The Planning Inspectorate

Appeal Decision

Inquiry held on 17-20 July 2018
Site visits made on 17 and 20 July 2018

by Y Wright BSc (Hons) DipTP DMS MSc MRTPI

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

Decision date: 4 October 2018

Appeal Ref: APP/X2410/W/17/3190236
Land at Melton Road, Rearsby, Leicestershire, LE7 4YR

- 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 Jelson Limited against the decision of Charnwood Borough Council.
- The application Ref P/17/0531/2, dated 16 March 2017, was refused by notice dated 18 October 2017.
- The development proposed is residential development of up to 66 dwellings and public open space (outline).

Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application to which the appeal relates was submitted in outline form with all matters reserved except for access. A Masterplan was submitted with the planning application, but I note that this is for illustrative purposes only.

3. A dated and signed planning obligation in the form of an agreement was submitted during the Inquiry pursuant to section 106 of the Town and Country Planning Act 1990 (S106). This has been agreed between the Appellant, District Council and Leicestershire County Council (LCC), though the Appellant raises some concerns about whether the civic amenity site contribution is in accordance with the CIL Regulations. I consider this planning obligation later within my decision.

4. The Inquiry sat for 4 days. I held an accompanied site visit on 20 July 2018 and I conducted unaccompanied visits on 17 and 20 July 2018.

5. An agreed Statement of Common Ground (SoCG) was submitted which sets out the development plan policies that are relevant to the proposal and the matters of agreement and disagreement between the two main parties.

6. On 24 July 2018, after the hearing closed, the Government published the final version of its revised National Planning Policy Framework (the Framework). This revised Framework sets out the Government's planning policies for England and how they should be applied and replaces the previous 2012 version. I asked for comments in writing from the main parties on the

relevance of this revised Framework to the case and have taken these into account.

7. In response the Council now states that they have a 5 year housing land supply (5YHLS) using the new method of calculating housing land supply under the revised Framework and they argue that the 'tilted balance' is no longer engaged. The Appellants still contend that the Council do not have a 5YHLS, although they do now agree that the use of the Leicester and Leicestershire Housing and Economic Development Needs Assessment (HEDNA) 2017 for determining the OAN is now not appropriate. I set the matter of the 5YHLS aside for now and deal with it later in my decision.

Main Issues

8. I consider the main issues are:

- whether the proposed housing would be in a suitable location having regard to the development plan and national policies;
- the effect of the proposal on the character and appearance of the area in relation to landscape and the Area of Local Separation;
- whether the proposed development would preserve or enhance the character or appearance of the Rearsby Conservation Area;
- the effect of the proposed development on best and most versatile (BMV) agricultural land; and
- whether there are any other material considerations which would justify the development being determined other than in accordance with the development plan.

Reasons

The Development Plan

9. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise. The Development Plan comprises the Charnwood Local Plan 2011-2028 Core Strategy (2015) (CS) and saved policies of the Charnwood Local Plan 1991-2006 (2004) (LP).

10. Whilst the reasons for refusal only refer to policies within the CS, relevant LP policies are referenced within the Council's Committee Report, both main parties' statements of case and several were raised and discussed during the Inquiry. Whilst I recognise that the saved LP policies are based on an out of date strategy, they nevertheless still form part of the development plan and may be accorded appropriate weight where justified. I acknowledge the different positions of the main parties on the relevance of these policies to the proposal and the weight to be attached to them.

Suitability of the location

11. The appeal site is around 4.4 ha in size and forms part of a larger grazed pasture field to the south west of the village of Rearsby. It is adjacent to Melton Road and is within close proximity to the neighbouring settlement of East Goscote which lies to the south.

12. Rearsby is identified within the CS development strategy and settlement hierarchy as an 'other settlement'. This is set out in Policy CS1 which makes provision for at least 500 homes to meet local social and economic needs within the 12 identified 'other settlements'. The policy continues by stating that this is to be delivered within the settlement boundaries identified in a *'Site Allocations and Development Management Plan Document'* (DMPD). The DMPD has not been progressed to adoption by the Council.

