



Appeal Decision

Inquiry Held on 7-10 February 2023

Site visit made on 9 February 2023

by H Butcher BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th March 2023

Appeal Ref: APP/K2420/W/22/3295558 Land East of The Common, Barwell

- 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 Ms A Genco c/o Harrow Estates against Hinckley & Bosworth Borough Council.
 - The application Ref 21/01470/OUT, is dated 7 December 2021.
 - The development proposed is the erection of up to 110 dwellings, together with associated access, open space, and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal is submitted in outline with only access to be determined at this stage. However, an Illustrative Masterplan accompanied the application showing, amongst other things, the location of development parcels totalling 3.4 ha, primary and secondary streets, and green spaces. The basic parameters set out in the Masterplan are to be adhered to in the reserved matters application, to be controlled by condition, and the appellant raised no objection to this.
3. The layout used to create the verified views in the appellant's Landscape and Visual Impact Assessment (LVIA)¹ was submitted to the Inquiry. This Testing Layout² shows 100 houses on the site following the parameters set by the Illustrative Masterplan. I have considered this plan on an illustrative basis also, mindful that layout is a reserved matter and therefore this plan is not part of the formal proposal. It is, nevertheless, a material consideration and has informed my decision.
4. The description of development states that up to 110 dwellings are applied for. However, during the course of the Inquiry, the appellant indicated they were willing to reduce this to 'up to 95 dwellings' in view of concerns I raised in respect of the Testing Layout. This has therefore also formed part of my considerations.

¹ Core Document 55h

² Inquiry Document 6

5. A signed and dated s.106 agreement has been submitted with the appeal and contains a number of obligations. However, it is not necessary for me to look at this in detail given the proposal is unacceptable for other reasons.

Main Issues

6. The Council have set out three reasons why they would have refused planning permission for the development, had they been in a position to do so, in the Officer's report³.
7. In respect of reason 2 additional evidence was submitted by the appellant but the Council still maintained an objection on highway grounds, even though no specific highway evidence was submitted by the Council and a highway witness for the Council did not attend the Inquiry. I deal with this as an 'other matter' below.
8. Following the submission of additional information in respect of reason for refusal 3 relating to biodiversity, the Council have confirmed that this is no longer in dispute. Consequently, there is no need for me to take this matter further.
9. The main issue is therefore:
 - The effect of the development on the character and appearance of the surrounding area.

Reasons

Character and appearance

The development

10. The appeal site comprises a collection of nine fields to the south of the village of Barwell. These fields extend from Dawsons Lane to the north down to the A47 at the south. The fields in question are currently used for the grazing of horses and the site is contained and sub-divided by mature hedgerows. Access is to be created from The Common to the west of the site.
11. Policy DM10 of the Site Allocations and Development Management Policies Document (DPD) is relevant to the determination of this appeal insofar as it relates to design. Whilst the application was submitted in outline and matters of design, such as 'layout', are reserved for later consideration, I must, nevertheless, be satisfied that an acceptable scheme for the development proposed could be achievable.
12. The Illustrative Masterplan shows development parcels which align with and tuck into adjacent development on Dawsons Lane and The Common. This is predominantly to reduce the visual impact of the development from the wider area and is in response to a previous appeal at the site⁴ where a greater quantum of development was proposed over 5.35 ha.
13. The Testing Layout supplied by the appellant shows the houses filling more or less all of the available space within the development parcels shown on the Illustrative Masterplan. There is a notable absence of space for landscaping

³ Core Document 1 para 11.1

⁴ APP/K2420/W/17/3188948

integrated within the development, for example, along the primary and secondary residential streets. Furthermore, the density of housing on the Testing Layout is notably higher than the overriding residential context to the site, when you look at the plot sizes in particular. During the Inquiry I asked where there was a similar density of development in the vicinity of the appeal site to that shown on the Testing Layout but a detailed response was not forthcoming. The nearest comparable is Garner Close, but, overall, this is a more spacious development than that shown on the Testing Layout.

14. The Testing Layout is also, notably, for 100 houses, but up to 110 houses have been applied for. At the Inquiry the appellant explained that to fit a further 10 houses into the development parcels would require subdividing the largest plots, but this would not only increase density, and further reduce any opportunity for landscaping within the development parcels but would also reduce the housing mix.
15. As set out in Policy DM10 of the DPD new development should complement or enhance the character of the surrounding area with regard to, amongst other things, density. It also requires a high standard of landscaping where this would add to the quality of the design. Whilst the Illustrative Masterplan would allow for large areas of landscaped open space around the periphery of the development parcels, this does not justify creating a dense development with limited landscaping within them. Landscaping and buildings should be integrated to create well designed places and the quality of the spaces between buildings is as important as the buildings themselves.
16. On the evidence before me, therefore, I am not satisfied that a development of the quantum of houses proposed could be accommodated on the site in a manner which would respect the character and appearance of the area. In coming to this finding I have had regard to the appellant's concession to reduce the development to 'up to 95 dwellings' but there is no evidence before me of what this may look like, and I am not satisfied such a small reduction in dwellings would overcome my concerns.
17. I therefore find conflict with Policy DM10 of the DPD. I also find conflict with the National Planning Policy Framework (the Framework) which is clear that the creation of high quality, beautiful places, is fundamental to what the planning and development process should achieve.

