrance to Bond Elm, which provides a more urban character to that part of the lane. Furthermore, most of the proposed dwellings on the indicative layout would be sited a significant distance from the highway behind an area of open space, allowing a sufficient gap for landscape planting, with the access being curved to reduce views into the site.
16. I have also considered the effect on the character of Jawbone of the additional traffic that would be generated by the development. Whilst the vehicles would enter and leave the development via Jawbone Lane, they would only need to travel a relatively short distance along the lane to arrive at Station Road in Melbourne, which is a main route and links up with routes in most directions. As most of Jawbone Lane would remain as a narrow rural lane with a tight bend and no footway along part of it, it would not be attractive for vehicular use. As such, I cannot see any convincing reason why the proposal would result in a significant increase in traffic using Jawbone Lane from that which uses it when accessing other nearby dwellings in Jawbone Lane, Station Road and Huntingdon Close. Therefore, I am satisfied that the proposal would not result in a significant change in the character and appearance of Jawbone Lane as a rural lane that is a Greenway and part of the National Cycle Network.
17. With regard to views of the proposal for users of the footpaths, it would be visible from FP15 when leaving Kings Newton. However, the dwellings would be seen against the backdrop of existing dwellings in Oaklands Way and Huntingdon Court. Also, the land falls away from the footpath, which would ensure that the proposed dwellings would not appear dominant in the skyline, particularly as most of the existing planting, including pine trees, would remain

and new planting would be able to be provided along the site boundary under reserved matters. I accept that the users of the footpath would have a high sensitivity but, based on the above and my observations at my site visit, I find that the proposal would result in a medium magnitude of change, due to the loss of part of the agricultural land to residential development, which would result in a moderate adverse visual effect. This would be its most severe resulting visual impact, as the proposed development would be set back from the boundary of Melbourne Cemetery, limiting views of it from the Cemetery and footpath FP14.

18. I have considered the concerns about the effect of the proposal on the separation between the built up areas of Kings Newton and Melbourne, which in the area of the appeal site consists mainly of open fields between Jawbone Lane and the settlement boundaries. However, part of the site is occupied by Bond Elm, which is a large house, together with its outbuildings and extensive curtilage, which already gives a perception of built development in that area. The proposal would not cause any significant reduction in the perceived separation of the two settlements, as there would be agricultural fields that would remain between them with boundary hedges and fencing. Also, the far boundary of the development would not extend significantly closer to Kings Newton than the residential development in Oaklands Way.
19. Taking the above into account, I conclude on this main issue that the proposal would not cause any significant harm to the character and appearance of the surrounding area. Whilst it would be outside the defined settlement boundary in the SDLP, it would be adjacent to that boundary, which is subject to be amended in the emerging Local Plan Part 2. In terms of SDLP Environment Policy 1, which only permits development outside settlements where it is essential to a rural based activity or unavoidable in the countryside, it can be argued that meeting a shortfall in a five-year housing land supply makes the development unavoidable. If this is the case, the proposal would accord with the Policy, as the development could be designed and located so as to create as little impact as practicable in the countryside. Nevertheless, the proposal would fail to accord with SDLP Policy H5, as it would not be within the defined confines of Melbourne.
20. The proposal would also fail to accord with Local Plan Part 1 Policy H1, which establishes a settlement hierarchy that places Melbourne in the second tier as a 'Key Service Village' where development of sites adjacent to settlement boundaries can be considered as an exception or cross subsidy site as long as not greater than 25 dwellings. The proposal would, however, accord with Local Plan Part 1 Policy BNE1, as it would be able to be designed to respond to its context and have regard to and respect valued and important landscapes, townscape, historic views and vistas and heritage characteristics; and Policy BNE4, as it would protect the character and local distinctiveness of the District's landscape and visual amenity and would retain key valued landscape components.

Heritage

21. I have considered the statutory duties under sections 66(1) and 72(1) Planning (Listed Buildings and Conservation Areas) Act 1990, which are to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses and to

pay special attention to the desirability of preserving or enhancing the character or appearance of a CA. The Framework does not distinguish between listed buildings and CAs in terms of designated heritage assets. In this respect, it identifies in paragraph 132 that development within the setting of a heritage asset can harm its significance.