13. I note the Appellant's arguments that as CS Policy CS1 is reliant on settlement boundaries that have yet to be defined, the proposal cannot be in breach of them. Nevertheless limits to development set out in saved LP Policy ST/2 have not been superseded and therefore still form part of the development plan. The appeal site is located outside these limits to development for Rearsby and it is common ground between the main parties that the proposal does not comply with Policy ST/2.

14. I recognise that the Council at the time of adopting the CS in 2015 proposed to amend the limits to development to take account of planned development as set out within Policy CS1. On this basis the limits to development under LP Policy ST/2 are out of date. Whilst the Council does not propose to change the position of Rearsby within the settlement hierarchy for the emerging new Local Plan or include the appeal site within the draft new settlement limits, these are draft proposals for a new Plan that is at an early stage of production and therefore may be subject to change. I can therefore only give LP Policy ST/2 very modest weight.

15. The Council states that there are commitments for 644 dwellings within the 'other settlements' which exceeds the 500 dwelling minimum requirement. Consequently, whilst the Council recognises that the figures in the CS are minimum, it contends that allowing up to 66 dwellings on this site would result in housing provision envisaged by the CS being considerably exceeded. To this extent I agree that allowing the appeal could cause some prejudice to the plan-led process and the settlement pattern set out within the CS. Furthermore the provision of up to 66 dwellings in a village of 407 households (2011 Census) would be a considerably large development and in the context of the settlement hierarchy, in my view, would not accord with CS Policy CS1.

16. I do not agree with the Appellant's suggestion that the Council's proposed inclusion of the small group of 8 houses on the western side of Melton Road (1686-1700 Melton Road) within the new settlement boundary for the emerging Local Plan adds support to their view that the appeal site is 'within the village'. Neither does the fact that the appeal site is located within the 30 mph speed limit and area denoted by the village name signs.

17. In relation to accessibility to services and facilities, both main parties agree that Rearsby has only a few services of its own, including a primary school, village hall, pubs and a church. The neighbouring settlement of East Goscote is a short walkable distance from the appeal site and has a wider range of shops and facilities that would be readily available for future occupants of the development to access by sustainable transport modes, including walking and cycling. Furthermore Rearsby is served by regular and frequent bus services with bus stops along Melton Road in close proximity to the appeal site, providing access to employment opportunities and more extensive services and facilities at the much larger service centre of Syston and the main centres of

Leicester and Melton Mowbray. Train services also operate from Syston. The proposed development would therefore be in a suitable location for future occupiers to access everyday services and facilities by means other than the private car. This factor weighs in support of the proposal.

Character and appearance – effect on landscape and the Area of Local Separation

18. The field is currently grazed by cattle. A public right of way (No 172/2) crosses the site in a north east to south west direction (Melton Road to Broome Lane). To the north behind a linear belt of mature trees there is the driveway to Rearsby House, a prominent detached property adjacent to the north-west corner of the site and the modern houses of Orton Close. To the east beyond the site's hedgerow boundary, Melton Road and deep private frontages, are 20th century houses. To the south is a small group of residential properties and a former plant nursery set amidst mature trees and vegetation. To the west are open fields. There is no physical site boundary on the western side of the site.

19. The appeal site slightly slopes from a high point in the north-west corner adjacent to Rearsby House down to the southern and eastern boundaries. It has a slightly elevated positon above the valley's gently sloping sides providing wide expansive views of the surrounding landscape to the west. There is a small cluster of trees within the site close to the footpath entrance off Melton Road, a small spinney in the north eastern corner of the site, a single tree along the clipped hedge on the eastern boundary, trees and vegetation along the southern boundary and two trees on the western boundary. The development would be accessed off Melton Road which would result in the loss of some of the eastern boundary hedgerow.

20. The site lies within the setting of and adjacent to the boundary of the Rearsby Conservation Area. I assess the contribution the site makes in visual and landscape terms to the significance of the heritage asset separately in my decision.

21. The Council considers that the site lies within a valued landscape, whilst the Appellant does not. I first of all assess this issue.

Valued landscape

22. Whilst the term 'valued landscapes' is not defined in the Framework, paragraph 170 does seek to protect and enhance them *'in a manner commensurate with their statutory status or identified quality in the development plan'.* The site and surrounding landscape is not covered by any statutory or local landscape designation. Neither is it identified within the development plan for its particular landscape quality. Whilst it is designated as an Area of Local Separation (ALS), a matter which I consider later in my decision, the main function of this is to prevent settlement coalescence by keeping undeveloped land open rather than to identify areas of particular landscape quality.

