



Appeal Decision

Inquiry held on 8 – 11 October 2019

Site visit made on 8 October 2019

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th November 2019

Appeal Ref: APP/X3025/W/19/3230027

Land south of Peafield Lane, Mansfield Woodhouse, Mansfield NG19 9DS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Gladman Developments Ltd against Mansfield District Council.
 - The application Ref 2018/0777/OUT is dated 30 November 2018.
 - The development proposed is for the erection of up to 240 dwellings with public open space, landscaping and sustainable drainage system and vehicular access point from Peafield Lane.
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Decision

1. The appeal is dismissed, and planning permission for the erection of up to 240 dwellings with public open space, landscaping and sustainable drainage system and vehicular access point from Peafield Lane is refused.

Procedural Matters

2. This appeal is against the non-determination of an outline planning application for up to 240 dwellings with all matters except for access reserved. The Council resolved that it would have refused the planning application and provided 3 putative reasons for refusal. Indicative plans have been provided detailing the layout and landscaping. I have had regard to these so far as relevant to the appeal.
3. Discussions between the main parties regarding access drawing 2324-F04 revision B occurred before the Inquiry opened, and revision C was presented at the Inquiry. Revision C proposes a wider carriageway than Revision B by 25cm along with 3m wide foot/cycle ways at both sides of the carriageway, a wider emergency access and a pedestrian refuge point on Peafield Lane. Revision C of drawing No 2324-F04 does not materially alter the proposal, and I am satisfied that neither interested parties nor the District and County Councils would be prejudiced by my consideration of it.
4. The Mansfield District Local Plan 2013-2033 (ELP) is progressing through a Local Plan Examination. I was advised that consultation on the main modifications is expected imminently. There are some unresolved objections, but given its advanced stage, I attach moderate weight to the emerging policies.
5. A planning obligation was submitted in draft form, discussed at the Inquiry and subsequently finalised. I have taken it into account.

Main Issues

6. Based on the submitted policies, my site visit and the representations from the appellant, Council, consultees and interested parties both in writing and at the Inquiry; I consider the main issues to be the effect of the proposal on:
 - (a) The landscape character and appearance of the area; and,
 - (b) The safety and free flow of traffic on the local highway network.

Reasons

7. Located on the eastern settlement edge of Mansfield Woodhouse, an urban area to the north east of Mansfield, the site comprises a single arable field of around 11 hectares. It is located outside the settlement boundaries of the district, as identified in the Mansfield Local Plan (November 1998) (LP), and as a result, is in the countryside in policy terms.
8. The proposed residential development of up to 240 dwellings, 20% of which would be affordable housing, would take vehicular and pedestrian access from Peafield Lane. The indicative plans detail around 38% of the site would contain formal and informal open space.

Planning Policy

9. As the site is in the countryside, Policies NE1 and H3 of the LP are relevant to the principle of the proposal. Both preclude general residential development in the countryside and seek to direct development to the most urban areas. It is accepted by the appellant that the proposal would conflict with these policies.
10. *NE1* –The policy is restrictive in its nature and sets out 8 activities which would be considered acceptable outside the urban boundaries. Although not a blanket ban of development in the countryside, the preclusion of market housing outside the urban boundary is not consistent with the National Planning Policy Framework (the Framework) nor is the policy approach of the protection of the countryside for its own sake. Whilst it aims to prevent the loss of areas of open countryside and to encourage the development of vacant and derelict sites within the urban area, the restrictive nature of the policy is not entirely consistent with the Framework.
11. *H3* – This policy is negatively worded and very restrictive, only allowing the development of permanent housing outside the urban boundary for agricultural or forestry workers. The supporting text refers to the superseded Planning Policy Guidance note 7. The Framework places no such restriction upon the development of dwellings in the countryside, but instead seeks to locate housing where it will enhance or maintain the vitality of rural communities. For these reasons, H3 is inconsistent with the Framework.
12. *NE7 and NE8(a)* – these are relevant to the character and appearance assessment of the proposal. Both policies are negatively worded, seeking to restrict developments to that which would conserve or enhance the landscape and ecology of the area (NE7) or refusing proposals that detract from the landscape or environmental quality of mature landscape areas in the River Maun (NE8a). However, in this context, the identification and protection of these landscape character areas is entirely appropriate within the Framework. Furthermore, Framework paragraph 127 seeks to ensure developments are

sympathetic to local character and history, including the surrounding built environment and landscape setting.