22. The Council has argued that the proposed development would be within the setting of Kings Newton Conservation Area (CA), which is in an elevated location to the north of the site. The CA includes a number of Grade II listed buildings. I accept the views of Historic England (HE) that it is particularly significant because its medieval layout is well preserved and readily apparent. Part of this significance is the retention to the south of its historic relationship with the agricultural land that sustained it. In this respect, footpath FP15 that is accessed between buildings fronting Main Street offers views of market gardens, some of which at my site visit appeared to be overgrown. The cultivated landscape, which has a historical significance, contrasts with the tight-knit form of development along Main Street and provides a physical and perceptual separation between the buildings in Melbourne and those in Kings Newton CA.
23. HE has identified the harm that the 44 unit proposal would cause to the heritage assets as transforming the character of agricultural land historically associated with Kings Newton to housing and a reduction in the area of separation between Kings Newton and Melbourne. In assessing the harm that the 34 unit proposal would cause to the heritage assets, I observed at my site visit that the appeal site is separated from the CA by market gardens and open fields with boundaries that include hedges and trees. As such, it is mainly hidden from view from footpath FP15 near to the rear of the buildings along Main Street, although I accept that when some of the trees and hedges have lost their leaves it might be more apparent.
24. The proposed dwellings would be on lower ground than the buildings in the CA. This would ensure that the skyline would not be broken in views from the edge of the CA over to the horizon, which include the church at Breedon-on-the-Hill. Due to the separation distance between the CA and the proposed development, together with any screening that would be provided by landscaping, the proposal would not have a significantly greater impact on views from the CA than the development at the edge of Melbourne that is currently visible.
25. Whilst the proposal would result in additional built development on the site and thus reduce the overall area of open land between Melbourne and Kings Newton, a significant gap consisting of open fields would remain. This, together with the character of the site, which includes the large dwelling and outbuildings at Bond Elm, and its relative location adjacent to visible development in Melbourne, would ensure that the perceived separation between Melbourne and Kings Newton would be retained. As such, I am satisfied that the proposal would result in minor harm to the setting of Kings Newton CA, which would amount to less than substantial harm to its significance.
26. The other heritage assets that the Council has indicated would have their setting harmed by the proposal are the Grade II listed Melbourne Cemetery mortuary chapels and the undesignated Melbourne Cemetery. In this respect the architect who designed the chapels and the landscape gardener who laid

out the gardens at the Cemetery contribute to their significance. Although their setting has changed significantly since the Cemetery was first constructed when it was surrounded by open countryside, the eastern boundary still retains a rural setting. This rural setting contributes to views out of the Cemetery and views of the chapel spire and planted trees from outside the Cemetery.

27. The most significant view from the Cemetery is that through the carriage arch, which looks out onto the eastern boundary that is planted with trees. Whilst the open countryside beyond would be more apparent in the winter months than when I visited the Cemetery, the proposed development of 34 dwellings would be set back away from this boundary and would therefore not interfere with these views. I observed that the main public views of the spire and Cemetery trees are from the nearby footpaths and Jawbone Lane. In this respect, I am satisfied that the relative location of the proposed development, together with the existing boundary treatment along Jawbone Lane, much of which could be retained, supplemented or replaced, would ensure that the existing views of these historical features would not be interfered with by the proposal. Therefore, I find that the proposal would preserve the setting of the listed building at Melbourne Cemetery and the Cemetery itself.
28. In weighing the less than substantial harm to the significance of the heritage asset against the benefits of the proposal, as required in paragraph 134 of the Framework, I have taken account of the economic and social benefits of providing up to 34 dwellings that include some affordable homes. Whilst I have attached considerable weight to the desirability of preserving the heritage asset's significance, the harm that I have found is limited. Therefore, the less than substantial harm that I have found that the proposal would cause to the significance of the CA is outweighed by the public benefits of the proposal.
29. In conclusion on this main issue I have found that the proposal would preserve the setting of Melbourne Cemetery and Grade II listed chapels but would fail to preserve the setting of Kings Newton CA. As such, it would accord with saved SDLP Environment Policy 13, as it would preserve the setting of listed buildings, but would fail to accord with saved SDLP Environment Policy 12, as it would have an adverse effect on the character of a CA, and Local Plan Part 1 Policy BNE2, as it would not protect, conserve or enhance the setting of the CA. It would accord with the Framework with regard to this issue, as the less than substantial harm that the proposal would cause to the significance of the CA would be outweighed by its public benefits.

Section 106 Planning Obligations

30. Following the close of the Inquiry, the appellant submitted an engrossed Section 106 Agreement, dated 27 October 2016. The obligations in the Agreement would secure the provision of contributions towards Kings Newton Bowls Club house, a healthcare contribution towards extra consulting rooms at Melbourne and Chellaston Medical Practice, contributions towards the provision and maintenance of off-site public open space in the area, an outdoor sports facilities contribution and a contribution towards the maintenance of a sustainable drainage scheme. They would also secure contributions to help meet the identified shortfall in primary, junior and secondary school places as a result of additional demand that would be generated by the future occupants of the proposed dwellings.