23. Based on the evidence and my own observations I agree that the appeal site, as a rural greenfield site has value both in its own right and as part of the wider landscape. In addition I acknowledge that local residents clearly value the site and the surrounding countryside. However this does not necessarily mean that it is a valued landscape in the context of the Framework.

24. It was agreed by the main parties that the criteria in Box 5.1 of the Guidelines for Landscape and Visual Impact Assessment (GLVIA3) are accepted as a useful tool for assessing value. I have carefully considered the separate assessments and differing positions of the main parties.

25. The site is clearly of some landscape and scenic quality. It is pastoral in character and there are long distance cross valley views towards the west. The footpath through the site provides important recreational value and allows users to experience a degree of tranquillity when walking through the site, although this is tempered to some extent by the proximity of the railway line.

26. Whilst the site could previously have been parkland, it has now become so degraded with only a few trees and tree stumps remaining that it is no longer clearly recognisable as such. It is incumbent on me to consider this appeal against the landscape as it exists now.

27. Overall, based on the available evidence, I find that the attributes identified by the Council as contributing to the valued landscape are not unduly unusual and are generally representative within the wider countryside. I find that, in this instance, they are insufficient, individually or in combination, to demonstrate that the landscape is valued within the meaning of paragraph 170 of the Framework, particularly as the site is neither designated nor identified in the development plan for its landscape quality. I therefore conclude that the site is not a valued landscape.

28. I now assess the landscape character and visual effects of the proposed development.

Effects on landscape

29. The Appellant has submitted a Landscape and Visual Appraisal (LVA) which considers the effect of the proposal on landscape character and assesses its visual impact. The Council's landscape witness has identified some limitations within the LVA, has reviewed its findings and has produced a further assessment using their preferred alternative methodology. Whilst there is agreement on some of the judgements expressed there are differing views on others. I have carefully considered the different approaches and conclusions.

30. Nationally the site lies within NCA 74 Leicestershire and Nottingham Wolds. It is agreed that the development proposal would have minimal impact on this landscape. I concur with this view.

31. At the borough level the site is within the Wreake Valley Landscape Character Area as defined in the Charnwood Landscape Character Assessment (2012) (LCA). Key characteristics include long distance open rural views across the flat bottomed gently sloping valley, mixed arable and pasture farming and settlements on valley slopes. The LCA identifies the eastern valley section, in which the appeal site is located, as having a *'distinct well defined strong tranquil and rural character'* that is *'contained by the surrounding landform of rising slopes'*. The assessment includes seeking development that preserves the open character of the LCA, has regard to views across the valley and increases tree cover around the larger settlements.

32. It is agreed between the two parties that at the LCA level the area has a medium susceptibility to change and landscape value. The dispute relates to the magnitude of change that would result from the development. At the more

localised level I note there is a difference of opinion on the sensitivity of the site itself and the resultant effects of the proposed development.

33. The character of the site is distinctly rural and is generally representative of the surrounding open landscape. It forms part of the open countryside and offers expansive views of the wider landscape, due to its slightly elevated positon above the valley's gently sloping sides. It is located on the settlement edge with existing residential development to the north and east and a small group of houses and a former plant nursery to the south. Except for Rearsby House, the surrounding dwellings are not dominant in the landscape due to the presence of mature trees, hedgerows and vegetation along the boundaries.

34. Despite the site's relatively small size compared to the LCA area as a whole and its partial containment by surrounding development, it contributes to the form and character of the surrounding landscape and provides a prominent rural edge to the settlement.

35. I note that the proposed scheme would be fairly low density with additional trees, landscaping and open space.

36. Overall, taking the above factors into account, I consider that at the LCA level the effect of the proposed development would be moderate-minor adverse.

37. At the local level due to the site's prominent location, its rural character, its openness to the wider landscape and the presence of a much used public footpath through the middle of the site, the effect of the proposed development would be significantly adverse.

38. In terms of visual effects, I note that the LVA identifies residents from nearby properties and users of the roads, trains and public footpaths as the main receptors and considers the visual effects from 11 viewpoints. I visited these viewpoints during my site visits.

