



Appeal Decision

Inquiry held on 18-19 June 2019

Site visit made on 20 June 2019

by Brendan Lyons BArch MA MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 16th July 2019

Appeal Ref: APP/X2410/W/18/3214382

Melton Road, East Goscote, Leicestershire LE7 4YQ

- 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 Gladman Developments Ltd against the decision of Charnwood Borough Council.
 - The application Ref P/18/0709/2, dated 29 March 2018, was refused by notice dated 23 August 2018.
 - The development proposed is the erection of up to 270 dwellings with public open space/community park, landscaping and sustainable drainage system (SuDS) and vehicular access point from Melton Road, with all matters reserved except for means of access.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The application that has given rise to this appeal was submitted in outline form. The precise extent of the site was revised while the application was still under consideration by the Council, but the 'red line' plan was not formally amended. The parties asked that a revised plan¹, as submitted for a second application on the site, should be substituted for the original location plan. As the change would have minimal effect, I am satisfied that no party's interests would be prejudiced by taking account of the amended plan.
3. Only the principle and amount of development and the means of access to the site were submitted for full approval at this stage. Other matters, including the layout and landscaping of the site and the scale and appearance of development were 'reserved' for later approval by the Council. However, the application was supported by an Indicative Development Framework plan and the Design and Access Statement ('DAS') includes an Illustrative Masterplan that shows how development might be laid out on the site. I have taken note of this illustrative material in considering the appeal.
4. Leicestershire County Council ('LCC') were granted 'Rule 6' status in the appeal and submitted a statement of case and a proof of evidence to be presented at the Inquiry. In the event, the author of the proof was unable to attend. LCC chose to rely on the written evidence, but its substitute representative at the

¹ Plan ref 8187-L-04

Inquiry answered questions and contributed to discussion of the appellants' intended planning obligation.

5. The planning obligation² seeks to address the third reason for refusal of the planning application. It is set out in the form of a unilateral undertaking ('UU'), a draft of which was submitted before the Inquiry. The UU contains covenants to Charnwood Borough Council ('the Council') on the provision and management on the site of affordable housing, open space and sustainable drainage ('SuDS') and the payment of financial contributions for outdoor sports facilities, allotments and healthcare provision. Covenants to LCC cover payments of contributions towards primary and special needs education, bus stop improvements, travel packs, bus passes and travel plan monitoring, and to library and civic amenity services. Following discussion at the Inquiry, an amended form of the UU, properly executed as a deed, was later provided in accordance with an agreed timetable. The effects of the covenants are considered later in this decision.
6. The appeal was accompanied by a signed Statement of Common Ground ('SCG'), which sets out matters not in dispute between the appellants and the Council. The SCG outlines an agreed description of the site and its surroundings and the policy context for consideration of the appeal proposal, including the adopted and emerging Local Plans and the Government's National Planning Policy Framework ('NPPF'). The SCG records agreement that the proposal's impact on biodiversity could be addressed by means of planning conditions, and that the Council would not seek to defend the second reason for refusal of the planning application. Local interested parties continue to raise objection on this ground.
7. The appellants' original case was that the Council could not demonstrate a five-year supply of deliverable housing land, in accordance with the NPPF³. However, shortly before the Inquiry a Supplemental SCG was submitted which confirms agreement that the relevant supply is available, and that the parties would not present evidence on the matter.

Main Issues

8. In the light of the reasons for refusal of the application and the matters subsequently agreed, I consider that the main issue in the appeal is whether the proposal would provide a sustainable form of development in accordance with national and local policy, having particular regard to the settlement strategy of the development plan.

Reasons

9. The appeal site comprises some 17.6ha of land adjacent to the rural village of East Goscote and to the south of the village of Rearsby. The site is made up of a pasture field and half of a larger arable field, together with a small paddock that fronts onto Melton Road. The main body of the site is separated from Melton Road by two small housing estates, the more recent of which was built on the site of the former 'Rearsby Roses' nursery. The site is bounded to the south by a block of woodland and a brook, to the east by the A607 by-pass road and to the north by the remainder of the arable field and by other small fields fringing the edge of Rearsby.