13. Additionally, Framework paragraph 171 sets out, amongst other things, that plans should distinguish between the hierarchy of international, national and locally designated sites; and take a strategic approach to maintaining and enhancing networks of habitats and green infrastructure. Consequently, I find policies NE7 and NE8(a) are consistent with the Framework.
14. *M16* – this policy seeks to ensure proposals would not have a detrimental effect on the surrounding highway network. As the Framework seeks to ensure the effect is not *severe* as opposed to *detrimental*, the Framework sets a higher bar and this is not entirely consistent. However, in all other respects, the policy is consistent, requiring developers to have regard to the needs and safety of all modes of travel and incorporating provision for safe vehicular access and be located where there is, or is potential for, easy access to public transport.

Character and appearance

15. The site contains hedgerow boundaries to the north, east and west. The southern boundary is formed by woodland and vegetation which runs alongside public bridleway BW39, adjacent to the River Maun. The site is surrounded by arable farmland to the north and east, and existing modern residential development to the west. Peafield Lane is positioned on the northern boundary of the site.
16. The site is included in the Sherwood Forest Special Landscape Area (Policy NE7 of the LP), and forms part of the River Maun Mature Landscape Area (Policy NE8(a) of the LP). The site is also located within the 'Sherwood' National Character Area, the 'Woods and Forests', and 'Sandstone Forests and Heaths' regional landscape character designation and the 'Birklands Wooded Estate' local character designation.
17. The special landscape characteristics of the site contains hawthorn hedges, undulating topography and woodland skylines, all features of the Birklands Wooded Estate local character area and to a larger degree, the regional and national designations. It also adjoins the River Maun, which contains mature deciduous woodland and river courses, along with the site having a relatively intact field pattern. Essentially, however, the site's intrinsic value arises from the undeveloped and open field, gently sloping upwards from the River Maun valley. This contributes to the countryside's fundamental beauty.
18. Whilst the Council does not dispute the findings of the Landscape and Visual Appraisal, which sets out that the site and the immediate context is of medium landscape value; it asserts that the proposal is a "valued landscape" for the purposes of the Framework.
19. I consider that the site is of a medium landscape value and contains features that contribute to its designation locally, regionally and nationally, along with the allocations in the LP. However, the site is heavily influenced by the urban fringe and the landscape features are not scarce in the surrounding area. Thus, I do not believe that it is a valued landscape for the purposes of the Framework.
20. In terms of visibility, due to the site's position on the south facing slope of the River Maun Valley, and the gently undulating topography, the site is visible

from several locations to the south, which I observed during my visit. The most elevated portion of the site in the north east corner is visible from many vantage points to the south. However, this is viewed in the context of the surrounding settlement to the east, which presents a severe and distinct edge between urban and rural.

21. The southern part of the site is mostly screened from southerly views due to a combination of the topography and tree planting associated with the River Maun. However, when nearer to the site, Public Right of Way FP37 and Bridleway BW39 have views into the development area where there are breaks in vegetation along the routes. Given the topography, most of the site is not seen from land to the north of Peafield Lane.
22. The masterplan indicates that a considerable amount of public open space and planting would be provided to the north and east of the site, along with hedgerow reinstatement and retention. Once matured this would soften the visual and landscape effects and somewhat ameliorate the impact of the development, particularly on the more visible parts of the site. It would also present a softened edge to the urban boundary, and the 'field' boundary and the landscaping to the River Maun would remain the same.
23. However, even considering these measures, the proposal would fundamentally result in an irreversible and obvious loss of an undeveloped part of the countryside. Consequently, the proposal would, on balance, have a moderately adverse effect upon the landscape character and appearance of the area. This would be contrary to policies NE1, H3, NE7 and NE8(a) of the LP.
24. It would also be contrary to Policies S5 and NE1 of the ELP, which together seek to safeguard and enhance the character and appearance of the landscape. The site would be in the countryside in the ELP which has set a revised urban boundary. Policy S5 sets restrictive criteria for development in the countryside. This does not include market housing.
25. Lastly, there would be conflict with the Framework which recognises the intrinsic character and beauty of the countryside and seeks to ensure decisions contribute to and enhance the natural environment.