39. I saw that one of the most noticeable visible effects of the development would be experienced from the public footpath which traverses the site. Currently users have open rural views of the entire site, its hedgerow and tree lined boundaries and expansive views across the Wreake valley. Whilst the footpath does not directly link to a wider network of other footpaths, it nevertheless provides access between Rearsby and East Goscote through a pleasant rural landscape and forms an important recreational route on the edge of the settlement, which increases its value. Views from the footpath of existing residential development are predominantly filtered and screened by the boundary hedgerows and trees and they are not unduly prominent when traversing the site. The one exception is Rearsby House which is visibly dominant from within the site and from various viewpoints in the surrounding area. Trains using the nearby railway line are also visible in views to the west.

40. The Appellant proposes to retain the footpath through the site and the illustrative masterplan shows this could be within a landscaped corridor with significant tree planting. Users would nevertheless experience a profound change as they would walk through a suburban housing estate rather than open countryside. Walkers travelling towards the site along the footpath from Broome Lane would also experience a significant change in views. Landscaping and open space along the western boundary of the site could provide additional viewpoints from which to view the valley to the west. However this would be

experienced in a very different built form setting and would by no means compensate for what is currently an uninterrupted view along the footpath of open pastoral land and landscape views across the valley.

41. Whilst I acknowledge that the development would be set back from Melton Road by open space and landscaping, and the existing trees and hedgerow would largely remain intact, except at the road access point, residential occupiers on the eastern side of Melton Road and some in Weston Close would experience a significant and materially adverse change in their outlook with the loss of open countryside and its replacement with housing. Walkers and other road users travelling along Melton Road would view the development over the mature boundary and through the new access opening and would also experience a loss of countryside views. The resultant impact would be significantly adverse.

42. The residents of properties along the northern edge of East Goscote currently have glimpsed views of the appeal site above and through intervening vegetation and the small group of properties on Melton Road. The development of two storey houses within the site would be likely to be visible to some degree, albeit that some of the views would be filtered by existing and proposed trees and landscaping. Rail users currently have a relatively good vantage point from which to view the appeal site and surrounding landscape, though their view is rather transitory. The development would be visible to some moderate degree from these receptors.

43. In longer distance views from roads and footpaths on the other side of the valley the site is visible but is small in scale when viewed within the context of the much wider landscape. From this distance, whilst the development would extend built form into open landscape, it would be seen as a relatively small change that would not be unduly prominent given the distances involved. I conclude that the overall visual effects from these longer viewpoints would be minor adverse.

44. Overall I conclude that the proposal would result in a number of adverse visual effects, which would be experienced by a significant number of receptors, albeit that these would be largely localised. The development would represent an incongruous and intrusive form of development into an open field. Whilst I recognise that the set back of the development behind open space, retention of existing hedgerows and trees and additional planting and landscaping within the site would go some way to mitigate some of this harm, these elements would be seen within the context of a housing development as opposed to a pastoral field. As such the proposal would conflict with CS Policy CS11 which seeks to protect the character of the landscape and countryside.

Area of Local Separation

45. The appeal site is located within an Area of Local Separation (ALS), which separates the settlements of Rearsby and East Goscote, as defined by LP Policy CT/1. The policy seeks, amongst other things, to strictly control development within these areas. The ALS is divided by Melton Road with the appeal site forming part of the much larger and more extensive area on the western side of Melton Road. Following a successful appeal in 2013[1], part of the smaller ALS on the eastern side of the road has been built on at Rearsby Roses.

[1] Appeal reference APP/X2410/A/12/2187470

46. It is clear from the evidence and my own observations that the age, type of built form and overall character of Rearsby and East Goscote are very different. Whilst the former is predominantly a historic village with listed buildings and a conservation area, the latter is a much more modern settlement built predominantly around the 1960s, although I note that there have been more recent modern housing developments in both.

47. The CS defines an ALS as *'an area of open countryside that separates two neighbouring settlements, whose main purpose is preserving settlement identity and which is based on landscape character and visual appearance of the area'.* ALS are therefore not designated specifically for reasons of landscape quality. Policy CS11 seeks to protect the character of the landscape and countryside which includes maintaining the separate identities of settlements and protecting *'the predominantly open and undeveloped character of Areas of Local Separation, unless new development clearly maintains the separation between the built up areas of these settlements'.* In the supporting text the CS states that ALS will be retained although the boundaries are proposed to be reviewed and set out in the DMPD.

