



Appeal Decision

Hearing held on 28 February 2024

Site visit made on 29 February 2024

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 May 2024

Appeal Ref: APP/P3040/W/23/3333863

Hillside Farm, Bunny Lane, Keyworth, Nottinghamshire, NG12 5LP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Barratt David Wilson Homes against the decision of Rushcliffe Borough Council.
 - The application Ref 22/02311/FUL, dated 15 December 2022, was refused by notice dated 18 September 2023.
 - The development proposed is the erection of 73 dwellings including landscaping, public open space, and associated infrastructure.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Barratt David Wilson Homes against Rushcliffe Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. On 19 December 2023, the Government published a revised National Planning Policy Framework (the Framework). In the interests of natural justice both main parties have had the opportunity to submit comments on the relevance of the Framework to this case. I have taken any comments received into consideration; in reaching my decision I have had regard to the revised Framework.
4. A unilateral undertaking to secure planning obligations required under the terms of the development plan was submitted for the purposes of the appeal. I have also had regard to that undertaking under s106 of the Town and Country Planning Act 1990 in my determination of this appeal. I return to this matter below.

Background

5. The substantially greenfield site lies adjacent to the built-up area of Keyworth, which is identified as a Key Settlement village in the Rushcliffe Local Plan Part 1: Core Strategy [2014] (the LP1). The land was allocated in October 2019 as a Green Belt release site on the adoption of the Rushcliffe Local Plan Part 2: Land and Planning Policies [2019] (the LP2). The site contributes to the borough's healthy housing land supply and the LP2's revised allocation of 600 houses for Keyworth.

6. At the time of the site visit, the majority of the land was rough grass with hedges defining most of the outer boundaries. The land levels reduce markedly to the south away from Bunny Lane. A residential estate lies to the east beyond a watercourse. The eastern drain feeds into another watercourse along the southern boundary.
7. To the south is an open grazing field for cattle. A livestock farmstead is sited immediately adjacent to much of the site's western boundary. Some distance to the south-west is a wastewater treatment works (WWTW). A detached dwelling with domestic garden, an agricultural barn, and a surfaced access and yard area are located within the north-western quadrant of the appeal site.

Main Issues

8. The main issues are:

- whether or not the development would deliver a high standard of living conditions for prospective occupiers with particular regard to the site's proximity to a livestock farm and the WWTW, private garden sizes, and the design response to the site topography in terms of retaining structures; and
- the effect of the proposed boundary fencing on the character and appearance of the locality.

Reasons

Living conditions - nearby land uses

9. The allocation of the site confirms the principle of housing as an acceptable use of the land. Within the variation of local housing densities, the LP2 envisages around 70 units on the site. Policy 4.4 of the LP2, acknowledges that the site is subject to some constraints due to the proximity of the neighbouring farm. The policy highlights that the amenity of residents should not be significantly affected by noise, odour or dust resulting from the farm. It requires that the agricultural operations should not be prejudiced as a result of adverse effects on the amenity of residents.
10. The Policy 4.4 approach reflects the requirements set out in Paragraph 193 of the National Planning Policy Framework (the Framework). This seeks to ensure new development can be integrated effectively with existing businesses and those businesses should not have unreasonable restriction placed on them as a result of development permitted after they were established. Where the operation of an existing business could have a significant adverse effect on new development in its vicinity, the applicant should be required to provide suitable mitigation before the development is completed.
11. The Planning Practice Guidance¹ (PPG) highlights that an applicant 'will need to clearly identify the effects of existing businesses that may cause a nuisance (including noise, but also dust, odours, vibration and other sources of pollution) and the likelihood that they could have a significant adverse effect on new residents/users. In doing so, the agent of change will need to take into account not only the current activities that may cause a nuisance, but also those

¹ Para.009 Reference ID: 30-009-20190722

activities that businesses or other facilities are permitted to carry out, even if they are not occurring at the time of the application being made’.