Local views

18. The appeal site falls within designated countryside. It is broadly agreed between the main parties that the greatest visual effects of the development would be felt locally to the appeal site. Key views focused on at the Inquiry were from The Common, Dawsons Lane, and Shilton Lane.
19. At The Common, where there are currently paddocks enclosed by mature hedgerow sited at the edge of Barwell, this would be opened up to create a new access road into the development. As shown on the Illustrative Masterplan the new access road would cut across an area of green, open space to connect into the development parcels indicated to be located further to the north. As verified views 10.2, 10.3 and 10.4⁵ show, even at Year 15, there would be a dramatic change visually due to the introduction of such a hard, urban feature

⁵ Core Document 55h

into what is currently a green edge to Barwell. Whilst the land to the sides of the road could be landscaped this would do little to soften the visual impact of the road itself. It is also notable that the Illustrative Masterplan indicates the location of a sustainable drainage feature on the south side of the access road which would be an additional engineered structure in this area.

20. I turn now to Dawsons Lane which has an urban feel at its western end due to the presence of housing and industrial buildings. However, in the vicinity of the appeal site this increasingly changes to a more rural and open character due to the presence of mature and native hedgerows, paddocks, and allotments.
21. The section of Dawsons Lane which runs along the north boundary of the site is currently bound by thick hedgerow. It was put to me at the Inquiry that this hedgerow could be retained in order to screen views, and the Illustrative Masterplan indicates this also. The Testing Layout for 100 houses, however, shows two properties in very close proximity to Dawsons Lane which would create pressure for the removal of this hedgerow, and providing 110 houses would only add to this. The appellant is, however, willing to reduce the number of houses proposed down to 95 which would enable this hedgerow to be retained at reserved matters stage. Notwithstanding this, houses of the scale indicated, i.e., with a maximum height of 9m, would be visible above this hedgerow to users of Dawsons Lane. Therefore, even with the retention of this hedgerow Dawsons Lane would experience an urbanising impact as a result of the development.
22. Further to the east of Dawsons Lane and from within the allotments the development would be visible bringing built form closer to these areas and having an urbanising impact. It was put to me that landscaping in the form of extensive planting of trees could mitigate these effects. However, landscaping cannot be considered permanent, and all vegetation has a natural life cycle and is susceptible to disease. Furthermore, extensive planting of tree belts would, in any event, alter the existing open character of the site and the rural amenity it currently affords users of Dawsons Lane and the allotments.
23. On Shilton Road there is a viewpoint which looks over an open piece of land down towards the appeal site and beyond. The verified views show that, given the lie of the land, which falls steeply here, views of the development would be largely screened by the intervening landscape. However, at viewpoint 1a⁶ the development would be partially visible in this view resulting in some urbanising impacts here also.
24. Overall, therefore, I find that the proposed development would result in harmful visual impacts to the roads and footpaths immediately surrounding the site, resulting in an overall erosion of this green, open, and rural edge to Barwell. I therefore find conflict with Policy DM4 of the DPD which seeks to protect the intrinsic value, beauty, open character and landscape character of the countryside. Policy DM4 is, however, somewhat inconsistent with the Framework insofar as it is a more restrictive policy. Consequently, I reduce the weight to be afforded to this policy conflict.

⁶ Core Document 55h

Green Wedge

25. The appeal site falls within the Hinckley/Barwell/Earl Shilton/Burbage Green Wedge. Core Strategy Policy 6 seeks to protect the role and function of the Green Wedge, which is to retain the separation of the three settlements helping to maintain their individual identities, and provide easy access from the urban areas into green spaces, thereby contributing towards the quality of life for local residents.
26. The proposal would result in the loss of Green Wedge land to housing. That is not in dispute.
27. In respect of settlement separation, the concern in this appeal relates to the separation of Barwell and Earl Shilton. These two settlements have merged already further to the north-east of the site. The development, of itself, would not worsen the existing situation on the ground as they would appear no less separate than they do currently.
28. In respect of providing access into green space for local residents, the site is currently used for private equine activities so there is no public access. The development could provide access into and through the site by way of the creation of new footpaths. However, its value as Green Wedge i.e., a green space, would be significantly diminished by the development. Furthermore, whilst footpaths across the site might provide a route to Burbage Common this is equally accessible along the Common and other routes.
29. Furthermore, even though public access is not currently available onto the appeal site, based on submissions from local residents, it is clear it still has a function as green space. It enhances the local area and makes an attractive contribution to the quality of life of nearby urban residents who are presently able to enjoy it from the adjacent public footpaths and allotments, for example. This would be diminished by the development.
30. By virtue of the physical loss of Green Wedge, and the resulting diminishing of its value and the effects that would have on the quality of life of local residents, I find that the development would not retain the function of the Green Wedge nor would it retain the visual appearance of the area. For these reasons it would conflict with Policy 6a) and d) of the CS.