48. Whilst the DMPD has not been produced by the Council, a review of ALS was carried out in 2016 as part of a larger study (the ARUP study). This assesses whether an area performs the strategic role of an ALS in accordance with the defined methodology. It concludes in relation to the Rearsby/East Goscote ALS that it provides a relatively small but highly open gap, development within which would result in a visual and perceptual reduction in the separation between the settlements. Except for the exclusion of the Rearsby Roses development to the south east, it recommends that the ALS should be retained.

49. I note the Appellant's concerns about this study and acknowledge that it has been produced as part of the evidence base to support emerging development plan documents. However no alternative comprehensive ALS review is before me.

50. I note that the gap between the appeal site and Broome Lane would generally be larger than the gap on the eastern side of Melton Road, which the Inspector for the Rearsby Roses appeal stated would *'remain a substantial open gap'*. However I do not consider that this lessens the importance of the appeal site as part of the ALS. The salient point is that it forms an integral part of the much larger, open and expansive gap on the western side of Melton Road which together with the other fields to the south and west, form a cohesive and well defined visual and perceptual buffer between the settlements.

51. Whilst the proposed scheme would not result in the two settlements actually merging and there would still be a degree of separation between them in this location should the development be allowed, the gap would be significantly reduced. In my view this would also significantly increase the perception that the separate identities of the settlements were being eroded.

52. Whilst I note the presence of the small group of houses and former plant nursery to the south of the appeal site, these are within the ALS, are surrounded on three sides by open fields and sit amidst trees and vegetation. The appeal site separates these properties from village development to the north and Melton Road and deep front gardens separate them from the houses

to the east. Because of this they do not lessen the importance of the appeal site as part of the ALS function.

53. The proposed set back of the development from Melton Road, the retention of existing trees and hedgerows and the provision of open space and additional trees and planting within the development would not mitigate the permanent erosion of the undeveloped ALS in this locality.

54. Consequently, taking the above factors into account I conclude that the appeal proposal would result in the substantial harmful erosion of the ALS reducing the gap between Rearsby and East Goscote on the western side of Melton Road, which would conflict with LP Policy CT/1 and CS Policy CS11.

Conclusions on character and appearance

Whilst I have concluded that the site is not a valued landscape in terms of paragraph 170 of the Framework, I have identified that the proposed development would result in adverse impacts to the landscape and the ALS. As this would result in significant material harm to the character and appearance of the site and surrounding area, which would conflict with the development plan policies as defined above, I give this harm significant weight.

Rearsby Conservation Area

55. The appeal site lies adjacent to the Rearsby Conservation Area (CA). The Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory duty on decision makers to have special regard to the desirability of preserving or enhancing the character or appearance of a conservation area when considering development proposals. This duty is reflected in the Framework which identifies that *'great weight'* should be given to the asset's conservation, irrespective as to whether the potential harm is substantial, total loss or less than substantial to its significance.

56. It is agreed that the significance of a CA derives not only from its physical presence but also from its setting. This is defined in the Framework as the surroundings in which a heritage asset is experienced. The appeal site forms part of the CA setting.

57. The main contributions to the special character of the CA are set out in the Rearsby Conservation Area Character Appraisal (2010) (CACA) and include *'the developmental views along Melton Road'* and *'the number of trees in a landscape with relatively few trees'.* The CACA defines key views and vistas. Along approaches to the village and from views across the valley it highlights that *'the village appears to be formed of a cluster of trees within which one sees glimpses of the houses'* and *'Rearsby House stands out clearly from the west'*.

58. I recognise that the majority of the CA is not visible from the appeal site. However I saw on my site visit that the site's openness provides key views of Rearsby House, which is defined as a chief building within the CA and the prominent trees that line the southern boundary of the CA. Rearsby House sits prominently as a key building within the landscape at the end of this belt of trees. The appeal site therefore has a visible and spatial connection to this part of the CA which acts as an open gateway allowing those approaching the village on the roads and footpaths, an opportunity to appreciate the southern

edge of the CA and Rearsby House. It therefore contributes positively to the setting of the CA.