31. The above contributions would be related to the number of dwellings that would be completed, using agreed formulae to calculate the sums to be paid, and are supported by development plan policy and guidance. As such, I find that they would be directly related, and would be fairly and reasonably related in scale and kind, to the development. I have examined the evidence provided by the Council, the Local Education Authority and the NHS Southern Derbyshire Clinical Commissioning Group regarding the need for these contributions and compliance with the Community Infrastructure Levy Regulations (CIL) Regulation 122 and Regulation 123(3). Based on this, I am satisfied that all the planning obligations in the Agreement would be necessary to mitigate the effects of the development on local facilities and services and they meet the tests in CIL Regulations 122 and 123(3). I have therefore taken them into account in my determination of this appeal.

Other Matters

32. The local residents were represented at the Inquiry by Melbourne and Kings Newton Action Group, Melbourne Civic Society, Kings Newton Residents' Association and a local District Councillor. I am satisfied that the matters raised by these parties cover the most relevant concerns expressed by local residents in their correspondence objecting to the proposal. I have addressed many of these concerns under the main issues. With regard to the other concerns, the planning obligations would address those regarding the effect on local facilities and services, and those regarding the effect on wildlife and drainage and the effect of noise from aircraft using the nearby airport would be addressed under planning conditions.
33. Whilst reference was made by objectors at the Inquiry to flooding at a recent new development on the edge of Melbourne, the available information demonstrates that the risk of flooding to the appeal development from all sources is considered low and it would be within Flood Zone 1. This indicates to me that the risk of flooding would not be significantly increased due to the proposal. With regard to concerns about the loss of agricultural land, I am satisfied that it would be insufficient to cause any significant harm in this respect.
34. In terms of the impact of traffic generated by the proposal on highway safety in the area, I have noted the concerns about the junction of Jawbone Lane with Main Street, the traffic using Swarkestone Causeway and the potential increase in the use of Jawbone Lane. However, the Highway Authority has not objected to the 44 dwelling proposal, subject to planning conditions. Also, limited evidence has been provided to show that there are any existing safety problems with the use of Jawbone Lane and there is little evidence to show that the route via Jawbone Lane and Main Street would be sufficiently attractive to use for vehicular access to the site to result in a significant increase in traffic using it due to the development. Therefore, given that an acceptable access would be secured through a planning condition and the internal layout is a reserved matter, I find that there is insufficient evidence to support the claims that the proposal would cause any significant harm to highway safety or that the residual cumulative impacts on transport would be severe.
35. With regard to localism and the emerging Neighbourhood Plan (NP), the evidence given at the Inquiry indicates to me that the NP is still at a relatively early stage in its preparation, having been prepared in draft over about a 2

year period that involved 3 drop-in sessions, and is not yet ready to proceed to referendum. Therefore, although I have been told at the Inquiry that the current draft NP supports the settlement boundaries for Melbourne identified in the draft Local Plan Part 2 and seeks to maintain the separation between Melbourne and Kings Newton, it could well be subject to change following further stages in its progression. I have therefore given it limited weight in this appeal.

36. I have noted the concerns that allowing this appeal would make it difficult for the Council to resist further new development in the area, which would have the cumulative effect of closing the separation between Melbourne and Kings Newton and thus harming the character and appearance of the area and the setting of heritage assets. Although there have been previous applications and previous appeals for housing in the area, each case should be determined on its own planning merits in the light of prevailing policies and guidance. Granting planning permission for the proposed development in the current appeal should not prevent other subsequent proposals in the area from being refused on planning grounds.
37. Following the Inquiry, the Council has referred to recent court judgments³ made after the close of the Inquiry. With respect to both the Barwood Case and the Daventry Case, they involve significantly different circumstances from the current appeal, particularly with regard to the Council being able to demonstrate a five-year housing land supply. In the Daventry Case, there was an apparent failure to assess the issue of the weight to be accorded to development plan policies under the approach mandated by paragraph 215 of the Framework, which I have addressed in reaching my decision on the current appeal. Whilst I have noted the points made, I consider that neither of the cases is directly comparable with the current appeal, which I have determined on its own individual planning merits having regard to prevailing policies and guidance.

Planning Balance

38. I have considered the proposal in the context of the presumption in favour of sustainable development. As I have found that the Council cannot demonstrate a five-year supply of deliverable housing sites, relevant policies for the supply of housing should not be considered up-to-date. In such circumstances, paragraph 14 of the Framework indicates 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.
39. The benefits of the proposal include the provision of up to 34 dwellings, which should make a contribution towards addressing the overall shortfall in the five-year housing land supply from 2016 to 2021. This includes 30% affordable housing, which would be secured by a planning condition. I have given significant weight to these benefits, given that the Framework aims to boost significantly the supply of housing, but taking account of the relatively small shortfall, the Council's demonstrable five-year supply in 2017 to 2022, and the

³ East Staffordshire Borough Council v Secretary of State for Communities and Local Government & Barwood [2016] EWHC 2973 (Admin) and Gladman Developments Ltd v Daventry District Council & Ancor [2016] EWCA Civ 1146

size of the contribution from the proposed development in meeting this shortfall.