Safety and free flow of traffic

26. The Council does not assert that the proposal would cause an unacceptable impact on highway safety, or that the residual cumulative impacts on the road network would be severe. The issue is that there are an unusually high number of unresolved matters in relation to the effect of the proposal on the safety and free flow of traffic; and the effects of the proposal are simply unknown.
27. The Transport Assessment¹ (TA) has been produced to accompany the planning application and appeal. Whilst the trip rates from the proposal are agreed, there remains a high amount of disputed technical matters between parties on the highways evidence.
28. Nottingham County Council Highways Authority (NCCCHA) find that the distribution and assignment of vehicles is incorrect, count data is questionable and the TA has not correctly considered other committed development. This has a knock-on effect for the study area for the TA, which has not been agreed.

¹ Prepared by Croft Transport Planning and Design (April 2019) (Job No 2324)

There are disagreements regarding the mitigation proposed and junction modelling. Furthermore, NCCHA have objections to the proposed single point of access into the site. I will discuss each of the areas of uncertainty in turn.

Distribution and assignment of vehicles

29. The TA includes junction assessments for several junctions surrounding the site and has provided 2 options of distribution and assignment modelling. However, for a number of the junctions assessed, NCCHA have concerns. In particular, the A60 Leeming Lane/New Mill Lane Crossroads assume, in both Options A and B of the Development Distribution models, that no traffic would turn left from the A60 Leeming Lane (south bound) onto New Mill Lane (east bound). NCCHA provided evidence that Google maps assigns vehicles down New Mill Lane and does not identify Old Mill Lane as a viable route when routing between the site and Nottingham.
30. I accept that Google is a 'live' tool, constantly updated and that the appellant went to the extent of producing 2 models. I also accept that drivers would choose their own routes and may stay on the A60. However, to assign no traffic down New Mill Lane in both distribution models when it appears to be the routing choice for Google; but then, as I will address later, produce a Technical Note² in September (TN) to mitigate the effect of the development at that junction, leaves me with substantial concerns about how the distribution modelling has been produced and if it effectively assigns traffic to the most appropriate routes/junctions.
31. The appellants claim that the effect of not assigning any traffic to New Mill Lane is that all traffic is then loaded onto the next junction (A60 Leeming Lane South/A6117 Old Mill Lane/Butt Lane Crossroads), which makes the TA more robust in terms of its assessment upon the A60. Yet, I am not persuaded that this satisfactorily explains the lack of distribution onto New Mill Lane, and I agree with NCCHA that the distribution and assignment of vehicles is likely to be incorrect.
32. *A60 Leeming Lane/New Mill Lane Crossroads* – looking at this junction specifically, owing to the concerns raised by NCCHA, the appellants produced a TN following their Transport Proof of Evidence (TPoE) proposing mitigation at the junction.
33. There is an element of inconsistency in the evidence provided by the appellants. The junction is not modelled in the TA and the appellants' TPoE provides an explanation, stating that all traffic is forecast to travel straight through the junction. However, the TN then assesses the effect on this junction using Options 1 and 2 distributions and finds that there would be an effect that requires mitigation. This is proposed in the form of adding a new dedicated right-turn lane to the A60 Leeming Lane southbound arm and widening of the New Mill Lane westbound arm to 3.85m. Both distributions options still assume no vehicles would turn eastbound down New Mill Lane, contrary to the Council's evidence.
34. NCCHA has concerns that there would be insufficient width in the 3 lanes at the A60 Leeming Lane southbound arm, which they believe should be 3m wide having regard to Manual for Street 2³. This is because the A60 is used for

² Prepared by Croft Transport Planning and Design

³ Section 8.6.5

buses and heavy goods vehicles, so they contend lanes wider than 2.5m would be required. I agree. It is reasonable to assume that the traffic on the A60 does not comprise only a small proportion of HGVs and buses. Furthermore, the 40m left turn lane is tapered, with only around 25m of length that would be 2.5m wide, allowing queuing for 7 vehicles. Additionally, as there would be 3 lanes, NCCHA also suggest that there should be traffic signals on a refuge in the road to aid visibility of the signals.