² Under Section 106 of the Town and Country Planning Act 1990 (as amended)

³ NPPF paragraph 73

10. Outline planning permission is sought for the erection of up to 270 dwellings, with access to be taken from a new roundabout on Melton Road at the junction with Broome Lane. It is intended that the land to the north of the access, across the full depth of the site, would be laid out as a publicly accessible 'community park', separated from the rest of the site by a strip of woodland planting, and that further green space would be provided around an attenuation pond in the south-east corner.

Settlement strategy

11. The development plan for the purposes of this appeal comprises the Charnwood Local Plan 2011-2028 Core Strategy ('CS'), adopted in 2015, and saved policies of the Borough of Charnwood Local Plan 1991-2006 ('BCLP'), adopted in 2004. I accept the agreed position that the emerging new Local Plan, intended to cover the period to 2036 and on which some initial consultation has taken place, is too early in its preparation to be afforded weight in the appeal. For the same reason, I agree that weight cannot be given to the re-emerging Rearsby Neighbourhood Plan, within whose area a small portion of the site lies.
12. The settlement strategy for the borough is defined by CS Policy CS1, which plans for the provision of at least 13,940 dwellings over the plan period. The great majority of this growth is directed to the Principal Urban Area at the city fringe of Leicester and to the main towns of Loughborough and Shepshed. Some growth is also planned for the seven large villages designated as Service Centres. The balance for the rest of the Borough of at least 500 additional homes is to be accommodated in the twelve Other Settlements, which include East Goscote, in order to meet local need.
13. The policy's supporting text explains that the Borough's villages do not generally have access to a good range of services or facilities, and rely largely on private car access. The Other Settlements such as East Goscote have been identified because they have four or more key services or facilities and bus access to a larger centre.
14. The strategy for these settlements is to be achieved by, among other measures, providing the minimum 500 additional dwellings at locations within settlement boundaries identified in a Site Allocations and Development Management Development Plan Document ('DPD'), and by responding positively to small-scale opportunities within the defined limits and to affordable housing developments. The supporting text explains that the type of development envisaged would be small-scale infill development to meet local needs, comprising single or small groups of homes. But the Summary of Housing Provision and Strategy⁴ shows that the base target of 500 dwellings was expected to be well exceeded by completions and commitments already made at the time of the CS's adoption.
15. The Council subsequently decided not to proceed with the DPD, turning instead to a replacement Local Plan. For planning purposes, defined settlement boundaries remain those shown on the BCLP Proposals Map as the Limits to Development. BCLP Policy ST/2 seeks to confine development to allocated sites and land within those limits. In the countryside, outside the limits, BCLP Policy CT/1 confirms that development will be strictly controlled, while Policy CT/2

⁴ CS Figure 1

supports such development only where there would be no harm to the character and appearance of the countryside and other interests would be safeguarded.

16. The latter two policies, along with CS Policy CS1, were cited in the first reason for refusal of the planning application. The appellants accept that the proposal would be contrary to all three policies. I endorse that assessment. The proposal would add to the supply of housing in the Borough but would not be directed to meet any identified local social need, as Policy CS1 expects for the limited development in the Other Settlements. The Council now suggest that this policy supports only infill development, but the specific preference for infill derives from the supporting text rather than the policy itself and it would be wrong to interpret it as a policy requirement⁵. However, there is little doubt that the policy envisages only small-scale development. While the appellants argue that the policy does not place any upper limit on the size of development, it is clear that the objective for this minor tier of the settlement hierarchy is to meet local needs, with the low overall provision potentially dispersed across twelve different villages. With up to 270 dwellings, the current proposal would not be small in scale. East Goscote currently has a population of some 2866 people⁶, in approximately 1000 homes, and the proposal would represent a very significant increase in the scale of the settlement. This would be contrary to the strategy for these smaller settlements.
17. The site would not be within the currently defined settlement boundary and would not comprise one of the limited forms of development envisaged by Policy CT/1. Because of this, there is also an in-principle conflict with Policy CT/2. Any deficiency in the definition of the settlement boundary becomes a matter of weight.
18. The first reason for refusal also cites conflict with CS Policy CS25. This policy seeks to echo the presumption in favour of sustainable development, as framed in the then current version of the NPPF⁷, and sets a tilted balance whereby permission is to be granted if relevant development plan policies are out of date at the time of making a decision, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, or unless specific NPPF policies indicate that development should be restricted. Given the acknowledged conflict with development plan policies, the issue then becomes the balance between that conflict and other considerations. I return to the balance later in this decision.