40. The economic benefits of the proposal include the jobs that would be created during construction, a potential increase in spending to support local businesses and services and the economic activity generated by the increase in the supply of market and affordable homes. The social benefits would be related to the affordable housing and a potential increase in support for local community facilities and services. Whilst the level of these benefits would be reduced by a reduction in the number of dwellings, they would still represent significant benefits, particularly when there is a lack of a demonstrable five-year housing land supply.
41. The site lies adjacent to Melbourne settlement which, as its Local Plan Part 1 classification as a Key Service Village indicates, is capable of accommodating new development at an appropriate scale. Melbourne is served by a bus service from Swadlincote and Derby and a multi-user Greenway runs close to it that connects to Derby. It has a post office, shops that include a convenience store, a GP practice, dentist, primary school, leisure centre, library, sports pitches and public houses that are relatively near to the site. As such, the Council has accepted that the site is in a sustainable location and I agree that it is located near enough to essential facilities and services to enable future residents on the site not to be reliant upon the private car. This, together with the landscaping under reserved matters, would assist in minimising the impact that the proposed increase in housing would have on the environment.
42. Although I have found that the proposal would fail to preserve the setting of a CA and the character and appearance of the surrounding area, the resulting harm to the environment would be mitigated by landscaping and the design of the proposed development. As such, the overall negative effect of the proposal on the environment would not be great enough to prevent it from amounting to sustainable development in accordance with the Framework.
43. I have found that there would be conflict with development plan policies with regard to the development being located outside a settlement boundary and in terms of its failure to preserve the setting of a CA. However, the scale of the harm to the significance of the heritage asset would be relatively low and I have accordingly attached reduced weight to this conflict with development plan policy. Furthermore, the settlement boundaries in the SDLP do not allow for the housing development that would be necessary to ensure that the full, objectively assessed needs for market and affordable housing in the housing market area would be met over the plan period, and are due to be reviewed in the Local Plan Part 2 Examination to take this into account.
44. In considering the weight to be attached to the development plan policies that are relevant for the supply of housing and are therefore not to be considered up-to-date, I have taken account of the recent adoption of the Local Plan Part 1. Therefore, I have attached significant weight to the relevant policies in that Local Plan. However, with regard to the relevant saved policies in the SDLP, including those that define the settlement boundaries, I have attached limited weight to them, due to the age of the SDLP and its apparent failure to boost significantly the supply of housing in accordance with the Framework. As such, I have given reduced weight to the conflict with development plan

policies associated with new housing development outside settlement boundaries.

45. Based on the stage that the Local Plan Part 2 has reached in its progress towards adoption, I attach some weight to its draft policies, in accordance with paragraph 216 of the Framework. Whilst the Pre-submission version of the plan does not include the appeal site within the proposed settlement boundary for Melbourne, draft Policy BNE5 indicates that planning permission will be granted for new development in the countryside if it can be demonstrated that it is well related to a settlement, the site is not a valued landscape and the development will not unduly impact on landscape character, biodiversity, best and most versatile land and historic assets. Taking account of my findings on the effect of the proposed development, I consider that the proposal would accord with draft Policy BNE5.
46. For the above reasons, I find that the adverse impacts of the proposed development, including its impact on the setting of a heritage asset, would not significantly and demonstrably outweigh its benefits. Therefore, although I have found that the proposal would not accord with the development plan as whole, other material considerations that I have given above, including the presumption in favour of sustainable development in accordance with the Framework, outweigh this conflict with development plan policy.

Planning Conditions

47. I have considered the conditions that have been agreed between the Council and appellant should the appeal be allowed, following discussions at the Inquiry. It is necessary to impose the standard conditions for outline planning permission to ensure that development is carried out expediently. A condition referring to the plans is necessary to provide certainty over the extent of the amended site boundary and the details of the access, particularly as access is not a reserved matter. A condition to ensure that account is taken of the design and layout on the indicative plan and the appearance detailed in the Design and Access Statement for 34 dwellings when considering reserved matters is necessary for the avoidance of doubt. The inclusion of details that would be required under reserved matters is necessary to ensure that the proposal would be designed to take account of the environment and highway safety.
48. A condition to control the times when work would be carried out on trees, hedgerows, shrubs or scrub, a condition to ensure that badgers and other mammals would be taken into account when carrying out the works and a condition to secure the implementation of a Habitat Management Plan (HMP) are necessary in the interests of protecting wildlife. An Ambient Noise Assessment has been carried out and, as the development would be near to the flight paths of aircraft using East Midlands Airport, the noise mitigation measures set out in that document should be secured by a condition.
49. In order to minimise the inconvenience and the impact of the proposal on amenity and health and safety during construction a condition to implement a Construction Management Plan (CMP) or Construction Method Statement (CMS) and a condition to provide an acceptable means of temporary access to the site are necessary. The CMP or CMS would include the routing of vehicles, which should help to address some of the concerns of local residents. The condition regarding the provision of a temporary access would also ensure that it would