35. The concerns raised by NCCHA are not unreasonable, and it has not been satisfactorily demonstrated in the TN that the proposed mitigation would be achievable. Although a condition to require mitigation measures at this junction could be imposed, and an alternative plan submitted, I am not satisfied that this matter could be effectively dealt with by a condition given my concerns regarding the distribution and assignment data. In any event this is not the proposal before me which has been assessed by other parties.
36. Table 4 in the TN sets out the effect of the development with the junction mitigation in place. The development would not be fully mitigated by the proposed junction improvements. Both options 1 and 2 would increase queuing and the degree of saturation at the A60 Leeming Lane (S) north bound arm in AM and PM peaks. Furthermore, both east bound and west bound New Mill Lane arms would be worsened at the PM peak. However, betterments are predicted for the A60 Leeming Lane (N) south bound and the New Mill Lane west bound and east bound arms for the AM peaks with the mitigation.
37. In this regard, looking at the effect of the proposal with mitigation on the whole junction, the effect would not be severe in totality. Nevertheless, as I have concerns over the achievability of the mitigation proposed on the ground and the distribution and assignment data, I am not satisfied that there would not be an unacceptable impact on highway safety, or that the residual cumulative impacts on the road network would not be severe.
38. *A60 Leeming Lane South/A6117 Old Mill Lane/Butt Lane Crossroads* – This junction is predicted to have a considerable increase in traffic without the development from other developments in the area. However, with the development, the increase in traffic would be even more significant, particularly on Butt Lane and A60 Leeming Lane South arms, along with the A6117 Old Mill Lane right PM.
39. However, the appellants' TPoE concludes that the impact of the proposals on all movements at the junction can be described as modest in both peak hours, despite it already operating over capacity in the PM peak.
40. The appellants' TPoE sets out that a scheme of improvement is proposed at this junction, but it became apparent at the Inquiry that this is not a formalised scheme, and little is known about the mitigation proposed. However, the planning obligation does commit to a payment of £250,000 towards the costs of junction improvements.
41. Nevertheless, again, little is known about what these junction improvements would be or if they would mitigate the effect of the development or improve capacity. Considering the existing capacity issues with the junction, I have concerns that the proposal may cause a significant impact on the transport network. Conversely, I also have a concern that the mitigation may not be necessary if the distribution and assignment models were subject to revision.

42. *Peafield Lane/Gorsethorpe Lane/Forrest Road* – This is a double mini roundabout and has been assessed using ARCADY. The summary of junction performance, with the development in 2024 results in Junction 2 Arm 1 being over capacity at 1.04 (Option A) or 1.01 (Option B) RFC as opposed to 0.99 RFC without the development. Indeed, on every single junction and arm combination in the AM peak, and most in the PM peak; with the proposal, there would be an increase in traffic in both Options.
43. The TA asserts that the junction is forecast to operate efficiently and within capacity on all junction approach arms, but when looking at the raw data in Appendix 4A and 4B, this does not appear to be the case. Whilst the results should be treated with caution, given there is a small distance between the linked junctions and the increase in traffic would be marginal, it still tips the point of capacity on Junction 2 Arm 1.
44. The TA concludes that no traffic queues were observed at the junction during the surveys and the development traffic impact is minimal, but it was accepted by the appellant's expert witness that in some situations queues can increase exponentially when a junction is over capacity and the ARCADY modelling does not always account for this.
45. However, whilst concluding the effect would be minimal, the appellants' TPoE then proposes measures to improve the operational capacity of the junction. This includes reducing the speed limit to 40mph for 300m at each junction approach, erecting signage and rumble strips. Yet, I have very little evidence as to how this would increase the capacity of the junction or why it has been offered by the appellants if they consider the effect minimal.

Traffic count data

46. There is considerable disparity between the traffic count data produced by the appellants and that held by NCCHA, ranging between around +35 to -160 vehicles over an hour. The appellants assert that there are simply differences in traffic on different days, and as NCCHA data did not contain queue data, this prevents junction modelling being calibrated.
47. On this matter, I accept that some days traffic can be heavier or lighter. There is little reason to doubt the validity of the raw data from the appellant, who commissioned several junctions to be surveyed in a neutral month, over peak hours.
48. Consequently, in this instance, I accept that there are simply unexplained traffic differences on the days in which the appellants' and NCCHA's surveys were carried out. Yet, it must be noted that owing to the differences, sensitivity testing could have been carried out to understand these disparities.