Other matters

19. Although not contested by the Council, a number of other matters could have a bearing on the proposal's suitability, including some disputed by local representatives and residents.

Heritage

20. The submitted Built Heritage Assessment concludes that there would be no harm to the significance of designated heritage assets, other than a very minor

⁵ See: R (Cherkley Campaign Ltd) v Mole Valley DC [2013] EWHC 2582 (Admin); Cherkley Campaign Ltd, R (on the application of) v Mole Valley DC and Anor. [2014] EWCA Civ 567

⁶ 2011 Census figure from Figure 2 of the Charnwood Settlement Hierarchy Assessment 2018. Local evidence to the Inquiry of a population of some 2600 people may refer to a more tightly defined area.

⁷ NPPF (2012) paragraph 14

effect on the setting of the Queniborough Conservation Area. As the site would be some 2km away from the location from where additional built development could be perceived, but against a retained green backdrop, and as the context already includes modern development, I agree that any adverse effect on the heritage significance of the conservation area would be minimal.

21. It appears that The Grange, which lies to the north of the site and is locally listed, was designed to enjoy views to the south over nearby fields. The appeal site thus makes a minor contribution to the significance of the non-designated heritage asset. I agree that the proposal would result in a very minor adverse effect on significance, which would be partly mitigated by the planting of the proposed park.
22. I accept the findings of the submitted Archaeology Desk-Based Assessment, which identifies no archaeological features that would preclude development.

Area of separation

23. Concern is raised by the two parish councils and some local people that the proposal would cause harm to the Area of Local Separation to the east of Melton Road identified by BCLP Policy CT/1. I accept that the introduction of the proposed access road would have an effect on this part of the land, which was to have been retained as pasture in the approved details of the Rearsby Roses development⁸. However, I agree with the Council that the land to the east of Melton Road would remain essentially open in character, reinforced by the addition of the proposed park. Importantly, the proposal would not extend hard development to the north of the existing Broome Lane junction that currently forms a strong edge to the settlement. Notwithstanding the earlier appeal decision for land to the west of Melton Road⁹, which is different in extent, I accept that adequate separation between settlements would be retained by the current proposal.

Ecology

24. The Council is now satisfied that the proposal's effects on biodiversity could be satisfactorily addressed by detailed measures secured by approval of planning conditions. In the light of the submitted Ecological Appraisal and subsequent reports, which show a potential net gain for biodiversity on the site, I accept the position agreed by the main parties. The impact on the ecological value of the Rearsby Roses land would be mitigated.

Highways and access

25. LCC as highway authority raises no objection to the proposed access on safety grounds or to the effects on the highway network of traffic likely to be generated by the proposed development. The site is within walking distance of the village's limited range of facilities and is very close to bus stops, from where a reasonably good daytime service is available to larger centres. The proposal would be supported by a Travel Plan to promote use of sustainable modes. Despite reservations on these matters expressed by some local representatives and residents there is a lack of firm evidence that would justify overruling the professional analysis.

⁸ The existence or not of any legal covenants to this effect outside the planning process is not a matter for this appeal decision.

⁹ APP/X2410/W/17/3190236 Land at Melton Road, Rearsby LE7 4YR

Flooding and drainage

26. Subject to further details that could be secured by approval of conditions, I accept the main parties' agreement that the site would not be subject to flooding and could be drained sustainably. Outfall to the adjoining brook would mimic existing run-off rates, so that there would not be an increased risk of off-site flooding. The site visit tended to support the appellants' assurances that a direct connection could be formed to the brook without involving third party land.