be closed when a permanent access would be provided in the interests of highway safety.

50. Conditions to secure measures to protect trees and hedgerows, control finished floor and ground levels, and control the planting and maintenance of any approved landscaping are necessary to safeguard the character and appearance of the area. A condition regarding surface water drainage is necessary to minimise a potential increased risk of flooding. A condition to secure appropriate disposal of foul water is necessary to prevent pollution in order to protect the environment.
51. A condition to secure the provision of affordable housing on the site is necessary to secure some of the benefits of the proposal and to ensure that it would comply with the requirements of the development plan in this respect. Whilst the necessary improvements to the public highway would be undertaken under Section 278 of the Highways Act, it is necessary in the interests of highway safety to prevent any dwelling from being occupied until the means of access to the site has been completed in accordance with the details shown on Drawing No 16257-01 Revision B, which I understand has been approved by the Highway Authority and only involves land within the highway boundary or the boundary of the site. A condition to ensure that dwellings are not occupied until appropriate access, parking, manoeuvring and bin storage has been provided for that dwelling is necessary in the interest of residential amenity and highway safety. I am satisfied that all the conditions that I have included are reasonable and necessary and reflect the advice in the national Planning Practice Guidance.

Overall Conclusions

52. I have found that a five-year supply of deliverable housing sites has not been demonstrated and the proposal would not have a significant adverse effect on the character and appearance of the surrounding area, but it would fail to preserve the setting of Kings Newton CA. Although it would be in conflict with development plan policies, it would represent sustainable development in accordance with the Framework. Therefore, for the reasons given above and having regard to all relevant matters raised, I conclude that the appeal should succeed.

M J Whitehead

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Jack Smyth	of Counsel, instructed by Ardip Kaur, Solicitor, South Derbyshire District Council
He called	
Nicola Sworowski MA	Planning Policy Manager, South Derbyshire
BSc(Hons) MRTPI	District Council
Melanie Morris BA(Hons)	Mel Morris Conservation
DipArchCons IHBC MRTPI	
John Nuttall BA(Hons)	Parkwood Consultancy Services Ltd
DipLA MA CMLI	
Chris Nash BSc(Hons) MA	Principal Area Planning Officer, South Derbyshire
MRTPI	District Council

FOR THE APPELLANT:

Satnam Choongh	of Counsel, instructed by Fisher German LLP
He called	
Richard Mowat MA(TRP)	Director, Johnson Brook Planning and
MA(LPM) MRTPI	Development Consultants
Ben Wright BA(Hons)	Director, Aspect Landscape Planning
DipLA CMLI	
Mike Kimber MA(Hons)	Project Manager, Headland Archaeology (UK) Ltd
MCifA	
Tom Collins BA(Hons)	Associate Planner, Fisher German LLP
MSc MRTPI	

INTERESTED PERSONS:

Margaret Gildea	Melbourne and Kings Newton Action Group
Jessica Long	Melbourne Civic Society and Kings Newton
	Residents' Association
Councillor Jim Hewlett	District Councillor for the Melbourne Ward