12. In support of the development, the appellant has provided details of on-site assessments of noise, odour, dust and flies. The studies sought to provide a measure of the effects of the adjacent livestock farm and the WWTW on prospective occupiers of the site.
13. Using methodologies agreed by the Council, measurements took place between 2018 and late 2023. However, during that period there was a significant change in the adjacent farmstead arrangements. In 2017, two permissions² were granted by the Council for agricultural sheds on the adjacent site. Another shed was approved in 2019³. The appellant’s evidence confirms that at the time of measurements taken in July 2021, the last of the larger sheds was under construction.
14. The 2 largest sheds are significant in scale. The buildings are designed to be well ventilated with upper open slatted sides and apertures suitable for the housing of livestock. They align with the site’s western boundary and are within a short distance of it. All 3 recent buildings were observed to house livestock at the time of my site visit.

Odour

15. Both parties refer to the Institute of Air Quality Management (IAQM) updated Guidance on the Assessment of Odour for Planning (2018). Due to the subjective nature of odour measurement compared to that of other environmental factors, the guidance recommends a multi-tool approach using 2 or more methods of assessment. The odour assessment by the appellant includes a desk-based study, community-based tools (history of complaints) and sniff tests.
16. The desk-based assessment follows the Frequency-Intensity-Duration-Offensiveness-Location (FIDOL) approach based on the IAQM guidance. The appellant has categorised the WWTW as having ‘large’ odour potential and the farm as ‘medium’ odour potential. Both sites are located upwind of the prevailing wind direction with a clear pathway to the site intended for use by a highly sensitive end user. The odour effects on the site are classified as ‘moderately adverse’ by the appellant.
17. In contrast, the Council’s evidence⁴ at the hearing indicates that housing of between 100-200 cattle within the buildings would equate to a similar scale of odour emissions as the WWTW. It states that having regard to seasonal fluctuations, the magnitude of use in the source odour potential for the cattle could rate as ‘large’ with a corresponding ‘substantial adverse’ odour effect on the development site.
18. It is the appellant’s position that the farm should be categorised as a low intensity operation and that the use of the sheds for cattle housing during the warmer months when biological degradation of wastes are highest would reduce. However, there is little before me to clarify the farming regime at the adjacent site. According to the evidence provided by the farm operator, the

² 17/01570/FUL and 17/01575/FUL

³ 19/00719/FUL

⁴ Statement of Case-Odour Michael Bull & Assoc. 24 Jan 2024

livestock holding has recently increased to around 500 cattle and 200 sheep. This is somewhat higher than the corresponding figures of 300 and 150 respectively as set out in the appellant's report. Any likely effects of potential increases were not comprehensively assessed.

19. The Council's original assessment of the sniff tests identified that the majority of tests were taken upwind of the odour sources. It acknowledged that testing during the warmest months was omitted but concluded that this was acceptable as the use of the cattle sheds was assumed to be reduced during those months. It further indicated that the likely frequency of the most odorous activity of mucking-out was every 2-months. However, there was little to corroborate the assumptions in relation to the use of the barns or the frequency of clean-downs. The report concluded that the testing could have been more extensive.
20. There is no dispute between the main parties that the number of odour monitoring occasions significantly exceeded standard practice for odour monitoring. However, 10 of these pre-date July 2021, when the agricultural shed was under construction as part of the consolidation of farm operations to the southern side of Bunny Lane. Although the earlier results retain relevance to the odour associated with the WWTW, they are of more limited value in assessing the current effects of the farm.
21. The minimum requirement of 3 observations has taken place since the agricultural sheds have come into use. However, although sniff testing of existing site effects is entitled to considerable weight in the overall assessment, it is subject to the limitations of snapshot circumstances both in relation to atmospheric conditions and the activity taking place on the adjacent land at that time. To establish whether significant effects would arise it can reasonably be expected that testing should be carried out when odour concentrations are likely to be at their highest.
22. The guidance indicates that this would be under stable atmospheric conditions (high pressure and mornings or evenings), under the prevailing wind at low wind speed, at higher ambient temperatures, and when the most odorous activities occur. For the cattle sheds this would likely be during the cleaning out of wastes. Although scraping had been observed on a single winter occasion, this notably resulted in the highest effects despite being under conditions when biological degradation of wastes would be relatively low compared to warmer weather conditions. On that occasions odour was experienced at the majority of monitoring locations. According to the single assessor, those downwind locations experienced 'moderately unpleasant' to 'unpleasant' ratings.
23. The appellant confirmed at the hearing that they had not established the farming regime sufficiently to know when the most odorous events occurred, nor their frequency or duration. The absence of summertime measurement of mucking-out activity gives little measure of its potential greatest intensity.
24. Furthermore, there is little consideration of any likely effects of the potential changes to, or intensification of, the activities taking place at the farm. The recent increase in livestock numbers could, for example, give rise to odour increases from more regular clean down operations in and around the buildings, which could be utilised across the calendar year.