Contaminated land

27. There is at best inconclusive evidence to support the Parish Council's concern that the site might have been used for tipping or burning of waste from the former ordnance factory on whose site the village is built. The balance of the evidence, including the interpretation of historic photographs, tends to support use for sand and gravel extraction rather than for the factory. However, the expert written submissions and oral evidence to the Inquiry give confidence that satisfactory remediation would be possible in any event, without risk to nearby residents. A Stage 2 investigation, secured by a planning condition, would provide a precautionary approach. There is no evidence of any significant unconsidered risk arising from the gas pipeline crossing the northern part of the site.

Balance of considerations

Whether policy out-of-date

28. The presumption in favour of sustainable development is retained in the most up-to-date version of the NPPF, but in slightly different terms from those endorsed by CS Policy 25. For this appeal the current wording must be applied. Therefore, rather than considering 'relevant' policies, the key consideration now is whether the 'policies which are most important for determining the application' are out-of-date¹⁰.
29. The appellants have referred to a recent judgement of the High Court¹¹ that provides guidance on the application of the NPPF policy. The judgement confirms that it is necessary first to identify which are the policies most important for the decision, then to examine each policy to see if it is out-of-date and finally to assess the entire 'basket' of these policies to reach a conclusion on whether, taken overall, they are out-of-date for the purposes of the decision¹².
30. The Council now contends that CS Policy CS1 is the single most important policy for determining the appeal, and that its case rests on conflict with that policy. However, I share the appellants' view that BCLP Policies CT/1 and CT/2 must also be regarded as among the most important policies, because they were cited in the reason for refusal and because they are current development plan policies that seek to control development outside settlement boundaries, such as the appeal site. Because it gives effect to those boundaries, Policy ST/2 also becomes one of the most important policies, even though not cited in the

¹⁰ NPPF paragraph 11(d)

¹¹ Wavendon Properties Limited v SSHCLG and Milton Keynes Council [2019] EWHC 1524 (Admin)

¹² See paragraphs 54-58

reason for refusal. These, together with CS Policy 25 make up the 'basket' of most important policies.

31. The SCG records agreement that Policies CT/1 and CT/2, and also Policy ST/2, should be seen as out-of-date, since the BCLP was drawn up to guide development to 2006 and is now time-expired. The NPPF advises that age alone should not render a policy out-of-date¹³ but I acknowledge, as accepted in a previous local appeal¹⁴, that these policies are not fully consistent with the NPPF approach to the protection of the countryside and reflect development needs that have now been updated by the CS.
32. The appellants put forward a number of arguments to suggest that Policy CS1 should also be seen as out-of-date. The first of these is that its overall housing figure for housing provision has been superseded by a more recent assessment of housing need, for which the policy no longer makes adequate provision. But it appears that the 2017 Housing and Economic Needs Assessment ('HEDNA') was prepared to inform a county-wide non-statutory Strategic Growth Plan and has no status as part of the development plan. Although it was also intended to contribute to the assembly of an evidence base for emerging local plans and has been quoted in an early consultation paper¹⁵, the Council state that its assessment of housing need has not been prepared in accordance with the latest government guidance, and is likely to change as further work on the new LP progresses. The figures relate to two potential alternative future plan periods, which cannot readily be substituted for the adopted plan requirement. The CS is a relatively recently adopted plan, and its housing requirement is in accordance with NPPF policy¹⁶. This has been implicitly accepted by the appellants in agreeing that the Council could demonstrate a greater than five-year supply of deliverable sites. The Council's intention to progress adoption of a new plan is a proper response to NPPF timescales, and does not diminish the current strategy, as the appellants now suggest.
33. A second argument is that housing has been approved by the Council outside the defined settlement limits, so that the current supply relies on sites not in accordance with the strategy. But the two examples of such approvals quoted in evidence both predated the adoption of the CS, and the appellants have not pointed to more recent instances. One of the two examples related to Shepshed, which is a higher order centre than East Goscote. The same is true of the Sileby appeal decision mentioned earlier. In that case, the Council was at the time unable to show a five-year housing land supply, which had an important bearing on the decision. The circumstances of these cases therefore appear to be different from the current proposal. National policy accepts that housing land supply can fluctuate over the plan period. Proposals must be assessed on the circumstances prevailing at the time. Approval of development in a balanced decision at a time of under-supply does not undermine the policy framework, as the appellants now appear to suggest.
34. The decision not to proceed with the DPD has meant that the application of Policy CS1 must draw on the BCLP settlement boundaries. But the precise location of the boundary is only one aspect of the strategy outlined by the policy. It is clear from the supporting text the type of small-scale development