DOCUMENTS SUBMITTED AFTER OPENING THE INQUIRY

- 1 Draft Section 106 Agreement, submitted by the appellant on 18 October
- 2 APP1: E-mail from Mr Nash on 16 August 2016 re Linden Homes decision, submitted by the appellant on 18 October
- 3 APP2: E-mails between the appellant's agent and the Council following a meeting on 24 August, submitted by the appellant on 18 October
- 4 APP3a: E-mails between the appellant's agent and the Council, 1 to 8 September 2016, regarding the early substitution of plans and drafting of a joint letter to the Planning Inspectorate to request the substitution of the 34 unit proposal, submitted by the appellant on 18 October
- 5 APP3b: Draft joint letter regarding the early substitution of plans and drafting of a joint letter to the Planning Inspectorate to request the substitution of the 34 unit proposal, submitted by the appellant on 18 October
- 6 APP6: High Court Judgment: Wychavon District Council v Secretary of State for Communities and Local Government [2016] EWHC 592 (Admin), submitted by the appellant on 18 October
- 7 APP7: Agricultural Land Classification by Soil Environment Services Ltd, June 2016, submitted by the appellant on 18 October
- 8 APP8: E-mail to Richard Mowat from agent of Dyson Group and St Modwen, owners of land at Church Street, Church Gresley, Swadlincote, regarding delivery, submitted by the appellant on 18 October
- 9 CD1.32: Extract from South Derbyshire Pre-Submission Local Plan Part 2, submitted by the Council on 18 October
- 10 SDDC1: Secretary of State decision letter and report for Appeal APP/Y3940/A/13/2206963, dated 21 September 2016, for development on land off Coate Road and Windsor Drive, Devizes, submitted by the Council on 18 October
- 11 SDDC2: Extract from PINS procedural Guide, August 2016, submitted by the Council on 18 October
- 12 Statement on behalf of Melbourne and Kings Newton Action Group read at the Inquiry by Margaret Gildea, submitted by Margaret Gildea on 18 October
- 13 SDDC4: E-mail, dated 18 October 2016, from Planning Prospects to the Council regarding land at Church Gresley, submitted by the Council on 19 October
- 14 SDDC5: E-mails regarding Appeal Ref APP/F1040/W/15/3139116 for Linden Homes proposal, submitted by the Council on 19 October
- 15 SDDC6: Track changes to the proposed conditions in the event the appeal is allowed, submitted by the Council on 20 October
- 16 SDDC7: CIL Compliance Statement, 20 October 2016, submitted by the Council on 21 October
- 17 SDDC8: Further track changes to the proposed conditions in the event the appeal is allowed, submitted by the Council on 24 October
- 18 SDDC9: Final proposed conditions in the event the appeal is allowed, submitted by the Council on 24 October
- 19 APP9: Table of disputed sites and agreed amended five-year housing land supply figures for 2016 to 2021 and 2017 to 2022 for the appellant and the Council, submitted by the appellant on 25 October
- 20 APP10: Five-year housing land supply disputed sites pro-formas, version 2 17 October 2016, submitted by the appellant on 25 October
- 21 APP11: Copy of decision letter for Appeal Ref APP/H1840/W/15/3008340 Land off Worcester Road, Drakes Broughton, submitted by the appellant on 25 October

- 22 SDDC10: Extract from the Statement of Common Ground for the Inquiry Appeal Ref APP/F1040/W/15/132831 Cauldwell Road, Linton, submitted by the Council on 25 October
- 23 Formal Statement on behalf of Melbourne Civic Society and Kings Newton Residents' Association read at the Inquiry by Jessica Long, and associated appendices, submitted by Jessica long on 25 October
- 24 Copy of Statement of Councillor Jim Hewlett read at the Inquiry by Councillor Jim Hewlett, submitted by Councillor Jim Hewlett on 25 October
- 25 Amended draft Section 106 Agreement, submitted by the appellant on 25 October
- 26 Copy of e-mail and attachment, dated 24 October 2016, regarding education contributions for Chellaston Academy, submitted by the Council on 25 October
- 27 Closing submissions on behalf of the Council, submitted by the Council on 25 October
- 28 Closing submissions on behalf of the appellant, submitted by the appellant on 25 October
- 29 Final engrossed Section 106 Agreement, submitted by the appellant on 28 October
- 30 E-mail, dated 22 November 2016, from Chris Nash of the Council referring to the High Court Judgment: East Staffordshire Borough Council v Secretary of State for Communities and Local Government & Barwood [2016] EWHC 2973 (Admin)
- 31 E-mail, dated 24 November 2016, from Chris Nash of the Council referring to the Court of Appeal Judgment: Gladman Developments Ltd v Daventry District Council & Ancor [2016] EWCA Civ 1146
- 32 E-mail, dated 25 November 2016, from Tom Collins on behalf of the appellant commenting on the High Court Judgment: East Staffordshire Borough Council v Secretary of State for Communities and Local Government & Barwood [2016] EWHC 2973 (Admin)
- 33 E-mail, dated 29 November 2016, from Chris Nash of the Council commenting on the Court of Appeal Judgment: Gladman Developments Ltd v Daventry District Council & Ancor [2016] EWCA Civ 1146
- 34 E-mail, dated 30 November 2016, from Tom Collins on behalf of the appellant commenting on the Court of Appeal Judgment: Gladman Developments Ltd v Daventry District Council & Ancor [2016] EWCA Civ 1146