25. The main parties at the hearing acknowledged that the permissions for the livestock buildings were conditioned in respect of animal waste management. I heard that this included a requirement to store waste a minimum distance of 150m from existing dwellings. However, the parties were unable to provide any detail as to where that distance was derived from or whether it would apply in respect of the proposed dwellings to impose a greater restriction on potential areas of waste storage on the farm. Notably, the reason for imposing the condition on the 2019 permission is to protect the amenities of the area with reference to Policy 10 of the LP1.
26. In relation to the WWTW, at the time the Council sought independent qualification of the odour assessment, their advisor identified that none of the sniff tests were carried out when the wind direction was from the WWTW nor during summertime. Despite that the appellant's acknowledgement that odour from the WWTW is likely to increase as warmer month progress, only one assessment had taken place during late summer. As the summer months coincide with the times when residents are likely to want to utilise outside spaces, the measure of effects on garden users, or the public open space, is limited.
27. The statistical significance of the results of sniff testing carried out by a single operator are somewhat skewed by the inclusion of the majority of assessments being made prior to the completion and use of the existing livestock buildings. The percentage figures based on the totality of the surveys and disproportionate recording of upwind instances against the prevailing wind direction, leads me to the conclusion that the effects of odour defined by that survey method are underestimated.
28. Furthermore, no detailed modelling of the effects of the individual source odours or their potential combined effects have been undertaken. The implications for odour intensity or potential extension of periods when it might be experienced have not been duly assessed.
29. At the hearing, I heard that of the complaints made to the Council's Environmental Health service in relation to noise or odour, none had been upheld. However, existing residential properties are at a significantly greater distance than the nearest proposed houses. Accordingly, I find the weight that can be attributed to that assessment tool is limited.
30. Despite some reasonable anticipation that prospective residents might require some acclimatisation to 'rural air' as opposed to a 'gold-plated'⁵ odour free experience, in my view, the absence of clear measurement of the most odorous events to inform the likely adverse effect on new residents is a flaw in the assessment. It leads me to conclude that the odour assessments fall short of what the PPG and development plan policies seek to achieve.
31. In the event that complaints were generated in regard to odour, the nature of the pollutant means that opportunities for mitigation on the site would be limited. It is the appellant's position that a 3m high fence running the substantial length of the western boundary would provide a degree of interruption to the free flow of air between the sites. It would induce eddying and improve the dispersion of odours to the offset housing. However, in the absence of any detailed modelling, the extent of any such effect is unclear.

⁵ Appellant's appendix 22

32. The use of sealed double-glazed window units with trickle vents could provide alternative ventilation when offensive odours occurred. However, as this is likely to be during warmer weather when residents are most likely to want to open windows, and airflow through trickle vents is limited, any benefit therein would also be limited. Furthermore, no detail of alternative forms of ventilation have been provided to demonstrate that the effects of closed windows could be offset. In the absence of alternative means of ventilation and its likely success in mitigating odour, it is not possible to impose a condition requiring it as this could nullify the benefit of any permission it was attached to.