Study area

49. This is clearly not agreed owing to concerns over the distribution and assignment data and traffic count data. Given my concerns raised over the distribution and assignment data, it follows that I am also not satisfied that all the junctions potentially affected by the development have been assessed.

Committed developments

50. There are several committed developments modelled in the TA, however I am concerned that a number of these have not been modelled correctly.
51. *Former Thoresby Colliery (16/02173/OUTM)* – Figure 3.1 in the appellants' TPOE shows over 200 vehicles passing that site entrance in the AM peak. They do not appear to be included in subsequent junctions. Additionally, they do not appear to be included in Figure 3, which shows the total committed development flows. Whilst the scheme may only deliver part of its capacity by 2024, and it is around 6 miles away from the site, I remain concerned that the number of vehicles passing the proposed site access and the subsequent effect upon other junctions has not been fully accounted for in the assessment.
52. *Lindhurst (2017/0618/RES)* – This is a reserved matters application for a phased part of a larger development. The figures for the outline planning permission for the larger site do not appear to have been accounted for, despite being provided by NCCHA. Although the site is around 2 miles away from the end of this proposal's network; the lack of inclusion, along with the disputed study area, raises concerns that the effect of this development may not have been fully accounted for in the TA.
53. *Penniment Farm (2018/0552/OUT)* – the application relates to increasing the number of dwellings on a site, and the larger outline planning application traffic numbers do not appear to have been accounted for.
54. As a resultant impact of the study area not being agreed, the effect of committed development together with the proposal upon the road network is to some extent unknown. Furthermore, despite the appellants' assertions at the Inquiry that the developments were too far away, and there would be an element of double counting given the creation of base traffic growth for 2024 which accounts for allocations; I remain unconvinced that the data provided properly accounts for committed developments, to such an extent that I consider the assessment in this regard could be flawed.

Single point of access/Peafield Lane proposals

55. The proposal would utilise one main access point for the development for all vehicular traffic. An emergency access is also proposed. The vehicular access would be 6.75m wide with 3m wide foot/cycle way to both sides. The emergency access would be 4.5m wide with a collapsible bollard, located to the west of the main access point. Additionally, there would be a pedestrian refuge island located opposite 71 Peafield Lane and a raised 'keep left' bollard located to the middle of Peafield Lane just east of the access. The vehicle speed limit is proposed to be reduced to 30mph.
56. NCCHA's adopted Highways Design Guide (HDG) deals with highways and transportation infrastructure for new developments. Table DG1: General geometry of residential roads (internal) sets out that for major residential access roads, normally no more than 400 dwelling should be accessed from a single point of access. There are numerous reasons for this requirement, but in the main, it appears to be to encourage well-connected streets and enable emergency access.
57. The masterplan framework for the proposal indicates a loop road with spurs of cul-de-sacs or streets. It also indicates potential linkages with BW39 and

Peafield Park to the south, along with the emergency access which could be used for pedestrian trips north west onto Peafield Lane.

58. Whilst the original plan submitted to the Council detailed an access width of less than 6.75m, Revision C access would have a carriageway width of 6.75m. This makes the width compliant with the HDG as a single point of access as it would serve less than 400 dwellings. The assertion that 2 accesses would be safer than one access was unsubstantiated by the Council.
59. Therefore, although the HDG details that emergency accesses are not normally accepted; it would not be necessary. Nevertheless, as there is one, it can only provide a benefit of alternative access in the rare event that it was needed.
60. In terms of the other highways proposals on Peafield Lane, the pedestrian refuge point would enable access to Dennon Drive without having to walk past the end of Dennon Drive and double back. This would ensure legible pedestrian access following natural desire lines to the bus stop on Dennon Drive from the site. Furthermore the 'keep left' bollard would discourage overtaking. Consequently, the single access point and other alterations to Peafield Lane would have an acceptable effect upon the safety and free flow of traffic.

Intergreen durations

61. NCCHA assert that the use of a 0 second pedestrian intergreen duration for 2 junctions modelled with pedestrian crossings has created unrealistically optimistic models, with meaningless conclusions. The appellants set out their reasoning for this during evidence, in that this 0 second intergreen time is based upon actual real world observations and the approach of calling the pedestrian phase every two cycles would still be more regular than actual observed behaviour. Furthermore, the CMX technology employed at the crossings extends crossing time for those who take longer than average, but it also shortens the period for those who cross quickly.
62. I have little reason to doubt the explanations provided regarding the intergreen durations from the appellant and I am satisfied that this is not unrealistically optimistic.