¹³ NPPF paragraph 213

¹⁴ APP/X2410/W/16/3152082 Land to the east of Seagrave Road, Sileby, Leicestershire

¹⁵ Towards a Local Plan for Charnwood, April 2018

¹⁶ NPPF paragraph 73

within the boundary likely to be found compliant with the policy. The assessment of small-scale development at the edge of the settlement becomes a matter of judgment, as in the Sibleby appeal decision, giving reduced weight where necessary to the effect of conflict. Reference to the adopted boundaries does not in itself render Policy CS1 out of date.

35. The third argument, that Policy CS1 places no limit on the total number of housing units to be located at Other Settlements, is factually correct, but does not help to show that the policy might be out of date. It is very clear from the policy that only a very small proportion of the total amount of additional housing (some 3.5%) was to be located in this second-lowest tier of the settlement hierarchy. The approval of over 600 units during the plan period shows that the policy has been applied effectively.
36. Similarly, the argument that the policy does not explicitly rule out large-scale development is also true, but does not advance the case that the policy is out-of-date. To add more than half of the planned amount in a single development outside a lower order settlement would be contrary to the strategy.
37. For the reasons set out above, I consider that Policy CS1 is not out-of-date. In terms of this decision, I consider that Policy CS1 is by far the most important policy of the 'basket' of important policies, as it addresses the principle of development and sets the key criteria by which compliance is to be assessed, of which the definition of the settlement boundary is but one aspect. On that basis, seeking to apply the terms of the High Court judgement, I find that the 'basket' of policies, taken overall, is not out-of-date. Therefore, the tilted balance outlined by the NPPF and by CS Policy 25, is not engaged in this instance, and the proposal must be assessed for its compliance with the development plan.

Harms and benefits

38. The Council accept that approval of later detailed proposals should ensure that there would be no unacceptable harm to the character of the countryside or of the local landscape. It is also accepted that suitably framed conditions would prevent harm from flooding, contamination and noise, would minimise adverse effects on neighbours during construction and afterwards. Conditions and the covenants of the UU would deliver suitable open space and mitigate impacts on biodiversity. The UU covenants would also address impacts on infrastructure. But these indications of mitigation of adverse impacts do not provide a robust argument in favour of allowing the proposal.
39. The appellants point to a range of benefits that the proposal would generate. The addition of market housing to the overall supply would be a social benefit, but only of moderate weight when the Council currently has an adequate deliverable supply. The provision of 30% affordable housing is agreed to be a significant social benefit, although this would only meet the policy minimum requirement, and the Council is currently delivering affordable housing in accordance with the CS strategy. There would be time-limited economic benefits from the investment in construction activity and some longer-term benefits from the use of local shops and facilities by potential future residents. The provision of the proposed community park would also produce a modest social and environmental benefit, and ecological enhancement measures could also produce a minor environmental benefit.

Balance

40. Set against any potential benefits would be the harm to the settlement strategy. The CS is a relatively recently adopted plan, prepared in accordance with the NPPF, and the strategy has been found sound at examination. The amount of housing committed for the Other Settlements already well exceeds the minimum target provision, with a number of years of the plan period still to run. The appeal proposal would significantly increase the overall number of units, affecting the thrust of the strategy, which is clearly focused on urban concentration and regeneration. It would not provide the small-scale development envisaged by the CS for these settlements, and would greatly increase the size of East Goscote, which is by definition a place with limited services. This would contribute to an unsustainable pattern of development. Much greater weight must be given to this conflict than to the absence of fully up-to-date settlement boundaries.
41. Setting aside any notion that a departure from the development plan should require exceptional reasons, I nevertheless consider that the appeal proposal's benefits, either singly or cumulatively, would not provide material considerations that would overcome the conflict with the plan, taken as a whole. A decision other than in accordance with the plan would not be justified.