59. Views of the modern development to the rear of this belt of trees on Orton Close are only glimpsed through the prominent trees and whilst there are some views of these houses from the west, they are not overly prominent and do not overtly detract from the dominant views of Rearsby House and the adjacent trees.

60. There was some discussion at the Inquiry about the status of Rearsby House. Whilst it is not listed or identified on the Council's local list of heritage assets, it nevertheless is recognised as a 'chief building' within the CA.

61. Whilst tops of the trees and the roof of Rearsby House could be visible above the height of the proposed development depending on its design, the overall visibility of the southern edge of the CA would be significantly eroded, adversely impacting on the prevailing open rural setting in which the CA sits and is experienced.

62. Overall, taking the above factors into account, I conclude that the development would lead to material harm to the setting of the CA and therefore its significance. Accordingly this would not preserve the character or appearance of the CA. In my view this harm would be less than substantial.

63. The harm identified would also not be in accordance with CS Policy CS14 which seeks to conserve and enhance historic assets for their own value and the community, environmental and economic contribution they make. As the policy is not entirely consistent with the statutory requirement to conserve or enhance and goes beyond the Framework's consideration of 'significance' I give the policy moderate weight. However this does not reduce the weight I attach to the harm.

64. In considering the planning balance required by paragraph 196 of the Framework it is accepted and well-established that any harm to the significance of a heritage asset should be given great weight. I have determined that there would be less than substantial harm to the significance of the CA. Against this harm I must consider the public benefits of the scheme.

Consideration of public benefits

65. The proposal, for up to 66 homes would be in an accessible location and would contribute to the supply of housing in the Borough and assist in meeting local housing needs. As well as market housing this would include a policy compliant 40% affordable housing provision which would be an additional benefit. These benefits collectively carry significant weight.

66. The development would also boost the local economy by providing construction jobs and supporting local building trades, albeit that this would be for a temporary period. Future occupants of the development would also support businesses and facilities within the local area. These benefits weigh in favour of the proposal.

67. Whilst the development would provide additional council tax income this would be used to mitigate for and deliver necessary services and infrastructure for the residents and would therefore be a neutral effect. In addition new homes bonus payments cannot be guaranteed and therefore this carries no weight.

68. The provision of public open space, additional landscaping and the retention of existing trees and hedgerows would be necessary to provide for the future occupiers of the development and to mitigate for any harm, though improvements to enhance biodiversity and introduce more trees within the locality would bring some minor public benefits. Whilst open space provision along the western boundary of the site would increase public access within the site this would be tempered by the significant change in views experienced whilst walking through the site and therefore overall would not be a benefit.

69. The planning obligations set out in the S106 planning agreement include a range of contributions that would be provided were the appeal to be allowed. Except for those already highlighted above I have not found it necessary to consider in detail the other contributions as these are intended to mitigate the effects of the development and render it acceptable in planning terms. They therefore do not constitute public benefits.

70. In the context of paragraph 196 of the Framework and taking account of the weight I have attached to the public benefits I have identified, I conclude overall that when they are taken as a whole, they outweigh the less than substantial harm to the significance of the CA.

Best and most versatile agricultural land

71. The appeal site comprises Grade 2 agricultural land which is classed as best and most versatile (BMV). The Council confirmed during the Inquiry that the majority of agricultural land within the Borough is Grade 3 (around 62%), though they were unable to determine how much of this was Grade 3a which is BMV. In comparison Grade 2 comprises about 24% of total agricultural land in the Borough and is therefore much less common.

72. CS Policy CS16 seeks, amongst other things, development that protects environmental resources including the *'most versatile agricultural land'*. This is broadly in line with the Framework which at paragraph 170 identifies, amongst other things, that planning decisions should recognise the intrinsic character and beauty of the countryside including the economic and other benefits of BMV agricultural land.

73. I note that the appeal site is currently in agricultural use as grazing land and forms part of a much larger agricultural holding. I note the Appellant's view that the loss of the appeal site would have no adverse impact on the operation of this wider holding. I have also considered the suggestion that it would not be feasible to farm the appeal site independently, but there is no evidence before me to support this position. Furthermore as identified in my other main issues above, the land contributes positively to the wider landscape, the ALS and the setting of the CA. I have already found that there would be harm to these other benefits of the land.