Highway safety

63. Based upon the road safety data submitted, whilst NCCHA give little credence to it, I have no substantive reason to doubt the findings. Furthermore, the additional accident data presented by the Council at the Inquiry demonstrated no road safety issues of particular concern. Traffic speed may be a contributory factor in accident severity at the site, but the speed limit would be reduced outside the site.
64. Notwithstanding this, given the disputed study area and concerns over the distribution and assignment data, I have concerns that there may be areas where highway safety has not been assessed, and/or mitigated.

Conclusion on safety and free flow of traffic

65. I accept that some matters regarding the assessment of the safety and free flow of traffic amount to professional judgement, and there has been a protracted amount of discussions between the appellant and NCCHA prior to

the Inquiry. I am also mindful that a line must be drawn regarding evidence gathering, sensitivity testing and modelling.

66. However, there are some areas where I remain unsatisfied and unsure that there would not be an unacceptable impact on highway safety, or the residual cumulative impacts of the proposal on the road network would not be severe. This principally relates to the distribution and assignment data, particularly that at the A60 Leeming Lane/New Mill Lane Crossroads, and the uncertainties around the committed development and mitigation.
67. I also heard evidence and have seen letters of objection from interested parties, who claim that the traffic on the A60 and the surrounding area is heavily congested. Indeed, I noted this while visiting the site and area. Although this is anecdotal evidence, it adds further doubt to my mind that the effect of the proposal may be unacceptable without suitable and agreed mitigation.
68. In this regard and having regard to the Satnam⁴ Judgement raised by both parties, I find it entirely appropriate to apply a precautionary principle as I am not satisfied that there would not be an unacceptable effect upon highway safety or a severe residual cumulative impact on the road network. Thus, there would be conflict with Policy M16 of the LP and paragraphs 108 and 109 of the Framework. There would also be conflict with Policy IN9 of the ELP, which seeks to ensure development proposals do not endanger highway safety, and any significant impacts on the highway network can be suitably mitigated.

Other Matters

Whether the proposal would materially undermine provisions central to the emerging Local Plan

69. Paragraph 49 of the Framework details that reasons of prematurity are unlikely to justify a refusal of planning permission other than in the limited circumstances where both the development proposed is so substantial that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.
70. It is agreed that the ELP is at an advanced stage. The proposal would provide up to 240 dwellings on an edge of settlement site. It is not allocated in the ELP, but it was considered (and discounted) as part of a larger site in the call for sites exercise.
71. The ELP anticipates that the housing need figure will be 325 dwellings per annum and identifies sites within the (amended) urban boundary to accommodate this. Several of these sites are relatively small scale, and the number of dwellings proposed would be significant in the context of the area and the ELP.
72. However, the scale, location and phasing of new development central to the ELP has been largely agreed, subject to the main modifications. Furthermore, whilst the location of development has been focussed upon sites with good

⁴ Satnam Millenium Ltd vs SSHCLG & Warrington Borough Council [2019] EWHC 2631 (Admin)

access to the Mansfield Ashfield Regeneration Route the housing need figure is not a maximum. Indeed, it represents a minimum figure.

73. Therefore, whilst it may be a significant development in the context of the area, I am not persuaded that it would be so substantial to meet part a) of Paragraph 49. In any event, it is not for me to pre-judge a local plan examination in the context of a Section 78 appeal.

Accessibility of facilities and services

74. The site is an edge of settlement development. There are nearby public rights of way and the bridleway to the south which gives access to the River Maun trail. A bus route runs to the west of the site through the residential estates. It is an hourly, daytime, Monday-Saturday service. I agree with the Council that this is not a frequent service and may not encourage travel by bus for most people. However, the planning obligation would provide a contribution towards the bus service, which would enable an additional service to be put on that loops around the site. This would be an hourly service that would run opposite the other service, such that there would be a half hourly service serving the area. I am satisfied that this would ensure the site is accessible by bus, if only during the daytime.
75. The train station is nearby, and whilst not within walking distance for less ambulant people, it is accessible by car, taxi, bus or on a bicycle. Additionally, cycling to or from local centres would also be an option as the topography is not particularly challenging. There is a local convenience store within walking distance along with a primary school. Secondary schools are a greater distance but would be accessible by bus, bicycle or walking - should pupils choose to walk the distance. Furthermore, there are other services nearby that could be accessed by sustainable modes of travel.
76. Therefore, the accessibility of facilities and services for future residents would be relatively accessible by a variety of other means than a private car, and the site would enable a genuine choice of transport modes.