Noise

33. The noise data identifies that the noisiest farm activities arise from the use of a milling machine and on-site vehicle movements. Of the noise surveys, the combined effect of the milling machine and site traffic was captured on a limited number of occasions in 2019. However, I heard that, despite an earlier partnership agreement between the appellant and the farmer, the appellant was unable to confirm the frequency of the use of the milling machine.
34. The written evidence of the farmer highlighted other sources of noise of particular note. These are not referred to under the appellant's BS4142:2014 assessment. This includes times of tuberculosis testing and inoculation, calving and the weaning of cattle. At the hearing I was informed that cattle noise during the nighttime could be significant in houses facing the farm from beyond the site's eastern boundary.
35. Of surveys carried out since completion of the large agricultural sheds, the March 2022 assessment concluded that noise from the farm was 'dominated by occasional vehicle movements, and that 'no significant noise sources are part of the typical farm operations'. An addendum report of April 2023 assessing measurements taken in January and February 2023 highlighted noise sources as occasional farm machinery (unspecified), vehicles and frequent animal noise. The location of the appellant's survey data from early 2023 was not identified however. That report also incorrectly concluded the milling machine was no longer in use. Although this was later retracted, I find those assessments unhelpful.
36. The appellant asserts that the extent of measurements was sufficient to establish the 'normal regime' at the farm. However, the appellant was, again, unable to verify that the noisier livestock events had been measured, nor when and with what frequency and duration they occur at the farm.
37. The Statement of Common Ground submitted by the main parties acknowledges that potential harm to the amenity of prospective residents was identified. In its unmitigated form the noise assessment includes effects at over +10dB above the measured background noise level, such that under World Health Organisation and BS4142 2014+A1:2019 guidance they would be regarded as 'significant adverse' effects across parts of the site.
38. If BS4142 tonality and intermittency corrections were applied for use of vehicle reversing alarms, say, the calculated effect would be even greater. This would be experienced at the facades of the buildings facing on to the farm sheds and in gardens with a direct line of sight. A significant effect would be experienced within other close gardens even when shielded by buildings. Furthermore, the

appellant's conclusions rely on absolute noise levels instead of a BS 4214 ratable noise assessment. This could also skew the assessment findings.

39. The proposed mitigation would be the combination of the distance to the housing from the farmstead, the installation of double glazing to dwellings and the erection of the 3m high acoustic fence along much of the western boundary.
40. According to the appellant's assessment, this would theoretically reduce absolute noise levels of the worst measured noise effects to guideline levels set out in BS8233:2014 as they apply to steady external noise sources. However, it is unclear whether the mitigation would meet that standard if the intermittency or tonality corrections were applied.
41. Moreover, in the absence of assessment of the other noisy events arising from farming activity directly associated with livestock keeping practices, that effectiveness remains in question. The effects of recent or future increases in livestock numbers could lead to more intensive use of the nearest buildings and yard area with increased frequency and/or duration in the use of attendant noisy machinery or cattle noise. The limited assessments made of the existing and potential farm arrangements reduces the confidence in their findings.
42. The assessment does not include daytime activity. Although background noise levels would generally be higher in the daytime, there is little to demonstrate that there is no corresponding increase in the working profile of the farmstead.
43. Taking the above matters together, it seems to me that the survey effort has failed to accurately profile the totality and subsequent potential frequency and duration of the farm's existing noise profile. Although mitigation of much of the noise emanating from the farm could likely be achieved as described, this has not been conclusively demonstrated.

Flies

44. Flies are not specifically referred to in the development plan policies. However, as with noise and odour, their pervasion is quite capable of significantly affecting living standards.
45. At the time of the odour assessments, the appellant's operative monitored the presence or absence of flies. The report confirms only some presence of flies alongside the western boundary hedge. This was on one of the occasions after the agricultural sheds had been completed.
46. However, this is in direct contrast to the experience of a significant number of local residents responding to consultation on the planning application and the appeal. At the hearing, a resident of a new development on the northern side of Bunny Lane made representation. It was highlighted that particularly during episodes of warm weather, fly nuisance would often prevent use of gardens and require residents to keep windows shut causing difficulty with ventilation during those times. Those properties are at some distance from the farm and WWTW.
47. Images provided by other residents of properties beyond the site's eastern boundary show the extent of flies, including those caught by commercial grade fly traps installed at one house. The residents highlighted that fly effects cumulatively arise from the keeping of livestock, associated storage of muck,

and from the WWTW – particularly after surcharge events, which were said to be becoming more frequent due to the effects of climate change.

48. From the extent of representation on that issue, it seems to me that the appellant's assessment is somewhat understated. Furthermore, despite the winter timing of my own site visit, flies were experienced when close to the site's western boundary, albeit at a relatively low level.
49. Guidance issued by DeFRA and the Environment Agency suggest that prevention of fly issues should be pro-active and tackled at source. However, although it is the appellant's position that the farm is subject to a waste management plan, it was not shown that it seeks to directly address issues associated with flies. The proposed boundary fence may stem some lateral movement, however, there is little to demonstrate its likely effectiveness.
50. As with the proposed odour mitigation, any prolonged requirement to keep windows closed during warmer months and reliance on trickle ventilation, would not, in my view, achieve a high standard of living conditions for prospective occupiers.