PLANS SUBMITTED AFTER OPENING THE INQUIRY

- A APP4: Drawing No YOR.2292-01K Jawbone Lane, Melbourne-Masterplan, considered at Appeal Ref APP/F1040/W/15/3139116 for Linden Homes proposal, submitted by the appellant on 18 October
- B APP5: Drawing No I15.1-001E: Amended Location Plan, submitted by the appellant on 18 October
- C SDDC3: Drawing No I15.1-001D: Amended Location Plan, submitted by the Council on 18 October

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Nos I15.1-001D and 16257-01 Revision B.
- 5) The details submitted pursuant to the reserved matters listed in condition 1 shall broadly be in accordance with the details shown on Drawing No A632 05 Rev A and the Layout and Scale and Appearance parameters on page 20 of the Design and Access Statement, February 2016. The reserved matters approval applications shall include, in so far as relevant to those matters and/or phase of the development, the following details/ requirements:
 - a) Tree planting within the street scene accompanied by details of tree pits/subterranean cages to allow full maturity to be achieved and details of those existing trees on the site to be retained;
 - b) the internal layout of the site to be designed in accordance with the guidance contained in 'Manual for Streets' and parking provision of at least 2 spaces per dwelling of dimensions no less than those set out in the '6Cs Design Guide';
 - c) driveways/parking spaces connecting to the estate roads provided with 2 metre x 2 metre x 45 degree pedestrian visibility splays on either side of the accesses at the rear of the footway/margin;
 - d) driveways/parking spaces connecting to the estate roads shall be no steeper than 1 in 14 for the first 5 metres from the nearside highway boundary and no steeper than 1 in 10 thereafter;
 - e) siting of bin collection points within private land at the highway end of private shared accesses sufficient to cater for up to 2 bins per dwelling the collection point serves;
 - f) a swept path analysis to demonstrate that service and emergency vehicles can safely enter and manoeuvre within the site; and
 - g) a timetable and phasing plan for the implementation of the landscape scheme.
- 6) No removal of trees, hedgerows, shrubs or scrub shall take place between 1 March and 31 August inclusive unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on the site during this period and details of measures to protect the nesting bird interest on the site have been submitted to and approved

in writing by the local planning authority. The approved protection measures shall then be implemented as approved.

- 7) The dwellings hereby permitted shall be constructed so as to provide all the noise mitigation measures set out in section 5 of the Ambient Noise Assessment Ref 8352/0901/01 Issue 1, October 2014, and these measures shall be retained thereafter.
- 8) No development shall take place, including any works of demolition, until a Construction Management Plan (CMP) or Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. The CMP/CMS shall provide for:
 - i) a dust mitigation strategy taking into account national practice guidance and highlighting details of the likely resultant dust levels from activities during the construction phase at the nearest residential premises as well as those dwellings which may be occupied as part of the development (or adjoining development), and set out measures to reduce the impact of dust on those residential premises;
 - ii) storage of plant and materials;
 - iii) site accommodation;
 - iv) loading, unloading of goods vehicles;
 - v) parking of site operatives' and visitors' vehicles;
 - vi) routes for construction traffic;
 - vii) hours of operation;
 - viii) a method of prevention of debris being carried onto the highway;
 - ix) pedestrian and cyclist protection; and
 - x) any proposed temporary traffic restrictions.

No portable generators shall be used on site, unless details have been included in the CMP/CMS and have been subsequently approved. The approved CMP/CMS shall be implemented before any other operations are commenced and adhered to throughout the construction period for the development.
- 9) No other operations shall take place until a temporary access for construction purposes has been provided in accordance with a detailed design that shall have been submitted to and approved in writing by the local planning authority. The access shall be retained in accordance with the approved details until it is replaced by, or it becomes redundant as a result of, the permanent access to be secured in line with the approved plans; whereupon within 28 days all means of access to Jawbone Lane other than the permanent access shall be permanently closed with a physical barrier and the existing vehicle crossover(s) reinstated as verge/footway in accordance with a scheme that shall have been submitted to and approved in writing by the local planning authority.
- 10) No development or other operations on the site (including ground works and vegetation clearance) shall take place until there has been submitted to and approved in writing by the local planning authority a scheme which provides for the protection of all hedgerows and trees identified for retention in the details submitted under condition 1 growing on or adjacent to the site. The approved protection measures shall then be

implemented prior to any development or operations commencing and thereafter retained until a time where vehicles or mechanical equipment cannot interfere with such hedgerow or trees, or completion of the development, whichever occurs first.