Housing land supply position

77. The ELP housing need figure has is considered justified by the ELP Inspector, at 325 dwellings per annum (dpa), and no further changes are required for soundness. The appellants argue that this is the figure that should be used in my assessment of the proposal on this matter. I disagree. This is because it cannot be guaranteed that this exact figure will be brought forward into the ELP nor that the ELP will even be adopted as part of the development plan. It would be both unreasonable and unjustified to use the ELP housing need figure.
78. As the strategic policies are more than five years old, the Council is correctly using the local housing need (LHN) figure of 272 dpa in which to base its 5 year supply of housing. The latest position (using the LHN figure) between parties sets out that the appellants believe the Council has a 4.81 year supply (52 dwellings short) and the Council believe it has a 5.82 year supply (235 dwellings over). The appellants' figure is based upon them discounting sites as they do not consider that they are deliverable. I will now turn to these contested sites.
79. In terms of deliverability the Framework sets out a clear definition. Sites which do not involve major development and have planning permission and all sites

with detailed planning permission should be considered deliverable until permission expires unless there is clear evidence otherwise. Where a site has outline permission or is allocated in a development plan, has permission in principle or is identified on the brownfield register, it should only be considered deliverable if there is clear evidence that housing completions will begin onsite within 5 years.

80. *Skegby Lane* – the site has detailed planning permission and evidence has been presented that a material start on site has been made. However, this start was made in August 2018 and it appears little has happened on site since then. Nonetheless, the Council recognise this and only allocate dwelling completions on this site from 2021/22. Therefore, as there is no clear evidence that homes will not be delivered within 5 years, it should be considered deliverable and the rate of delivery purported by the Council is reasonable.
81. *Berry Hill (Lindhurst)* – The appellants apply a discount of 20 dwellings per annum, removing 80 dwellings from the supply, as they find the sustained delivery of 30dpa for each of the 4 housebuilders to be optimistic. I disagree. The overall site has outline planning permission and there is clear evidence that house completions are ongoing and will continue. It is intended to market Phase 2 later this year, with the possibility of residential completions by 2021 following submission of reserved matters. The phasing plan is fairly recent, a masterplan has been approved and condition 3 of 2010/0089/ST requires submission for final phase by April 2023. Consequently, the site meets the definition of deliverable and there is no clear evidence to justify discounting the estimated rate of delivery.
82. For the purposes of the appeal, given the shortfall contested by the appellants is 52 dwellings, it is not necessary to examine all the disputed sites. I have assessed the 2 sites where the difference between the Council and appellant are at the greatest and found these to be deliverable. Therefore, there would be sufficient supply to address the appellants' asserted undersupply of 52 dwellings.
83. Additionally, the Council does not apply any windfall supply to its assessment. Clearly there has been past windfall development, at 219 dwelling per annum on average from 2006-2017. Therefore, if I were to add only one third of this average to the appellants' housing land supply assumptions, this would bring the supply to over 5 years on its own.
84. Therefore, based upon the evidence before me, I am confident that the Council can demonstrate a 5 year supply of housing based upon the LHN figure, although the provision of housing remains a material benefit. Whilst the tilted balance is not engaged for this reason, for the reasons set out below, it is engaged and therefore the conclusions on the 5 year supply are of no major significance in this appeal.

Planning Balance and Conclusion

85. The development plan is the starting point for decision making. The presumption in favour of sustainable development does not change the statutory status of the development, and the Framework details that where a planning application [or appeal] conflicts with an up-to-date development plan, permission should not usually be granted.