Dust

51. The Council's reason for refusal includes reference to dust. The assessment of dust was limited to snapshot observations coinciding with the sniff testing. Although those visits were generally skewed away from drier months, there was little before me to demonstrate that dust is a significant problem in the locality.
52. At the hearing, this was not raised as a significant concern by the main parties or residents. In the circumstances, despite the Council advisor's criticism that the appellant's assessment fell short of any scientific monitoring or modelling exercise, there is little basis to consider this would be a significant issue in the overall assessment of effects on prospective occupiers' living conditions.

Conclusion on land use effects

53. While there is no dispute between the main parties that, taken individually, the threshold of 'significant effects' on the amenity of residents arising from the farm would be unlikely to arise, I do not share that confidence. The identified shortfalls in comprehensive assessment, particularly of the farm operations since the completion of the livestock buildings, leads me to conclude that the effects of odour, flies and noise are highly likely to have been underestimated.
54. Moreover, there is inadequate assessment of their cumulative effects from the farm and the WWTW. The consideration of potential changes to those established uses have largely been omitted. As a requirement in the PPG, there is little before me to suggest why that test should not be applied in this particular case.
55. Where each of the effects could require residents to close windows and rely on limited ventilation for extended periods – particularly during warmer weather when those effects are expected to be greatest, that is unlikely, in my view, to achieve a high standard of living conditions for many residents of the site.
56. In support of the proposal the appellant highlights that no objections were received from relevant consultees. Responses from Severn Trent Water seem

restricted to the detail of sewage management from the site rather than environmental factors arising from operations.

57. Advice provided by the Council's Environmental Health advisor and the findings of an independent assessor concluded that the effect on living conditions would be limited. This was on the basis of securing mitigation measures. However, it is unclear as to the weight given to the data collection which took place before the existing farming regime was fully established, why the absence of capture of worst-case events, or their frequency, was not considered significant, or, whether cumulative effects were considered. Neither respondent appears to have considered potential changes that could occur at the sites causing effects in any detail.
58. Taking all of the above together, I consider that the survey effort to date fails to accurately establish the profile of some worst-case events and the magnitude and frequency of the cumulative effects of noise, odour and flies on prospective residents' living conditions. In that context, and when activity is said to have intensified – and could do so further, I am not persuaded that the assessment to date is sufficiently robust to fully inform the full extent of mitigation that might be required to provide acceptable living conditions for all residents of the site. Moreover, with that uncertainty, it is unclear as to what mitigation measures might be required and they cannot therefore be left to be dealt with by way of planning condition/s.
59. For the above reasons, I find the proposal conflicts with Policy 10 of the LP1 and Policy 1 of the LP2 as they seek development to create a healthy environment and ensure the amenity of occupiers or users would not be detrimentally affected by existing nearby uses. For similar reasons it would conflict with Paragraph 135 f) of the revised Framework requiring high standards of amenity for future users.

Living conditions -garden sizes and retaining structures

60. Policy H2 of the Keyworth Neighbourhood Development Plan [2018] (the NP) specifies minimum requirements for garden sizes associated with 2 and 3+ bedroom houses. There is no dispute between the main parties that numerous plots fall short against the standard imposed. The Statement of Common Ground highlights some plots having gardens well below the 80sqm required by the policy. 24 units in total would have substandard garden sizes.
61. Paragraph 10.12 of the supporting text to Policy H2 of the NP clarifies that the standards are imposed to provide appropriate private space. Additionally, the policy seeks to secure the characteristic local density of development and allow for home extensions to meet lifetime home standards.
62. In support of the proposal the appellant highlighted that the generous provision of public open space on the site balances the shortfall in private amenity space. I heard that improvements in the number of policy compliant plots had been made despite it not being raised as a reason for refusal of an earlier scheme.
63. The appellant contended that the prescriptive policy was too simplistic and failed to recognise the wider implications of plot geometry requirements for units of 3 bedrooms or more. Despite a shortfall in a percentage number of plots, it was claimed that the overall garden area provision was some 20% over the standards set out in the Council's Supplementary Design Guide.