- 11) No development shall take place until details of the finished floor levels of the dwellings and other buildings hereby permitted, and of the ground levels of the site relative to adjoining land levels, along with details of any retaining features necessary, have been submitted to and approved in writing by the local planning authority. Thereafter the development shall be constructed in accordance with the agreed levels and any approved retaining features.
- 12) No development shall take place until the detailed design of a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development hereby permitted has been submitted to and approved in writing by the local planning authority. The drainage scheme shall demonstrate the surface water run-off generated up to and including the 100 year plus 30% (for climate change) critical rain storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall include:
 - i) surface water drainage system/s to be designed in accordance with either the National SUDs Standards, or CIRIA C697 and C687, whichever are in force when the detailed design of the surface water drainage system is undertaken;
 - ii) limiting the discharge rate generated by all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm so that it shall not exceed the run-off from the undeveloped site and shall not increase the risk of flooding off-site;
 - iii) provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm;
 - iv) detailed design (plans, cross sections, long sections and calculations) in support of any surface water drainage scheme, including details of any attenuation system, highway drainage infrastructure, maintenance access, and the outfall arrangements;
 - v) details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development, to ensure long term operation to design parameters; and
 - vi) a timetable for the delivery and/or phased delivery of the drainage scheme.

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

- 13) The development hereby permitted shall not take place until a scheme to dispose of foul drainage has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved.

- 14) No works which include the creation of trenches or culverts or the presence of pipes shall take place until measures to protect badgers and other mammals from being trapped in open excavations and/or pipe and culverts have been submitted to and approved in writing by the local planning authority. The measures may include:
- a) creation of sloping escape ramps (mammal ladders) for badgers and other mammals potentially using the site, which may be achieved by edge profiling of trenches/excavations or by using planks placed into them at the end of each working day; and
 - b) open pipework greater than 200mm outside diameter being blanked (capped) off at the end of each working day.

The approved measures shall be implemented throughout the construction period.

- 15) No development shall take place until a scheme for the provision of affordable housing as part of the development shall have been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2: Glossary of National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:
- i) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 30% of housing units and 75% social rented and/or affordable rented and 25% intermediate housing;
 - ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing with no more than 80% of market housing units occupied before completion and transfer of the affordable housing units;
 - iii) the arrangements for the transfer of the affordable housing to an affordable housing provider;
 - iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing to those on the District Housing Waiting List; and
 - v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing by means of the District Choice Based Lettings allocation scheme or in such other forms as may be proposed by the local planning authority and agreed with the affordable housing provider.

The affordable housing shall be retained in accordance with the approved scheme.

- 16) The management of all retained and created habitats outside the curtilage of domestic properties shall be subject to a Habitat Management Plan (HMP) which shall be submitted to and approved in writing by the local planning authority prior to the occupation of any dwelling on the site. The content of the HMP may extend to the use of additional land and shall include the following:
- a) location, description and evaluation of features to be managed;

- b) ecological trends and constraints on site that might influence management;
- c) aims and objectives of management, including mitigation and enhancement for species identified on site and as advocated by the response of the Derbyshire Wildlife Trust, dated 21 April 2016;
- d) management options for achieving aims and objectives;
- e) prescriptions for management actions;
- f) preparation of a work schedule for an agreed period of time;
- g) details of the body or organisation responsible for implementation of the HMP; and
- h) ongoing monitoring and remedial measures.

The HMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan shall be secured with the management body(ies) responsible for its delivery. The HMP shall also set out where the results from monitoring show that conservation aims and objectives of the HMP are not being met how contingencies and/or remedial action shall be identified, agreed and implemented so that the fully functioning biodiversity objectives of the originally approved scheme are delivered. The HMP shall be implemented in accordance with the approved details.

- 17) No dwelling hereby permitted shall be occupied until a means of access for vehicles/pedestrians/cyclists has been constructed in accordance with the details shown on Drawing No 16257-01 Revision B.
- 18) Prior to the occupation of each dwelling hereby permitted:
 - (a) the new estate street(s) between that dwelling and the existing public highway shall be laid out in accordance with the approved plans under condition 1, constructed to base level, drained and lit in accordance with Derbyshire County Council's specification for new housing development roads;
 - (b) space shall be provided within its curtilage, or shared courtyard where applicable, for the parking and manoeuvring of residents' and visitors' vehicles associated with that dwelling, laid out in accordance with the approved plans under condition 1, and that parking and manoeuvring space shall be thereafter retained throughout the life of the development free from any impediment to their designated use as such; and
 - (c) where serving multiple properties, bin collection points shall be provided prior to the first occupation of the dwellings to which they relate and shall be thereafter retained throughout the life of the development free from any impediment to their designated use as such.
- 19) All planting, seeding or turfing comprised in the approved details of landscaping under condition 1 shall be carried out in the first planting and seeding seasons following the occupation of the dwellings or the completion of the development, whichever is the sooner; and any plants which within a period of 5 years, and trees within a period of 10 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. Any publically landscaped areas shall be maintained as such until these areas are transferred to the local authority or nominated management company.