86. Paragraph 213 of the Framework clearly sets out that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).
87. I must make an assessment as to whether the most important policies for determining the appeal are out of date, in accordance with Paragraph 11(d) of the Framework and having regard to the Wavendon⁵ judgement.
88. I set out what I consider the most important policies for determining the appeal in the Planning Policy section earlier. Policies NE1 and H3 are inconsistent with the Framework, and of little (NE1) or no (H3) weight. These are particularly important as they apply to the principal of the proposal. I also consider Policy M16 to be moderately inconsistent, and thus of limited weight. Policies NE7 and NE8(a) are consistent and I attach them full weight.
89. When taken as a whole, it is my judgement that the most important policies for determining the appeal are out of date. Therefore, Paragraph 11(d) of the Framework, or the tilted balance, is engaged.
90. There would be benefit from the provision of a substantial amount of market homes to which I attach substantial weight, and there would be LP policy compliant 20% affordable housing, or 48 homes for local people in need, to which I attach very substantial weight. This would be more than policy compliant in the ELP. The proposal would provide a considerable amount of public open space creating recreational opportunities, to which I attach considerable weight. Biodiversity enhancements are of reasonable weight.
91. Construction works would create employment opportunities and the provision of housing would increase local spending, all of which would contribute towards the local economy. This is of moderate weight. The planning obligation proposes numerous other monetary contributions to off-set the effect of the development, but these would be essentially of neutral value since they would mitigate the effect. The development is also in an accessible location.
92. Importantly, however, having applied the precautionary principle, there would be harm to the safety and free flow of traffic. Whilst the weight to be attached to both Policies M16 and IN9 is moderate, there is conflict with the Framework, which indicates that permission should be refused where there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Consequently, I attach this matter extremely substantial weight.
93. Additionally, there would be harm to the landscape character and appearance of the area by the large incursion of housing development into the open countryside. Yet this effect would be tempered by the proposed landscaping and public open space, such that the overall harm would be of moderate weight.
94. The site is outside the urban boundary and there is a fundamental conflict with Policies NE1 and H3 of the LP, yet these policies are of limited or no weight.

⁵ Wavendon Properties Limited v SSHCLG & Milton Keynes Council [2019] EWHC 1524 (Admin)

However, there is also conflict with Policies S5 and NE1 of the ELP, to which I give moderate weight.

95. Consequently, even with the 'tilted balance' engaged, given the extremely substantial weight I have attached to the harm to the safety and free flow of traffic, together with the other harms; it is my judgement that this would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
96. Thus, for the reasons set out above, I conclude that the appeal should be dismissed, and planning permission for the proposal refused.

Katie McDonald

INSPECTOR

APPEARANCES

For the Local Planning Authority:

Miss H Sargent of Counsel Instructed by Mansfield District Council
(aided by Mr A Shattock of
Counsel)

She called

Mr B Woollard	Director at Planning and Design Group (UK) Ltd
BA (Hons) MA MRTPI	
Mr T Dillarstone	Principal Planning Policy Officer, Mansfield District Council
Ms K Besh	Sustainable Planning Officer, Mansfield District Council
Ms S Hancock	Principal Officer, Highways Development Control for Nottinghamshire County Council
ONC	

For the appellant:

Mr C Hawley of Counsel Instructed by Gladman Developments Ltd
He called

Mr N Lewis	Senior Planner, Gladman Developments Ltd
BSc (Hons) MCD MRTPI	
Mr T Jackson	Director, FPCR Environment and Design Ltd
BA (Hons), Dip LA, CMLI	
Mr P Wooliscroft	Partner, Croft Transport Planning & Design
MSc, HNC	
Mr M Downes	Director, Aspbury Planning Limited
BA BPL MRTPI	
Ms C Richardson	Aspbury Planning Limited

Interested parties:

Cllr J Bosnjak	County Councillor objecting to the proposal
Miss K George	Local resident objecting to the proposal

INQUIRY DOCUMENTS

ID1	Suggested conditions
ID2	Housing land supply information presented during round table discussion from both parties
ID3	Housing land supply updated position (as of 9 October 2019)
ID4	Drawing No 2324-F04 Revision B
ID5	Drawing No 2324-F04 Revision C
ID6	Accident data
ID7	Manual for Streets extract
ID8	Planning Obligations Strategy (September 2019)
ID9	Closing submissions for APP/X3025/W/19/3229245
ID10	CIL Compliance statement updated (11 October 2019)
ID11	Executed planning obligation (dated 11 October 2019)