74. I therefore conclude that the loss of this BMV grade 2 agricultural land would result in material harm which would be contrary to CS Policy CS16 and the Framework.

Other material considerations

75. During the Inquiry it was common ground between the parties, as set out in the SoCG that the Council was unable to demonstrate a 5 year supply of deliverable land for housing. However, as set out in my preliminary matters

the Council now considers they can demonstrate a 5YHLS under the revised Framework. I discuss this matter further within my overall planning balance.

76. I have set out and considered the suggested benefits of the proposal above and identified those that are of public benefit. I do not repeat them again here. I nevertheless give these benefits due regard as material considerations within my overall planning balance.

Other matters

77. The Parish Council confirms that following the withdrawal of the Rearsby Neighbourhood Plan (NP) in December 2017, a revised version is in progress. However this has not reached any formal consultation stage and no Plan is before me. Consequently I can give it no weight within my decision.

78. I have carefully considered other concerns raised by local residents on matters including traffic, living conditions for neighbouring residents, drainage, wildlife, archaeology and the capacity of services and facilities to cope with the additional development. The evidence before me demonstrates that the traffic generated by the scheme would be acceptable. Matters relating to drainage, living conditions for occupiers of neighbouring properties, wildlife and archaeology could be adequately dealt with by conditions and through the suitable design of the scheme as part of reserved matters. Furthermore I have no substantive evidence before me to demonstrate that local services and facilities are at breaking point. Whilst I find no harm in relation to these matters the resultant neutral effect weighs neither for nor against the proposal.

79. Concerns have also been raised that the development would set a precedent for other similar development. However each appeal must be decided on its own individual merits.

The Planning Balance

80. The duty in section 38(6) of The Planning and Compulsory Purchase Act 2004 enshrines in statute the primacy of the development plan. As an essential component of the 'plan-led' system, it is also reiterated in the Framework. The Framework is of course a material consideration to which substantial weight should be attached.

81. I note the difference between the parties on 5YHLS. Without coming to a definitive position on this matter I intend to firstly apply the tilted balance in paragraph 11 of the Framework in order to ascertain whether or not the 5YHLS will be determinative within my decision.

82. Paragraph 11 of the Framework sets out the presumption in favour of sustainable development and defines what it means for decision-taking, as set out in sections c) and d). I have already determined that LP Policy ST/2 is out of date and therefore for the purposes of this appeal section d) applies. This states that where the policies that are most important for determining the application are out of date permission should be granted unless one of the circumstances listed in sub sections i or ii is met.

83. Section d) i states that the presumption should not be applied if specific policies in the Framework indicate development should be restricted. Paragraph 196 constitutes a specific policy indicating that development should be restricted as indicated in footnote 9. In the circumstances, having carried

out a paragraph 196 balance, I conclude that this does not provide a clear reason for refusing the development on the basis that there is less than substantial harm which is outweighed by the public benefits of the proposal.

84. Therefore I must now turn to paragraph 11 d) ii. This requires a balance to be undertaken whereby permission should be granted unless the adverse impacts significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

85. In this case I have concluded that the proposal would result in material harm to the character and appearance of the landscape which attracts significant weight; significant harm to and erosion of the ALS which carries substantial weight and less than substantial harm to heritage assets which carries great weight. It would also result in material harm to the settlement pattern and loss of around 4.4 hectares of BMV land which both carry some weight. In addition the proposal is outside the settlement boundaries identified in LP policy ST/2, though I give this very modest weight for the reasons set out above.

86. In terms of benefits the proposal would result in market and affordable housing which would be in an accessible location. In circumstances where a Council does not have a 5YHLS and in light of the imperative in the Framework to boost significantly the supply of housing, this provision is a significant consideration. The proposal would also result in construction jobs, albeit that these would be temporary and other economic benefits over the lifetime of the development which carry some moderate weight. There would be some minor benefits for biodiversity and from additional tree planting.

87. Overall I conclude that the accumulation of harm I have identified attracts substantial weight and as such this significantly and demonstrably outweighs the other material considerations and benefits of the proposal. Therefore overall the appeal scheme would not be compliant with the Framework when considered as a whole and cannot be sustainable development.