64. Additionally, the appellant highlighted a legitimate expectation to deliver the 70 units anticipated in the site allocation. While it is unclear on what assumptions were relied upon to come to that figure when the site was allocated, as a proposal for 73 units, I find this argument of limited weight in the case circumstances.
65. Although there is little before me to demonstrate the extent to which public space should be relied on to mitigate reductions against the adopted standard for private spaces, the public open space would offer some opportunity for outside play. Nevertheless, whilst there would be a modest conflict with Policy H2 of the NP, the majority of plots would be provided with sufficient outdoor space for sitting, play and drying laundry.
66. The gradient of the site necessitates designed level changes within the proposed estate layout. As with other developments nearby, the layout relies on boundary retaining structures to minimise the slope on individual plots.
67. The Rushcliffe Residential Design Guide indicates that boundary walls or fences above 1.8m should be avoided where they would be visible in the street scene. Aside from a retaining wall between plots 68 and 69, street-facing retaining structures would be generally limited in height compared to those to rear and rear-side boundaries. The frontage retaining structures would go some way to breaking up consecutive lines of forecourt parking.
68. Where the existing incline is greatest, the changes in level occur mainly between back-to-back plots. According to the Layout Plan this would result in retaining structures of up to some 3.75m. Elsewhere, level changes would be lower, but in some cases would still significantly add to the overall height of garden boundaries in conjunction with proposed 1.8m high rear garden fencing.
69. Some of the larger structures to the rear of plots would be visible from the streetscene. However, views would generally be limited or only glimpsed through gaps between buildings. Moreover, they could be assimilated through the introduction of planting or climbing vegetation, which could be conditioned.
70. The arrangement would result in some high levels of enclosure and reduced rear outlook on lower plots. The effects on resident's living conditions would vary dependent on the plot orientation, garden depth and overall height of the combined means of enclosure. However, those plots most affected generally have larger gardens. Accordingly, the effects on living conditions would be limited.
71. At the hearing, I heard that the layout arrangement sought to minimise significant level changes. However, the appellant explained that this was somewhat dictated by the design limits for the incline of adoptable roadways, Building Regulations requirements, and the fire regulations. It was also influenced by the aim of making the best use of the land.
72. As a legitimate design response to the site topography, I find the effect on living standards would be limited. Furthermore, as highlighted by the Council, such effects could be reduced by terracing or grading rear gardens to limit the effect of large retaining structures with boundary fences atop. This could also be conditioned.
73. For the above reasons, despite a conflict with Policy H2 in the NP, the effect of the garden sizes and their retaining walls would not cause significant harm to

the living conditions of prospective residents. In that respect the development would accord with the aims of Policy 10 of the LP1 and Policy 1 of the LP2 insofar as they relate to site design and residential amenity.

Character and appearance

74. Hedging forms the predominant characteristic settlement interface with adjoining rural areas of open agricultural land. Occasional examples of low-level domestic timber fencing exist but are in the minority. The proposed installation of a 3m high mitigation fence along much of the site's western boundary would contrast significantly with those characteristic rural edge forms of enclosure.
75. The fence would be sited inside of an existing hedge. The hedge is generally 3-4m in height. In conjunction with the screening effect of the successive line of buildings associated with the adjacent farm, views on the western approach to the village would be largely unchanged by the fence.
76. However, despite the reducing level of the site, or the backing of the existing hedge and buildings, the incongruous height and continuous length of the fence would be clearly visible from Bunny Lane, properties with a westward view across the site, and from the memorial gardens off Wysall Lane. Although landscaping is proposed on the internal side of the fence to soften its appearance, this would take some considerable time to establish and be unlikely, in my opinion, to fully assimilate its visual impact and incongruity.
77. Although the appellant contends that it would provide visual respite from the farm, and it would be seen in the context of new built development, this would not outweigh the resultant visual harm and uncharacteristic boundary treatment at the settlement edge. Accordingly, I find the fence would conflict with Policy 10 of the LP1, Policy 1 of the LP2 and H3 of the NP as they require development to have regard to and integrate well with their local context, reinforce character and identity through locally distinctive design, and be of an appropriate scale.