Other matter

31. The Local Highway Authority (LHA) raise concern over the appellant's modelling of the junction of the A47/The Common/B4668 Leicester Road. The concern is that the appellant's capacity assessments for Junction 2 do not account for unequal lane use. Clarification is also required on traffic growth factors for the LHA to comment further. The figures before me, however, show that the development is forecast to have very little impact on the operation of this junction, adding a maximum of a 1 second delay on the A47 west during the pm peak hour. In any event, there is no evidence from the LHA that their concerns, if not resolved, would result in an unacceptable impact on highway safety or severe impacts on the road network.
32. Turning now to the A47/A447 Ashby Road/B4667 Ashby Road junction, with background traffic growth and committed development, which includes the Barwell Sustainable Urban Extension, this junction is forecast to operate over capacity during the 2034 future year scenario. That is without the development

before this appeal. This development would therefore further increase the degree of saturation here.

33. Although the appellant is willing to accept a proportion of responsibility for works to improve this junction, there is not an improvement scheme currently in place. The Council have suggested a condition requiring the appellant to submit for approval a scheme of mitigation for this junction and to implement the approved scheme prior to occupation. However, such a condition would not meet the relevant tests, not least because it would be unreasonable for this development to shoulder the full responsibility for upgrading this junction.
34. The position, therefore, is that the development would result in some harm to the Ashby Road junction and there is no suitable mitigation in place to resolve this. Notwithstanding this, the Council have failed to articulate the level of harm resulting to this junction or provide evidence that the effects on this junction would be significant. The Framework is clear that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. This is a high bar, and the Council have failed to provide substantive evidence to demonstrate this.
35. With these points in mind, I find no conflict with Policy DM17 of the DPD nor with the Framework paragraphs 110 or 111. Nevertheless, as identified, there would be some limited harm to highway safety and the road network, as a result of this development, and this must be weighed into the overall planning balance. I address this below.

Planning balance

36. The Council cannot currently demonstrate a five-year supply of deliverable housing sites which is agreed at 4.76 years. This renders the policies most important for determining this application out-of-date as set out at paragraph 11d) of the Framework. In this case there are no policies in the Framework that protect areas or assets of particular importance that provide a clear reason for refusing the development. Consequently, paragraph 11d) ii of the Framework applies, namely, consideration should be given as to whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
37. Taking the totality of harm that I have found to character and appearance I give this substantial weight. In addition to this I have found some limited harm to highway safety and the local road network. Taking the appellant's best case, up to 110 houses represents a significant benefit in terms of housing land supply, noting that a lack of 5 year housing land supply has been an ongoing issue since 2018, and a future requirement to contribute to Leicester City's unmet housing needs. Affordable housing is a further significant benefit. There would also be economic benefits during the construction phase and operational lifetime of the development which would contribute towards economic growth. Biodiversity Net Gain benefits and provision for self-build plots also weigh in favour of the development, and I note the appeal site is in a relatively accessible location. However, for the reasons already given I do not consider new access routes across the site to be anything more than a minimal benefit. Overall, I afford the benefits in this case significant weight.

38. Taking these points together I find that the adverse effects would significantly and demonstrably outweigh the benefits.

Conclusion

39. I have had regard to the development plan as a whole and the policies which weigh both in favour of the development and against it. I have also had regard to all material considerations. In applying planning judgement to these matters I find that planning permission should be refused. The appeal is therefore dismissed.

Hayley Butcher

INSPECTOR

APPERANCES

FOR THE LOCAL PLANNING AUTHORITY:

Hugh Richards,

He called: Jonathan Mark Billingsley
Laura Ashton

FOR THE APPELLANT:

D E Manley KC,

He called: Jeremy Peachey
Matthew Gilbert

INTERESTED PERSONS WHO SPOKE AT THE INQUIRY:

Paul Lamprell

Susan Lamprell

Nigel Vernon

DOCUMENTS SUBMITTED DURING THE INQUIRY:

1. Landscape, Visual and Green Wedge Matters Statement of Common Ground
2. Planning Statement of Common Ground
3. Appellant's Opening
4. Council's Opening
5. Appeal Decision APP/K2420/A/12/2188915 plus Layout
6. Testing Layout used for the appellant's visual montages
7. Comment from Sharon Hubbard
8. Appeal Decisions APP/K2420/C/19/3222721 and APP/K2420/W/19/3222720
9. Comments from Mrs Janet Farrell
10. Draft conditions
11. Council's closing
12. Appellant's closing