Conclusion

42. For the reasons set out above, I conclude that the appeal should be dismissed.

Brendan Lyons

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Timothy Leader of Counsel	Instructed by Kathryn Harrison, Principal Solicitor, Charnwood Borough Council
He called: Patrick Reid BA(Hons) MRTPI	Principal Planning Officer, Charnwood Borough Council

FOR THE APPELLANT:

Thea Osmund-Smith of Counsel	Instructed by Laura Tilston, Gladman Developments Ltd
She called: David Schumacher MSc DipMS MCIHT Peter Hoy BSc(Hons) PgDip MCIEEM Dr Stephen Black	Director, Prime Transport Planning Director and Ecology Team Leader, FPCR Associate Director, Enzygo
Laura Tilston BSc(Hons) MA MRTPI	Planning Director, Gladman Developments Ltd

FOR THE RULE 6 PARTY:

Anthony Cross	Head of Law, Leicestershire County Council
He called no witnesses but contributed to debate on the planning obligation	

INTERESTED PERSONS:

Laurie Needham	Member, Charnwood Borough Council
James Poland	Member, Charnwood Borough Council and Leicestershire County Council
John Malpus	Chairman, East Goscote Parish Council
Rod Axon	Researcher, East Goscote Parish Council
David Cannon	East Goscote resident
John Measures	Keep East Goscote Green Action Group
Helen Measures	East Goscote resident
Ryan Franklin	East Goscote resident

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Appeal Decision Ref APP/X2410/A/12/2187470:
Land at (the former) Rearsby Roses Ltd, Melton Road, East Goscote
- 2 Opening Statement on behalf of the Appellant
- 3 Appeal Decision Ref APP/D0121/W/18/3206217:
Land North of Greenhill Road, Sandford
- 4 Report of the Examination into the Charnwood Local Plan Core Strategy,
September 2015
- 5 Charnwood 2026 Core Strategy Further Consultation 2008 Evidence Base:
Settlement Hierarchy Review September 2008
- 6 High Court Judgement: East Staffordshire Borough Council v Secretary of
State for Communities and Local Government and another
[2016] EWHC 2973 (Admin)
- 7 Charnwood Local Plan 2011 to 2028: Core Strategy
- 8 Leicester & Leicestershire 2050: Our Vision for Growth December 2018
- 9 Miss Isabella Fosberry: Letter of objection dated 17 June 2019
- 10 Towards a Local Plan for Charnwood: Charnwood Local Plan to 2036
April 2018
- 11 Charnwood Settlement Hierarchy Evidence Refresh August 2014
- 12 Charnwood Settlement Hierarchy Assessment March 2018
- 13 David Schumacher: Curriculum Vitae
- 14 Peter Hoy: Curriculum Vitae
- 15 Dr Stephen M Black: Curriculum Vitae
- 16 Councillor James Poland: Statement
- 17 John Measures: Statement
- 18 Helen Measures: Statement
- 19 David Cannon: Statement
- 20 Ryan Franklin: Statement
- 21 John Hurst: Letter to Rod Axon dated 22 November 2018 with copy of e-
mail dated 3 March 2018
- 22 Sketch plan showing brook and Mr Hurst's land ownership
- 23 Mahavir Medical Centre: webpages
- 24 Housing Annual Monitoring Report December 2018 – extract
- 25 Amended Draft Schedule of Conditions
- 26 Rearsby Roses Landscape & Ecological Management Plan
- 27 Revised Unilateral Undertaking
- 28 Charnwood Borough Council Playing Pitch Strategy December 2018
- 29 Amended Draft Schedule of Conditions
- 30 Closing Submissions on behalf of the Local Planning Authority
- 31 Closing Submissions on behalf of the Appellant
- 32 High Court Judgement: Wavendon Properties Limited v Secretary of State
for Housing Communities and Local Government and Milton Keynes
Council [2019] EWHC 1524 (Admin)
- 33 Court of Appeal Decision: Barwood Strategic Land II LLP v East
Staffordshire Borough Council and Secretary of State for Communities and
Local Government [2017] EWCA Civ 893

DOCUMENTS SUBMITTED AFTER THE INQUIRY

- 34 Copy of Executed Unilateral Undertaking dated 3 July 2019
- 35 Amended Draft Schedule of Conditions
- 36 Appellants' acceptance of draft pre-commencement conditions