Other Matters

78. At the hearing, the Parish Council raised concerns in relation to the site's designation in the face of alternative site allocations and recent housing delivery about the village. However, as a more recently adopted element of the development plan, the provision for 600 homes in the LP2 carries greater weight than the preceding parts. Moreover, Paragraph 61 of the Framework makes it clear that housing allocation requirements imposed on Councils are minimum requirements.
79. There was some dispute as to whether the eastern ditch should be qualified as a 'watercourse' for the purpose of Policy 19 of the LP2. Environment Agency guidance⁶ defines watercourses to include a river, brook, beck, ditch, stream, leat, goyle, rhyne or culvert. As a flowing ditch it falls within that scope.
80. Policy 19 states that where physically feasible, a 10m offset from watercourses to protect, conserve and enhance watercourse corridors should apply. The scheme shows a corridor of 5m to the northern section of the watercourse

⁶ <https://www.gov.uk/guidance/owning-a-watercourse>

where it is culverted; thereafter the undeveloped width of land adjacent to the bank top would reduce to 3m.

81. Aside from a proposed surface water outfall, there is little to suggest that any changes to the watercourse, hedge or the immediate margin would result from the development. Indeed, subject to its suitable management, the more limited buffer proposed could potentially provide an improvement alongside the watercourse that could otherwise be regularly disturbed by crop production.
82. For a watercourse of limited width and depth, the provision of a protected buffer on the western side would provide a secured means of access to facilitate the riparian owner's maintenance responsibilities. The effect on the watercourse corridor is, in my view, unlikely to be significant. Whilst I acknowledge that the Lead Local Flood Authority indicated that the offset should be 5m; the reason for this in the site circumstances is unclear. Accordingly, I find there is little to demonstrate any harm to the value or future maintenance of the watercourse corridor would arise sufficient to find a conflict with the aims of Policy 19 of the LP2.
83. The surface water drainage scheme for the site shows an attenuation pond to the south-eastern corner. Controlled flows from the system and storage lagoon are shown to discharge to the lower end of the eastern watercourse. At greenfield run-off rate, discharges to the existing surface water system should present little change to drainage capacities in the area. I heard that, subject to final design and securing either the landowner's consent or a requisition order (subject to planning permission) then a suitable connection to a watercourse could be provided.
84. On the eastern fringe of the site, some proposed dwellings have an interface distance to houses on Roseland Close below the generous 30m separation guideline found in the Design Guide. However, some are orientated to avoid direct views; others would be set slightly lower than the existing dwellings such that overlooking would be limited. Even when accounting for ground floor extensions to some of the existing dwellings, the proposed interface distances would generally be comparable to those typical of a residential estate setting.
85. There is local concern in relation to the capacities in community services to accommodate the development and its users. A planning obligation under s106 of the Act has been provided by the appellant as a unilateral undertaking. The terms of the obligations in relation to: affordable housing and First Homes; a libraries contribution; education contribution; off-site highways improvements; open space delivery and management (including the eastern buffer, the drainage attenuation basin and the western boundary fence); and Council monitoring fee, have been agreed with the Council who have issued a Compliance Statement to that effect.
86. I find the obligations in the s106 undertaking are necessary to make the development acceptable in planning terms. They are directly related to the development and are fairly and reasonably related in scale and kind to it. They therefore meet the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and Paragraph 57 of the Framework. Accordingly, the development plan requirements for addressing local infrastructure capacity would be met.