88. Notwithstanding the different positions of the two main parties on the 5YHLS, I have come to the view that there is no need for me to make any findings on whether the Council has a 5YHLS as this is not a determinative factor within my decision. I have concluded my decision on the basis that the tilted balance is applied in accordance with paragraph 11 of the Framework. If the housing supply position was improved and a five year supply evidenced then the tilted balance would not apply and the appeal would still be dismissed.

Conclusion

89. For the reasons given above, and having considered all matters raised, I conclude that the appeal should be dismissed.

Y Wright

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Ashley Bowes of Counsel, Cornerstone Barristers, instructed by Ms Kathryn Harrison, Principal Solicitor, Charnwood Borough Council (CBC)

He called:	Mr Mark Fennell MA, PGDip, IHBC	Team Leader Natural & Built Environment, CBC
	Ms Nola O'Donnell MAgrSc, Dip (Hons), LA, CMLI	Senior Landscape Officer, CBC
	Ms Karen Brightman BA (Hons), MRTPI	Principal Planning Officer, CBC

FOR THE APPELLANT:

Mr Christopher-Lockhart-Mummery QC of Landmark Chambers, instructed by GVA

He called:	Mr Michael G Holliday BA (Hons), MPhil, CMLI	Consultant
	Mr Graeme Ives BA (Hons), PGDip, MRTPI	Consultant
	Mr Craig I Alsbury BA (Hons), MRTPI	Consultant

FOR THE RULE 6 PARTY:

Mr Andrew Tyrer BA (Hons), MRTPI	Developer Contributions Officer, Leicestershire County Council (LCC)
Ms Kerry Skeer	Senior Strategic Waste Management Officer, LCC

INTERESTED PERSONS/PARTIES:

Mr Rod Axon	Local resident
Mr Michael Costello	Local resident
Mr Ged Pearson	Local resident
Mrs Anthea Byrne	Vice Chair of Rearsby Parish Council
Ms Alison Higgins	Keep Rearsby Rural Group
Mr Terry Garner	Local resident
Mr Neil Cox	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY:

1 Secretary of State decision for APP/E2734/W/17/3181320 dated 25 June 2018

2 Secretary of State decision for APP/P2935/V/16/3158266 dated 22 March 2018

3 List of appearances for the Appellant

4 Appellant's opening statement

5 Council's opening statement including a list of appearances

6 Rearsby Conservation Area Character Appraisal adopted March 2010

7 Lever arch file from the Council containing the following documents:

a. Letter from the Minister regarding Strategic Housing Market Assessments dated 19 December 2014

b. Gladmans, Daventry and SSCLG [2016] EWCA Civ 1146

c. Hopkins Homes v Suffolk Coastal and SSCLG [2016] EWCA Civ 168 and Supreme Court decision

d. Jelson Ltd v SSCLG and Hinckley [2018] EWCA Civ 24

e. West Berkshire v SSCLG and HDD Burghfield Common Ltd [2016] – EWHC 267 (Admin)

f. St Modwen v SSCLG, East Riding of Yorkshire and Save Our Ferriby Action Group [2017] EWCA Civ 1643

g. Appeal decisions for APP/X2410/W/15/3028159 and APP/X2410/W/15/3028161

h. RTPI Delivering large scale housing schemes Research Briefing No 21 October 2017

i. Nathaniel Lichfirld & Partners Start to Finish November 2016

j. CBC Housing delivery scenarios, December 2017

k. Rt Hon Sir Oliver Letwin MP Independent Review of Build Out Rates June 2018

8 Agricultural Land Classification Map for Charnwood Borough

9 Inspector's Report to Charnwood Borough Council on the examination into the Core Strategy 21 September 2015

10 Email note from the Council regarding agricultural land classification

11 Rearsby Parish Council statement

12 List of final draft conditions

13 Mr G Pearson Statement

14 S106 contributions for the Banks Surgery since April 2010

15 Council's closing submissions including:

15a Aldingbourne Parish Council v Arun District Council [2017] EWHC 3450 (Admin)

15b Bovis Homes Ltd and Miller Homes Ltd v SSCLG and Cheltenham Borough Council 26 July 2016

16 Appellant's closing submissions including:

16a Gladman Developments Ltd v SSHLG and Aylesbury District Council May 2018