87. Subject to the off-site highway improvements, there is no dispute between the main parties that highway capacity and safety in the vicinity of the site would not be materially affected.
88. Regulation 9 of the Conservation of Habitats and Species Regulations 2017 imposes a duty on me to have regard to the likelihood of European Protected Species being present and affected by the proposed development. An extended phase 1 habitat survey of the site was carried out in April 2021.
89. The survey found that the site had low potential for bat roosts. Existing site edging would provide commuting routes and feeding for bats and other mammals; however, these are largely to be retained. Subject to that requirement (or replacement where they are to be removed) and imposition of external lighting restrictions which could be secured by planning conditions, no adverse impact on bats or other mammals and their habitats is anticipated.
90. Following identification of a potential pond used by Great Crested Newts (GCN) close to the site, a supplementary DNA survey was carried out. This took place in June 2021. It concluded no presence of GCN in the site boundary watercourses. The report also highlighted that the appeal site had limited ecological value for GCN.
91. However, the lifetime of the reports' findings have expired. Nevertheless, at the hearing, the appellant's ecological advisor provided an update insofar as he was able to confirm that the site circumstances, including the condition of existing buildings, remained largely unchanged. As an arable site of limited ecological value, I heard that the findings in the dated reports would retain a high degree of validity. This was not disputed by the Council.
92. Subsequent to the report's findings and confirmation of the site circumstances, and subject to the recommendations made within the reports being imposed by planning condition, I am satisfied that the duty can be discharged, and planning conditions could protect and enhance the biodiversity value of the site.
93. The appellant refers to a written Ministerial Statement⁷ (WMS) issued by the Government on 8 September 2023 in relation to its long-term plan for housing. The letter includes the direction that 'Development should proceed on sites that are adopted in a local plan with full input from the local community unless there are strong reasons why it cannot'. Although it was not reported that it was before the Council when it made its decision (a short time after it was issued), I shall take account of it in my decision.
94. I acknowledge the frustrations of the appellant who has provided several iterations of the proposed scheme as a result of ongoing dialogue with officers of the Council after refusal of an earlier scheme (Ref. 20/02670/FUL). However, this is not a matter for this appeal.

Planning Balance

95. The scheme would provide a contribution to the borough's supply of housing. It would include a policy compliant amount of affordable housing, including First Homes opportunities. In the context of the Government's objective of

⁷ Department for Levelling Up, Housing & Communities – Long-Term Plan for Housing, 8 September 2023.

significantly boosting the supply of homes this is a benefit of significant weight.

96. There would be economic benefits associated with the development in terms of sustaining or creating employment opportunities during the construction phase of the development and subsequent site servicing. The development could deliver biodiversity net gains whilst meeting the development plan requirements in terms of highway safety and capacity and protecting existing residents' living conditions.
97. However, the uncertainty and potential harm to future residents' living conditions on the cumulative effects associated with the adjacent farm (as highlighted in the site designation policy) and the WWTW, is entitled to substantial weight. The houses would last for tens of years and residents would be potentially subject significant adverse effects on their living conditions during their use.
98. I find that the lack of comprehensive assessment of the potential effects of neighbouring land uses falls short of demonstrating that the scheme would deliver a well-designed, beautiful place that, amongst other things, would support community health, and social and cultural wellbeing through providing a high standard of living conditions for all prospective residents.
99. Notwithstanding my finding in favour of the appellant in terms of the effect of the restricted gardens and enclosures, I find the benefits of the scheme do not outweigh the potential harm to prospective residents living conditions. Furthermore, that harm would provide the strong reason why housing should not be allowed on the allocated site based on the evidence provided. The development would conflict with the development plan read as a whole. There are no other considerations, including the Framework and the WMS, that outweigh this conflict.

Conclusion

100. For the reasons given above the appeal should be dismissed.

R Hitchcock

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Satnam Choongh
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FOR THE COUNCIL:

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ET Planning
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INTERESTED PARTIES

Parish Cllr. Tamsin Armour
Ben Holmes
Sophie Hughes
Christine Colbeck
Charles Noblet
Peter Hopson
Mary Butler
Graham Blakey

Keyworth Parish Council
Oxalis Planning on behalf of Norman Davill
Oxalis Planning on behalf of Norman Davill
Resident
Resident
Resident
Resident
Resident

DOCUMENTS SUBMITTED AT THE HEARING:

Paper copy of planning permissions:

17/01575/FUL – Agricultural building and formation of yard area Hillside Farm, Bunny Lane, Keyworth.

19/00719/FUL – Erect multi-purpose agricultural building, Land adjacent to Lynwood, Bunny Lane, Keyworth.

Paper copy of Miller Goodall Odour, Dust and Noise Review Report No 103022, dated 26 May 2023

Precis of received objection of Mary Butler with images.

Appellant's schedule of s106 changes

END.